

CITY OF SAN ANTONIO
INTERDEPARTMENTAL MEMORANDUM
PUBLIC WORKS DEPARTMENT

TO: Mayor and City Council

FROM: Thomas G. Wendorf, P.E., Director of Public Works

THROUGH: Terry M. Brechtel, City Manager

COPIES: Melissa Byrne Vossmer, Peter Zanoni, Malcolm Matthews, Rebecca Waldman, Milo D. Nitschke, Andrew Martin, Jason Cosby, P.E., File

SUBJECT: Execution of a Short-Term Lease Agreement with Nick's Enterprises, Inc. d/b/a N & D Sports for the use of vacant retail space at the HemisFair Parking Garage.

DATE: March 11, 2004

SUMMARY AND RECOMMENDATIONS

This ordinance authorizes the execution of a Short-Term Lease Agreement with Nick's Enterprises, Inc. d/b/a N & D Sports for a period commencing March 30, 2004 and ending April 7, 2004, for the use of vacant retail space at the HemisFair Parking Garage for a one-time rental fee of \$13,500.00, and providing for an immediate effective date upon passage by 8 affirmative votes.

Staff recommends approval of this ordinance.

BACKGROUND INFORMATION

The 2004 NCAA Final Four Basketball Tournament will be held at the Alamodome from April 2-6, 2004. Due to the close proximity of the City property to the tournament site, Nick's Enterprises, Inc. d/b/a N & D Sports desires to lease the retail space from March 30, 2004 through April 7, 2004. The space will be used solely for the non-exclusive right to sell officially licensed 2004 Men's NCAA Final Four Basketball Tournament merchandise. As per the agreement, tenant will obtain any permits necessary to operate in the leased premises, including those required to operate in the "Clean Zone".

POLICY ANALYSIS

The Parking Fund was established as a self-sustaining enterprise fund. This ordinance is consistent with the City's policy to generate revenue through the leasing of City owned properties. Previous Parking Division leases with similar terms and conditions have been approved in the past and revenues have been added to the Parking Division Operating Fund.

FISCAL IMPACT

Revenues generated by this Lease Agreement will be \$13,500.00 for 6,242 square feet. This space is leasing for \$0.24 per square foot per day or \$2.16 per square foot per month. This rate is 73% over the low end of the normal long-term lease rate (\$1.25 per square foot) and 23% over the high end of the normal long-term lease rate (\$1.75 per square foot). Because of the prime location of this lease space, and the anticipation of heavy consumer traffic in the area due to the NCAA event, staff was able to negotiate higher than usual rates in order to maximize this underutilized space. In addition, staff will continue to develop measures to attract similar tenants through marketing efforts.

Nick's Enterprises, Inc. leased only the storefront of Suite 103 in FY 2003 for which they paid \$2,000.00. This year they are leasing Suite 102, the former Spurs Store, which is a prime corner location of the garage, in addition to Suite 103. The length of this lease is the same as last year. These spaces, which are currently unoccupied, are being leased in an "as is" condition which saves the City the cost of a finish out allowance.

COORDINATION


This request has been coordinated with the City Attorney's Office, Risk Management, Asset Management, Parks and Recreation, Finance Department, and the Office of Management and Budget.


SUPPLEMENTARY COMMENTS

The Discretionary Contract Disclosure Form required by the Ethics Ordinance is attached.

ATTACHMENTS

1. Lease Agreement


Thomas G. Wendorf, P.E.
Director of Public Works


Melissa Byrne Vossmer
Assistant City Manager

Approved:


Terry M. Brechtel
City Manager

HEMISFAIR PARKING GARAGE SHORT-TERM LEASE AGREEMENT

This Lease Agreement ("Lease") is by and between the CITY OF SAN ANTONIO ("LANDLORD"), acting by and through its City Manager or her designee, pursuant to Ordinance No. _____ dated _____ 2004, and NICK'S ENTERPRISES, INC. d/b/a N & D SPORTS COMPANY, a corporation ("TENANT") and is as follows:

ARTICLE I. DEMISE OF PREMISES

1.1 LANDLORD, in consideration of the rents, covenants and promises herein contained to be kept, performed and observed by TENANT, leases unto TENANT, and TENANT accepts from LANDLORD, the premises ("Leased Premises" or "Premises"), being Suites 102, Suite 103A, and Suite 103B, located at 600 E. Market Street, within the HemisFair Parking Garage located on Lot 92, Block 203, New City Block 13814, HemisFair Plaza, San Antonio, Bexar County, Texas. LANDLORD reserves the right from time to time to install, maintain, repair and replace utility lines, pipes, ducts, and wires passing through the Leased Premises to serve other parts of, or premises within, the HemisFair Parking Garage, without constituting a constructive eviction of TENANT.

ARTICLE II. USE

2.1 The Leased Premises shall be used solely for the non-exclusive right to sell only officially licensed 2004 Men's NCAA Final Four Basketball Tournament merchandise, in accordance with all required permits secured by TENANT to operate in the Leased Premises, including those required of permittees to operate in the "clean zone" as designated by Ordinance No. 98726, passed and approved on January 22, 2004, and for no other use, without LANDLORD's prior written approval.

ARTICLE III. TERM OF LEASE

3.1 The Term of this Lease shall commence March 30, 2004 and continue through April 7, 2004, unless earlier terminated.

ARTICLE IV. ACCEPTANCE AND CONDITION OF PREMISES

4.1 TENANT, has had full opportunity to examine the Leased Premises and accepts the Leased Premises from LANDLORD in its present, AS IS, WHERE IS AND WITH ALL FAULTS CONDITION as suitable for TENANT's use as stated herein. TENANT acknowledges that there is in and about said Premises nothing dangerous to life, limb or health and TENANT hereby waives any claim for damages that may arise from defects of that character after this occupancy. Further, TENANT agrees that no representations respecting the condition of the Leased Premises and no promises to decorate, alter, repair, or improve the Leased Premises, either before or after the execution hereof, have been made by LANDLORD or its agents to TENANT.

ARTICLE V. RENT/SECURITY DEPOSIT

5.1 TENANT agrees to pay LANDLORD as rent the amount of \$13,500.00, with a security deposit of \$1,000.00, both rent and security deposit being due and payable to the City of San Antonio Parking Division, Public Works Department, in a lump sum no later than March 29, 2004, prior to the date TENANT takes possession of the Premises. The security deposit shall be refundable to TENANT without the accrual of any interest thereon, unless TENANT holds over. Such holdover shall constitute a tenancy at sufferance, and the security deposit shall be retained by LANDLORD, to be used, applied, or retained in whole for the payment of any sum in default, or any other sum which LANDLORD may expend or be required to expend by reason of TENANT's default and including any damages or deficiencies in re-letting of the Premises, whether such damage or deficiency may occur before or after a repossession proceeding or other reentry by LANDLORD. Further, such security deposit may be applied to payments due from TENANT each day of \$1,000 cash, beginning April 8, 2004. LANDLORD's allowance of TENANT's holdover or acceptance of daily rent payments shall not constitute LANDLORD's acceptance of TENANT as a continuing occupant of the Leased Premises or a renewal of the Term. In the event that TENANT shall fully and faithfully comply with all the terms and conditions of this Lease, the security deposit or any balance thereof, shall be returned to TENANT within fourteen (14) days after the expiration of the Term or the date on which TENANT provides LANDLORD with a forwarding address, whichever is later. If for any reason the 2004 Men's NCAA Final Four basketball tournament is canceled prior to occupancy of the Leased Premises, TENANT will receive a full refund of all deposits and a pro-rated refund if cancellation occurs during the event, depending on the number of days TENANT occupies the Premises. If for any reason LANDLORD closes the Premises, not due to (1) any activities of TENANT, or (2) the negligence of TENANT or (3) damages caused by TENANT, then a pro-rated refund will also be made to TENANT.

ARTICLE VI. CONSTRUCTION AND ALTERATIONS

6.1 TENANT shall make no opening or attachment to the roof, ceiling, concrete floor, or to the interior and/or exterior walls, or any construction or structural alterations in any portion of the Leased Premises or Parking Garage, nor any alterations in or on the front of the

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exterior of the Leased Premises, nor any major interior alterations, nor place any signs on the Premises (collectively "modifications") without the prior written consent of LANDLORD. Such modifications shall be shown on plans and specifications provided to LANDLORD in advance of any work being done and shall become the property of LANDLORD at the end of the Term, and not removable by TENANT, except for signs, as detailed below, or removable is requested by LANDLORD. If LANDLORD requests removal, TENANT shall have five (5) days after the end of the Term to remove such modifications. TENANT agrees to pay LANDLORD for any damages to the Premises caused by such removal and to return the Leased Premises to its condition immediately prior to the installation of such modifications. If removal is requested and not completed within ten (10) days, then LANDLORD may effect such removal and make any repairs necessitated thereby. TENANT agrees to immediately pay LANDLORD the cost thereof as additional rental hereunder.

6.2 COMPLIANCE/NO LIENS. All work done by TENANT for modifications to the Leased Premises shall conform to, and comply with, all Federal, State and local laws, ordinances, permits, rules, and regulations applicable thereto. TENANT agrees to pay promptly for any work done by TENANT (or materials furnished for such work) in or about the Leased Premises. TENANT covenants that it shall not bind, or attempt to bind, LANDLORD for payment of any money in connection with any modifications to the Premises and that it shall not permit any liens to arise against the Premises, or any improvements thereon, or any equipment, machinery and/or fixtures therein belonging to LANDLORD. TENANT expressly agrees that it will keep and save the Premises and LANDLORD harmless from all costs and damages resulting from any such liens or lien of any character created or that may be asserted through any act or thing done by TENANT. In the event any mechanic's or other liens or orders for payment shall be filed against the Leased Premises or improvements thereon, or LANDLORD-owned property located therein, during the Term hereof, TENANT shall, within five (5) days cause the same to be canceled and discharged of record, by bond or otherwise at the election and expense of TENANT, and shall also defend on behalf of LANDLORD, at TENANT's sole cost and expense, any action, suit or proceeding which may be brought thereon or for the enforcement of such lien or order. Failure of TENANT to comply with any requirement of this section or ARTICLE shall be cause for immediate termination of this Lease by LANDLORD.

6.3 LANDLORD hereby reserves the right at any time to make alterations or additions the Premises or the HemisFair Parking Garage at any time, without constituting a constructive eviction of TENANT.

ARTICLE VII. TRADE FIXTURES AND PERSONAL PROPERTY

7.1 Any trade fixtures, signs, and other personal property (including merchandise for sale) TENANT not permanently affixed as a modification to the Leased Premises shall remain the property of TENANT and LANDLORD agrees that TENANT shall have the right, provided TENANT is not in default under the terms of this Lease, at any time, and from time to time, to remove any and all of its trade fixtures, signs, and other personal property which it may have stored or installed in the Leased Premises. TENANT, at its sole expense, shall immediately repair any damage occasioned to the Premises by reason of the removal of any such trade fixtures, signs and other personal property, and upon expiration or earlier termination of this Lease shall leave the Leased Premises in the same condition as immediately prior to the placement of such trade fixtures, signs and other personal property within the Premises. All trade fixtures, signs, and other personal property installed in or attached to the Leased Premises or otherwise placed within the Premises by TENANT must be new or in good, serviceable and attractive condition when so installed or attached or placed. The parties agree that any trade fixtures, signs, or other personal property, including merchandise for sale, whether or not so installed or attached, if not removed by TENANT from the Leased Premises on or before five (5) days after the termination of this Lease, shall become the property of LANDLORD without any further notice to TENANT or to its creditors, and without any liability whatsoever to any party on LANDLORD's part for its safety, condition, or disposal at public sale or private sale or otherwise, without notice.

ARTICLE VIII. PARKING

8.1 TENANT understands and agrees that no parking spaces are available to TENANT.

ARTICLE IX. TAXES AND FEES

9.1 TENANT shall pay before delinquency all taxes and assessments, both real and personal, and all vendor, license and permit fees, and governmental impositions of whatever kind or nature against the Leased Premises, and TENANT shall reimburse LANDLORD, with interest thereon at the maximum rate of interest, under applicable law, upon request, if LANDLORD shall have paid any such tax in the first instance provided LANDLORD was legally obligated to pay the same.

ARTICLE X. MAINTENANCE AND REPAIRS

10.1 TENANT agrees, at its own expense, to maintain and keep in good order and repair and in good, safe and sanitary condition, the Leased Premises, including plate-glass and plate-glass frames, interior plumbing, plumbing fixtures, plumbing lines and plumbing connections and exterior plumbing lines and connections of said Premises, and interior and exterior electrical fixtures of Premises, lamps and/or bulbs, wiring and connections, and interior walls, flooring, doors and other interior improvements, including heating and air conditioning equipment, and, to paint the interior when necessary to maintain the Leased Premises, or any part thereof, in a manner reasonably satisfactory to fulfill the obligations hereof, with the color of such paint to be approved by LANDLORD in writing in

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advance of such painting. Failure to do so shall be grounds for immediate termination of this Lease.

10.2 LANDLORD agrees to keep and maintain the roof, foundation, main beams, exterior walls, and all other structural portions of the Premises in good repair, as well as any electrical, plumbing, sprinkler system or HVAC service which may have been provided by LANDLORD, but LANDLORD shall not be liable to TENANT for any damage caused by the same being or becoming out of repair until LANDLORD has had reasonable opportunity to have same repaired after being notified immediately in writing of the need of same by TENANT. Further, LANDLORD shall not be liable to TENANT for any damage to merchandise, trade fixtures, or personal property of TENANT in the Premises caused by water leakage from the ceiling, water lines, sprinkler, or heating and air conditioning equipment or any other equipment installed by TENANT.

ARTICLE XI. INDEMNIFICATION

11.1 TENANT covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS LANDLORD and the elected officials, employees, agents, officers, directors, volunteers, contractors, subcontractors, consultants, subconsultants, utility providers, service providers, invitees, licensees, sublicensees, other tenants of the HemisFair Parking Garage, and representatives of LANDLORD, 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, death and property damage, made upon LANDLORD directly or indirectly arising out of, resulting from or related to TENANT's activities or LANDLORD's activities under this Lease, or any third party's activities, including any acts or omissions of TENANT, its employees, agents, officers, directors, representatives, contractors, subcontractors, consultants, subconsultants, subtenants, licensees, sublicensees, exhibitors, invitees, volunteers, utility providers, and service providers, and their respective officers, agents, employees, directors and representatives or of LANDLORD, its elected officials, employees, agents, officers, directors, volunteers, contractors, subcontractors, consultants, subconsultants, utility providers, service providers, invitees, licensees, sublicensees, other tenants of the HemisFair Parking Garage, and representatives of LANDLORD, all while in the exercise or performance of the rights or duties under this Lease all without however, waiving any governmental immunity available to LANDLORD under Texas Law and without waiving any defenses of the parties under Texas Law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF LANDLORD, ITS ELECTED OFFICIALS, EMPLOYEES, AGENTS, OFFICERS, DIRECTORS, VOLUNTEERS CONTRACTORS, SUBCONTRACTORS, CONSULTANTS, SUBCONSULTANTS, UTILITY PROVIDERS, SERVICE PROVIDERS, INVITEES, LICENSEES, SUBLICENSEES, OTHER TENANTS OF THE HEMISFAIR PARKING GARAGE, AND REPRESENTATIVES UNDER THIS LEASE. 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. TENANT shall promptly advise LANDLORD in writing of any claim or demand against LANDLORD or TENANT known to TENANT related to or arising out of TENANT'S activities or LANDLORD's activities or any third party's activities under this Lease and shall see to the investigation and defense of such claim or demand at TENANT'S cost. Notwithstanding any condition imposed by a policy of insurance to which TENANT and LANDLORD are named, LANDLORD 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 TENANT under this ARTICLE without relieving TENANT of any of its obligations under this ARTICLE.

11.2 It is the EXPRESS INTENT of the parties to this Lease, that the INDEMNITY provided for in this ARTICLE, is an INDEMNITY extended by TENANT to INDEMNIFY, PROTECT and HOLD HARMLESS, LANDLORD from the consequences of LANDLORD'S OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this ARTICLE SHALL APPLY only when the NEGLIGENT ACT of LANDLORD is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of LANDLORD is the sole cause of the resultant injury, death, or damage. TENANT further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF LANDLORD AND IN THE NAME OF LANDLORD, any claim or litigation brought against LANDLORD, its elected officials, employees, agents, officers, directors, volunteers, contractors, subcontractors, consultants, subconsultants, utility providers, service providers, invitees, licensees, other tenants of the HemisFair Parking Garage, and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

ARTICLE XII. INSURANCE

12.1 Without limiting LANDLORD's rights to indemnification, TENANT shall provide and maintain insurance, at its own expense, or provide evidence of self-insurance, with companies admitted to do business in the State of Texas and with a rating of A- or better by A. M. Best and Company, in the following types and amounts for the term of this Agreement, including periods of modifications to the Premises by TENANT:

TYPE

AMOUNT

- | | |
|---|--|
| 1. Worker's Compensation during the period of any modifications made to the Premises and at other periods during the Lease Term | Statutory, with a waiver of subrogation in favor of LANDLORD |
| 2. Employers' Liability during the | \$500,000 per category, |

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- period of any modifications made to the Premises by TENANT or an approved alternate plan at other periods during the Lease Term.
3. Commercial General (Public) Liability - to include coverage for the following where the exposure exists:
- (a) Premises/Operations
 - (b) Independent Contractors
 - (c) Products/Completed
 - (d) Personal Injury Liability
 - (e) Contractual Liability
 - (f) Explosion, Collapse and Underground Property
 - (g) Broad Form Property Damage
4. Property Insurance for physical damage to the property of TENANT including modifications ("improvements and betterments") Made to the Premises.
- with a waiver of subrogation in favor of LANDLORD.
- For Bodily Injury and Property Damage:
\$1,000,000 per Occurrence
\$2,000,000 general aggregate
or its equivalent in Umbrella or Excess Liability coverage.
- Coverage for a minimum of 80% of the actual cash value of the improvements.

Any alternate plan for Workers' Compensation and Employer's Liability must be approved in advance by the LANDLORD's Risk Manager. Alternate plans will not be allowed or accepted during any periods of TENANT's Work in, on, or about the Premises, whether authorized or unauthorized hereunder.

12.2 LANDLORD's Risk Manager is hereby authorized to reasonably modify the requirements set forth above in the event he determines that such modification is in the LANDLORD's best interest.

12.3 TENANT further agrees that, with respect to the above-required insurance, that each insurance policy required by this Agreement shall contain the following clauses:

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

- | | | |
|--|-----|---|
| (a) City Clerk, City of San Antonio
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966
ATTN: Risk Manager | and | (b) Department of Public Works
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966
ATTN: Acting Parking Manager |
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"It is agreed that any insurance or self-insurance provided by TENANT is primary to any insurance or self-insurance maintained by the CITY OF SAN ANTONIO."

"It is agreed that any insurance or self-insurance maintained by the CITY OF SAN ANTONIO shall apply in excess of, or not contribute with, insurance provided by this policy."

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

"The CITY OF SAN ANTONIO, its elected officials, employees, agents, officers, directors, consultants, subconsultants, contractors, subcontractors, volunteers, representatives and invitees are added as additional insureds as respects operations and activities or, on behalf of, the named insured performed under a Lease Agreement with the City of San Antonio."

12.5 If TENANT makes any modifications to the Leased Premises, TENANT shall further procure, or have its contractors and subcontractors procure, and maintain in full force and effect during the term of such contract for such modifications and until all work is accepted by LANDLORD, (1) builder's risk insurance for the replacement cost of the improvements being constructed; (2) commercial general (public) liability insurance adequate to fully protect LANDLORD and TENANT from and against any and all liability for death of, or injury to, persons, or damage to property, caused in or about, or by reason of, such modifications; (3) workers' compensation and employer's liability insurance; (4) professional liability insurance for architects and engineers; and (5) any other liability or other insurance coverage in the amounts and types of coverage approved by LANDLORD's Risk Manager, covering all risks of physical loss during the term of any contract for such modifications and until said work is accepted by LANDLORD. Also payment and performance bonds naming LANDLORD as additional indemnitee shall be provided by TENANT or its contractors or subcontractors. Should the size and scope of a contract for such modifications be limited in nature, TENANT may request, in writing to LANDLORD's Director of Public Works Department, a waiver of the requirements in this ARTICLE; however, a waiver may only be granted by LANDLORD's Risk Manager. In any event, LANDLORD's Risk Manager's decision shall be final.

12.6 Further TENANT agrees to provide to LANDLORD prior to the Commencement Date of this Lease endorsements to the above-WFF:dd Hemisfair Parking Garage short-form-Nick's Enterprises, Inc. (N & D) 1/29/04

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required policies, which add to these policies the applicable clauses referenced above in **SECTIONS 12.3 and 12.4**. Such endorsements shall be signed by an authorized representative of the insurance company and shall include the signatory's company affiliation and title. Should it be deemed necessary by **LANDLORD**, it shall be **TENANT's** responsibility to see that **LANDLORD** receives documentation acceptable to **LANDLORD** which confirms that the individual signing said endorsements is authorized by the insurance company to do so.

12.7 Said Notices and Certificates of Insurance shall be provided to:

- | | | |
|---|-----|--|
| <p>(a) City Clerk, City of San Antonio
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966
ATTN: Risk Manager</p> | and | <p>(b) Department of Public Works
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966
ATTN: Acting Parking Manager</p> |
|---|-----|--|

12.8 Nothing herein contained shall be construed as limiting in any way the extent to which **TENANT** may be held responsible for the payment of damages to persons or property resulting from **TENANT's** activities or the activities of **TENANT's** agents, officers, directors, representatives, employees, consultants, subconsultants, contractors, subcontractors, subtenants, assignees, invitees, volunteers, or service providers under this Agreement.

12.9 **LANDLORD**, its elected officials, employees, agents, officers, directors, volunteers, contractors, subcontractors, consultants, subconsultants, utility providers, service providers, invitees, licensees, other tenants of the Hemisfair Parking Garage, and representatives shall not be liable, and **TENANT** waives all claims for any damage to persons or property sustained by **TENANT** or any person claiming through **TENANT**, which may occur on the Premises, or for the loss of or damage to any property of **TENANT** or of others by theft or otherwise, whether caused by other persons on the Premises or by occupants of adjacent property or the public or **TENANT's** employees, agents, officers, directors, representatives, contractors, subcontractors, consultants, subconsultants, subtenants, licensees, sublicensees, exhibitors, invitees, volunteers, utility providers, and service providers, and their respective officers, agents, employees, directors and representatives. **TENANT** shall save and hold harmless **LANDLORD**, except for **LANDLORD's** sole active negligence, from any and all claims arising out of damage to **TENANT's** property, including subrogation claims by **TENANT's** insurers.

12.10 Any and all employees, agents, officers, directors, representatives, contractors, subcontractors, consultants, subconsultants, subtenants, licensees, sublicensees, exhibitors, invitees, volunteers, utility providers, and service providers, and their respective officers, agents, employees, directors and representatives of **TENANT** or any other party providing services on behalf of **TENANT** while engaged in the performance of any work required by **LANDLORD** or **TENANT** related to the Premises shall be considered employees, agents, officers, directors, representatives, contractors, subcontractors, consultants, subconsultants, subtenants, licensees, sublicensees, exhibitors, invitees, volunteers, utility providers, and service providers, and their respective officers, agents, employees, directors and representatives of **TENANT** only, and not of **LANDLORD** unless otherwise required by law. Any and all claims that may result from any obligation for which **TENANT** may be held liable under any Workers' Compensation, Unemployment Compensation or Disability Benefits law or under any similar law on behalf of said its employees, agents, officers, directors, representatives, contractors, subcontractors, consultants, subconsultants, subtenants, licensees, sublicensees, exhibitors, invitees, volunteers, utility providers, and service providers, and their respective officers, agents, employees, directors and representatives shall be the sole obligation and responsibility of **TENANT**. **TENANT** shall also secure Releases of Liability from said parties and provide copies thereof to **LANDLORD**.

12.11 **LANDLORD** reserves the right to review and require reasonable changes in insurance coverage at any time during the term of this Lease. In the event **TENANT** believes the requested change is unreasonable, **TENANT** may immediately, upon written notice to **LANDLORD** terminate this Lease, at which time **TENANT** agrees to remove all trade fixtures, personal property, and signs from the Leased Premises and repair, at **TENANT's** cost, any damages to the Premises caused thereby.

ARTICLE XIII. COSTS OF UTILITIES

13.1 **LANDLORD** will provide either chilled water or refrigerant for air conditioning purposes, if needed. **LANDLORD** will also provide all other utilities for the term of the Lease, to **EXCLUDE** costs associated with cable, satellite or other television connections and charges. **TENANT** shall not install any electrical or other equipment that overloads or clogs the utility lines serving the leased or adjacent premises. **LANDLORD** shall not be liable to **TENANT** in damages or otherwise if said services are interrupted or terminated because of necessary repairs, installations, improvements or any cause beyond the control of **LANDLORD**.

ARTICLE XIV. DEFAULT AND REMEDIES

14.1 The following contingencies shall be a condition of default:

A. If **TENANT** shall 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 any way observed and if such neglect or failure continues and is not cured by **TENANT** to **LANDLORD's** satisfaction, within a period of twenty-four (24) hours after **LANDLORD** notifies **TENANT** orally or by written notice

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of such neglect or failure; or

B. If the estate hereby created shall be taken by execution or by other process of law; or

C. The taking by a court of competent jurisdiction of TENANT and its assets pursuant to proceedings under the provisions of any Federal or State reorganization code or act, insofar as the following enumerated remedies for default are provided for or permitted in such code or act.

D. If any court shall enter a final order with respect to TENANT, providing for modification or alteration of the rights of creditors; or

E. If TENANT shall fail to take possession of the Leased Premises, for the conduct of business within five (5) days following the Commencement Date, or after beginning the conduct of business fails to open the business for a period of over twenty-four (24) consecutive hours, including Saturday, Sunday and any holiday.

14.2 In the event any condition of default shall occur (notwithstanding any waiver, license or indulgence granted by LANDLORD with respect to any condition of default in any form or instance) LANDLORD, then, or at any time thereafter, but prior to the removal of such condition of default shall have the right, at its election, either (1) to terminate this Lease by giving at least twenty-four (24) hours' written notice to TENANT, at which time TENANT will then quit and surrender the Leased Premises to LANDLORD, but TENANT shall remain liable for additional rent as provided under ARTICLE V. for any time TENANT occupies the Leased Premises after the twenty-four (24) hours' written notice, or, (2) to enter upon and take possession of the Leased Premises (or any part thereof in the name of the whole), without demand or notice, and repossess the same as LANDLORD's former estate, expelling TENANT and those claiming under TENANT, forcibly, if necessary, without prejudice to any remedy for arrears of rent, additional rents, future rents and future additional rents due hereunder, and other damages LANDLORD may claim and without any liability to TENANT or those claiming under TENANT for such repossession.

14.3 LANDLORD's repossession of the Premises shall not be construed as an election to terminate this Lease nor shall it cause a forfeiture of rents or other charges remaining to be paid during the balance of the Term hereof, unless a written notice of such intention is given to TENANT by LANDLORD. Notwithstanding any reletting without termination by LANDLORD because of any default by TENANT, LANDLORD may at any time after such reletting, elect to terminate this Lease for any such default.

14.4 Upon repossession, whether or not this Lease is terminated and notwithstanding any law or anything contained herein to the contrary, to the full extent permitted under applicable law, TENANT and LANDLORD agree that LANDLORD's duty to relet the Premises or otherwise to mitigate damages under this Lease, shall be limited to those requirements set forth in the Texas Property Code, as amended. TENANT agrees that LANDLORD shall in no event be liable and TENANT's liability shall not be affected or diminished in any way whatsoever for LANDLORD's failure to relet the Premises, or in the event the Premises are relet, for failure to collect any rent under such reletting so long as LANDLORD uses objectively reasonable efforts to comply with said Texas Property Code. LANDLORD and TENANT agree that any such duty shall be satisfied and LANDLORD shall be deemed to have used objectively reasonable efforts to relet the Premises and mitigate LANDLORD's damages by: (1) posting a "For Lease" sign on Premises; (2) advising LANDLORD's lease agent, if any, of the availability of the Premises; and (3) advising at least one outside commercial brokerage entity of the availability of the Premises.

14.5 In connection with any such reletting, LANDLORD may make or cause to be made such repairs to the Leased Premises as LANDLORD shall, in good faith, deem advisable, and the making of such repairs shall not release TENANT from liability hereunder.

14.6 In the event that LANDLORD shall elect to relet, then rentals received by LANDLORD from such reletting shall be applied: First, to the payment of any rent and other indebtedness due hereunder from TENANT to LANDLORD; Second, to the payment of any cost of such reletting; and Third, to the payment of the cost of any repairs to the Leased Premises; and the residue, if any, shall be held by LANDLORD. TENANT shall also pay to LANDLORD, as soon as ascertained, any costs and expenses incurred by LANDLORD in such reletting or in making such repairs not covered by the rentals received from such reletting of the Leased Premises.

14.7 If LANDLORD shall enter into and repossess the Leased Premises for reason of the default of TENANT in the performance of any of the terms, covenants or conditions herein contained, then and in that event TENANT hereby covenants and agrees that TENANT will not claim the right to redeem or recapture the said Premises to restore the operation of this Lease and TENANT hereby waives the right to such redemption and reentrance under any present or future law.

14.8 All rights, options and remedies of LANDLORD contained in this Lease shall be cumulative of the other, and CITY shall have the right to pursue any one or all of such remedies or any other remedy or relief available at law or in equity, whether or not stated in this Lease. No waiver by LANDLORD of a breach of any of the covenants, conditions, or restrictions of this Lease shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition, or restriction herein contained.

14.9 The words "center" and "century" as used in this Lease are not restricted to their technical legal meaning.

14.10 If proceedings shall at any time be commenced for recovery of possession as aforesaid and compromise or settlement shall be effected either before or after judgment whereby TENANT shall be permitted to retain possession of said Premises, then such proceeding shall not constitute a waiver of any condition or agreement contained herein or of any subsequent breach thereof or of this Lease.

14.11 Upon expiration or termination of this Lease, all rights and privileges herein granted shall immediately cease and terminate and TENANT shall immediately cease and terminate use of the Premises. LANDLORD reserves the right to require TENANT to restore the Leased Premises to its original or better condition existing prior to said occupancy of the Premises by TENANT, less normal wear

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and tear, at the sole cost of the **TENANT** and subject to approval of **LANDLORD** upon inspection. Any modifications, trade fixtures, personal property, signs, equipment and other items of **TENANT's** or other persons not recovered within five (5) days after the date of expiration or termination set forth herein, shall become the property of **LANDLORD**. **TENANT** shall be liable to **LANDLORD** for any costs incurred by **LANDLORD**, if **LANDLORD**, if removes **TENANT's** property and stores or disposes thereof. As noted elsewhere, **LANDLORD** may dispose of any or all of said property at a private or public sale by **LANDLORD** without notice or liability to **TENANT** or other persons whatsoever.

14.12 Any amount paid or liability incurred by **LANDLORD** for the account of **TENANT** may be deemed to be additional rental and the same, at **LANDLORD's** option, may be added to any rent then due or thereafter falling due hereunder.

ARTICLE XV. CONFLICT OF INTEREST

15.1 **TENANT** acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit the City, as **LANDLORD** herein, or a City officer or employee, as those terms are defined in Part B, Section 10 of the Ethics Code, as may be amended from time to time, 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 or her parent, child or spouse; a business entity in which the officer or employee, or his or her 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. **TENANT** warrants and certifies, and this Lease is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. **TENANT** further warrants and certifies that, if required to do so, it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

ARTICLE XVI. MISCELLANEOUS

16.1 **DEFINITION OF PARTIES.** The word "**TENANT**" and the provisions referring thereto shall mean, where the context so admits or requires, the person, named herein as **TENANT**; and if there is more than one **TENANT**, the covenants of **TENANT** shall be joint and severable obligations of each of them, and if **TENANT** is a partnership, the covenants of **TENANT** shall be the joint and severable obligations of each of the partners and the obligations of the firm. Any pronoun shall be read in the singular or plural number and in such gender as the context may require. Whenever the word, "**LANDLORD**" is used herein, it shall mean the **CITY OF SAN ANTONIO**, provided, however, that where the word, as used, denotes action authority, same shall mean the City Manager or her designee.

16.2 **TENANT's RESPONSIBILITY.** **TENANT** is fully responsible, pecuniarily and in all other respects, for acts or omissions on its part that are not properly authorized pursuant to the provisions herein.

16.3 **BINDING AGREEMENT.** All agreements herein contained shall be binding upon, apply and inure to the parties hereto and their respective legal representatives, successors, and assigns; it being understood and agreed, however, that the provisions herein as to Assignment and Subletting hereof are in no way impaired by this provision.

16.4 **RELEASE OF LANDLORD.** In the event of any sale or exchange of the Leased Premises by **LANDLORD**, **LANDLORD** shall be and is hereby entirely freed and relieved of all liability under any and all of its covenants and obligations contained in or derived from this Lease arising out of any act, occurrence, or omission relating to the Leased Premises or this Lease occurring after the consummation of such sale or exchange. Upon written request of the **LANDLORD**, or any purchaser or, as applicable, ground lessor, of the Leased Premises from the **LANDLORD**, or a mortgagee or beneficiary of **LANDLORD**, **TENANT** will, in writing, subordinate its rights hereunder to the interest of any purchaser or, any ground lessor of the land upon which the Leased Premises are situated and to the lien of any mortgage or deed of trust, now or hereafter in force against the land and Building of which the Leased Premises are a part, and upon any building hereafter placed upon the land of which the Premises are a part and to all advances made or hereafter to be made upon the security thereof. Further, provided that if **TENANT** is not in default hereunder, **TENANT** also agrees to execute a Certificate of Estoppel if so requested and under the provisions hereof. "Ground lessor" shall include **LANDLORD**.

16.5 **TENANT's FINANCING.** To the extent necessary to accommodate **TENANT** in dealing with its suppliers of merchandise and equipment who seek to place a lien on such merchandise and equipment, in connection with financing, **LANDLORD** agrees, upon written request from **TENANT**, to execute a Non-Disturbance and Attornment Agreement, including an Estoppel Certificate, or similar agreement purporting to secure a lien on such merchandise and/or equipment, if in a form acceptable to the City of San Antonio Director of the Public Works Department, upon consultation with the City Manager and City Attorney, and to the extent such agreement and certificate do not subordinate **LANDLORD's** interest in the Leased Premises and Building and do not change the notice, default or any other provisions of the Lease or this **MISCELLANEOUS** article, which would occasion getting approval by passage of a subsequent ordinance by the San Antonio City Council.

16.6 **ATTORNMENT TO SUBSEQUENT PURCHASER.** In the event any proceedings are brought for foreclosure, or in the event of the exercise of the power of sale under any mortgage or deed of trust made by **LANDLORD** covering the Leased Premises, **TENANT** shall attorn to the purchaser upon any such sale and recognize such sale and recognize such purchaser as **LANDLORD** under the Lease, provided said purchaser recognizes **TENANT's** rights under this Lease.

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16.7 RELATIONSHIP. The parties hereto agree that it is their intention to create only the relationship of LANDLORD and TENANT, and no provision hereof, or act of either party hereunder, shall ever be construed as creating the relationship of principal and agent, or a partnership, or a joint venture of enterprise between the parties hereto.

16.8 TRIPPLICATE ORIGINALS. This Lease may be executed in triplicate originals, each of which shall be considered an original for all purposes.

16.9 CAPTIONS. The captions securing this Lease are for the purposes of easy reference and shall not be considered a part of this Lease or in anyway modify, amend or affect the provisions hereof.

16.10. APPLICABLE LAW. This Lease shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Bexar County, Texas. The parties hereto further agree that any court of proper jurisdiction sitting in San Antonio, Bexar County, Texas, shall be the proper forum for any actions brought hereunder.

16.11 SEVERABILITY. If one or more of the provisions contained in this Lease shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall be construed as if such invalid, illegal, or unenforceable provision has never been contained herein. In such event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby, and it is also the intention of the parties to this Lease that in lieu of each clause or provision of this Lease that is illegal, invalid 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.

ARTICLE XVII. ENTIRE AGREEMENT

17.1 It is understood and agreed that this instrument contains the entire agreement between the parties hereto and shall not be modified or amended in any manner except by instrument in writing executed by the parties hereto. It is further understood and agreed by TENANT that LANDLORD and LANDLORD's agents have made no representations or promises with respect to the Leased Premises or the making or entry into this Lease, except as in this Lease expressly set forth, and that no claim or liability or cause for termination shall be asserted by TENANT against LANDLORD for, and LANDLORD shall not be liable by reason of, the breach of any representations or promises not expressly stated in this Lease, any other written or oral agreement with LANDLORD being expressly waived by TENANT, it being understood that the Charter of the CITY OF SAN ANTONIO requires all agreements with the CITY ("LANDLORD" herein) must be in writing and adopted by ordinance.

17.2 The party executing this Lease warrants that he or she has full authority to execute this Lease on behalf of TENANT.

17.3 The parties acknowledge that they have thoroughly read this Lease, including any exhibits or attachments hereto, and have sought and received whatsoever competent advice and counsel necessary to form a full and complete understanding of their rights and obligations herein, and, having so done, do hereby execute this Lease.

LANDLORD:

CITY OF SAN ANTONIO,
a Texas Municipal Corporation

BY: _____

PRINTED NAME: _____

TITLE: _____ City Manager

DATE SIGNED: _____ 2004

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

ADDRESS: P.O. BOX 839966

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TENANT:

NICK'S ENTERPRISES, INC. d/b/a
N & D SPORTS COMPANY, a corporation

BY: 

PRINTED NAME: David Dambrosio

TITLE: Sec + Tres

DATE SIGNED: 3/2/, 2004

ADDRESS: 2781 State Street
Hamden, Connecticut 06517

San Antonio, Texas 78283-3966
ATTN: CITY CLERK/2nd Floor, City Hall

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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:

N/A

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

N/A

and the name of:

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

N/A

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:

N/A

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.

NA

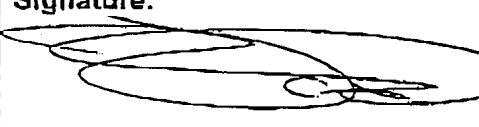
Political Contributions

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:
NA	NA	

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.

NA		
Signature: 	Title: Sec + Treu Company: NFD Sports	Date: 3/2/04

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.