

Agenda item #45

CITY OF SAN ANTONIO  
OFFICE OF THE CITY COUNCIL  
INTERDEPARTMENTAL CORRESPONDENCE

**TO:** Mayor and Council Members

**FROM:** Councilman Roger Flores, District 1

**COPIES TO:** Terry M. Brechtel, City Manager; Leticia Vacek, City Clerk; Andrew Martin, City Attorney; Gayle McDaniel, Assistant to City Council; Peter Zanoni, Acting Director of Management & Budget; Milo Nitschke, Director of Finance

**SUBJECT:** REQUEST FOR COUNCIL CONSIDERATION - LEASE AGREEMENT

**DATE:** September 20, 2004

Your concurrence is hereby requested to place an item on the September 23, 2004 Council agenda for Council consideration.

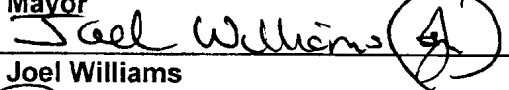
This item will request an ordinance to authorize execution of a Lease Agreement with Midtown Enterprises, Ltd., for 750 rentable square feet in the Midtown Merchants Building, at 1804 Blanco Rd. for the District 1 Constituent Office. The terms of the lease allow for a rental rate of \$975 per month with a commencement period of October 15, 2004 through October 14, 2006 or the date as specified by a letter of commencement based upon acceptance of the premises after completion of improvements to the leased space. An additional renewal period of twenty-four (24) months is included in this agreement, subject to City Council approval, and contingent upon appropriation of funds.

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

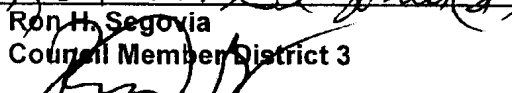
  
Roger O. Flores  
Council Member District 1

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Ed Garza  
Mayor

  
Joel Williams  
Council Member District 2

  
Ron H. Segovia  
Council Member District 3

  
Richard Perez  
Council Member District 4

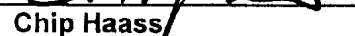
Patti Radle  
Council Member District 5

Enrique Barrera  
Council Member District 6

Julian Castro  
Council Member District 7

Carroll Schubert  
Council Member District 9

  
Art. A. Hall  
Council Member District 8

  
Chip Haass  
Council Member District 10

**LEASE AGREEMENT  
(COUNCIL DISTRICT NO. 1 FOR OFFICE SPACE)**

This Lease Agreement ("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 \_\_\_\_\_, 2004, and Midtown Enterprises, Ltd., a Texas Limited Partnership, acting by and through its duly authorized representative, ("**LANDLORD**"). **LANDLORD** and **TENANT** are collectively referred to herein as the **PARTIES**.

**I. PREMISES/USE/PARKING**

**1.1 DESCRIPTION OF PREMISES.** The "Leased Premises" or "Premises" identified as 1804 Blanco Road, consisting of approximately 750 rentable square feet, within a larger building containing approximately 6,500 square feet, designated as the "Midtown Merchants Building ("Building")" situated in the City of San Antonio, County of Bexar, State of Texas, which must be used for City of San Antonio Constituent ("District No. 1") office use, but the use of the Premises for personal business or political campaigning is prohibited. **LANDLORD** further agrees to make the Building Conference Room available for **TENANT'S** use, on a first come, first served basis, with forty eight (48) hours advance notice and upon prior arrangement with **LANDLORD**.

**1.2 PARKING.** **LANDLORD** also grants to **TENANT** the non-exclusive right to use all of the parking areas for the Building ("open parking").

**II. GRANTING CLAUSE**

**2.1 GRANT.** **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 said Leased Premises for the Initial Term as specified below, any holdover period, and Renewal Term, unless sooner terminated as herein provided, to be continuously used and occupied during said Term and any holdover period, by **TENANT**, only for the use(s) permitted herein and not otherwise.

**2.2 ACCEPTANCE OF PREMISES.** **TENANT** has thoroughly and independently inspected the Leased Premises, through its District Council Member and members of his staff, and accepts the Leased Premises in an "as-is" condition, after completion of improvements to the Premises to be made by **LANDLORD**, at **LANDLORD'S** sole cost and expense, as detailed in **Section 7.1**.

**2.3 ADDITIONAL CONTINGENCIES FOR OCCUPANCY.** **LANDLORD** agrees to comply with the San Antonio City Charter, City Code, City and County ordinances, Federal and State laws (collectively "Code") and confirms that the Leased Premises, following completion of said improvements and the Building will be, and will continue to be during the Initial Term, any holdover period, whether following the Initial Term or Renewal Term, and during the Renewal Term: (1) in good and satisfactory condition, (2) suitable for **TENANT'S** intended purpose and (3) in compliance with the Americans with Disabilities Act and all regulations thereunder that

**3.4 OCCUPANCY RIGHTS OF OFFICEHOLDER'S SUCCESSOR.** Notwithstanding the foregoing, if such event occurs whereby the current officeholder of District No.1 is no longer able to continue in office, as detailed in the foregoing **Section 3.3**, then **LANDLORD** grants the right to said officeholder's successor in office, at said successor's option, to continue occupancy of the Premises for the remainder of the Term, or holdover period, upon the same terms and conditions herein, as such right is detailed in the assignment provisions hereafter. A successor in office who does not wish to continue occupancy of the Premises, will give **LANDLORD** thirty (30) days advance written notice of termination. Any end of the Term as provided herein will be designated "Termination." Further, if prior to the Commencement Date or at anytime during the Term or Renewal Term hereof, the boundaries of District No. 1 are modified for any reason to the extent that the Premises are no longer included within the boundaries of District No. 1, then this Lease will terminate with thirty (30) days' prior written notice by **TENANT** to **LANDLORD** and both **TENANT** and **LANDLORD** will be relieved of any further obligations whatsoever hereunder. Upon advance notice to **TENANT**, **LANDLORD** will have the right to show the Leased Premises to other prospective tenants during said thirty (30) day period.

**3.5 RENEWAL OPTION.** **LANDLORD** grants to **TENANT** the right to renew and extend the Term of this Lease for an additional period of twenty four (24) calendar months following the Expiration Date of the Initial Term ("Renewal Term"), upon the same terms and conditions as set forth herein except for the rent, which will be subject to renegotiation. Further, any renewal must be approved by the passage of a future ordinance by the San Antonio City Council.

**3.6 TERMINATION WITHOUT CAUSE.** In addition to the termination with cause provisions set forth in this Lease for both **PARTIES**, **TENANT** reserves the right, with thirty (30) days' prior written notice to **LANDLORD**, to terminate this Lease without cause at anytime during the Lease, and without any further liability for the payment of any future rents, but with a commitment to pay any rent outstanding as of the date notice is sent to **LANDLORD**.

#### **IV. OBLIGATIONS OF LANDLORD**

**4.1 TAXES, ETC.** **LANDLORD** agrees to pay all State, 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, assessments and other fees becoming delinquent.

**4.2 UTILITIES.** **LANDLORD** represents that all electric and water connections are available to the Leased Premises. **LANDLORD** agrees, at **LANDLORD's** sole cost and expense, to pay all monthly charges for utility services, as necessary, including but not limited to, electric, water and sewer, however, any telephone, cable, satellite or other television services, and connections for any security service, if desired by **TENANT** (collectively "other utility services"), shall be paid for directly by **TENANT** to the providers of such other utility services during **TENANT's** occupancy of the Premises.

**4.3 REPAIR AND MAINTENANCE.** During **TENANT's** occupancy of the Leased Premises, **LANDLORD** agrees to repair and maintain, at **LANDLORD's** sole cost and expense, in such condition acceptable to **TENANT** for its intended office space purposes, the entire exterior and

are applicable to the Leased Premises and the Building, including a restroom located within the Leased Premises. Further, occupancy by **TENANT** is also subject to, and contingent upon, the following, unless otherwise satisfied by **LANDLORD**, as indicated herein:

(1) **ASBESTOS SURVEY.** **LANDLORD** has provided to **TENANT** an Asbestos Survey of the Leased Premises and the Building in which the Leased Premises is locate, in accordance with the provisions of City of San Antonio Ordinance No. 89710 passed and approved May 6, 1999. **TENANT** acknowledges that such report complies with such provisions.

(2) **MOLD: PROCEDURE IF PRESENCE OF MOLD SUSPECTED.** If **TENANT** suspects the presence of mold within the Leased Premises, **LANDLORD** will send a representative to make an inspection within three (3) business days from the date of receiving notice from **TENANT**. **LANDLORD'S** representative will report the findings to **TENANT** within three (3) business days from the date of the inspection. If mold is present, **LANDLORD** may, at its election, remediate the Leased Premises. If **LANDLORD** elects not to remediate, then **TENANT** may elect to terminate this Lease with three (3) calendar days' written notice. **LANDLORD** will notify **TENANT** of **LANDLORD'S** election to remediate or not at the same time as **LANDLORD** reports its findings to **TENANT**.

### **III. TERM/RENEWAL OPTION**

**3.1 TERM.** The term of this Lease ("Initial Term") will commence on the later of (1) October 15, 2004 or (2) the date **TENANT** accepts in writing the improvements to the Premises to be completed by **LANDLORD**, as detailed in **Section 7.1** ("Commencement Date") and will continue for a period of twenty-four (24) calendar months thereafter, through the later of (1) October 14, 2006 ("Expiration Date") or (2) the second anniversary of the date **TENANT** accepts in writing the improvements to the Premises to be completed by **LANDLORD**, as detailed in **Section 7.1**, 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 the Lease Term is sooner terminated as provided elsewhere in this **ARTICLE III**. **LANDLORD** and **TENANT** agree to execute a letter evidencing the actual Commencement Date and Expiration Date.

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

**3.3 CHANGE IN OFFICE.** The Parties agree and understand that this Lease is granted for the use of the officeholder of City Council District No.1 of the City of San Antonio, Texas during the Term and holdover period and that in the event the person holding this public office changes during the Term of this Lease, or holdover period, whether from the results of an election, resignation, death or any other reason, no further action is necessary to continue this Lease in full force and effect for the remaining Term of this Lease. However, in the event of termination, **TENANT** will not be liable to **LANDLORD** for any further payments of rent or other sums due, or for any damages whosoever or for specific performance for the balance of the term, following the termination, except for sums due through the date of termination.

interior of the Leased Premises, including, but not limited to, repair and maintenance of the exterior roof, foundation, load bearing walls, 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, (iii) ceiling and walls, (iv) windows and doors, (v) HVAC, (vi) the parking lot, (vii) landscaping and (viii) Common Areas of the Leased Premises and of said Building if any, and all other portions of the exterior and interior of the Leased Premises, not otherwise detailed herein to include (ix) a trash receptacle for use by **TENANT**. **LANDLORD** is not responsible for providing janitorial service for the Leased Premises, however, as noted below, **TENANT** may provide its own janitorial services.

## **V. OBLIGATIONS OF TENANT**

**5.1 JANITORIAL SERVICES.** **TENANT** may provide janitorial services for the Leased Premises at **TENANT'S** sole cost and expense.

**5.2 OTHER UTILITY SERVICES.** **TENANT** agrees to pay for any telephone, cable, satellite or other television services, and connections for any security service, if desired by **TENANT** (collectively designated in **Section 4.2** above as "other utility services"), shall be paid for directly by **TENANT** to the providers of such other utility services during **TENANT'S** occupancy of the Premises.

## **VI. RENT/SECURITY DEPOSIT**

**6.1 RENT.** **TENANT** agrees to pay **LANDLORD** a total monthly rental of \$975.00, beginning on the Commencement Date of the Initial Term of this Lease, and thereafter on or before the first day of each succeeding calendar month continuing for a period through month 24 of the Initial Term and during the entire Renewal Term.

**6.2 SECURITY DEPOSIT.** **LANDLORD** agrees that **TENANT** will not pay a security deposit.

**6.3 PLACE OF PAYMENT.** **TENANT** will mail all payments to: Midtown Enterprises, Ltd., 1802 Blanco Road, San Antonio, Texas 78212.

**6.4 GRACE PERIOD.** **LANDLORD** agrees to allow **TENANT** a grace period of 10 days past the due date of any payment of rent or otherwise due from **TENANT** to **LANDLORD** before the payment will be considered delinquent.

**6.5 PAYMENT SUBJECT TO ANNUAL APPROPRIATION.** **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. Accordingly, the above provisions notwithstanding, in the event that **TENANT** will 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, the **LANDLORD'S** sole option will be to terminate **TENANT'S** right under this Lease and **TENANT** will have no further obligations hereunder. **TENANT** agrees to give **LANDLORD** a minimum of 30 days written notice if **TENANT** must terminate the Lease because of any non-appropriation.

**6.6 PROHIBITION OF UNFUNDED DEBT.** **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. LANDLORD'S IMPROVEMENTS**

**7.1 LANDLORD'S IMPROVEMENTS.** Prior to **TENANT'S** occupancy of the Leased Premises, **LANDLORD** agrees to finish out the Leased Premises to include installation, taping and floating of sheetrock, painting of the walls, and installation of lighting fixtures, the HVAC system, and carpet on the floors, except for vinyl composition tile in the restroom area.

## **VIII. ACCESS TO PREMISES**

**8.1 LANDLORD'S RIGHT TO ACCESS.** Provided a representative of **TENANT** is present and always accompanies **LANDLORD** or **LANDLORD'S** authorized representatives, **LANDLORD** will have the right, upon 24 hours' prior 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 Lease Term or to prospective tenants within 30 days before the Termination Date of the Term, unless otherwise agreed to in writing by **TENANT**. Further, **LANDLORD** will 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 electrical problems and for termination and relocation purposes.

## **IX. MORTGAGE OF LANDLORD'S INTEREST**

**9.1 LANDLORD'S RIGHTS.** **LANDLORD** will 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** will 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. Further, **LANDLORD** will use its best efforts to secure a subordination, non-disturbance and attornment agreement from the present mortgage holder, to protect **TENANT** in case of **LANDLORD'S** default thereunder.

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 prepaid 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 her designee and will not require City Council approval.

## **X. ASSIGNMENT OR SUBLEASE**

10.1 **TENANT'S RIGHTS WITH LANDLORD'S CONSENT.** **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. HOWEVER, **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 Lease Term, or holdover period referenced above, including, but not limited to, failure to get reelected, 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 Lease Term, or holdover period, upon the same terms and conditions herein. Such process of succession and exercise of the option to occupy are detailed in **Section 3.4** above.

10.2 **LANDLORD'S RIGHTS.** **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 ALTERATIONS AND ADDITIONS.** TENANT will 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. Provided TENANT is not in default, TENANT will have the right, within 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 will 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 on the Leased Premises at a location or locations mutually agreed to by the parties, subject to compliance with all applicable laws and/or the City's sign ordinance including approval of the City Historic and Design Review Commission, if applicable.

## **XII. QUIET ENJOYMENT**

**12.1 LANDLORD'S COVENANT.** LANDLORD hereby covenants that TENANT, upon paying rent as herein reserved, and performing all covenants and agreements herein contained on TENANT'S part, will 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'S AGREEMENT RE MORTGAGE HOLDERS, ETC.**

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

## **XIII. DESTRUCTION OF LEASED PREMISES**

**13.1 DESTRUCTION OF LESS THAN 50% OF PREMISES.** If less than 50% of the Leased Premises is destroyed or otherwise made untenable in whole or in part by fire, other casualty, or for any other reason during the Term of this Lease, or any holdover period, LANDLORD will (1) commence the repair of the Leased Premises to the condition it was in prior to such damage or destruction within 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 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 90 days after the date of such partial destruction, **TENANT** may terminate this Lease, with 10 days' prior written notice to **LANDLORD**.

**13.2 DESTRUCTION OF 50% OR MORE OF PREMISES.** If 50% or more of the Leased Premises is destroyed or otherwise made untenable in whole or in part by fire, other casualty, or for any other reason during the Term of this Lease, or any holdover period, then either **LANDLORD** or **TENANT** may terminate this Lease in its entirety, with 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 LANDLORD'S OBLIGATION TO RESTORE PREMISES.** If neither party terminates under the provisions of **Section 13.2**, then **LANDLORD** will 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 or bonded general contractor, of the period of time (the "Stated Restoration Period") which will be required for the repair and restoration of the Leased Premises. **TENANT** will thereafter have the right, at its election, to terminate the Lease if either (i) the Stated Restoration Period will be in excess of 90 days following the event of casualty, whereupon **TENANT** may terminate this Lease with written notice thereof to **LANDLORD** within 10 days following delivery of the Restoration Notice, or (ii) **LANDLORD** will 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 10 days following the expiration of the Stated Restoration Period deadline. Rent will abate (pro rata to the space lost) 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 LANDLORD'S INSURANCE COVERAGE.** **LANDLORD** agrees to maintain adequate Commercial General Liability insurance of not less than \$2,000,000 combined single limits for bodily injury and property damage; and property and casualty insurance for physical damage in an amount not less than 80% of the actual cash value of said Leased Premises.

**14.2 TENANT'S INSURANCE COVERAGE.** **TENANT** will provide such self-insurance as it deems advisable to insure against general liability and loss of any of its property in the Leased Premises.

## **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 30 days' written notice to **LANDLORD**. If less than 50% of the Premises is condemned and **TENANT** elects to continue in possession, following 30 days written notice to **LANDLORD**, then **TENANT's** monthly rental for the remainder of the Lease Term will 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** will 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 will 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 REMEDY-TENANT'S DEFAULT**

17.1 **TENANT'S EVENTS OF DEFAULT; RIGHT TO CURE.** An Event of Default in the Lease will 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 the **LANDLORD**, which notice will 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** will notify **TENANT** of any monetary default by certified or registered mail, return receipt requested, to all required parties as identified in **Section 19.6** of this Lease and the Director of Finance, City Of San Antonio, P.O. Box 839966, San Antonio, Texas 78283-3966.

**17.2 LANDLORD'S REMEDY.** Upon failure of **TENANT** to timely cure an Event of Default, as stated above, **LANDLORD** will 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 will be limited to termination of this Lease and **TENANT'S** liability for the payment of rent will be limited to rent due as of the date of termination, without acceleration of rent for the balance of the Term of the Lease.

### **XVIII. DEFAULT AND REMEDY-LANDLORD'S DEFAULT**

**18.1 LANDLORD'S EVENTS OF DEFAULT; RIGHT TO CURE.** An Event of Default in the Lease will 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 will 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 will 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 benefit 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 TENANT'S REMEDY.** Upon failure of **LANDLORD** to timely cure an Event of Default, as stated above, **TENANT** will have the right to immediately terminate this Lease by providing five (5) days' prior written notice to **LANDLORD**. **TENANT'S** remedy will be limited to termination of this Lease and **LANDLORD'S** liability for the payment of any amounts due to **TENANT** will 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 the Expiration Date of the Initial Term or Renewal Term of this Lease, whichever is applicable at the time of such hold over, then such holding over will constitute and be construed

as a tenancy from month to month only, at a rental equal to the rent paid for the last month of the Initial Term or Renewal Term of this Lease, whichever is applicable at the time of such hold over, unless otherwise agreed to in writing by **LANDLORD** and **TENANT**, and subject to City Council approval and appropriation of such rent, in each instance. The inclusion of the preceding sentence will 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 then it is the intention of the parties that the remainder of this Lease will 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 will 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 will be held and construed to include any other gender, and words in the singular number will be held to include the plural, unless the context otherwise requires.

**19.4 COMPLETE AGREEMENT.** This Lease and any 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 will 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 Agreement will 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 will 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:**

Midtown Enterprises, Ltd.  
1802 Blanco Road  
San Antonio, TX 78212

**TENANT** offices of notification:

City Clerk  
P.O. Box 839966  
San Antonio, TX 78283-3966

and City Council Member, District 1  
P.O. Box 839966  
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, will be deemed to be one agreement. This Lease may be executed concurrently in one or more counterparts, each of which will be deemed an original, but all of which together will 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 will 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.

## **XX. CONFLICT OF INTEREST**

**20.1 LANDLORD** acknowledges that it is informed that the Charter of the City of San Antonio ("TENANT" herein) 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 individuals 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 10% or more of the voting stock or shares of the business entity, or 10% 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.

### **TENANT:**

CITY OF SAN ANTONIO,  
a Texas Municipal Corporation

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_ City Manager  
Date Signed: \_\_\_\_\_

Attest:

\_\_\_\_\_  
City Clerk

Approved as to Form:

\_\_\_\_\_  
City Attorney

### **LANDLORD:**

MIDTOWN ENTERPRISES, LTD.,  
A Texas Limited Partnership

Print Name: 1806 Blanco Road, L.L.C., a Texas  
Limited Liability Company  
Title: General Partner  
By: \_\_\_\_\_  
Printed Name: Troy "Trey" S. Martin, III  
Title: Its Authorized Representative and Member  
Date Signed: \_\_\_\_\_  
Attest: \_\_\_\_\_