

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

TO: Mayor and Council Members

FROM: Councilman Richard Perez, District 4

COPIES TO: J. Rolando Bono, Interim City Manager; Leticia Vacek, City Clerk; Andrew Martin, City Attorney; Gayle McDaniel, Assistant to City Council; Peter Zanoni, Director of Management & Budget; Milo Nitschke, Director of Finance

SUBJECT: REQUEST FOR COUNCIL CONSIDERATION - LEASE RENEWAL

DATE: December 28, 2004

Your concurrence is hereby requested to place an item on the January 6, 2005 Council agenda for Council consideration.

This item will request an ordinance to authorize the renewal and execution of a Lease Agreement with Moses and Cristy Mitchell, d/b/a Valley Hi Executive Center, for leased space located in a building known as Valley Hi Executive Center at 333 Valley Hi Drive, Suite #2108 and #2110 for the District 4 Constituent Office. The terms of the lease allow for a rental rate of \$587.25 per month with a commencement period of January 1, 2005 through May 15, 2005. At the conclusion of this lease, the District 4 Constituent Office will relocate to another site and that authorization will be brought forth at later date.

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


Richard Perez
Council Member District 4

Ed Garza
Mayor

Roger O. Flores
Council Member District 1


Joel Williams
Council Member District 2

Ron H. Segovia
Council Member District 3

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

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2004 DEC 29 A 8:01

RENEWAL AND EXTENSION OF LEASE AGREEMENT

(DISTRICT 4 OFFICE SPACE)

This Renewal and Extension Lease Agreement is entered into by and between The City of San Antonio, a Texas municipal corporation, acting by and through its Interim City Manager or designee ("**Tenant**"), pursuant to City of San Antonio Ordinance No. _____ dated December 16, 2004, and Moses and Christy Mitchell, d/b/a Valley Hi Executive Center, ("**Landlord**"). It renews and extends the terms of a Lease Agreement (District Office Space) (hereafter "Lease"), approved by Ordinance No. 95058 on December 13, 2001, and is for the lease of space located at 333 Valley Hi Drive, Suites #2108 and #2110, City of San Antonio, Texas 78242 ("Leased Premises"), in a building known as Valley Hi Executive Center ("Building"), City of San Antonio, Bexar County, Texas, as shown on Exhibit "A-2" to the original Lease, a copy of which original Lease is attached hereto as Exhibit "A" and incorporated herein verbatim for all purposes.

RENEWAL AND EXTENSION

TENANT has notified Landlord of **TENANT's** intent to renew and extend the terms of such Lease, subject to the approval of the City of San Antonio City Council, as evidenced by passage of the ordinance referenced above, such right to renew and extend having been granted by Landlord in **ARTICLE III. TERM, Section 3.5** of the Lease. Further, the following revisions are made to the Lease:

A. **ARTICLE III. TERM** is deleted in its entirety and the following new **ARTICLE III. TERM** is substituted for such **ARTICLE III.**

"III. TERM

"3.1 The Renewal Term of this Lease (alternately referred to herein as "Term", "Lease Term" or "Renewal Term") begins January 1, 2005 ("Commencement Date") and continues thereafter on a monthly basis through May 15, 2005, if funds are appropriated annually by the San Antonio City Council for rent payments beyond the current City of San Antonio Fiscal Year, ending September 30, 2005, as explained by the "unfunded debt" provisions in **Section 6.5**, unless the Term is sooner terminated as provided elsewhere in this **ARTICLE III.**

"3.2 As a local government, **Landlord** is subject to the Texas Public Information Act ("Act"), thus making this Lease subject to the terms of the Act.

"3.3 This Lease is granted for the use of the officeholder of City Council District No. 4 of the City of San Antonio, Texas during this Renewal Term and holdover period. If **Tenant** wishes to terminate this Lease for any reason before the Renewal Term expires, **Tenant** need only give 30 days' advance written notice of such termination. If **Tenant** terminates, **Tenant** will not be liable to **Landlord** for any further payments of rent, other sums due, any damages whatsoever, specific performance, or any other obligations whatsoever, following the termination, except for sums owing or liabilities incurred for the period before termination.

"3.4 If officeholder does not continue in office, officeholder's successor in office may but need not step into officeholder's shoes in occupying the Premises for the term of this Renewal and any further renewals. The successor officeholder's occupancy will be on the same terms and conditions as before, and the successor officeholder will be presumed to continue this Lease unless **Tenant** gives written notice of termination as provided above. If the boundaries of District No. 4 are modified for any reason such that the

Premises are no longer included within the boundaries of District No. 4, then this Lease will terminate on 30 days' prior written notice by **Tenant** to **Landlord**. Both **Tenant** and **Landlord** will thereupon be relieved of any further obligations hereunder, except for sums owing or liabilities incurred for the period before termination. Upon advance notice to **Tenant**, **Landlord** will have the right to show the Leased Premises to other prospective tenants during said 30-day period. Any end of this or a subsequent Renewal Term as provided herein shall be designated "Termination."

"3.5 **RENEWAL OPTION**: **Tenant** may renew and extend the Renewal Term of this Lease for an additional period of two years, upon the same terms and conditions as set forth herein, except that the rent is subject to renegotiation. Further any renewal must be approved by the passage of a future ordinance by the San Antonio City Council."

B. **ARTICLE VI. RENT/SECURITY DEPOSIT**, Section 6.1 **RENT**: is deleted in its entirety and the following new Section 6.1 **RENT** is substituted for such Section 6.1:

"6.1 **RENT**: **Tenant** will pay **Landlord** a total monthly rental of **\$587.25** on or before the 1st day of each calendar month during the Lease Term and any holdover period. For any month of **Tenant's** occupancy less than a full month, the rent will be prorated according to the number of days of **Tenant's** occupancy."

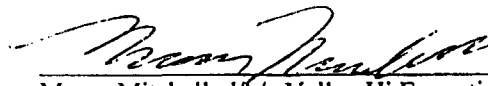
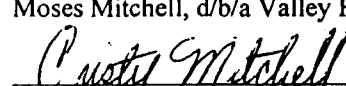

Effective: January 1, 2005 ("Commencement Date").

TENANT:

City of San Antonio, a Texas
municipal corporation

By: _____
Interim City Manager

LANDLORD:


Moses Mitchell, d/b/a Valley Hi Executive Center

Christy Mitchell, d/b/a Valley Hi Executive Center


ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

Exhibit "A"

LEASE AGREEMENT

(DISTRICT 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. 95058 dated DECEMBER 13 2001, and Moses and ~~Christie~~/Mitchell, d/b/a Valley Hi Executive Center, acting by and through their duly authorized officers ("collectively LANDLORD") and is for the lease of space located at 333 Valley Hi Drive, City of San Antonio, Texas 78242 ("Leased Premises" or "Premises"), in a building known as Valley Hi Executive Center ("Building"), City of San Antonio, Bexar County, Texas, as shown on Exhibit "A" (A-1 and A-2) attached hereto.

Cristy
CM

I. PREMISES/USE

1.1 The "Leased Premises" or "Premises," including all of suites 2108 and 2110, consists of approximately 625 rentable square feet which may be used for City of San Antonio Constituent ("District") office use, but which shall be prohibited for the use of personal business or political campaigning. (See Exhibit "A").

II. GRANTING CLAUSE

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

2.2 TENANT has thoroughly and independently inspected the Leased Premises, through its District Council Member, and accepts the Leased Premises in "as-is" condition. LANDLORD will comply with the San Antonio City Charter, City Code, City and County ordinances, Federal and State laws and warrants that the Leased Premises and Building are, and will continue to be during the Lease term suitable for TENANT's intended purpose.

III. TERM

3.1 The term of this Lease ("term") shall commence on January 1, 2002, ("Commencement Date") and shall continue thereafter until December 31, 2004, (1) provided 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) provided Councilman Enrique Martin remains in office, during the entire term of this Lease, unless the Lease term is sooner terminated as provided elsewhere in this ARTICLE III.

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

3.3 The Parties agree and understand that this Lease is granted for the use of the officeholder of City Council District No. 4 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.

3.4 Notwithstanding other provisions of this Lease, if such event occurs whereby the current officeholder of District No. 4 is no longer able to continue in office, 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. Alternatively, a successor in office who does not wish to continue occupancy of the Premises, may give LANDLORD forty five (45) days advance written notice of Termination. Any end of the term as provided herein shall be designated "Termination." Upon such Termination, as upon all other Termination rights herein vested in

TENANT, TENANT shall not be liable to LANDLORD for any further payments of rent or other sums due, or for specific performance for the balance of the term, following the Termination, except for sums due through the date of Termination.

3.5 LANDLORD grants to TENANT the right to renew and extend the term of this Lease for an additional period of three (3) years, upon the same terms and conditions as set forth herein, except that the rent is subject to renegotiation. Further, any renewal must be approved by the passage of a future ordinance by the San Antonio City Council.

IV. SERVICES BY LANDLORD/TAXES, ETC.

4.1 LANDLORD, at LANDLORD's sole cost and expense, shall furnish TENANT for the term of this Lease and any holdover period, those services set forth in Section 7.1.

4.2 LANDLORD agrees to pay all state, City and County taxes and any assessment and any other applicable fees assessed 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.

V. UTILITIES

5.1 LANDLORD agrees, at LANDLORD's sole cost and expense, to provide the following utility services for TENANT, including extension of service, separate metering, and payment of monthly charges for such services, during TENANT's occupancy of the Premises:

- a. water
- b. sewer
- c. electricity
- d. heating and air conditioning

5.2 If TENANT avails itself of any other utility services, then TENANT will do so at its sole cost and expense.

VI. RENT/SECURITY DEPOSIT

6.1 RENT: TENANT agrees to pay LANDLORD a total annual rental of \$6,600.00, in equal monthly installments of \$550.00 per month beginning on January 1, 2002 (as limited below), and on or before the first day of each succeeding calendar month thereafter during the Lease term and holdover period, if any. Notwithstanding the foregoing, the monthly rental of \$550.00 shall be abated (only) for the month of January 2002. Accordingly, no rent shall be due or payable until February 1, 2002. Other than as set forth herein, TENANT shall make rental payments without deduction, offset, prior notice or demand.

6.2 SECURITY DEPOSIT: The parties agree that TENANT shall not pay a security deposit.

6.3 PLACE OF PAYMENT: TENANT shall make payments payable to the order of "Valley Hi Executive Center" and shall mail all payments to: BCD Management, Inc.
Valley Hi Executive Center
14502 Brook Hollow Blvd.
San Antonio, Texas 78232

6.4 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, however all obligations of TENANT are subject to annual appropriation by the City Council in future years. Accordingly, the above provisions notwithstanding, in the event the TENANT shall fail to appropriate sums to pay any of the TENANT obligations under this Lease, and due to such failure to appropriate, fails to pay such obligations, the LANDLORD's sole option shall be to terminate TENANT's right under this Lease and TENANT shall have no further obligations hereunder.

TENANT agrees to give LANDLORD a minimum of forty five (45) days written notice if TENANT must terminate the Lease because of any non-appropriation.

6.5 LANDLORD agrees and understands that the Texas Constitution (Article 11, Section 5) prohibits the creation of an unfunded debt by a local government. The prohibition includes indemnity clauses in various types of contracts, thus making any indemnity clause in the Lease of no force or effect whatsoever.

VII. REPAIR AND MAINTENANCE

7.1 **LANDLORD'S DUTIES:** LANDLORD agrees to repair and maintain in first class condition useable by TENANT for its intended office space purposes, the exterior of the Leased Premises, including, but not limited to, repair and maintenance of the roof, foundation, load bearing walls, and other structural members of the Leased Premises, and of the Building in which the Leased Premises is located, as well as, (i) the parking lot, (ii) landscaping and (iii) Common Areas of the Leased Premises and of said Building. LANDLORD shall also provide: (a) janitorial service in the Common Areas, and (b) trash removal from the interior of the Leased Premises, Monday through Friday, inclusive, legal holidays excepted, throughout the Lease term and holdover, if any.

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

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

7.4 **RULES AND REGULATIONS:** TENANT and TENANT's agents, contractors, employees, guests and representatives shall comply fully with the "Rules and Regulations" of the Property, as set forth in Exhibit "B" attached hereto and made a part hereof for all purposes. LANDLORD may make reasonable changes in such Rules and Regulations from time to time as LANDLORD deems advisable for the safety, health, care and/or cleanliness of the Premises and/or the Property, provided such changes are reasonable for TENANT's purposes, TENANT is notified in advance in writing and are not in conflict with this Lease.

VIII. ACCESS TO PREMISES

8.1 Provided a representative of TENANT is present and always accompanies LANDLORD or LANDLORD's authorized representatives, LANDLORD shall have the right, upon twenty-four (24) hours' notice, to enter upon the Leased Premises during TENANT's business hours for the purposes of abating nuisances or protecting the Leased Premises, inspecting the same or of making repairs, additions or alterations thereto or to the real property or to the Building located thereon or for the purposes of exhibiting the same to prospective purchasers, at any time during the Lease term or to prospective tenants within sixty (60) days before the Termination Date of the term, unless otherwise agreed to in writing by TENANT. Further, LANDLORD shall have the right without TENANT's consent and/or prior notice to enter upon the Leased Premises for emergency purposes, such as, but not limited to, trash removal from the interior of the Premises, curing of plumbing or electric problems and for Termination and relocation purposes.

IX. MORTGAGE OF LANDLORD'S INTEREST

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

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

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

c. **ESTOPPEL CERTIFICATE:** TENANT agrees to furnish from time to time, within thirty (30) days after receipt of a written request from LANDLORD or LANDLORD's mortgagee, a statement certifying, if applicable and to the extent true, the following: TENANT is in possession of the Premises; the Premises are acceptable; the Lease is in full force and effect, the Lease is unmodified; TENANT claims no present charge, lien, or claim of offset against rent; the rent is paid for the current month, but is not prepaid for more than one month and will not be prepared for more than one month in advance; there is no existing default by reason of some act or omission by LANDLORD; and such other matters as may be reasonably required by LANDLORD or LANDLORD's mortgagee, including evidence of the subordination of TENANT's leasehold interest referenced herein, and attornment to said mortgagee or Transferee in exchange for written recognition of TENANT's right to remain in peaceful possession of the Leased Premises. Such statements may be executed by the City Manager or his designee and will not require City Council approval.

X. ASSIGNMENT OR SUBLEASE

10.1 TENANT agrees not to assign or sublease the Leased Premises, lease any part thereof, or any right or privilege connected therewith, or to allow any other person, except TENANT's agents and employees, to occupy the Leased Premises or any part thereof, without first obtaining the LANDLORD's prior written consent, such consent not to be unreasonably withheld. LANDLORD agrees and understands that if the TENANT's elected official occupying the Premises fails to continue in office for any reason whatsoever during the 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 Notwithstanding the provisions of Section 10.1, LANDLORD agrees that TENANT has the right to substitute a Department of the City of San Antonio or portion thereof as TENANT, without LANDLORD's approval, including any changed use, provided LANDLORD's obligations hereunder are not increased and TENANT's obligations hereunder are not decreased.

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

XI. ALTERATIONS AND ADDITIONS/SIGNAGE

11.1 TENANT shall not permit, make or allow to be made, any alterations or physical additions in or to the Leased Premises without the prior written consent of LANDLORD, which consent will not be unreasonably withheld. TENANT shall have the right, within fifteen (15) days after the Termination Date, or any holdover period, to remove from the Leased Premises all of its furniture, fixtures, equipment, trade fixtures, furnishings, and other personal property, including any partitions, any alarm systems or other items which are not the property of LANDLORD and with respect to any damage caused by TENANT's negligence in such removal, TENANT shall have the obligation to restore the Leased Premises to its condition prior to such removal, save and except for damage from normal wear and tear. 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. LANDLORD shall provide TENANT's name for the Building directory and a Building standard sign at TENANT's expense. With the exception of one (1) four feet by two feet sign on the pylon provided for all tenants of the Property for the purpose of indicating the nature of the business carried on by TENANT in the Premises and an identification sign in the right of way adjacent to the Building, TENANT signs shall not be permitted outside the Premises unless by prior written consent of LANDLORD. The foregoing two permitted signs shall be installed at TENANT's expense. The outside sign on the common area pylon shall be the same size as set forth herein above unless by prior written agreement between TENANT and LANDLORD. All of TENANT's signs shall conform with the Rules and Regulations of the Property as set forth in Exhibit "B" attached. TENANT shall be permitted to place one (1) sign on the entry door to the Premises for the purpose of indicating the nature of the business carried on by TENANT in the Premises and provided such sign does not damage the Premises in any manner. All such signs, alterations, and/or improvements affixed to the Premises by the TENANT shall become the property of the LANDLORD unless agreed to otherwise by prior written agreement between TENANT and LANDLORD.

XII. QUIET ENJOYMENT

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

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

XIII. DESTRUCTION OF LEASED PREMISES

13.1 If the Leased Premises is partially destroyed or otherwise made untenable in whole or in part by fire, other casualty, or for any other reason during the term of this Lease, or any holdover period, LANDLORD shall (1) commence the repair of the Leased Premises to the condition it was in prior to such damage or destruction within thirty (30) days after the partial destruction, and (2) diligently pursue the repair work in the order of priority designated by TENANT, and (3) complete such repairs within one hundred eighty (180) 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 one hundred eighty (180) days after the date of such partial destruction, TENANT may terminate this Lease, with ten (10) days' prior written notice to LANDLORD.

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

13.3 If neither party terminates under the provisions of Section 13.2, then LANDLORD shall be obligated to provide written notice (the "Restoration Notice") to TENANT within thirty (30) days of such event of casualty stating a good faith estimate, certified by an independent architect, of the period of time (the "Stated Restoration Period") which shall be required for the repair and restoration of the Leased Premises. TENANT shall thereafter have the right, at its election, to terminate the Lease if either (i) the Stated Restoration Period shall be in excess of one hundred eighty (180) days following the event of casualty, whereupon TENANT may terminate this Lease with written notice thereof to LANDLORD within ten (10) days following delivery of the Restoration Notice, or (ii) LANDLORD shall fail to substantially complete the repair and restoration of the Leased Premises within the Stated Restoration Period (subject to delays due to Acts of God, terrorism, war, strikes, labor disputes, or shortages of materials or other causes which are agreed to by TENANT) and TENANT delivers written notice of such Termination to LANDLORD within ten (10) days following the expiration of the Stated Restoration Period deadline.

XIV. INSURANCE

14.1 **TENANT'S INSURANCE COVERAGE:** TENANT shall provide such self-insurance as it deems advisable to insure against loss of any of its property in the Leased Premises.

14.2 **LANDLORD'S INSURANCE COVERAGE:** LANDLORD agrees to maintain adequate Commercial General Liability insurance of not less than \$1,000,000 limit of liability for bodily injury and property damage; and property and casualty insurance for physical damage in an amount not less than 80% of actual cash value of said Leased Premises.

LANDLORD shall not be obligated to insure any personal property of TENANT and/or TENANT's agents, contractors, employees, guests and/or representatives, including but not limited to furniture, fixtures, equipment, documents, signs, machinery, goods, inventory and/or supplies which TENANT and/or TENANT's agents, contractors, employees, guests and/or representatives may bring onto and/or place upon the Premises and/or the Property. LANDLORD shall not be obligated to insure any improvements which TENANT may construct, install and/or attach to the Premises. LANDLORD shall not be obligated to insure against TENANT's loss of business, income and/or its use of the Premises.

XV. INDEMNIFICATION

15.1 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.

XVI. EFFECT OF EMINENT DOMAIN PROCEEDINGS

16.1 In the event of the commencement of eminent domain proceedings which may result in the condemnation of a portion or all of the Leased Premises or of the Building TENANT may terminate this Lease in its entirety, with sixty (60) days' notice to LANDLORD. If less than fifty (50%) of the Premises is condemned and TENANT elects to continue in possession, following sixty (60) days written notice to LANDLORD, then TENANT's monthly rental for the remainder of the Lease term shall in such case be reduced by the amount that the Leased Premises taken bears to the total rentable square footage of the original Leased Premises. If 50% or more of the Leased Premises is condemned or otherwise made untenable, either LANDLORD or TENANT may terminate this Lease in its entirety, and TENANT and LANDLORD shall each be entitled to compensation for any loss arising from such condemnation. LANDLORD and TENANT may pursue their rights to such compensation separately. Rental payments shall be abated proportionately for any period of time in which TENANT is unable to occupy any portion of the Premises, based on the number of useable square feet therein.

XVII. DEFAULT AND REMEDIES-TENANT'S DEFAULT

17.1 An Event of Default in the Lease shall occur should TENANT neglect or fail to perform or observe any of the terms, provisions, conditions or covenants herein contained and on TENANT's part to be performed or in any way observed and if such default should continue for a period of thirty (30) days after the date of mailing by LANDLORD to TENANT of written notice from the LANDLORD, which notice shall specify the exact nature of said default with particularity and how the same may be cured, except for delinquency in the payment of any installment of rent or additional rent wherein such delinquency is a default and must be cured within ten (10) days after receipt by TENANT of written notice of such default. LANDLORD shall notify TENANT of any monetary default by certified or registered mail, return receipt requested through the Director of Finance, City Of San Antonio, P.O. Box 839966, San Antonio, Texas 78283-3966 and LANDLORD shall also provide notices of any default to all parties as identified in Section 19.6 of this Lease.

17.2 Upon failure of TENANT to timely cure an Event of Default, as stated above, LANDLORD shall have the right to terminate this Lease by five (5) days' prior written notice to TENANT or without terminating. LANDLORD may without being obligated to do so, re-enter and, to the extent required under the Texas Property Code, (as amended), as to LANDLORD's duty to mitigate, relet the Leased Premises or any part thereof upon the best rent and best terms possible as soon as reasonably possible and with reasonable effort on the part of

LANDLORD. LANDLORD's remedy shall be "limited" to Termination of this Lease and TENANT's liability for the payment of rent shall be limited to rent due as of the date of Termination.

XVIII. DEFAULT AND REMEDIES-LANDLORD'S DEFAULT

18.1 An Event of Default in the Lease shall occur should LANDLORD neglect or fail to perform or observe any of the terms, provisions, conditions or covenants herein contained and on LANDLORD's part to be performed or in any way observed and if such default should continue for a period of fifteen (15) days after the date of mailing by TENANT to LANDLORD of written notice from the TENANT, which notice shall specify the exact nature of said default with particularity and how the same may be cured.

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

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, in the event TENANT remains in possession of the Leased Premises, or any part thereof, without LANDLORD's prior written approval, after the Termination Date of this Lease, such holding over shall constitute and be construed as a tenancy from month to month only, at a rental equal to 125% of the rent set forth herein due for the last month of the term of this Lease unless otherwise agreed to in writing by LANDLORD and TENANT. The foregoing is subject to City Council approval and appropriation of such rent, and shall not be construed as LANDLORD's consent to such holding 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 shall not be affected and that in lieu of each clause or provision that is illegal or unenforceable there be added as a part of this Lease, a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable. The caption of each Article and Section hereof is added as a matter of convenience only and shall be considered to be of no effect in the construction of any provision or provisions of this Lease. Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

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

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

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

Cristy
LANDLORD: Moses and ~~Christie~~ Mitchell
d/b/a Valley Hi Executive Center
BCD Management, Inc.
14502 Brook Hollow Blvd.
San Antonio, Texas 78232

and

Mr. and Mrs. Moses L. Mitchell
c/o ABCF Day Care
333 Valley Hi Drive, Suite 1102
San Antonio, Texas 78227

TENANT office of notification: City Clerk
P.O. Box 839966
San Antonio, Texas 78283-3966

and

City Council Member, District 4
P.O. Box 839966
San Antonio, Texas 78283-3966

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

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

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

19.10 **LANDLORD'S CONSTRUCTION:** LANDLORD shall have the right to construct or permit construction of TENANT improvements in the Building in which the Premises are located, in any other building of the Property and/or on any other property in the surrounding area for existing and/or new tenants. Notwithstanding anything which may be contained in this Lease, TENANT hereby agrees that LANDLORD may undertake or permit such construction, and TENANT hereby agrees that such construction shall not be deemed to constitute a nuisance or breach of its quiet enjoyment rights, and TENANT hereby waives any such claim which it might have arising from such construction. LANDLORD shall use best efforts to keep the disruption to TENANT caused by this construction minimized.

19.11 **SALE BY LESSOR:** In the event of a sale or conveyance by LANDLORD of the Property, the building in which the Premises are located and/or any portion of either, the sale or conveyance shall operate to release LANDLORD from any responsibility and/or liability for any of the covenants or conditions, expressed or implied, herein contained in favor of TENANT, provided buyer simultaneously assumes all obligation of this Lease. After such sale and in such event TENANT agrees to look solely to the successor or interest of LANDLORD in and to this Lease. This Lease shall not be affected by any such sale, and TENANT agrees to attorn to the purchaser or assignee.

19.12 **TENANT'S LIENS PROHIBITED:** TENANT shall have no power to do any act or to make any contract that may create or be the foundation of any mortgage, deed of trust or other lien upon the Property, the Premises, the leasehold and/or upon any of the buildings or improvements thereof. Should any such mortgage, deed of trust or other lien be created or filed, TENANT, at TENANT's sole cost and expense, shall liquidate and discharge the same in full within thirty (30) days after the earlier of the creation and/or filing thereof, and should TENANT fail to discharge the same with such period of time, it shall constitute a breach of this Lease by TENANT.

XX. CONFLICT OF INTEREST

20.1 LANDLORD acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with the City or any City agency such as City-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10%) percent or more of the voting stock or shares of the business entity, or ten (10%) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor

on a City contract, a partner or a parent or subsidiary business entity. LANDLORD warrants and certifies, and this lease is made in reliance thereon, that it, its partners, employees and agents are neither officers nor employees of the City. LANDLORD further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XXI. CONFERENCE ROOM

21.1 At no cost to TENANT, for a period of two (2) hours each month, and upon reasonable notice to LANDLORD, and subject to prior reservation by other tenants, TENANT shall be entitled to the use of the conference room located in the Building. Additional time in the conference room shall be available to TENANT at the same rates charged to the tenants then paying the lowest rates therefor.

XXII. PARKING

22.1 TENANT and TENANT's agents, contractors, employees, guests and representatives shall have the non-exclusive right to park (in common with other tenants of the Property and the agents, contractors, employees, guests and representatives of other tenants of the Property) in all unreserved parking facilities and spaces located on the Property and provided for tenants of the Building(s) located on the Property, subject to LANDLORD's right to alter, modify, resurface and/or to change the location of such parking facilities and spaces. LANDLORD reserves the right to determine whether the parking facilities and spaces are becoming crowded and, in such event, to allocate parking spaces among the TENANT and other tenants of the Property and/or to otherwise limit the number of parking spaces available for use by TENANT and/or TENANT's agents, contractors, employees, guests and/or representatives. LANDLORD reserves the right to set aside and charge for reserved parking spaces. In the event LANDLORD determines to charge for and/or reserve parking, TENANT shall have the option of renting at least its pro rata number of parking spaces, based on the square feet of rentable leased space by TENANT in the Building compared to other tenant's rentable leased space in the Building at a cost to TENANT of no more than other Class B buildings in San Antonio.

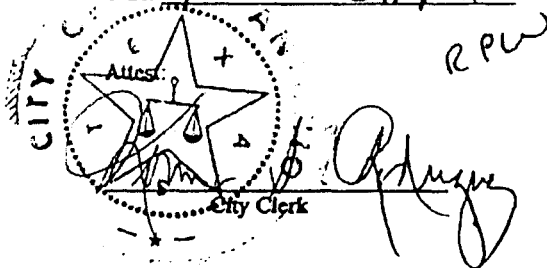
EFFECTIVE: ten (10) days after the date of passage of the ordinance referenced on Page 1 ("Effective Date").

TENANT:

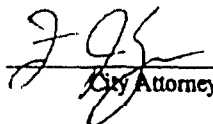
CITY OF SAN ANTONIO,
a Texas municipal corporation

By: 

Title: Assistant City Manager



Approved:


City Attorney

LANDLORD:


Moses and ~~Christie~~ Mitchell

By: 

Moses Mitchell

By: 

Christie Mitchell

Cristy

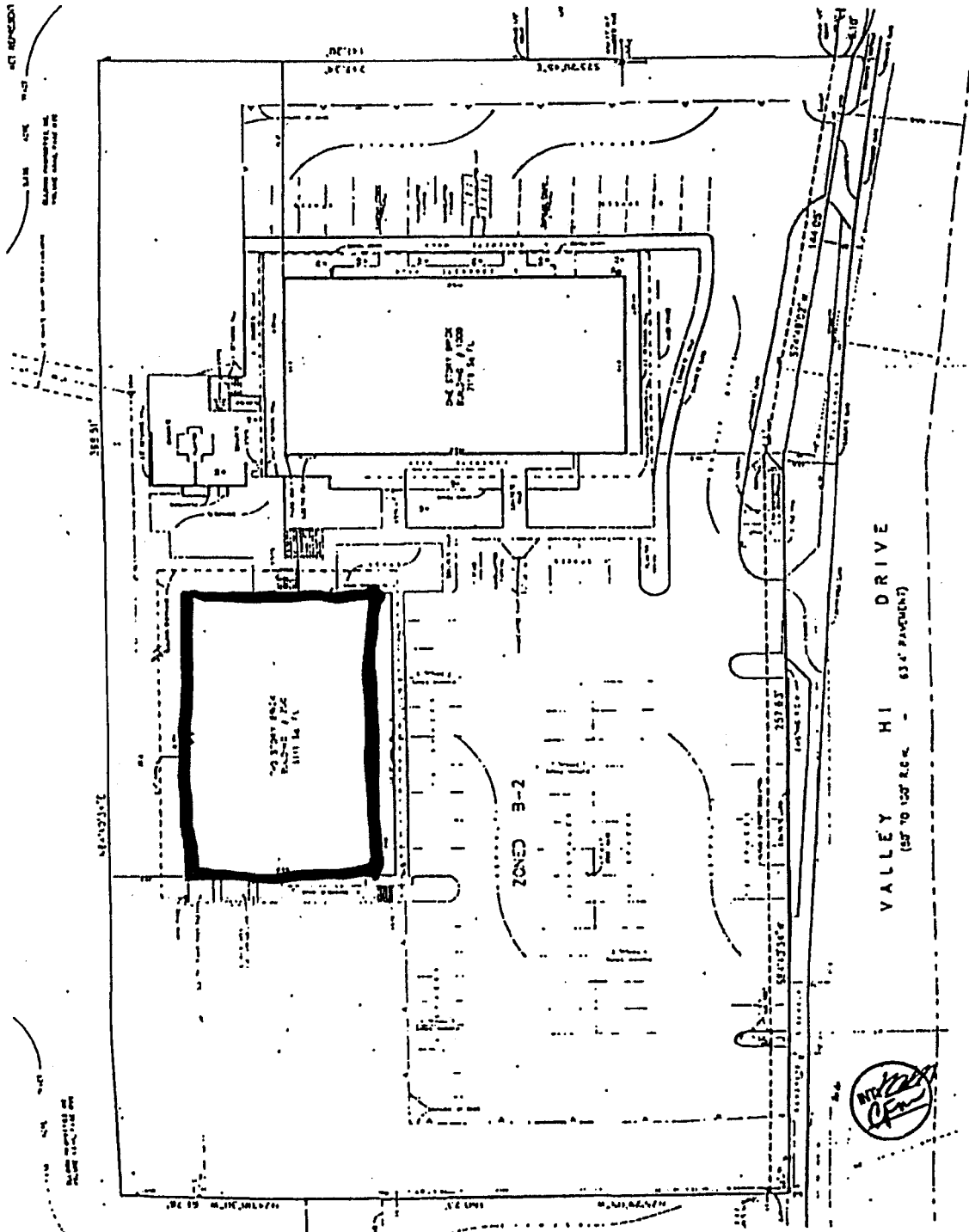


A
INITIAL
DATE
OK

EXHIBIT "B-1"
BUILDING OF PROPERTY IN WHICH THE PREMISES ARE LOCATED

Project: Valley-Hi Executive Center
333 Valley-Hi Drive / San Antonio, Texas 78227

The Two (2) story building shown outlined in Red herein below.



(A)
EXHIBIT "B-2"
FLOOR PLANS



Project: Valley-Hi Executive Center, 333 Valley-Hi Dr., San Antonio, Texas
Building: The Two (2) story building
Floor: (First or Second) First
Location: The Premises are situated in the location shown outlined in Red herein below.

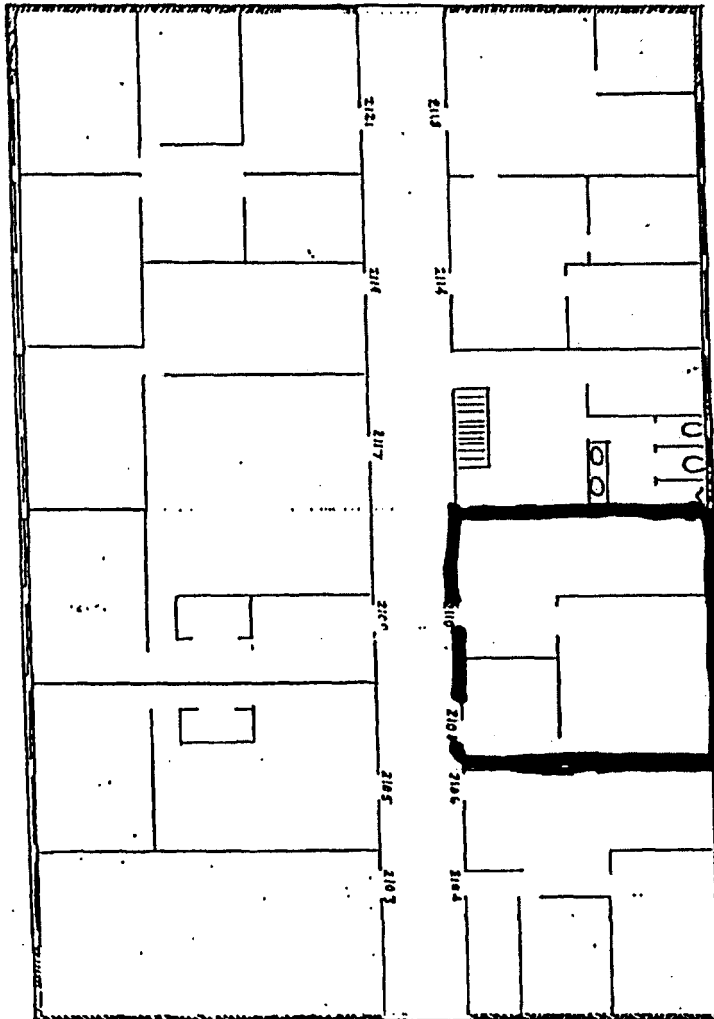


EXHIBIT "B"
RULES AND REGULATIONS

1. Canvassing, soliciting and/or peddling in and on the Property are prohibited, and Tenant shall cooperate to prevent such activities.
2. Tenant shall not bring onto or keep on and/or within the Premises and/or the Property any animal, bicycle and/or motorcycle unless approved under Permitted Uses or unless specifically approved in writing by Landlord.
3. Tenant shall not conduct manufacturing operations, cook and/or prepare food and/or place or use any inflammable, combustible, explosive or hazardous fluid, chemical, device, substance and/or material in, on and/or about the Premises and/or the Property without the prior written consent of Landlord. Tenant shall comply with all statutes, ordinances, orders, rules, regulations and requirements imposed by governmental and/or quasi-governmental authorities including, but not limited to, fire, health and safety and fire, health and safety prevention ordinances and regulations and Tenant shall not commit any act, and/or permit any object to be brought into or kept in the building, which shall result in a change in the rating of the Property by Landlord's insurance carrier and/or any similar person or entity.
4. Tenant shall not use the Premises and/or the Property for the storage of goods, inventory, merchandise and/or wares, except as such storage may be incidental to the use of the Premises for general office purposes and except in such portions of the Premises as may be specifically agreed to and designated by Landlord for such storage or unless specifically approved in writing by Landlord.
5. Tenant shall not install and/or use in the Premises and/or the Property any air conditioning unit, boiler, engine, generator, heating unit, machinery, radiator, stove, water cooler, ventilator and/or any other similar apparatus without the express prior written consent of Landlord, and then only as Landlord may direct.
6. Tenant shall move all freight, furniture, fixtures, supplies and other personal property into, within and out of the Premises and/or the Property only at such times and through such entrances as may be designated by Landlord. Tenant shall not move and/or install any such object in, on and/or about the Premises and/or the Property in such a fashion as to unreasonably obstruct and/or disturb the activities of other tenants of the Property, and all such moving and/or installing shall be done at the sole expense, risk and responsibility of Tenant.
7. Tenant shall not deposit any trash, refuse, cigarettes and/or other substances of any kind within and/or about the Property except in the refuse containers designated and provided by Landlord therefore. Tenant shall not introduce into the Premises and/or the Property any substance which might add an undue burden to the cleaning and/or maintenance of the Premises and/or the Property. Tenant shall exercise its best efforts to keep the sidewalks, entrances, passages, courts, yards, lobby areas, garages, parking areas, elevators, escalators, stairways, vestibules, public corridors and halls in, on and about the Premises and the Property clean and free from debris, trash and rubbish.



8. Landlord reserves the right to exclude or expel from the Premises and/or the Property any person who, in the judgement of Landlord, is intoxicated or under the influence of liquor and/or drugs and/or is deemed to be dangerous and/or a disturbance, and/or shall in any manner act in violation of the rules and regulations of the Property.
9. Tenant shall not use the washrooms, restrooms and/or plumbing fixtures of the Property, and/or appurtenances thereto, for any purpose other than for which they are constructed and intended, and Tenant shall not deposit any trash, sweepings, rubbish, rags and/or other improper substances therein. Tenant shall not waste water by interfering and/or tampering with the faucets or otherwise. If Tenant or Tenant's agents, contractors, employees, guests, invitees, representatives and/or visitors cause any damage to such washrooms, restrooms, plumbing fixtures and/or appurtenances, such damage shall be repaired by Tenant and at Tenant's expense, and Landlord shall not be responsible therefore.
10. Tenant shall not make alterations, cut, drill into, paint, string wires within, and/or in anyway alter, modify and/or deface any part of the Premises and/or the Property without the express prior written consent of Landlord, and, if permitted by Landlord to do so, shall do so only as Landlord may direct. Upon the removal of any ceiling, floor and/or wall covering, decoration and/or installation by Tenant, any damage to the ceiling, floor and/or walls shall be repaired by Tenant at Tenant's sole cost and expense.
11. Six (6) initial sets of keys to the exterior doors of the Premises and to the building in which the Premises are located shall be obtained by Tenant from Landlord, and Tenant shall pay Landlord a reasonable deposit. Tenant shall not install additional lock(s) and/or bolt(s) of any kind upon any of the doors and/or windows of, or within, the Premises and/or the Property, and Tenant shall not make any changes in existing locks and/or the mechanisms thereof without Landlord's express prior written consent.
12. Except as set forth in Section XXIV of the Lease, no signs, advertising devices, awnings, showcases and/or other fixtures, materials, projections and/or obstructions shall be attached to the outside walls of the Premises and/or the Property or attached or placed upon any common areas of the Property without the express prior written consent of Landlord. No window shades, blinds, drapes and/or other window coverings shall be installed in the Premises and/or on the Property without the express prior written consent of Landlord. No sign, advertisement, picture, window display and/or other public display or notice shall be exhibited, inscribed, painted and/or affixed by Tenant upon and/or within any part of the Premises and/or the Property in such a fashion as to be seen from outside of the Premises and/or the Property without the express prior written consent of Landlord. In the event of the violation of any of the foregoing by Tenant, Landlord may remove the articles constituting violation without any liability to Landlord, and Tenant shall, upon demand, reimburse Landlord for all expenses incurred in such removal as additional rent under the Lease. Interior signs on the doors of the Premises and/or upon the building directory shall be subject to the express prior written consent of Landlord and shall be exhibited, inscribed, painted and/or affixed by Landlord at the expense of Tenant.



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:

Moses L. Mitchell and Cristy Mitchell
d/b/a Valley Hi Executive Center

(2) the identity of any **business entity**¹ that would be a party to the discretionary contract:

John T. Crone, III d/b/a Crolanco
BCD Management, Inc.

and the name of:

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

Always Being Cared For Child Care, Inc.

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;

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.

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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:
Councilman Perez from John T. Cronin III	\$ 100.00	August 2004

Disclosures in Proposals

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

Signature: Manny Pinares Cristy Mitchell	Title: Company:	Date: 12-21-04 Dec 21, 2004

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.