

CITY OF SAN ANTONIO

CONSENT AGENDA  
ITEM NO. 17

DEPARTMENT OF ASSET MANAGEMENT  
INTERDEPARTMENTAL CORRESPONDENCE SHEET

---

**TO:** Mayor and City Council

**FROM:** Rebecca Waldman, Director, Department of Asset Management

**COPIES:** Erik J. Walsh, Assistant to the City Manager; Beth Costello, Director, International Affairs Department

**DATE:** September 30, 2004

**SUBJECT:** Ordinance approving a Lease Agreement with the Government of the State of Nuevo Leon, Mexico, at the International Center

**SUMMARY AND RECOMMENDATIONS**

This Ordinance authorizes the execution of a lease agreement with the Government of the State of Nuevo Leon, Mexico, operating as Secretaria De Desarrollo Economico, N.L., for the use of approximately 1,521 square feet of office space at the International Center, located at 203 South St. Mary's Street, in Council District 1, for a two year term commencing October 1, 2004 and expiring September 30, 2006, at a rent of \$13.20 per square foot annually during the Initial Term, increasing to \$15.00 per square foot annually during the optional Renewal Term, plus Common Area Maintenance (CAM) costs which are subject to annual adjustment.

Staff recommends approval.

**BACKGROUND**

In September 1998, the International Center was inaugurated as a mixed-use building to house City of San Antonio Departments and public and private enterprises focused on international relations and trade. Secretaria De Desarrollo Economico, N.L., has been a tenant at the International Center since October 1, 1998. This item approves a new lease agreement with Secretaria De Desarrollo Economico, N.L., for the continued use of office space at the International Center for its representative office of the State of Nuevo Leon, Mexico, in San Antonio, for the purposes of promoting economic development, tourism, and cultural exchange.

**FINANCIAL IMPACT**

Under the terms of the lease agreement, Secretaria De Desarrollo Economico, N.L., will pay rent at the rate of \$13.20 per square foot annually (rent for the previous lease term was \$9.60 per square foot annually), for a total annual rent of \$20,077.20 (\$1,673.10 monthly). The total anticipated rental

revenue to the City for the initial two-year lease term is \$40,154.40. In addition, this tenant will reimburse the City for their proportionate share of the Common Area Maintenance (CAM) expenses in the amount of \$2.76 per square foot annually, for a total of \$4,197.96 annually (\$349.83 monthly), subject to annual adjustments. Rent for the two-year renewal term, if exercised, will be \$15.00 per square foot annually (\$1,901.25 monthly plus CAM).

### **POLICY ANALYSIS**

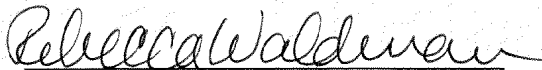
This action is consistent with the City's policy relative to the International Center to house City Departments, public/private partnerships and governmental agencies working together to facilitate international trade and business.

### **SUPPLEMENTARY COMMENTS**

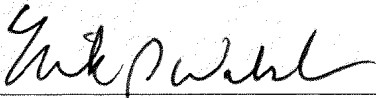
No Discretionary Contracts Disclosure Form is required as this tenant represents the Government of the State of Nuevo Leon, Mexico.

### **COORDINATION**

This item has been coordinated with the City Attorney's Office and the International Affairs Department.



Rebecca Waldman, Director  
Department of Asset Management



Erik J. Walsh  
Assistant to the City Manager

**LEASE AGREEMENT  
INTERNATIONAL CENTER SUITES  
("GOVERNMENT OF THE STATE OF NUEVO LEON")**

This LEASE AGREEMENT ("Lease") is entered into by and between the **CITY OF SAN ANTONIO**, a Texas Municipal Corporation, acting by and through its duly authorized officers, pursuant to Ordinance No. \_\_\_\_\_ passed and approved on \_\_\_\_\_, 2004, ("**LANDLORD**") and Secretaria De Desarrollo Economico, N.L., a Texas non-profit corporation, acting by and through its **SECRETARY** of its Board of Directors, ("**TENANT**") in accordance with the following terms as evidenced by the execution of this Lease:

**1. PREMISES/USE/COMMON AREAS**

**1.1. PREMISES/USE.** In consideration of **TENANT's** intention to continue use of a representative office for the GOVERNMENT OF THE STATE OF NUEVO LEON, MEXICO, in the CITY OF SAN ANTONIO, Texas, to be used for the purposes of promoting economic development, tourism and cultural exchange, such office designated as "Secretaria De Desarrollo Economico, N.L.", International Center Suite No. 150, as detailed in **Section 3.2. LANDLORD**, owner of the building identified as the International Center ("Building") at 203 South St. Mary's Street, and legally described as Lot 1 thru 4, New City Block 107 and Lots, 1, 2, and A-6, New City Block 146, plus a closed portion of Dolorosa Street right-of-way and Yturria Street right-of-way, in the CITY OF SAN ANTONIO, Bexar County, Texas, hereby leases and delivers to **TENANT** and **TENANT** receives from **LANDLORD** an office suite plus a proportionate amount of the shared area within the International Center Suites ("Add-on") in said Building, containing a total of approximately 1,521 square feet (the "Premises" or "Leased Premises"), as shown on **EXHIBIT 1** attached hereto and incorporated herein; to be used solely for the office space purposes set forth herein and no other use without the prior written approval of **LANDLORD**

**1.2 LANDLORD'S RESERVATION.** **LANDLORD** reserves the right from time to time to install, maintain, repair and replace utility lines, pipes, ducts, and wires passing through the Premises to serve other parts of, or premises within, the Building. Any such installation, maintenance, repair or replacement ("**LANDLORD's** Work") shall (1) be placed in locations which shall not unreasonably interfere with **TENANT's** use of the Leased Premises, except in emergency situations; (2) shall be carried out so as to minimize inconvenience or disruption of **TENANT's** business, except in emergency situations; (3) shall not constitute an eviction of **TENANT**; and (4) shall not warrant an abatement of any costs or fees owed by **TENANT** to **LANDLORD** under any circumstances.

**1.3 CONTINUOUS OPERATIONS.** **TENANT** covenants and agrees that, during minimum business hours, from and after its initial opening for business, it will operate and conduct within the Leased Premises the business it is permitted to operate and conduct under the provisions of this Lease, except while the Leased Premises are untenable by reason of fire or other casualty. **TENANT** agrees to conduct its business at all times in a first-class manner consistent with reputable business standards and practices. "Minimum Business Hours" shall be from 8:00 A.M. until 4:00 P.M. Central Time in the United States of America on the consecutive days of Monday through Friday during each and every week of the Term and each Renewal Term, if applicable. **TENANT** will also be allowed to be open on Saturday and Sunday. However, **TENANT** will not be required to open for business on Christmas Day, Mexican national holidays, or CITY OF SAN ANTONIO holidays.

**1.4 COMMON AREAS.** "Common Areas" shall mean all areas, both open and enclosed space (including, without limitation, the gallery space), equipment, facilities, and services in the Building, as the same may exist from time to time and be provided by **LANDLORD** for the common use and benefit of the tenants of the Building, their employees, servants and customers and other invitees.

**1.5 TENANT's RIGHT TO USE.** **TENANT** and those claiming under or having business with

**TENANT** shall have the non-exclusive right to use the Common Areas as constituted from time to time, such use to be in common with others and subject to such reasonable rules and regulations governing use, operation, and maintenance as **LANDLORD** may from time to time prescribe.

**1.6 CHANGES TO COMMON AREAS.** **LANDLORD** reserves the right to make changes to the Common Areas, including, without limitation, changes in the dimensions and location of the Common Areas, without prior consultation with, or approval of, **TENANT**, unless the Common Areas Costs, as defined thereafter, will be increased, whereupon **TENANT** will be consulted. Any increased billing shall be reflected in the subsequent annual Common Areas Costs accounting.

**1.7 LANDLORD's DUTY.** **LANDLORD** shall, subject to events beyond its reasonable control, manage, operate and maintain the Common Areas in reasonably good order and repair, provided that any damage thereto occasioned by the act of **TENANT** or those claiming under **TENANT** or having business with **TENANT**, including customers, shall be paid for by **TENANT** upon demand by **LANDLORD**. **LANDLORD** shall be responsible for electricity, providing heating, ventilation, air-conditioning (HVAC), lighting, and, where applicable, water, for portions of the Common Area.

**1.8 NO PARKING PROVIDED.** No parking is provided by **LANDLORD** to **TENANT**, its employees or guests.

## **II. TERM/RENEWAL**

**2.1 TERM.** The term of this Lease ("Term") will be for two years, commencing on October 1, 2004 ("Commencement Date") and expiring on September 30, 2006 ("Expiration Date"), unless earlier terminated under the terms hereof.

**2.2 RENEWAL AND EXTENSION.** Provided **TENANT** is not in default hereunder, upon the mutual agreement of the **LANDLORD** and **TENANT**, the parties may renew and extend this Lease for one (1), two (2) year term ("Renewal Term") following the end of the Term set out in **Section 2.1** above, subject to City Council approval as evidenced by the passage of a future **CITY** Ordinance. **TENANT** shall notify **LANDLORD** in writing of its intent to renew and extend the tenancy, not later than ninety (90) days preceding the Expiration Date of the Term set out in **Section 2.1** above. If **LANDLORD** does not receive timely notice, **LANDLORD** may advertise and show the property for lease to others starting on the 89<sup>th</sup> day before termination of the Term. For the Renewal Term, all terms and conditions of the Lease Agreement will be subject to renegotiation, at **CITY's** option, with rent at the rate of \$15.00 per square foot as detailed below, and Common Area Costs at the rate in effect for such International Center Building office space tenants in effect at the Commencement Date of the Renewal Term.

## **III. RENT/COMMON AREAS COSTS/UTILITIES**

**3.1 RENT.** **TENANT** agrees to pay to **LANDLORD** Base Rent ("rent") associated with the exclusive use of Suite 150 at the annual rates as follows:

**TERM:** \$13.20 S.F., or **\$1,673.10 per month** (U.S. dollars)

**RENEWAL TERM:** \$15.00 S.F., or **\$1,901.25 per month** (U.S. dollars)

In consideration for the rental amounts shown above, **LANDLORD** at **LANDLORD's** sole cost and expense, agrees to perform "**LANDLORD's** Work" as described in **Exhibit 2** attached hereto and incorporated herein.

**3.2 TIME DUE AND PLACE OF PAYMENT.** Payments may be made in person or mailed by the first day of each month of the Term and each Renewal Term (at such rent rate as agreed upon prior to the commencement date of said Term and each Renewal Term) to the CITY OF SAN

ANTONIO Finance Department, Revenue and Taxation Division, 506 Dolorosa Street, San Antonio, Texas 78205. If rent is not received by **LANDLORD** by the tenth (10<sup>th</sup>) day of any month of the Term and each Renewal Term hereof, **TENANT** agrees to pay a late fee of \$15.00 in U.S. Dollars.

**3.3 DEFINITION OF COMMON AREA COSTS.** Common Areas Costs (or "C.A.M. charges") means all sums expended by **LANDLORD** in respect of costs for maintenance and operation of the Common Areas and an allowance in an amount equal to fifteen (15%) percent of such costs for **LANDLORD's** supervision of maintenance and operation of the Common Areas. Such costs for maintenance and operation of the Common Areas shall also include, without limitation, lighting and electricity; heating, ventilation and air conditioning (HVAC); passenger and freight elevators; telephones; cable TV; domestic water and sewer; other utilities, if any; public restrooms; security; landscaping; pest control; garbage fees; repairs; policing; repainting; cleaning, sweeping and other janitorial services, including wages/salaries of maintenance workers and unemployment insurance, income taxes, and social security taxes therefor; premiums on public liability insurance, property damage, fire and Worker's Compensation Insurance; and such other costs for those services supplied by **LANDLORD**, which, in **LANDLORD's** sole judgment, are necessary for the maintenance and operation of the Common Areas. Provided, however, in no event shall Common Area Costs include any capital improvements made to the Common Areas.

**3.4 PAYMENT OF COMMON AREA COSTS.** Except as provided herein, commencing with and in addition to, the first monthly Base Rent payment due and continuing throughout the Term and each Renewal Term of this Lease, **TENANT**, agrees to pay **LANDLORD** as additional rent **TENANT's** proportionate share of the Common Areas Costs the amount of twenty-three (23¢) cents per square foot per month (which is \$2.76 per square foot per year) for each square foot of space that **TENANT** leases from **LANDLORD** under this Lease, being \$349.83 per month for the Term, with such annual amount subject to adjustment annually in both the first Renewal Term and second Renewal Term at the current rate in effect for the International Building office space tenants at the Commencement Date of the first Renewal Term and second Renewal Term, respectively.

**3.5** Beginning in the year 2005 and during each calendar year thereafter, **TENANT's** proportionate share of the total Common Areas Costs as reasonably estimated and determined by **LANDLORD** shall be computed on the basis of total CAM costs divided by the Total Rentable Area ("Rentable Area") of all leaseable premises in the Building, multiplied by the square footage in **TENANT's** Leased Premises. **LANDLORD**, may, at **LANDLORD's** option, make monthly or other periodic charges based upon the estimated annual Common Areas Costs, payable not more than one month in advance, and subject to adjustment at the end of each calendar year during the Term and each Renewal Term of this Lease on the basis of the actual Common Areas Costs for such year. Upon the computation of such adjustment, **TENANT** shall pay to **LANDLORD** the amount of any deficiency, or **LANDLORD** shall credit to **TENANT** the amount of any excess, as the case may be toward the CAM Costs due for the following month or months.

**3.6 UTILITIES.** **LANDLORD** will provide utilities to **TENANT**, except for telephone and television connections and monthly use fees. **TENANT** agrees to pay for all line, long distance and other charges associated with use of the telephone, including connections and monthly use fees and all charges and monthly fees related to installation, connection, and use of any television cable, satellite or other television system and any surveillance system installed in or on the Premises.

#### **IV. ACCEPTANCE AND CONDITION OF PREMISES/PROHIBITION AGAINST MODIFICATION**

**4.1 TENANT's ACCEPTANCE.** **TENANT** acknowledges that **LANDLORD** has performed any and all necessary construction and installation to make the Premises ready for **TENANT's**

occupancy. Further, **TENANT** has had full opportunity to examine the Leased Premises, in its present "AS IS, WHERE IS, WITH ALL FAULTS CONDITION", following any finish-out by **LANDLORD**, and **TENANT** acknowledges that there is not presently in and about said Premises, nor will **TENANT** create by any installation by **TENANT** of equipment, fixtures, trade fixtures, or otherwise, or construction of **TENANT** Improvements, if made with **LANDLORD's** prior written approval, anything dangerous to life, limb or health and **TENANT** hereby waives any claim for damages that may arise from defects of that character after occupancy. **TENANT's** taking possession of the Leased Premises in its present "AS IS, WHERE IS, WITH ALL FAULTS CONDITION" shall be conclusive evidence of **TENANT's** acceptance from **LANDLORD** of said Premises in good order and satisfactory condition and as suitable for **TENANT's** intended purposes and uses as stated herein.

**4.2 LANDLORD's DISCLAIMER.** **LANDLORD** specifically disclaims any and all warranties whatsoever of suitability of the Premises for **TENANT's** intended purposes and uses.

**4.3 PROHIBITION.** **TENANT** understands and agrees that no improvements, remodeling, renovations, alterations, additions, or modifications of any kind or nature, whether structural or otherwise may be made to the Leased Premises by **TENANT**, without the prior written approval of **LANDLORD**.

**4.4 LANDLORD's RESERVATION RIGHTS AS TO ALTERATIONS, ETC.** **LANDLORD** hereby reserves the right at any time to make alterations or additions to, and to build additional stories on, or to remove adjoining portions of, or remodel, the Building in which the Leased Premises is contained and to build adjoining the same, provided such alterations, additions or construction thereof do not materially alter **TENANT's** egress and ingress to the Leased Premises. **LANDLORD** agrees to give **TENANT** thirty (30) days advance notice in writing of any pending such alterations, additions, etc.

## **V. YIELDING-UP**

**5.1 TENANT** will, upon expiration or termination of this Lease, yield up the Leased Premises peacefully to **LANDLORD**, in good order and condition, with, in all respects, repair, damage by fire, casualty, unavoidable accident, acts of God, taking by eminent domain, acts of public authority, and reasonable use and wear excepted.

## **VI. TENANT's SIGNS**

**6.1** Upon request **LANDLORD** shall furnish to **TENANT**, for which **TENANT** will pay for at cost, a tenant/suite identification sign which will be affixed to the wall near the main entrance to the Leased Premises. This sign has been designed by **LANDLORD** and is of the same material used for other tenant/suite identification signs in the Building. No other signs shall be installed outside of the Leased Premises or in a manner that is visible outside of the Leased Premises.

## **VII. TAXES AND FEES**

**7.1 TENANT** shall pay before delinquency all current and future taxes, assessments, license and permit fees, and governmental impositions of whatever kind or nature imposed with respect to the Leased Premises, including, but not limited to, taxes on **TENANT's** leasehold interest and leasehold improvements and, if in the future, the fee simple interest of **LANDLORD** is subject to taxation, then such tax will be included in the charges payable by **TENANT**. Further, **TENANT** forthwith, upon request, shall reimburse **LANDLORD** with interest thereon at the maximum rate of interest, under applicable law, if **LANDLORD** shall have paid any such taxes, assessments, license or permit fees, or governmental impositions in the first instance, provided **LANDLORD** was legally obligated to pay the same and provided **TENANT** is in default under this provision.

## **VIII. CONDITION OF PREMISES**

**8.1 TENANT** shall give to **LANDLORD** prompt written notice of any damage to or defective condition in any part of the Building's plumbing, electrical, heating, air conditioning or other system located in or passing through the Leased Premises.

**8.2 TENANT** agrees that it shall not permit any liens to arise against the Premises or improvements thereon, or any equipment, machinery and/or fixtures therein belonging to **LANDLORD**, and to the extent allowed by law, **TENANT expressly agrees that it will keep and save the Leased Premises and LANDLORD harmless from all costs and damages resulting from any such liens or lien of any character created or that may be asserted through any act or thing done by TENANT.**

**8.3** In the event any mechanic's or other liens or orders for payment shall be filed against the Leased Premises or improvements thereon, or CITY OF SAN ANTONIO ("**LANDLORD**")- owned property located therein, during this Term or either Renewal Term, **TENANT** shall, within thirty (30) days after the date of filing, cause the same to be canceled and discharged of record, by bond or otherwise at the election and expense of **TENANT**, and shall also defend on behalf of **LANDLORD**, at **TENANT's** sole cost and expense, any action, suit or proceeding which may be brought thereon or for the enforcement of such lien or order.

**8.4** Failure of **TENANT** to comply with any requirement of this Article shall be cause for immediate termination of this Lease by **LANDLORD**, subject to the notice and cure periods set forth in **ARTICLE XX.** below.

## **IX. MAINTENANCE AND OPERATION**

**9.1** In connection with maintenance and operation of the Building as referenced in **ARTICLE III.**, **TENANT** is advised that:

1.) **LANDLORD** provides janitorial and utilities, except for telephone and television connections and monthly use fees, as detailed above in **SECTION 3.5.**

2.) Provision of heating or air conditioning, in amounts and at temperatures determined by **LANDLORD** to be standard for office space in San Antonio, Texas, will be provided between the hours of 7:00 A. M. and 6:00 P.M. on Monday through Friday, except Christmas Day, New Years Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day and any other CITY OF SAN ANTONIO holidays, or Mexican national holidays. If **TENANT** desires to use heating or air conditioning at any other hours, then **TENANT** agrees to provide a written request to **LANDLORD** for **LANDLORD's** prior approval. Such request shall be made by delivery to the Building security guard at least twenty- four (24) hours in advance, or in the case of a Saturday, Sunday or holiday, the request must be made by **TENANT** no later than noon on the business day preceding the Saturday, Sunday or holiday. The security guard may be contacted at (210) 886-9874.

3.) **LANDLORD** shall not be liable to **TENANT** for any damage to merchandise, trade fixtures, or personal property of **TENANT** in the Leased Premises caused by water leakage from the roof, water lines, sprinkler, or heating and air conditioning equipment, or acts of other tenants in the Building, or overflow of the banks of the San Antonio River unless due to the sole active negligence of **LANDLORD.**

4.) **TENANT** shall keep and maintain the interior of the Leased Premises equipped with safety devices which may be required by any governmental authority because of **TENANT's** use. **TENANT** specifically covenants to comply with all rules and regulations of the local Board of Fire Underwriters occasioned by, or required in, the conduct of **TENANT's** business.

5.) If the **TENANT** installs any electrical or other equipment which would overload or clog the existing utility lines serving the Leased Premises or adjacent premises, then the **TENANT** shall, at its own expense, make whatever changes are necessary to comply with the

requirements of the Insurance Underwriters and/or the CITY OF SAN ANTONIO Development Services Department to correct such overload.

6.) If **TENANT** fails to maintain or repair said Leased Premises as deemed necessary by **LANDLORD**, then both parties agree that **LANDLORD** may demand that **TENANT** perform the same forthwith in writing, and if **TENANT** refuses or neglects to commence such maintenance or repairs and complete the same with reasonable dispatch, the **LANDLORD** may, but shall not be required to, make or cause such maintenance or repairs to be made and shall not be responsible to the **TENANT** for any loss or damage that may accrue to **TENANT's** stock or business by reason thereof, and if the **LANDLORD** makes or causes such maintenance or repairs to be made, then **TENANT** agrees that it will forthwith, on demand, pay to **LANDLORD** the cost thereof, and if **TENANT** shall default in such payment, **LANDLORD** shall have the remedies provided elsewhere herein for default of payment of costs and fees.

7.) **LANDLORD** agrees to keep and maintain the roof, foundation, main beams, exterior walls, and all other structural portions of the Leased Premises in good repair but **LANDLORD** shall not be liable to **TENANT** for any damage caused by the same being or becoming out of repair until **LANDLORD** has had a reasonable opportunity to have same repaired after being notified in writing of the need of same by **TENANT**.

#### **X. LAWS AND ORDINANCES**

10.1 **TENANT** agrees to comply promptly with all laws, ordinances, orders, and regulations affecting the Leased Premises and the cleanliness, safety, operation, or use thereof or the business conducted therein.

10.2 **TENANT** agrees to comply with the regulations or requirements of any insurance underwriter, inspection bureau, or similar agency, with respect to that portion of the Leased Premises leased and installed by **TENANT**. **TENANT** also agrees to permit **LANDLORD** to comply with such recommendations and requirements with respect to that portion of the Leased Premises installed by **LANDLORD**.

#### **XI. RULES AND REGULATIONS**

11.1 **LANDLORD** agrees that, in carrying out the rules and regulations applicable to all of **LANDLORD's** tenants in the International Center, **TENANT** shall not be discriminated against, and **TENANT** covenants and agrees that **TENANT**, its agents, employees, representatives, and invitees, will fully comply with any and all rules and regulations set or otherwise imposed by **LANDLORD**, including prior approval by the Historic and Design Review Commission, where applicable, and which rules and regulations **TENANT** understands and agrees may be amended by **LANDLORD** from time to time, governing the operation and use of the Building and/or the Common Areas and further which are imposed by **LANDLORD** upon all tenants of the Building in order to preserve the rights and peaceful occupancy of all tenants in the Building, and provide for the efficient operation of the Building, including, but not limited to the following:

(1) Subject to **TENANT's** right to conduct its business, **TENANT** shall not injure, overload or deface the Leased Premises or Building, nor make any use thereof which is contrary to any Federal or State law or City of San Antonio Ordinance, nor permit any act or thing to be done on the Leased Premises which may make void or avoidable or increase the rates of any insurance covering the Leased Premises or Common Areas; nor cause or permit the omission of any excessively loud noises or noxious odors from the Leased Premises or in the Building by the operation of any instrument, apparatus, equipment therein, or other means which may, in **LANDLORD's** judgment, be deemed offensive or disturbing in nature; nor perform any act or carry on any practice which may be a nuisance or menace to other tenants in the Building or which is illegal, immoral or disreputable or which may reduce the market value of the Leased Premises or Building. In connection therewith, no activity or method of operation shall be allowed in, on or about the Leased Premises which exposes patrons thereof to nudity or to partial nudity



as defined the CITY OF SAN ANTONIO's Sexually Oriented Business Ordinance or which otherwise violates such ordinance.

(2) The operation of a massage business or tanning salon or modeling studio or place of gambling shall not be allowed in, on, or about the Leased Premises.

(3) Upon provision by **LANDLORD** of notice to **TENANT** of any employee in **TENANT's** operations that may be reasonably deemed to be discourteous or objectionable or rude, **TENANT** agrees to take immediate appropriate remedial action, including, but not limited to, removal of said employee from employment on the Leased Premises, if warranted.

(4) **TENANT** shall not cause the loading or unloading of trucks or similar delivery devices in the Building except in the loading and service areas and at such reasonable times as designated by **LANDLORD**, nor shall **TENANT** cause the undue obstruction of streets, sidewalks or other Common Areas, doorways, corridors, stairways, or entrances of the Building. At any time that **TENANT** moves equipment or furniture in or out of the Leased Premises, **TENANT** will be responsible for covering or otherwise protecting the Common Areas flooring, walls, doors and other finishes from damage. **TENANT** shall direct their vendors and customers to use the service elevator for any large deliveries.

(5) The outside areas immediately adjoining the Leased Premises, including sidewalks, and Common Areas of the Building, shall be kept free and clear at all times by **TENANT** and **TENANT** shall not place nor permit any obstructions, garbage, refuse, merchandise or displays in such areas.

(6) Other than normal janitorial service, **TENANT** shall dispose of garbage and refuse in accordance with municipal ordinances and in the space designated by **LANDLORD**. No trash shall be stored in the Common Areas.

(7) **TENANT** shall not place or maintain any obstructions, including temporary fixtures, in the Common Areas. In the event any violation of this Rule is not corrected on demand, **LANDLORD** shall have the right, without obligation for prior notice, to remove any such obstruction without liability therefor.

(8) **TENANT**, its employees, and/or its agents shall not solicit business in the Common Areas or other areas of the Building or adjoining sidewalks, San Antonio River Walk, or streets nor shall **TENANT**, its employees, and/or agents, representatives, or invitees distribute handbills or other advertising matter in the Common Area the Building. However, **TENANT** shall be allowed to conduct business inside its office portion of the Leased Premises.

(9) Nothing is to be attached or placed on the roof or any other areas of the Building or grounds or exterior walls of the Leased Premises, including, but not limited to, any antenna, sound amplification equipment or other telecommunication equipment, without the prior written consent of **LANDLORD**.

(10) No loudspeakers, television, phonographs, radios, flashing lights, or other devices shall be used in a manner so as to be heard or seen outside of the Leased Premises without the prior written consent of **LANDLORD**.

(11) No auction, fire, bankruptcy, going out of business, or other selling-out sales shall be conducted on or about the Leased Premises without the prior written consent of the **LANDLORD**.

(12) Unless **LANDLORD** approves in writing in advance, **TENANT** shall not affix or maintain on the glass panes and supports of the show windows, doors, or the exterior walls of the Leased Premises any signs, logos, posters, advertising placards, names, insignia, trademarks, descriptive material, or any other such like item or items, excepting only, in the case of exterior walls, windows, and doors, signs approved under the provision of **ARTICLE VI.**, and, in the case of doors, signs identifying **TENANT** and indicating the hours of operation.

(13) No awning or other projections shall be attached to the outside walls of the Leased Premises or the Building without the prior written consent of **LANDLORD** and any appropriate municipal authority.

(14) **TENANT** must keep the Premises clear and free of rodents, bugs and vermin. No pets of any kind will be allowed in the Leased Premises, Building or on the grounds at any time.

(15) No tables or chairs or any improvements, trade fixtures, equipment, other furniture, fixtures, furnishings, personal property or any other property of **TENANT** whatsoever will be allowed to encroach into the Common Areas or public right-of-way, including, but not limited to, the public sidewalk area.

(16) Further, **LANDLORD** will not be responsible for any loss, theft, damage or destruction of, or to, any tables, chairs or any other improvements, whether structural or non-structural, trade fixtures, equipment, other furniture, fixtures, furnishings, personal property or any other property of **TENANT** that is placed in the Leased Premises.

(17) **TENANT** shall comply with **LANDLORD's** noise ordinance. Failure to comply may, at **LANDLORD's** option, constitute a separate act of default under this Lease.

(18) Discrimination on account of race, color, gender, age, handicap, religion or national origin, directly or indirectly, in employment or in the use of, or admission to, the Leased Premises is prohibited.

(19) **TENANT** shall not, except as may otherwise be permitted by applicable laws and regulations, pay less than the minimum wage required by Federal and State statutes and CITY OF SAN ANTONIO Ordinances to persons employed in its operations hereunder.

(20) **TENANT** agrees to comply with all Federal and State Statutes and CITY OF SAN ANTONIO Ordinances regarding the use of CITY OF SAN ANTONIO ("**LANDLORD**")-owned property, specifically including, but not limited to, the CITY OF SAN ANTONIO's smoking ordinance, which prohibits smoking in the Building and the Leased Premises, and prohibitions on carrying concealed weapons.

(21) Any safes being brought into the Building will require the prior written permission of **LANDLORD**. **LANDLORD** may prescribe where the **TENANT** may not locate the safes within the Leased Premises. This language shall not apply to a small safe which **TENANT** is hereby granted permission by **LANDLORD** to place inside of the office portion of the Leased Premises at any location **TENANT** desires.

(22) Plumbing fixtures in **TENANT** areas and Common Areas shall be used only for their intended purposes and no trash or other materials that may cause stoppage or damage shall be placed in or on such plumbing fixtures.

(23) No draperies, shutters or window coverings of any kind shall be installed by **TENANT**.

(24) The Leased Premises shall not be occupied as sleeping or lodging quarters.

(25) **TENANT** and **TENANT's** employees are advised that all valuables, including purses, should be kept in a safe and/or locked area.

(26) **TENANT** must keep the areas immediately in front of windows neat and orderly so that the view into the window from the exterior is not unsightly. No boxes, trash, trash containers, signs, decorations, or storage of materials or supplies should be placed in front of or attached to the windows.

(27) If **TENANT** requires additional locks, **TENANT** shall request such locks from **LANDLORD** and all charges will be paid by **TENANT**. No locks shall be placed on any doors in the Leased Premises by **TENANT** without prior approval of **LANDLORD** and, in the event that **LANDLORD** approves such installation, **TENANT** shall provide **LANDLORD** with duplicate keys.

(28) Bicycles must be stored in bicycles racks outside of the Building or, if they are brought into the Building, the service elevator must be used and the bicycle must be stored in the Leased Premises, not on balconies or in Common Areas or within public view.

(29) No furniture, plants or other objects may be placed on the Building balconies without the prior approval of the Historic and Design Review Commission. No furniture, plants or other objects may be placed in the street level arcade areas without the prior approval of the **LANDLORD's** Departments of Asset Management, **LANDLORD** Architect's Office and the Historic Preservation and Urban Design Division of the Planning Department.

(30) Electrical appliances such as coffee pots shall be used in the break room or kitchen area of the Leased Premises (**EXCEPT FOR TENANT's EQUIPMENT, USED IN THE REGULAR COURSE OF BUSINESS**), and **TENANT** must ensure that all such appliances are turned off at the close of business each day.

(31) Use of the International Conference Center located on the third floor of the Building must be scheduled in advance by contacting **LANDLORD**. Scheduling and use of this Center are subject to the procedures established by **CITY** and such procedures may be modified from time to time by **LANDLORD**.

(32) Persons entering the Building between 6:00 p.m. and 6:00 a.m. weekdays and at any time on weekends and holidays must sign in and out with the lobby security guard.

(33) No items may be placed or displayed in the gallery, niches, or in any portion of the Common Areas without the prior written approval of **LANDLORD**.

## **XII. SUBORDINATION TO SCHEDULED EVENTS**

**12.1 TENANT** acknowledges and agrees that **LANDLORD** will from time to time accommodate various functions or events that may require temporary street closures, controlled or limited access to the Leased Premises and/or temporary closures of access to, or temporary closure of, the Leased Premises. **TENANT** expressly recognizes that any such determination or requirement by the **LANDLORD** is superior to any right, privilege or leasehold interest granted **TENANT** under this Lease and **TENANT** hereby agrees to cooperate fully with **LANDLORD** upon notification. **TENANT** further waives any and all claims for damages, including, but not limited to, loss of business, which **TENANT** may suffer as a result of any such requirement by **LANDLORD**, nor will the payment of any costs, charges or fees abate during such period.

## **XIII. ACCESS TO PREMISES**

**13.1 TENANT** agrees that **LANDLORD**, its agents, employees or servants, or any person authorized by **LANDLORD**, may enter the Leased Premises for the purposes of: (a) inspecting the condition of same; (b) making such repairs, additions, alterations or improvements thereto, or to the Building of which they are a part, as **LANDLORD** may elect or be required to make, to specifically include, but not be limited to, accessibility to sewer drainage clean outs to prevent damage; and (c) exhibiting the same to prospective purchasers or future tenants of the Building in which the Leased Premises is contained. **LANDLORD** agrees that any such entry by **LANDLORD** or its agents onto the Premises shall not unreasonably interfere with the conduct of **TENANT's** business, except in emergency situations.

#### **XIV. INSURANCE**

**14.1** Any and all employees, representatives, sublessees, agents or volunteers of **TENANT** while engaged in the performance of any work required by **LANDLORD** or any work related to a lease of space with the **LANDLORD** shall be considered employees, representatives, sublessees, agents or volunteers of **TENANT** only and not of **LANDLORD**. Any and all claims that may result from any obligation for which **TENANT** may be held liable under any Workers' Compensation, Unemployment Compensation or Disability Benefits law or under any similar law on behalf of said employees, representatives, sublessees, agents or volunteers shall be the sole obligation and responsibility of **TENANT**.

**14.2** **TENANT's** financial integrity is of interest to **LANDLORD**, therefore without limiting **LANDLORD's** right to indemnification, **TENANT** agrees to provide and maintain in full force and effect with respect to the Premises from the Effective Date of this Lease and for the duration of the Initial Term and Renewal Term, insurance coverage written on an occurrence form, by companies authorized and admitted to do business in the State of Texas and rated A or better by A.M. Best Company and/or otherwise acceptable to **LANDLORD**, in the following types and amounts:

**TYPE:**

1. Worker's Compensation

**AMOUNT:**

Statutory, with a Waiver of subrogation in favor of **LANDLORD**

Employer's Liability

\$500,000/\$500,000/\$500,000 in U.S. Dollars with a Waiver of Subrogation in favor of **LANDLORD**.

2. Commercial General Public Liability Insurance to include (but not be limited to coverage for) coverage for the following:

for Bodily Injury, Death, and Property Damage of \$1,000,000 in U.S. Dollars per occurrence; \$2,000,000 in U.S. Dollars general aggregate, or its equivalent in umbrella or excess liability coverage.

- (1) Premises/Operations
- (2) Independent Contractors
- (3) Products/Completed Operations
- (4) Contractual Liability
- (5) Personal Injury Liability
- (6) Broad-Form Property Damage, to include Fire Legal Liability

- (7) Host Liquor Liability Insurance, if alcoholic beverages are served on the Premises
- (8) Liquor Legal Liability Insurance, if alcoholic beverages are sold on the Premises

\$ 1,000,000.00 in U.S. Dollars

\$ 1,000,000.00 in U.S. Dollars

3. Business Automobile Liability to include coverage for:

- a. Owned/Leased Automobiles
- b. Non-owned Automobiles
- c. Hired Automobiles

Combined Single Limit for Bodily Injury, Death, and Property Damage of \$1,000,000.00 in U.S. Dollars per occurrence.

4. Property Insurance for physical damage to the property of the **TENANT**, including improvements and betterments made to the Leased Premises.

All Risk Coverage for a minimum of 80% percent of the actual cash value of **TENANT's** improvements and betterments valued in U.S. Dollars made to the Leased Premises by **TENANT**.

E. Plate Glass Coverage for the Leased Premises

Replacement Cost Insurance valued in U.S. Dollars or, at option of **TENANT**, self insurance, based on U.S. Dollars

**14.3 LANDLORD** reserves the right to review the insurance requirements herein during the effective period of this Lease and any extension or renewal hereof and to modify insurance coverage and their limits when deemed necessary and prudent by **LANDLORD's** Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Lease, but in no instances will **LANDLORD** allow modification whereupon **LANDLORD** may incur increased risk.

**14.4 TENANT** further agrees that with respect to the above-required insurance that each insurance policy required by this Lease, excepting policies for Workers' Compensation and Employer's Liability, shall contain the following clauses:

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

- (a) City Clerk, City of San Antonio  
City Hall/2nd Floor  
P. O. Box 839966  
San Antonio, Texas 78283-3966  
Attention: Risk Manager  
and
- (b) Department of Asset Management  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

"It is agreed that the insurance provided by **TENANT** is primary to any insurance or self-insurance maintained by the City of San Antonio."

"It is agreed that any insurance or self-insurance maintained by the City of San Antonio shall apply in excess of, and not contribute with, insurance provided by this policy."

"The City of San Antonio, its officials, employees, representatives and volunteers are added as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under this Lease with the City of San Antonio."

**14.5 LANDLORD** shall be entitled, upon request and without expense, to receive by mail directly to **LANDLORD's** Risk Manager and the CITY OF SAN ANTONIO City Clerk from **TENANT's** insurance carrier or agent, copies of the policies and all endorsements thereto as they apply to the limits required by **LANDLORD**. **LANDLORD** may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies) and **LANDLORD** will provide thirty (30) days' prior notice to **TENANT** and an opportunity to discuss such deletion, revision or modification if increased costs of insurance will result. If so requested, **TENANT** shall exercise efforts to accomplish such changes in policy coverage, and shall pay the cost thereof.

**14.6** In those cases where **TENANT** makes any improvements or other modifications to the Premises, if approved in advance by **LANDLORD**, then **TENANT** shall further provide Builder's Risk Insurance Coverage, Worker's Compensation and Employer's Liability Insurance Coverage, Professional Liability Insurance Coverage and any other liability or other insurance coverage in the amounts and types of coverage approved by **LANDLORD's** Risk Manager, covering all risks of physical loss during the term of any construction contract and until work is accepted by the City of San Antonio. **TENANT** shall procure and maintain said insurance, as well as other insurance coverage enumerated above, in full force and effect during the construction phase. Also, payment and performance bonds naming **LANDLORD** indemnitee shall be provided by **TENANT** or its contractors or subcontractors. Should the size and/or the scope of a construction contract be limited in nature, **TENANT** may request, in writing to the City's Director of Asset Management,

a waiver of the requirements in this Section, but a waiver may only be granted by **LANDLORD's** Risk Manager, whose decision shall be final.

**14.7** Within thirty (30) days after the Effective Date of this Lease **TENANT** agrees to provide **LANDLORD** certificates mailed to **LANDLORD's** Risk Manager and the CITY OF SAN ANTONIO City Clerk from **TENANT's** insurance carrier, reflecting endorsements to the above-required policies, which add the applicable clauses referenced in **SECTION 14.4**. The endorsements shall be signed by an authorized representative of the insurance company and shall include the signator's company affiliation and title. If requested by **LANDLORD**, **TENANT** agrees to send **LANDLORD** documentation acceptable to **LANDLORD** which confirms that the individual signing said endorsements is authorized to do so by the insurance company.

**14.8** Said Notices and Certificates of Insurance shall be provided to:

- (a) Department of Asset Management  
City of San Antonio  
P. O. Box 839966  
San Antonio, Texas 78283-3966  
Attention: Director
- (b) City Clerk, City of San Antonio  
City Hall, 2nd Floor  
P. O. Box 839966  
San Antonio, Texas 78283-3966  
Attention: Risk Manager

**14.9** Nothing herein contained shall be construed as limiting in any way the extent to which **TENANT** may be held responsible for payments of damages to persons or property resulting from **TENANT's** activities or the activities of **TENANT's** agents, employees, sublessees, or invitees under this Lease.

**14.10** **LANDLORD**, its agents or employees shall not be liable, and **TENANT** waives all claims for any damage to persons or property sustained by **TENANT** or any person claiming through **TENANT**, which may occur on the Leased Premises, or for the loss of or damage to any property of **TENANT** or of others by theft or otherwise, whether caused by other tenants or persons in the International Center or in the Leased Premises or by occupants of adjacent property or the public.

## **XV. INDEMNIFICATION**

**15.1** **TENANT** covenants and agrees to **FULLY INDEMNIFY AND HOLD HARMLESS**, the CITY OF SAN ANTONIO AS **LANDLORD** and the elected officials, employees, agents, officers, directors, volunteers, contractors, subcontractors, consultants, subconsultants, utility providers, service providers, invitees, licensees, other tenants of the Building, and representatives of **LANDLORD**, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including, but not limited to, personal or bodily injury, death and property damage, made upon **LANDLORD** directly or indirectly arising out of, resulting from or related to **TENANT's** activities or **LANDLORD's** activities, under this Lease, including any acts or omissions of **TENANT**, any agents, employees, officers, directors, volunteers, representatives, consultants, subconsultants, contractors, subcontractors, utility providers, service providers, licensees, and invitees of **TENANT**, and their respective officers, agents, employees, directors, , volunteers, representatives, consultants, subconsultants, contractors, subcontractors, utility providers, service providers, licensees, and invitees or of **LANDLORD**, its elected officials, employees, agents, officers, directors, volunteers, representatives, consultants, subconsultants, contractors, subcontractors, utility providers, service providers, licensees, and invitees while in the exercise or performance of the rights or duties under this Lease, all without however, waiving any governmental immunity available to **LANDLORD** under Texas Law and without waiving any defenses of

the parties under Texas law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF LANDLORD, ITS ELECTED OFFICIALS, EMPLOYEES, AGENTS, OFFICERS, DIRECTORS, VOLUNTEERS, REPRESENTATIVES, CONSULTANTS, SUBCONSULTANTS, CONTRACTORS, SUBCONTRACTORS, UTILITY PROVIDERS, SERVICE PROVIDERS, LICENSEES, AND INVITEES UNDER THIS LEASE. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractually or otherwise, to any other person or entity. TENANT shall promptly advise LANDLORD in writing of any claim or demand against LANDLORD or TENANT known to TENANT related to or arising out of TENANT's activities or LANDLORD's activities or omissions as noted herein under this Lease and shall see to the investigation and defense of such claim or demand at TENANT's cost. Notwithstanding any condition imposed by a policy of insurance to which TENANT and LANDLORD are named, LANDLORD shall retain the right, at its option and at its own expense, to participate in any such defense provided by insurance or self-insurance of TENANT under this ARTICLE without relieving TENANT 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 (ARTICLE XV.), is an INDEMNITY extended by TENANT to INDEMNIFY, PROTECT AND HOLD HARMLESS, LANDLORD from the consequences of LANDLORD's OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in the ARTICLE SHALL APPLY only when the NEGLIGENT ACT of LANDLORD is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of LANDLORD is the sole cause of the resultant injury, death, or damage. TENANT further AGREES TO DEFEND, AT ITS OWN EXPENSE AND ON BEHALF OF LANDLORD AND IN THE NAME OF LANDLORD, any claim or litigation brought against LANDLORD and its elected officials, employees, agents, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

#### **XVI. ACTS OF CO-TENANTS AND OTHER PERSONS**

16.1 All trade fixtures, equipment, furniture, fixtures, furnishings, and personal property placed in the Leased Premises shall be at the sole risk of TENANT. LANDLORD shall not be liable to TENANT or to any other person, and TENANT waives all claims for, any injury or death to any person or damage to any property of TENANT or to other persons or other property located in or upon the Leased Premises, or for any loss or damage to said property by theft or otherwise or due to the Leased Premises or any part or appurtenances thereof becoming out of repair or arising from bursting or leaking of water, gas, waste pipes, or defective wiring or excessive or deficient electrical current; or from any act or omission of employees, co-tenants, or other occupants of the Leased Premises, or the Building, or any other persons or due to the happening of any accident in or about said Leased Premises, unless such damage is proven to have been caused by LANDLORD's sole active negligence. TO THE EXTENT ALLOWED BY LAW, TENANT SHALL SAVE AND HOLD HARMLESS LANDLORD FROM ANY CLAIMS ARISING OUT OF DAMAGE TO TENANT's PROPERTY OR DAMAGE TO TENANT's BUSINESS, INCLUDING SUBROGATION CLAIMS BY TENANT's INSURERS, UNLESS SUCH DAMAGE IS CAUSED BY LANDLORD's SOLE ACTIVE NEGLIGENCE.

#### **XVII. ASSIGNMENT AND SUBLETTING**

17.1 TENANT shall not have any right to assign or sublease this Lease, without the prior written permission of LANDLORD, evidenced by the passage of a future City of San Antonio Ordinance.



## **XVIII. FIRE AND OTHER DAMAGE**

**18.1** In the event that the Leased Premises shall be partially damaged by fire or other casualty, **TENANT** shall give immediate notice thereof to **LANDLORD** and the same shall be repaired at the expense of **LANDLORD** except for the cost of **TENANT's** property, including equipment installed on the Leased Premises, to the extent sufficient insurance proceeds and other funds are readily available to **LANDLORD** and released by the San Antonio City Council through passage of a future CITY OF SAN ANTONIO ordinance, without unreasonable delay unless **LANDLORD** determines that the damage is so extensive that repair or rebuilding is not feasible. From the date of such casualty until the Leased Premises are so repaired, all costs, charges, and fees payable hereunder shall abate in such proportion as the part of the Leased Premises thus destroyed or rendered untenable bears to the total Leased Premises; provided, however, that if the Leased Premises shall be so slightly injured by any such casualty as not to be rendered unfit for occupancy, the payments hereunder shall not cease or be abated during any repair period. In the event that the damage to the Leased Premises should be so extensive as to render said Premises untenable, the costs, charges, and fees hereunder shall cease until such time as the Leased Premises shall again be put in repair, but in the event that the Leased Premises or the Building of which the same is a part is damaged by fire or other casualty to such an extent as to render it, in the exclusive judgment of **LANDLORD**, not necessary to rebuild the same, then, at the option of the **LANDLORD**, and upon notice to **TENANT**, this Lease shall cease and come to an end, and the payments hereunder shall be apportioned and paid up to the date of such damage. If **LANDLORD** elects to rebuild the Premises and continue this Lease, then **LANDLORD** shall notify **TENANT** of such intention within sixty (60) days after the date of the damage; otherwise, the Lease shall be deemed canceled and of no further force or effect.

## **XIX. EMINENT DOMAIN**

**19.1** In the event the entire Leased Premises or any portion thereof shall be appropriated or taken under the power of eminent domain by any public or quasi-public authority, this Lease shall terminate and expire as of the date of such taking and both **LANDLORD** and **TENANT** shall thereupon be released from any liability thereafter accruing hereunder.

**19.2** If this Lease is terminated in either manner herein above provided, the **LANDLORD** shall be entitled to the entire award or compensation from such proceedings, and **TENANT** hereby waives all claims to any condemnation award, but nothing herein shall be deemed to affect **TENANT's** right to receive compensation or damages for its trade fixtures, equipment, furniture, fixtures, furnishings, personal property, and relocation expenses through a separate award. All costs, charges, and fees for the last month of **TENANT's** occupancy shall be prorated, and **LANDLORD** agrees to refund to **TENANT** any costs, charges, and fees paid in advance, but not earned by **LANDLORD**.

## **XX. DEFAULT**

**20.1** The following shall be conditions of default:

A. If **TENANT** shall neglect or fail to perform or observe any of the terms, provisions, conditions or covenants herein contained and on **TENANT's** part to be performed or any way observed and if such neglect or failure should continue for a period of thirty (30) days after receipt by **TENANT** of written notice of such neglect or failure or vacating (except for the failure or neglect to pay any costs, charges or fees when due wherein such neglect or failure must be cured within ten (10) days after receipt by **TENANT** of written notice of such neglect or failure) or, if more than thirty (30) days shall be required because of the nature of the default, if **TENANT** shall fail within said original thirty (30) day period to commence and thereafter diligently proceed to cure such default, but such cure period for a non-monetary default shall not exceed a total of sixty (60) days from the date of such default; or ten (10) days as to a failure to pay costs, charges,



fees or any other monetary default; or thirty (30) days from the date of voluntary abandoning of the Leased Premises; or

B. If **TENANT** shall fail to take possession of the Leased Premises, or having taken possession, **TENANT** fails to open them for the conduct of business within thirty (30) days following the Commencement Date, or after beginning the conduct of business fails to open the business for a period of over three (3) consecutive days at any one time, except for "3-day" weekends, where a holiday precedes or follows a weekend.

**20.2** Further, in addition to the remedies set forth below, the right is expressly reserved to **LANDLORD** to terminate this Lease for the following, which are hereby also deemed to be contingencies, either of which constitutes a default:

A. In the event this Lease is deemed inconsistent with the best public use of the property, or

B. In the event use of the Premises shall have been deemed a nuisance by a court of competent jurisdiction, both contingencies A. and B. being set forth in the City Charter of the City of San Antonio.

## **XXI. REMEDIES-TERMINATION AND OTHER OPTIONS**

**21.1** In the event of default by **TENANT**, **LANDLORD** may after the notice and cure periods set forth in **ARTICLE XX.** above, at its option, declare this Lease and all rights and interests created by it to be terminated. Upon **LANDLORD** electing to terminate, this Lease shall cease and come to an end as if that were the day originally fixed herein for the expiration of this Term or applicable Renewal Term. **LANDLORD**, its agents or attorney, may resume possession of the Premises and re-let the same for the remainder of this Term, if applicable, or respective Renewal Term, if applicable, at the best rent, costs, charges, fees and other applicable sums **LANDLORD**, its agents or attorney may obtain for the account of **TENANT**, who shall make good any deficiency. Upon repossession, whether or not this Lease is terminated and notwithstanding any law or anything contained herein to the contrary, to the full extent permitted under applicable law, **TENANT** and **LANDLORD** agree that **LANDLORD's** duty to relet the Premises or otherwise to mitigate damages under this Lease, shall be limited to those requirements which may be set forth in the Texas Property Code, as amended, other Texas statutes, codes, and case law. **TENANT** agrees that **LANDLORD** shall in no event be liable and **TENANT's** liability shall not be affected or diminished in any way whatsoever for **LANDLORD's** failure to relet the Premises, or in the event the Premises are relet, for failure to collect any rental under such reletting provided that **LANDLORD** uses objectively reasonable efforts to mitigate its damages in the event of a **TENANT** default. Absent any specific requirements under Texas Property Code, as amended, other Texas statutes, code and case law, **LANDLORD** and **TENANT** agree that any such duty shall be satisfied and **LANDLORD** shall be deemed to have used objectively reasonable efforts to relet the Premises and mitigate **LANDLORD's** damages by: (1) posting a "For Lease" sign on Premises; (2) advising **LANDLORD's** lease agent, if any, of the availability of the Premises; and (3) advising at least one outside commercial brokerage entity of the availability of the Premises. If **LANDLORD** receives any payments from the reletting of the Premises any such payment shall first be applied to any costs or expenses incurred by **LANDLORD** as a result of **TENANT's** default hereunder, per **Section 21.7**. In the alternative, **LANDLORD** may, upon such election to terminate the Lease, and as an alternative, seek recovery of liquidated damages from **TENANT** equal to the present value of the remaining Lease rent, costs, charges, fees and any and all other sums due and owing, or to become due and owing to **LANDLORD** by **TENANT**.

**21.2** In connection with any such reletting, **LANDLORD** may make or cause to be made such repairs to the Leased Premises as **LANDLORD** shall, in good faith, deem advisable, and the making of such repairs shall not release **TENANT** from liability hereunder. **LANDLORD** shall in no event be liable, and **TENANT's** liability shall not be affected or diminished in any way

whatsoever, for inability to relet the Premises, or in the event the Premises are relet, for inability to collect any rental under such reletting.

**21.3** Any termination of this Lease by **LANDLORD** shall not relieve **TENANT** from payment of any sum or sums then due and payable or to become due and payable to **LANDLORD** hereunder, or any claim for damages then or thereafter accruing against **TENANT** hereunder, and any such sum or sums or claim for damages by any remedy provided for by law, or from recovering damages from **TENANT** for any default thereunder.

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

**21.5** Upon any expiration or termination of this Lease, **TENANT** shall quit and peacefully surrender the Premises to **LANDLORD**, and **LANDLORD**, upon or at any time after such expiration or termination, may, without further notice, enter upon and re-enter the Premises and possess and repossess itself thereof, by force, summary proceedings, ejectment or otherwise, and may dispossess **TENANT** and remove **TENANT** and all other persons and property from the Premises, unless **TENANT** is in the process of negotiating an extension and **LANDLORD** is agreeable to such extension.

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

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

**21.8** If **LANDLORD** shall terminate this Lease or take possession of the Premises by reasons of a condition of default, **TENANT**, and those holding under **TENANT**, shall forthwith remove their trade fixtures, equipment, signs, furniture, furnishings, other personal property and non-structural improvements (hereafter collectively "goods and effects") from the Premises, subject to a "Landlord's Lien" and other liens, if any, for the payment of rent and other sums due to **LANDLORD**, as referenced herein. If **TENANT** or any such claimant shall fail to effect such removal within ten (10) days after such termination, or if **LANDLORD** exercises its Landlord's Lien rights, then **TENANT** agrees that any such goods and effects left or subject to the Lien(s) shall automatically become the property of **LANDLORD** whereupon **LANDLORD** may, without liability to **TENANT** or those claiming under **TENANT**, remove such goods and effects and store the same for the account of **TENANT** or of the owner thereof at any place selected by **LANDLORD** with all costs for said removal and storage to be borne by **TENANT** or, at **LANDLORD's** option, **LANDLORD** may retain or dispose of **TENANT's** goods and effects, without notice, at a private or public sale and without liability to **TENANT** or those claiming under **TENANT**.

**21.9** If **LANDLORD** shall enter into and repossess the Premises for reason of the default by **TENANT** in the performance of any of the terms, covenants or conditions herein contained, then,

and in that event, **TENANT** hereby covenants and agrees that **TENANT** will not claim the right to redeem or re-enter the said Premises to restore the operation of this Lease.

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

**21.11** **ADDITIONAL RENT.** Any amount paid or expense or liability incurred by **LANDLORD** for the account of **TENANT** may be deemed to be additional rent and the same may, at the option of **LANDLORD**, be added to any other sums then due or thereafter falling due hereunder.

## **XXII. TERMINATION WITHOUT CAUSE**

**22.1** Notwithstanding the provisions of **ARTICLE XX. DEFAULT**, this Lease may be terminated at any time during this Term or respective Renewal Term, without cause, by either party, upon written notice to the other party, as long as no rent, costs, charges, fees or other sums are due and owing, if such notice is provided a minimum of sixty (60) days prior to the effective date of termination. Said notice shall be sent certified mail, return receipt requested, to the addresses provided herein. **TENANT** must bring current all rent, costs, charges, fees and any and all other sums then due and owing prior to any such termination.

## **XXIII. LIMITATION OF WAIVER**

**23.1** No consent, approval or waiver by **LANDLORD**, whether express or implied to (or of) any act, or to (or of) any breach of any covenant, condition or duty of **TENANT** on any occasion shall be construed as a consent, approval or waiver to, (or of) any other act or any other breach of the same covenant, condition or duty on any other occasion, or to, (or of) any other act or any breach of any other covenant, condition or duty on the same occasion.

## **XXIV. NOTICE**

**24.1** Any Notice hereunder shall be in writing and shall be deemed duly served if mailed by Certified Mail, Return Receipt Requested, and by Air Mail to the addresses shown below, addressed to the designated Party, as follows:

### **LANDLORD:**

City of San Antonio  
Attn: City Clerk  
City Hall, 2nd Floor  
P.O. Box 839966  
San Antonio, Texas 78283-3966  
With a copy to:  
Director  
Department of Asset Management  
City of San Antonio  
Municipal Plaza Building  
114 W. Commerce-2<sup>nd</sup> Floor  
San Antonio, Texas 778205

### **TENANT:**

203 South St. Mary's, Suite #150  
San Antonio, TX 78205  
Attn: Gustavo Gutierrez

or to such other address which a party communicates in writing to the other party to this lease and such Notices shall be presumed received five (5) calendar days after mailed. Written notice may also be hand-delivered or transmitted by facsimile and in such instance immediately deemed received upon delivery or confirmation of transmission.

## **XXV. QUIET ENJOYMENT**

**25.1** If **TENANT** shall pay the costs, charges, fees, and any other sums due hereunder and observe and perform the other terms, covenants and conditions on **TENANT's** part to be observed or performed, **LANDLORD** agrees that **TENANT** shall peaceably and quietly have, hold and enjoy the Leased Premises and **TENANT's** other rights of the Lease without hindrance or molestation by any person or persons lawfully claiming by, through or under **LANDLORD**, subject however, to the terms of this Lease, with the exception of special events, if subsequently held hereafter.

## **XXVI. MISCELLANEOUS**

**26.1** The word "**TENANT**" and the pronouns referring thereto shall mean, where the context so admits or requires, the person named herein **TENANT**; and if there is more than one party who is **TENANT**, the covenants of **TENANT** shall be joint and several obligations of each of them, and if **TENANT** is a partnership, the covenants of **TENANT** shall be the joint and several obligations of each of the partners and the obligations of the firm. Any pronoun shall be read in the singular or plural number and in such gender as the context may require.

**26.2** Whenever the word, "**LANDLORD**" is used herein, it shall mean the CITY OF SAN ANTONIO, provided, however, that where the word, as used, denotes action authority, same shall mean the City Manager or his designee so designated in writing. **TENANT** is fully responsible, pecuniarily and in all other respects, for acts or omissions on **TENANT's** part that are not properly authorized pursuant to the provisions herein.

**26.3** All covenants, promises, conditions, representations, and agreements herein contained shall be binding upon, apply and inure to the parties hereto and their respective legal representatives.

**26.4** In the event of any sale or exchange of the Leased Premises by **LANDLORD**, **LANDLORD** shall be and is hereby entirely freed and relieved of all liability under any and all of its covenants and obligations contained in or derived from this Lease arising out of any act, occurrence, or omission relating to the Leased Premises or this Lease occurring after the consummation of such sale or exchange. **TENANT** agrees to attorn to the purchaser and to execute an instrument required by **LANDLORD** to the effect the sale or exchange.

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

**26.6** This Lease may be executed in duplicate originals, each of which shall be considered an original for all purposes.

**26.7** **TENANT** hereby acknowledges that it has had no dealings with any real estate broker or salesman in connection with the negotiation or execution of the Lease and **TENANT** agrees to indemnify and hold **LANDLORD** harmless against any costs, expenses, attorney's fees or other liability for commissions or other compensation, claiming the same by, through or under **TENANT**.

## **XXVII. CONFLICT OF INTEREST**

**27.1** **CONFLICT OF INTEREST.** **TENANT** acknowledges that it is informed that the Charter of the City of San Antonio ("City" and **LANDLORD** herein) and City's Ethics Code prohibit City or a City officer or employee, as those terms are defined in Part B, Section 10 of the Ethics Code, as may be amended from time to time, from having a financial interest in any contract with City or any City agency such as City-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or

employee; his or her parent, child or spouse; a business entity in which the officer or employee, or his or her parent, child or spouse owns ten (10%) percent or more of the voting stock or shares of the business entity, or ten (10%) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity. **TENANT** warrants and certifies, and this Lease is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of City. **TENANT** further warrants and certifies that it has tendered to City a Discretionary Contracts Disclosure Statement in compliance with City's Ethics Code.

**27.2** To the extent not prohibited by the CITY OF SAN ANTONIO's Ethics Ordinance or State of Texas law or Federal (United States of America) law, **TENANT** may solicit to sell on an individual basis to **CITY** officials, goods produced.

#### **XXVIII. CAPTIONS**

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

#### **XXIX. CONSTRUCTION/INTERPRETATION**

**29.1 THIS LEASE SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND THE UNITED STATES OF AMERICA, and all obligations of the parties created hereunder are performable in Bexar County, Texas. The Parties hereto further agree that any court of proper jurisdiction sitting in San Antonio, Bexar County, Texas, shall be the proper forum for any actions brought hereunder.**

**29.2** If one or more of the provisions contained in this Lease shall be for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. In such event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby, and it is also the intention of the parties to this Lease that, in lieu of each clause or provision of this Lease that is illegal, invalid or unenforceable, there be added as a part of this Lease a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

#### **XXX. ENTIRE AGREEMENT**

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

**30.2** The party executing this Lease, on behalf of **TENANT** personally warrants that he or she has full authority to execute this Lease on **TENANT's** behalf.

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]**

30.3 The parties hereto acknowledge that they or their duly authorized officers, employees, agents or representatives have thoroughly read this Lease, including any exhibits or attachments hereto, and have sought and received whatsoever competent advice and counsel was necessary for them to form a full and complete understanding of their rights and obligations herein, and, having so done, do hereby, through said duly authorized parties, execute this Lease to be effective on the day and year mentioned hereafter.

EXECUTED to be EFFECTIVE as of October 1, 2004

**LANDLORD:**

**CITY OF SAN ANTONIO,  
a Texas Municipal Corporation**

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

Title: \_\_\_\_\_ City Manager

**TENANT:**

**SECRETARIA DE DESARROLLO  
ECONOMICO, N.L., a Texas Non-Profit  
Corporation**

BY: \_\_\_\_\_

NAME: Gustavo Gutierrez

Title: Foreign Investment officer

BY: \_\_\_\_\_

NAME: Beatriz Martinez

Title: Foreign Investment officer

ATTEST: \_\_\_\_\_  
City Clerk

**ADDRESS:**

**203 South St. Mary's, Suite #150  
San Antonio, TX 78205**

**APPROVED AS TO FORM:**

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

**ADDRESS:**

**City of San Antonio  
Attn: City Clerk  
City Hall, 2nd Floor  
P.O. Box 839966  
San Antonio, Texas 78283-3966**

**Exhibits:**

**Exhibit 1: Floor plan**

**Exhibit 2: LANDLORD's Work**

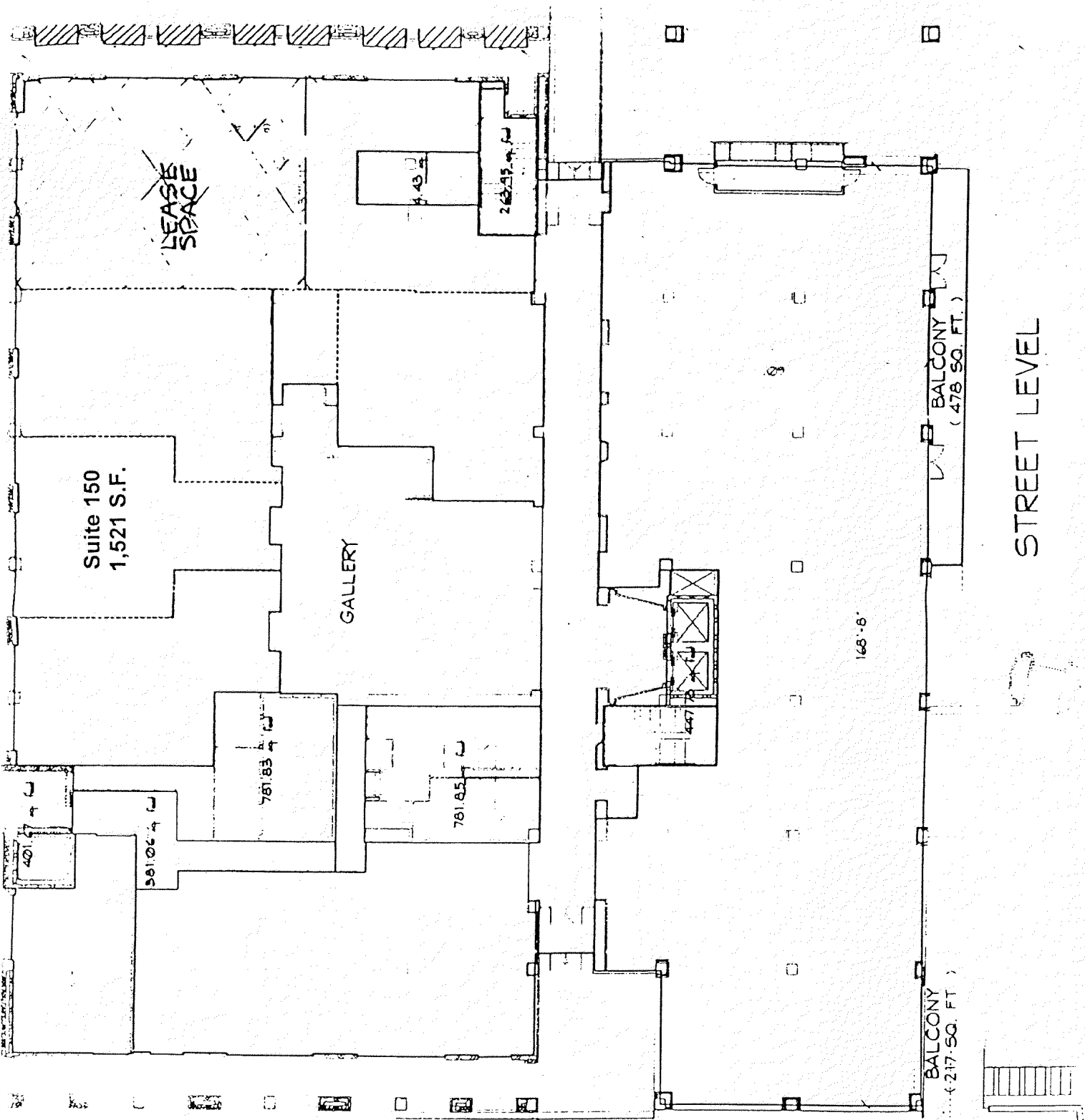


EXHIBIT 1

8255.42 sq ft

## **EXHIBIT 2**

### **LANDLORD'S WORK**

**For, and in consideration of the rental amounts to be collected during the term of this lease, LANDLORD agrees, at LANDLORD's sole cost and expense, to provide LANDLORD approved, paint and carpet only, for the Leased Premises.**