

AN ORDINANCE 2017-06-15-0437

AUTHORIZING LEASE AGREEMENTS WITH BIRD AND PEAR, LLC AND THE SAN ANTONIO CONSERVATION SOCIETY/NIOSA, EFFECTIVE JULY 1, 2017 THROUGH JUNE 30, 2020.

* * * * *

WHEREAS, on March 15, 2017, a Request for Proposals (RFP) was issued seeking proposals from qualified respondents interested in operating either a retail shop, gallery, or working artist studio in Building #10 or #20 located in the La Villita Historic Arts Village (La Villita); and

WHEREAS, on April 19, 2017, nine proposals were received in response to the RFP; these proposals were then evaluated on May 16, 2017 by a five-member evaluation committee composed of City staff and representatives from San Antonio's arts and tourism/destination management community; and

WHEREAS, the committee recommended awarding leases to Bird and Pear, LLC and the San Antonio Conservation Society/NIOSA; and

WHEREAS, both proposed lessees have been successful temporary tenants in La Villita and bring concepts that enhance the retail mix of La Villita for San Antonio residents and visitors; and

WHEREAS, the proposed lease with Bird and Pear, LLC is for Building #10 which totals 1,441 square feet; and

WHEREAS, the proposed lease with the San Antonio Conservation Society/NIOSA is for Building #20 which totals 575 square feet; and

WHEREAS, the agreements provide for one three-year term effective July, 1, 2017, and include two, one-year renewal options; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager or her designee, or the Director of the Center City Development and Operations Department or his designee, is authorized to execute lease agreements with Bird and Pear, LLC and the San Antonio Conservation Society/NIOSA; effective July 1, 2017 through June 30, 2020. A copy of the lease agreements are attached hereto and incorporated herein for all purposes as **Attachment I** and **II**.

SECTION 2. Funds generated by this Ordinance will be deposited as per the table below:

Amount	General Ledger	Internal Order	Fund
\$29,274.39	4407720	21900000007	11001000
\$5,382.00	4401111	21900000007	11001000
\$2,484.00	4407718	21900000007	11001000

SW
06/15/17
Item No. 10

SECTION 3. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 4. This Ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 15th day of June, 2017.



M A Y O R
Ivy R. Taylor

ATTEST:



Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:



Andrew Segovia, City Attorney

Agenda Item:	10 (in consent vote: 4, 5, 6, 7, 9, 10, 11A, 11B, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35A, 35B)						
Date:	06/15/2017						
Time:	09:32:16 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing lease agreements with Bird and Pear, LLC and the San Antonio Conservation Society/NIOSA, effective July 1, 2017 through June 30, 2020. [Lori Houston, Assistant City Manager; John Jacks, Director, Center City Development & Operations]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Treviño	District 1		x			x	
Alan Warrick	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Ana E. Sandoval	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				x

La Villita Working Artist Lease
Building 10

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1. Basic Information, Definitions.

Authorizing Ordinance:

Landlord: City of San Antonio

Landlord’s Address: P.O. Box 839966, San Antonio, Texas 78283-3966

(Attention: Center City Development & Operations Department)

Tenant: Bird and Pear, LLC

Tenant's Address: La Villita, San Antonio Texas, 78205

Premises: Building 10 located at 418 Villita Street and is depicted on the attached **Exhibit A**. Premises include outdoor display areas depicted on **Exhibit B**. Total leasable area of building 10 is 1,441 square feet.

Permitted Use: Tenant's initial inventory and initial merchandise display plan is listed in Attachment I.

Commencement Date: July 1, 2017

Construction/Set up Phase: The time period of any construction of Tenant capital improvements or setup prior to opening for operations not to exceed 60 calendar days after Commencement Date.

Capital Improvements: Capital improvements are permanent structural and/or physical improvements or the restoration of some aspect of the business that will either enhance the building's overall value or increase its useful life.

Tenant's Capital Improvements is listed in Attachment II.

Initial Term: July 1, 2017 – June 30, 2020

Security Deposit: None

Base Rent - Retail: \$1.28 per square foot per month

Base Rent – Work Room: \$1.02 per square foot per month

Base Rent – Storage: \$1.00 per square foot per month

Utilities Fees: \$0.25 per square foot per month

Common Area Maintenance (CAM)

Fees: \$0.12 per square foot per month

Address for Payment of Rent: City of San Antonio, Treasury Division, Central Billing Station, P.O. Box 839975, San Antonio, Texas

78283-3975

Common Areas: All areas, space, equipment, facilities, and services provided from time to time by Landlord for the common use and benefit of the tenants of the La Villita Area, their employees, volunteers, agents, customers, and other invitees, including access roads, driveways, sidewalks, landscaped space, public washrooms, pedestrian walkways or plazas within La Villita.

Director: The Director of the City of San Antonio's Center City Development & Operations Department or such other successor department as designated by Landlord.

2. Grant, Use.

2.01. Landlord leases the Premises to Tenant, and Tenant takes the Premises from Landlord on the terms and conditions of this Lease.

2.02. Landlord hereby agrees to permit Tenant use of above described Premises. Tenant agrees that the Premises shall be utilized for the sole purpose of arts, crafts, and skills display and retail sales.

2.02.01. Tenant agrees that it will cooperate with CITY in facilitating the intended objectives set forth in Ordinance 01-355 dated October 12, 1939 which was re-confirmed by resolution dated July 7, 1981 defining the goals, objectives, and policies of La Villita insofar as they may still be applicable. The Tenant further agrees that its lease of the Premises is conditioned on Tenant's maintaining the Permitted Use.

2.02.02. The Tenant further agrees that its lease of the Premises is conditioned on following the Merchandising Display Plan attached hereto as Attachment I.

2.02.02. Both the Permitted Use and the Merchandising Display Plan contained in Attachment I may be changed with written approval of the Landlord, acting by and through the Director, provided any requests for changes must be submitted in writing at least 45 calendar days in advance of the requested change. Written request must include description and images of any new arts and or craft TENANT requests authority to sell, the proposed revised Merchandising Display Plan as well as valid goal and objective for said request. It shall be within the Director's sole discretion to determine whether a change in Tenant's Permitted Use or Merchandising Display Plan

shall be allowed.

2.02.03. TENANT understands and agrees that any violation of the above stated inventory restrictions and Merchandising Display Plan would be a material breach of this Agreement, that just compensation for the harm suffered by CITY that would be caused by such violations would be difficult to quantify, and that the following charges and procedures are a reasonable and good faith estimate by the parties of the extent of the damage which is reasonably certain to occur in the event of a violation:

1. The first violation shall result in a written notice from CITY. TENANT shall immediately cure matter upon receipt of this notice.
2. TENANT shall pay CITY \$50.00 for each violation thereafter. Each day during which TENANT has failed to cure the violation shall be deemed a separate violation.
3. At the Landlord's option, the fifth or any succeeding violation, including a single violation for which TENANT has failed to cure for 5 calendar days, may be deemed a material breach and default and cause for lease termination without opportunity to cure.

2.03. In using the Premises for the purposes described in this section, the Tenant may, with the prior written permission of the Director arrange for associates to learn, demonstrate, exhibit or practice a specific art or craft on said Leased Premises. Such associates shall be considered as invitees of the Tenant and not as sublessees.

2.04. The Tenant covenants and agrees that it will operate and conduct its business except during the Construction/Set Up Phase or while the Premises are untenable by reason of fire or other casualty. The Tenant agrees to conduct its business in the Premises at all time in a first-class manner consistent with reputable business standards and practices for such business.

2.05. The Tenant agrees to maintain the following minimum hours of operation except for during the Construction/Set Up Phase: 10:00 a.m. to 6:00 p.m. Monday through Saturday and 11:00 a.m. – 4:00 p.m. on Sundays. Tenant may close the Premises on the following traditional holidays: Easter Sunday, Thanksgiving Day, Christmas Day, and New Year's Day.

2.05.01. The Director or a designee of the Director shall have authority to approve temporary closings in emergency situations such as a death or medical emergency in the immediate family of Tenant or Tenant's employee. Tenant shall notify the Director within 24 hours of any such emergency closing.

2.05.02. The Director or a designee of the Director shall have authority authorize temporary closings in response to weather emergencies.

2.05.03. Tenant agrees to remain open for extended hours from 6:00 PM to 9:00 PM twice a month for special promotional days as may be designated by the Director.

Landlord will give Tenant a minimum of 45 calendar days written notice prior to these events.

2.05.04. TENANT understands and agrees that any violation of the above stated operating hours requirements would be a material breach of this Agreement, that just compensation for the harm suffered by CITY that would be caused by such violations would be difficult to quantify, and that the following charges and procedures are a reasonable and good faith estimate by the parties of the extent of the damage which is reasonably certain to occur in the event of a violation:

1. The first violation shall result in a written notice from CITY.
2. TENANT shall pay CITY \$50.00 for each violation thereafter.
3. At the Landlord's option, the fifth or any succeeding violation may be deemed a material breach and default and cause for lease termination without opportunity to cure.

2.06. The Tenant agrees to comply with any and all sign design guidelines, provisions, and limitations in place now or in the future, including those within the City of San Antonio Unified Development Code and any applicable Master Plans. Tenant shall not place any signs on the Premises that are not directly related to the provision of Tenant's commercial operations. Tenant shall not place any political signs on the Premises.

3. Rent.

3.01. Rent includes all sums due to Landlord under this lease, whether Base Rent, Common Area Maintenance (CAM) Fees, Utilities Fees, reimbursement for repairing damages caused by Tenant, express liquidated damages provided for herein, or otherwise, no matter how denominated.

3.02. Base Rent is comprised of charges for leased retail space. Tenant shall not be charged for any Outdoor Display Area depicted in Exhibit B. Base Rent, Common Area Maintenance (CAM) Fee, and Utilities Fee for the first year of the Initial Term are as follows:

	Amount Per Square Foot Per Month	Square Feet	Total Amount Per Month
Base Rent- Retail	\$1.28	650.50	\$845.44
Base Rent – Work Room	\$1.02	650.50	\$673.71
Base Rent – Storage	\$1.00	120.00	\$120.00
Utilities Fee	\$0.25	1,441.00	\$360.25
Common Area Maintenance	\$0.12	1,441.00	\$172.92

3.03. Base Rent, CAM Fee, and Utilities Fee are as set forth above. Base Rent will increase 2% annually on each anniversary of the Commencement Date. CAM Fee will increase 2.5% annually on each anniversary of the Commencement Date. Utilities Fee will increase 2.5% annually on each anniversary of the Commencement Date.

3.04. Tenant must pay Base Rent, CAM Fee, and Utilities Fee payments in the amounts described in this section in advance on the first day of each month or within 10 days thereafter without penalty, beginning the earlier of 60 calendar days after Commencement Date or the day that Tenant begins commercial operations, i.e. no rent shall be paid during the Construction Phase. If Tenant begins commercial operations on a day other than the first day of the month Rent shall be prorated by the day for that month and shall be paid on the day on which commercial operations commence. If Tenant is delinquent in paying any Rent, Tenant must pay to Landlord upon demand a late charge of \$50.00. Tenant shall be charged a fee for any insufficient funds checks used to pay the rent and shall be subject to other rules and regulations adopted by Landlord's Treasury Division, including the insufficient funds fee. Late charges are in addition to all Landlord's other rights and remedies.

3.05. Tenant's covenant to pay Rent and Landlord's covenants are independent. Tenant may not abate Rent for any reason.

4. Common Areas.

4.01. "Common Areas" mean all areas, space, equipment, facilities, and services provided from time to time by Landlord for the common use and benefit of the tenants of the La Villita Area, their employees, volunteers, agents, customers, and other invitees, including access roads, driveways, sidewalks, landscaped space, public washrooms, pedestrian walkways or plazas within La Villita.

4.02. Tenant has 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 as the Landlord may from time to time prescribe. Such use must be requested in writing a minimum of 30 calendar days in advance.

4.03. Landlord may change the Common Areas, including, without limitation, their dimensions and location, without prior consultation with Tenant.

4.04. Landlord will, subject to events beyond its reasonable control, manage, operate, and maintain the Common Areas, except for damage caused by Tenant or those whose presence is through Tenant.

5. Term, Termination, Renewal.

5.01. The term of this Lease is the Initial Term, July 1, 2017 - June 30, 2020 unless sooner terminated as provided in this Lease.

5.02. Either party may terminate this lease with 90 calendar days' written notice.

5.03. If Tenant is not in default under the Lease, Tenant may ask to renew this Lease two additional one-year terms by giving Landlord six months prior written notice before expiration of the previous term. Landlord's acquiescence in Tenant's holding over is not acquiescence to renewal. Renewal is effected only after written notice of intent to renew, negotiated agreement on rent for the renewal term, and approval of the proposed renewal by further City Council ordinance. Though no renewal is effective unless approved by City Council, Landlord has no duty to present a proposed renewal to Council, even though Tenant has given the requisite notice.

5.04. Renewal Terms are governed by this Lease just as the Initial Term, except for Rent. Rent will be renegotiated prior to the Renewal Term.

6. Tenant's Affirmative Promises.

Tenant promises that it will:

6.01. Accept the Premises in their present "AS IS" condition.

6.02. Obey (a) all applicable Federal, State, and Local laws relating to the use, condition, and occupancy of the Premises and Building; (b) any requirements imposed by utility companies serving or insurance companies covering the Premises or Building; and (c) any rules and regulations for the Premises and Common Areas adopted by Landlord.

6.03. Cooperate with the Landlord in facilitating the intended objectives set forth in Ordinance 01-355 dated October 12, 1939 that was reconfirmed by resolution dated July 7, 1981 defining the goals, objectives, and policies of La Villita insofar as they may still be applicable.

6.04. Allow Landlord to enter the Premises to perform Landlord's obligations, inspect the Premises, and show the Premises to prospective purchasers or tenants after at least 24 hours written notice has been received by the tenant, except in cases of life and safety emergencies.

6.05. Repair, replace, and maintain any part of the Premises that Landlord is not obligated to repair, replace, or maintain, normal wear excepted. Such maintenance shall include the provision of any necessary pest control measures subject to all applicable laws, rules and regulations and reasonable regulations established by Landlord.

6.06. After casualty loss not terminating the lease, rebuild the interior partitions/walls, ceilings, wiring, light fixtures, and plumbing.

6.07. Submit in writing to Landlord any request for repairs, replacement, and maintenance that are the obligations of Landlord.

6.08. Vacate the Premises and return all keys to the Premises on the last day of the Term, subject to any holdover rights.

6.09. On request, execute an estoppel certificate that states the Commencement Date and Expiration Date of the lease, identifies any amendments to the lease, describes any rights to extend the Term or purchase rights, lists defaults by Landlord, and provides any other information reasonably requested. If Landlord sells the Premises, Tenant must deliver to the buyer or the buyer's lender a subordination, nondisturbance, and attornment agreement reasonably satisfactory to the buyer and its lender. Tenant's obligation to deliver the agreement may be conditioned on buyer's agreement to honor this Lease according to its terms, but buyer will not be estopped to act on Tenant's default under this Lease.

6.10. Maintain a fully functioning lock system on the premises. Any changes to the lock systems shall receive the prior written approval of the Landlord through La Villita manager and any and all other necessary departments, boards or commissions of the City of San Antonio, including, but not limited to, the Historic and Design Review Commission; and ensure that the Landlord through La Villita manager be provided a copy of keys to the leased premises.

6.11. Monthly and Annual Reports: Tenant shall deliver to the Landlord: (a) within 15 calendar days after the expiration of each calendar month of the Lease Term, a written statement, on a form satisfactory to the Director, showing the Gross Receipts made from the Premises during such period including an itemization of any exclusions or deductions made to Gross Receipts ("Monthly Statement"); and (b) within 60 calendar days after the expiration of each 12 month period of the Lease term and after termination of this Agreement, a written statement, on a form satisfactory to the Director, showing in reasonable detail the amount of Gross Receipts made by Tenant from the Premises during the preceding 12 month period including an itemization of any exclusions or deductions made to Gross Receipts. Tenant shall certify in its Annual Statement that (i) such statements have been prepared in accordance with the terms of this Agreement and accounting procedures that adequately reflect the Gross Receipts of Tenant, and (ii) that all revenues derived from Tenant's activities hereunder which are required to be included in Gross Receipts have been so included. The Monthly Statements and Annual Statements prepared by Tenant shall also provide the total number of transactions. The Director may make reasonable changes to the form of the Monthly Statement or Annual Statement from time to time upon 30 calendar days prior notice to Tenant. Failure to provide the Monthly or Annual Statement shall be a material breach of the Lease.

6.12. **Records:** Tenant shall keep and maintain full and accurate books and source

documents of the Gross Receipts, for transactions conducted at the physical retail store, whether for cash, credit or otherwise, of Tenant's physical retail store at any time operated within the physical retail store (collectively, "Records"). The Records to be kept by Tenant at its principal business office in the United States shall include, without limitation, true copies of all federal, state and local sales and use tax returns and reports, daily receipts from all sales (including those from mail, electronic or telephone orders), duplicate bank deposit slips, invoices, journals, ledgers and other pertinent original sales records and records of any other transactions conducted in or from the Premises. Pertinent original sales records shall also include a point of sale system of record keeping and such other reasonable documentation of Tenant's sales sufficient to provide determination and verification of Gross Receipts and the exclusions therefrom. The Records shall be preserved by Tenant for a period of two (2) years following the expiration of the Term or earlier termination of this Agreement.

6.13. Definition of Gross Receipts. The term "Gross Receipts" as used herein shall mean and include all monies paid or payable to Tenant, whether for cash, credit or otherwise, for retail sales made in the physical location at La Villita, all deposits not funded to or otherwise forfeited by customers; orders taken, although said orders may be filled elsewhere; the entire amount of the actual sales price and all other receipts for sales and services rendered; all insurance proceeds received due to loss of gross earnings paid under Tenant's business interruption insurance policy because of business interruptions. A "sale" shall be deemed to have been consummated for purposes hereof, and the entire amount of the sales price shall be included in Gross Receipts and deemed received at the time of determination of the amount due for each transaction, whether for cash, credit or otherwise, and not at the time of billing or payment. Losses from "bad" checks or credit card fee transactions shall not be excluded from Gross Receipts. Gross Receipts shall include all such sales, revenues or receipts generated by Tenant's subtenants or anyone else conducting business pursuant to an arrangement with Tenant within the Premises. **Exclusions from Gross Receipts:** Gross Receipts shall not include: (i) any sums collected for any federal, state, county and municipal sales taxes but only if separately stated from the sales price and only to the extent paid by Tenant to any duly constituted governmental/taxing authority; (ii) the portion of the sales price for all merchandise and products returned by customers and accepted for credit to the extent of the credit actually given to the customer as well as rebates, exchanges or allowances made to customers; (iii) shipping and delivery charges if there is no profit to Tenant and such charges are merely an accommodation to customers; (iv) sale of trade fixtures, equipment or property which are not stock in trade and not in the ordinary course of business; (v) receipts in the form of refunds from or the value of merchandise and products; services, supplies or equipment returned to vendors, shippers, suppliers or manufacturers including volume discounts received from vendors, suppliers or manufacturers; (vi) customary discounts given by Tenant on sales of merchandise and products or services to Tenant's employees, if separately stated, and limited in amount to not more than 1% of Tenant's Gross Receipts per Lease Month; (vii) gratuities for services performed by employees of Tenant which are paid by Tenant's customers to such employees; (viii) exchange of merchandise and products between stores or warehouses owned by or affiliated with Tenant (where such exchange is made solely for the convenient operation of the business of Tenant and not for purposes of consummating a sale

which has theretofore been made in or from the Premises and/or for the purpose of depriving the Landlord of the benefit of a sale which otherwise would be made in or from the Premises); (ix) proceeds from the sale of gift certificates or like vouchers until such time as the gift certificates or like vouchers have been treated as a sale pursuant to Tenant's record keeping system; (x) the sale or transfer in bulk of the inventory of Tenant to a purchaser of all or substantially all of Tenant's assets in a transaction not in the ordinary course of Tenant's business; (xi) except with respect to proceeds received for business interruptions paid on a gross earnings business interruption insurance policy as provided in above, receipts from all other insurance proceeds received by Tenant as a result of a loss or casualty, and (xii) sales reported by Tenant under another Lease with the Landlord.

6.14. Tenant agrees to consider working with and/or participating in programs provided by the City to enhance and increase potential business practices and maximize business plans such as but not limited to: merchandising, display layout, finance, customer experience, sales, marketing, etc.

7. Indemnity.

7.01. **TENANT covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and 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 the CITY directly or indirectly arising out of, resulting from or related to TENANT' activities under this Agreement, including any acts or omissions of TENANT, any agent, officer, director, representative, employee, Tenant or subcontractor of TENANT, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT TENANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

7.02. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. TENANT shall advise the CITY in writing within 36 hours of any claim or demand against the CITY or TENANT known to TENANT related to or arising out of TENANT' activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at TENANT's cost. The CITY shall have the right, at its

option and at its own expense, to participate in such defense without relieving TENANT of any of its obligations under this paragraph.

8. Tenant's Negative Promises.

Tenant promises that it will not:

8.01. Use the Premises for any purpose other than the Permitted Use.

8.02. Create a nuisance.

8.03. Interfere with any other tenant's normal business operations or Landlord's management of La Villita.

8.04. Permit waste.

8.05. Use the Premises in any way that would increase insurance premiums or void insurance on the Premises.

8.06. Alter the Premises without Landlord's written consent.

8.07. Allow a lien to be placed on the Premises.

8.08. Make repair, maintenance or cleaning requests to City personnel other than the City's La Villita manager.

9. Landlord's Affirmative Promises.

Landlord promises that it will:

9.01. Lease to Tenant the Premises for the entire Term beginning on the Commencement Date and ending on the Expiration Date.

9.02. Obey all applicable laws with respect to Landlord's operation of La Villita and its Common Areas.

9.03. Repair, replace, and maintain the (a) roof, (b) foundation, (c) Common Areas, (d) structural soundness of the exterior walls, doors, and windows, and (e) HVAC serving the Premises. Landlord's La Villita manager shall maintain a form for the reporting of repairs, shall track the progress of the requested repairs and be Tenant's point of contact for all official information regarding such repairs. Landlord shall within a reasonable period of time make all necessary repairs reported to the La Villita manager.

10. Landlord's Negative Promise.

10.01. Landlord promises that it will not interfere with Tenant's possession of the Premises as long as Tenant is not in default.

10.02. Landlord promises that it will not communicate with any person regarding lease and contract issues other than Tenant and such persons as Tenant has indicated in writing are Tenant's attorneys, agents and/or lobbyists.

11. Construction of Premises and Alterations.

11.01. All improvements required for Tenant's Capital Improvements to be made to the Premises shall be substantially as set forth in Attachment II and any other requirements required by the City. Tenant shall construct and install all of its improvements (including both fixtures and equipment) to the Premises so that the Premises will provide attractive, well-designed facilities that promote the marketing of merchandise, products and/or services and present a positive image to La Villita visitors.

11.02. Tenant shall immediately apply for and diligently pursue, at Tenant's expense, any and all permits required to perform Tenant's Work. Tenant, at its expense, shall construct, equip and complete the Tenant's Work at all times with due diligence and in a good and workmanlike manner in accordance with all applicable legal and code requirements, in order to complete the same and open the Premises for business to the public no later than 60 calendar days after the Commencement Date. Completion date of Tenant's Work may be adjusted with written approval of the Landlord, acting by and through the Director.

11.03. All such construction shall be completed free and clear of all liens, encumbrances and security instruments. If any mechanics', materialmen's or other lien is filed against the Premises or any interest in this Agreement as a result of any work or act of Tenant, Tenant shall fully and completely discharge the lien and have it released from record by payment or posting a bond within 20 calendar days after the filing thereof.

11.04. Tenant shall deliver to the Director a copy of the Certificate of Occupancy with respect to the Premises within 20 calendar days after Tenant's receipt thereof from the City.

11.05. Tenant shall not construct, or allow to be constructed, any improvements or structures on the Leased Premises nor shall Tenant make, or allow to be made, any alterations to the Leased Premises without the prior written approval of the Landlord through Director and any and all other necessary departments, boards or commissions of the City of San Antonio, including, but not limited to, the Historic and Design Review Commission.

11.06. Tenant shall not attach anything to the exterior of the Premises including but not

limited to telecommunications or other electronic equipment.

11.07. Physical additions or improvements to the Premises made by Tenant will become the property of Landlord. Landlord may require that Tenant, at the end of the Term and at Tenant's expense, remove any physical additions and improvements, repair any alterations, and restore the Premises to the condition existing at the Commencement Date, normal wear excepted.

11.08. The City may provide rental abatements in the amount of 80% of approved, documented, and verified capital improvements to the lease space over the first five (5) years of the lease agreement. Any and all improvements must be reviewed and approved in writing by City.

12. Insurance.

A) Prior to the commencement this Agreement, Tenant shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Center City Development & Downtown Operations Department, which shall be clearly labeled "La Villita Lease Bldg 10" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the Authorized Representative of the carrier, and list the agent's signature and phone number. The certificate shall be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Risk Management Division. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

B) The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereby City may incur increased risk.

C) A tenant's financial integrity is of interest to the City; therefore, subject to tenant's right to maintain reasonable deductibles in such amounts as are approved by the City, tenant shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at tenant's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
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1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury *d. Environmental Impairment/ Impact – sufficiently broad to cover disposal liability. *e. Explosion, Collapse, Underground	For Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. *Professional Liability (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	\$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.
5. *Builder's Risk	All Risk Policy written on an occurrence basis for 100% replacement cost during construction phase of any new or existing structure.
6. *Property Insurance: For physical damage to the property of LESSEE, including improvements and betterment to the Leased Premises	Coverage for replacement value with a minimum co-insurance factor of eighty percent (80%) of the cost of Contractor's property
*if applicable	

D) Tenant agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of tenant herein, and provide a certificate of insurance and endorsement that names the tenant and the City as additional insureds. Policy limits of the coverages carried by subcontractors will be determined as a business decision of tenant. Tenant shall provide the City with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by

City's Risk Manager, which shall become a part of the contract for all purposes.

E) As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all required endorsements. Tenant shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within 10 days. Tenant shall pay any costs incurred resulting from provision of said documents.

City of San Antonio
Attn: Center City Development & Downtown Operations Department
P.O. Box 839966
San Antonio, Texas 78283-3966

F) Tenant agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
- Provide advance written notice directly to City of any suspension or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

G) Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, tenant shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend tenant's Agreement should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

H) In addition to any other remedies the City may have upon tenant's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order tenant to stop work hereunder, and/or withhold any payment(s) which become due to tenant hereunder until tenant demonstrates compliance with the requirements hereof.

D) 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 or its subcontractors' performance of the work covered under this Agreement.

J) It is agreed that tenant's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

K) It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.

L) Tenant and any subcontractors are responsible for all damage to their own equipment and/or property.

13. Release of Claims/Subrogation.

The insurance requirements of this Lease are a bargained-for allocation of risk of loss. Landlord and Tenant release each other from claims arising from injury or loss to either of them or to third parties to which they are liable, if the injury or loss is covered by insurance the waiving party is required by this Lease to maintain, whether or not the party actually has the insurance ("Covered Claims"). This release is additional to and does not limit any other release contained in this lease. Landlord and Tenant, to the maximum extent allowable without causing cancellation of a required policy, will require their insurers to waive subrogation against each other for Covered Claims.

14. Environmental Matters.

14.01. "Environmental Laws" means applicable federal, state, and local laws relating to protection of the public health, welfare, and the environment, including without limitation, those laws relating to the storage, handling, and use of chemicals and other hazardous substances, those relating to the generation, processing, treatment, storage, transport, disposal, or other management of waste materials of any kind, and those relating to the protection of environmentally sensitive areas.

14.02. "Hazardous Material" means "hazardous substance," "pollution or contaminant," "petroleum," and "natural gas liquids," as those terms are defined by or used in Environmental Laws, or that are regulated because of their effect or potential effect on human health and the environment.

14.03. "Release" means depositing, spilling, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing.

14.04. In its use of the Premises, Tenant must comply with all applicable Environmental Laws and must cause its employees, agents, and contractors on the Premises to do so as well. Tenant will obtain all permits required under Environmental Law for its use of the Premises. At least 180 days before expiration of any such permit, Tenant must present proof to Landlord that it has applied for renewal.

14.05. Tenant must not allow the Release of any Hazardous Material from its use of the Premises on, onto, or from the Property. Tenant further must not handle, use, or otherwise manage any Hazardous Material on the Premises or the Property in violation of any Environmental Laws or in any but a reasonable and prudent manner.

14.06. Tenant must immediately provide to Landlord copies of: (i) any documents required to be submitted to a Governmental Authority under Environmental Law; (ii) any notice alleging a violation of Environmental Law, or (iii) any demand from or allegation by any third party in relation to Hazardous Materials or Environmental Law. Tenant must promptly deliver to Landlord any information it receives regarding any Release of Hazardous Materials on, to, from, or about the Premises.

14.07. Landlord may conduct, at Tenant's expense, periodic inspections of the Premises and Tenant's operations thereon to assure compliance with Tenant's environmental covenants. Tenant need not pay the expense of more than one such inspection in any 12-month period.

14.08. If Tenant breaches any of its representations, warranties or covenants, Tenant at its sole expense, must take all actions required, including environmental cleanup of the Premises, to comply with the representations, warranties, and covenants or applicable law. Tenant must take all action required by applicable Environmental Laws. If Tenant's actions under this provision involve cleaning up a Release of Hazardous Materials, Tenant must perform the cleanup consistently with residential use of the Premises and will not use any institutional controls or engineering controls in lieu of clean-up. Tenant will further obtain a Certificate of Completion from the TCEQ's Voluntary Cleanup Program. Institutional controls include laws, rules, or regulations or private prohibitions limiting use of a property, such as a prohibition against water well use within a certain contaminated track or area of a local government's jurisdiction. Engineering controls mean physical apparatus such as an asphalt or concrete cap, detention basin, extraction well, or other engineered device to control, contain, or remove pollutants.

14.09. Tenant must indemnify Landlord and hold Landlord and its officials, employees, and contractors from loss, cost, liability, or expense (including, but not limited to, attorneys' fees and expenses, including all attorney's fees and expenses incurred by Tenant in enforcing this indemnity) arising from or relating to breach of Tenant's environmental representations, warranties, and covenants.

15. Landlord's Municipal Powers.

15.01 Landlord is a municipality as well as landlord under this Lease. As a municipality, it may from time to time exercise municipal powers unrelated to the Lease that will nevertheless adversely affect Tenant. Such actions may include redirection of traffic, street closures, or other actions intended to facilitate public safety, the public interest, or the conduct of major events. No such action by Landlord as a municipality is a breach of Landlord's duties as landlord or entitles Tenant to any relief under this Lease. Likewise, no breach of contract or other duty by municipal utility providers is a breach of Landlord's duties as landlord or entitles Tenant to any relief under this Lease. Tenant has no more rights under this Lease than it would if its landlord were a private entity.

16. Prohibited Interests in Contracts.

16.01. The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of 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:

- (i) a City officer or employee;
- (ii) his parent, child or spouse;
- (iii) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;
- (iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

16.02. Tenant warrants and certifies as follows:

- (i) Tenant and its officers, employees and agents are neither officers nor employees of the City.
- (ii) Tenant has tendered to the City a Contracts Disclosure Statement in compliance with the City's Ethics Code.

16.03. Tenant acknowledges that City's reliance on the above warranties and certifications is reasonable.

17. Casualty/Total or Partial Destruction.

17.01. If the Premises are damaged by casualty and can be restored within ninety days, Landlord will, if funding is available, at its expense, restore the roof, foundation, exterior doors, windows, Common Areas, and structural soundness of the exterior walls of the Premises. Restoration must be to substantially the same condition existing before the casualty. If Landlord fails to complete the portion of the restoration for which Landlord is responsible within ninety days from the date of written notification by Tenant to Landlord of the casualty, Tenant may terminate this lease by written notice delivered to Landlord before Landlord completes Landlord's restoration obligations.

17.02. If the Premises cannot be restored within ninety days from the date of written notification by Tenant to Landlord, Landlord has an option to restore the Premises. If Landlord chooses not to restore, this lease will terminate. If Landlord chooses to restore, Landlord will notify Tenant of the estimated time to restore and give Tenant an option to terminate this lease by notifying Landlord within ten days. If Tenant does not terminate this lease, the lease will continue, and Landlord will restore the Premises as provided above.

17.03. To the extent the Premises are untenable after the casualty; the Rent will be adjusted as may be deemed fair and reasonable by Landlord.

17.04. If Landlord is obligated to rebuild or chooses to do so, Tenant must promptly rebuild and restore all improvements the maintenance of which are its responsibility under this Lease. Restoration must be to substantially the same condition existing before the casualty.

17.05. As with the insurance requirements, the rebuilding obligations of this paragraph are a bargained-for allocation of risk.

17.06 If, during any approved renovations, the interior of the Premises is found to be damaged by water due to Landlord's failure to perform its maintenance obligations or asbestos or lead paint is discovered Landlord will, if funding is available, at its expense, restore the damaged interior areas of the Premises, excluding Tenant's furniture, fixtures and other personal property. If Landlord fails to complete the portion of the restoration for which Landlord is responsible within ninety days from the date of written notification by Tenant to Landlord of the casualty, Tenant may as its sole remedy terminate this lease by written notice delivered to Landlord before Landlord completes Landlord's restoration obligations.

17.07 If the Premises cannot be restored within ninety calendar days from the date of written notification by Tenant to Landlord, Landlord has an option to restore the Premises. If Landlord chooses not to restore, this lease will terminate. If Landlord chooses to restore, Landlord will notify Tenant of the estimated time to restore and give Tenant an option to terminate this lease by notifying Landlord within ten days. If Tenant does not terminate this lease, the lease will continue, and Landlord will restore the Premises as provided above.

18. Condemnation/Substantial or Partial Taking.

18.01. If the Premises cannot be used for the purposes contemplated by this lease because of condemnation or purchase in lieu of condemnation, this lease will terminate.

18.02. If there is a condemnation or purchase in lieu of condemnation and this lease is not terminated, Landlord will, at Landlord's expense, restore the Premises, and the Rent payable during the unexpired portion of the Term will be adjusted as may be fair and reasonable.

18.03. Tenant will have no claim to the condemnation award or proceeds in lieu of condemnation.

19. Holdover.

19.01. If Tenant holds over after termination or expiration of this Lease, the terms of this Lease apply during the holdover period, except (A) the Lease shall have a month to month term, and (B) the Base Rent is 110% of what it was immediately before the term ended.

20. Contractual Lien.

20.01. To secure the payment of Rent and the full performance of this Lease by Tenant, Tenant hereby grants to Landlord an express first and prior security interest and contract lien on all property (including fixtures, furniture, furnishings, equipment, chattels, merchandise, goods, inventory, and all other personal property) that may now or hereafter be placed in the Premises and all additions, accessions and replacement thereto, and all proceeds therefrom and also upon all proceeds of any insurance that may accrue to Tenant by reason of destruction of or damage to any such property ("Collateral"). Tenant must not remove the Collateral from the Premises without Landlord's written consent until Rent arrearages then due to Landlord are paid in full. Tenant waives all exemption laws in favor of this lien and security interest. Landlord does not waive its statutory lien, and this lien and security interest is cumulative with the statutory lien.

20.02. In case of an event of default, Landlord may, in addition to any other remedies, enter the Premises and take possession of any and all personal property of Tenant situated on the Premises, without liability for trespass or conversion. This lien may be foreclosed with or without court proceedings by public or private sale provided Landlord gives Tenant at least 10-days notice of the time and place of sale. Landlord has the right to bid and purchase at the sale. Any sale or disposition of the Collateral made under this section is commercially reasonable (A) if held at the Premises or where the Collateral is located and (A) if the time, place, and method of sale and a general description of the Collateral to be sold is advertised in a daily newspaper published in the county in which the property is located for five consecutive days before the date of sale. Tenant must inform Landlord as soon as reasonably possible after receiving the notice of sale about any and all prospects of whom Tenant is aware who have any interest in purchasing any of the Collateral. Tenant must further inform Landlord of any marketing or selling activity that Tenant believes will bring a fair sale price for the Collateral, balancing the cost of the

activity. Should Tenant fail to cooperate in offering information to assist in the disposition of the Collateral, Tenant should not be heard to complain about the Landlord's disposition made according to this Lease.

20.03. The proceeds from any disposition of the Collateral, less any and all expenses connected with the taking of possession, holding and selling of the Collateral (including reasonable attorney's fees and other expenses), will be applied as a credit against the indebtedness secured by the security interest granted in this paragraph. Any surplus goes to Tenant or as otherwise required by law, and the Tenant must pay any deficiencies forthwith. Contemporaneously with the execution of this Lease (and if requested hereafter by Landlord), Tenant shall execute and deliver to Landlord Uniform Commercial Code financing statements in sufficient form so that, when properly filed, the security interest will be perfected. If Landlord requests, Tenant must also execute and deliver to Landlord Uniform Commercial Code financing statement change instruments in sufficient form to reflect any proper amendment of, modification in, or extension of the contract lien and security interest hereby granted. A carbon, photographic, or other reproduction of this Lease is sufficient as a financing statement. In addition to all of its rights, Landlord also has all the rights and remedies of a secured party under the Uniform Commercial Code as adopted in Texas. Landlord may execute any financing statement as agent for Tenant so that the document is in proper form to be filed.

21. Default, Remedies for Default.

21.01. Events of Default. If Tenant permits or fails to prevent any of the following occurrences, it is a Tenant event of default:

21.01.01. Tenant fails to pay any installment of Rent when due.

21.01.02. Tenant fails to comply with any term, provision or covenant of this Lease, other than the payment of rental or expenses demanded by Landlord and does not cure such failure within 30 calendar days after written notice thereof to Tenant, or any representation or warranty by Tenant is false or misleading in any material respect when given to Landlord.

21.01.03. This Lease for the Premises or any part thereof is taken upon execution or by other process of law directed against Tenant, or is taken upon or subject to any attachment at the instance of any creditor or claimant against Tenant, and the attachment is not to be discharged or disposed of within 30 calendar days after the levy thereof.

21.01.04. Tenant files a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or voluntarily takes advantage of any such law or act by answer or otherwise, or is dissolved, or makes a transfer in fraud of creditors or makes an

assignment for the benefit of creditors, or admits in writing its inability to pay its debts as they mature.

21.01.05. Involuntary proceedings under any such bankruptcy law or insolvency act or for the dissolution of Tenant is instituted against Tenant, as the case may be, or a receiver or trustee of all or substantially all of the property of Tenant is appointed, and such proceeding is not dismissed or such receivership or trusteeship vacated within sixty (60) days after such institution or appointment.

21.01.06. Tenant deserts, vacates or abandons all or any portion of the Premises, or ceases to physically occupy any substantial portion of the Premises and continuously operate its business on the Premises, or fails to commence business operations in the Premises on or before the Commencement Date. If Tenant removes or makes preparations to remove its goods, equipment, inventory, and fixtures (other than in the normal course of business) in amounts sufficient to indicate a probable intent to vacate the Premises, Tenant's breach is established conclusively.

21.01.07. Tenant does or permits to be done anything which creates a lien upon the Premises.

21.01.08. The business operated by Tenant is closed for failure to pay any State sales tax as required or for any other reason, other than repairs, death of the principals of Tenant, or normal business holidays.

21.01.09. This Lease or the estate of Tenant hereunder is transferred to, or passes to any other person or party except in a manner permitted herein.

21.02. *Remedies for Default.* Upon the occurrence of any Tenant event of default, Landlord has the option to pursue anyone or more of the following:

21.02.01. In addition to, and without limiting any other remedies available to Landlord at law or in equity, immediately terminate this Lease and all rights of Tenant hereunder. Upon termination, Tenant must immediately surrender the Premises to Landlord. If Tenant fails to do so, Landlord may, without prejudice to any other remedy, enter and take possession of the Premises or any part thereof and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof, by force if necessary, without being liable for prosecution or any claim of damages.

21.02.02. Enter upon and take possession of the Premises or any part thereof and expel or remove Tenant and any other person who may be occupying said Premises or any part thereof, by force if necessary, without being liable for prosecution or any claim for damages therefore without having terminated the Lease.

21.02.03. Enter upon the Premises, by force if necessary, without being liable for prosecution or any claim for damages, and do whatever Tenant is obligated to do under the terms of this Lease. In such case, Tenant must reimburse Landlord on demand for expenses Landlord may incur in thus effecting compliance with Tenant's obligations. Landlord is not liable for any damages resulting to the Tenant from such action.

21.02.04. Alter all locks and other security devices at the Premises without terminating this Lease. If Landlord does so:

(i) Landlord need not allow Tenant re-entry to the Premises or provide Tenant with a new key unless and until Tenant cures any and all defaults under this Lease,

(ii) Landlord may refuse to give Tenant a new key unless Tenant establishes a security deposit by an amount determined by Landlord,

(iii) If Landlord does provide Tenant with a key, it will do so only during the Landlord's regular business hours, and

(iv) Tenant must pay Landlord all costs and expenses incurred by Landlord in connection with altering the locks and other security devices.

Landlord's remedies and rights under this Lease entirely supersede and supplant the provisions of Texas Property Code § 93.002.

21.03. *Repossession and Alteration of Locks.* Landlord's exercise of one or more remedies is not acceptance of Tenant's purported surrender of the Premises, whether by agreement or by operation of law. Surrender can occur only by the written agreement of Landlord and Tenant. No such alteration of locks or other security devices and no removal or other exercise of dominion by Landlord over the property of Tenant or others at the Premises is unauthorized or constitutes conversion. Tenant consents to Landlord's exercise of dominion over Tenant's property within the Premises in case of Tenant's default. Tenant waives (A) all claims for damages by reason of such reentry, repossession, or alteration of locks or other security devices and (B) all claims for damages by reason of any distress warrant, forcible detainer proceedings, sequestration proceedings, or other legal process. Re-entry by Landlord may be pursuant to judgment obtained in forcible detainer proceedings or other legal proceedings or without the necessity for any legal proceedings, as Landlord may elect. Landlord is not liable in trespass or otherwise for such re-entry. Landlord's remedies and rights under this Lease entirely supersede and supplant the provisions of Texas Property Code § 93.002.

21.04. *Effect of Termination.* If Landlord terminates the Lease for an event of default, then despite the termination, Tenant is liable for and must pay Landlord, at the Address for

Payment of Rent, all Rent accrued to the date of termination. Landlord's acceptance of past-due rent after termination does not reinstate the Lease.

21.05. *Effect if No Termination.* If Landlord repossesses the Premises without terminating the Lease, then Tenant is liable for and must pay Landlord, at the Address for Payment of Rent, all Rent accrued to the date of repossession, plus Rent due during the remainder of the term until the date of expiration. Tenant's obligation is diminished by any net sums thereafter received by Landlord through reletting the Premises (after deducting expenses of reletting). Tenant is liable for the full Rent for the remainder of the Lease term if the Premises are not relet. In no event is Tenant entitled to any excess of any rental obtained by reletting over and above the Rent. Actions to collect amounts due by Tenant to Landlord may be brought at one time or from time to time, on one or more occasions, without the necessity of Landlord's waiting until expiration of the Lease term. In the alternative, if Landlord relets the Premises, Landlord may recover from Tenant (A) the unpaid Rent accrued before Tenant's default, plus (B) the then present value of the amount by which the Rent for the remainder of the term exceeds the rental received from reletting the Premises. Present value is computed by allowing interest at 1% in excess of the discount rate of the Federal Reserve Bank of Dallas, Texas. No repossession of the Premises by Landlord hereunder is either an acceptance of surrender or an election to terminate this Lease. Neither does it cause a forfeiture of Rent remaining to be paid during the balance of the Lease term, unless a written notice of such intention is given to Tenant or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding Landlord's right to relet and collect the difference in rental values, Landlord may, at any time after default, terminate this Lease. Landlord also may decline to repossess the Premises, and may from time to time, without terminating this Lease, recover all rent as it becomes due.

21.06. *Liability for Costs Incurred.* If Tenant defaults, in addition to any other sum required by this Lease, Tenant must also pay to Landlord, at the Address for Payment of Rent, (A) brokers and management fees incurred by Landlord in connection with reletting the whole or any part of the Premises; (B) the costs of removing and storing Tenant's or any other occupant's property, (C) the costs of repairing, altering, remodeling, or otherwise putting the Premises into a condition acceptable to a new tenant or tenants, (D) all rental concessions as a result of reletting, and (E) any and all other costs, fees, and expenses associated with reletting the Premises and all reasonable expenses incurred by Landlord in repossessing the Premises and in enforcing or defending Landlord's rights and/or remedies, including reasonable attorney's fees, which shall be not less than 10% of all sums then owing by Tenant to Landlord.

21.07. *Obligation to Reimburse.* If Tenant fails to timely make any payment or cure any default, Landlord, without an obligation to do so and without waiving default, may make the payment or remedy the other default for the account of Tenant (and enter the Premises for such purposes). Thereupon Tenant must pay upon demand, all costs, expenses, and disbursements (including reasonable attorney's fees) incurred by Landlord in taking the remedial action.

21.08. Default by Landlord. If Landlord defaults, Tenant's exclusive remedy is an action for damages (Tenant hereby waiving the benefit of any laws granting it a lien upon the property of Landlord or on rent due Landlord). Tenant is not permitted to withhold Rent. Before filing any such action Tenant must give Landlord 30-days prior written notice specifying the alleged default and giving Landlord opportunity to cure. Unless and until Landlord fails to timely cure a default after written notice, Tenant has no remedy or cause of action by reason thereof. All obligations of Landlord are covenants, not conditions. Landlord's liability to Tenant for default is limited to actual, direct, but not consequential, damages. **Tenant hereby waives its statutory lien under § 91.004 of the Texas Property Code.**

21.09. Payments After Termination. Tenant's payment of money to Landlord after termination or after notice of default (other than a demand for payment of money within any applicable cure period) does not reinstate, continue, or extend the term or affect any notice given to Tenant prior to the payment. After the service of a suit or after any final judgment granting Landlord possession of the Premises, Landlord may receive and collect any sums due under the terms of this Lease or may otherwise exercise any of its rights and remedies hereunder. Such payment, whether as rent or otherwise, does not waive any notice or a termination of Tenant's right of possession, or in any manner affect any suit theretofore commenced or judgment previously obtained.

21.10. Rights Respecting Personal Property. If Landlord takes possession of the Premises under the authority of this Lease, Landlord may keep in place and use all furniture, fixtures, and equipment at the Premises, including that owned by or leased to Tenant at all times before foreclosure thereon by Landlord or repossession thereof by any lessor thereof or lienholder thereon. Landlord may also remove from the Premises (without obtaining a distress warrant, writ of sequestration, or other legal process) all or any part of the furniture, fixtures, equipment, and other property and place same in storage anywhere in the county in which the Premises are located. In such case, Tenant is liable to Landlord for costs incurred by Landlord in the removal and storage and must indemnify Landlord from all loss, damage, cost, expense, and liability arising from or relating to the removal and storage. Landlord also may relinquish all or any part of the furniture, fixtures, equipment, and other property to any person ("Claimant") who presents to Landlord a copy of any instrument represented to have been executed by Tenant, if the instrument purports to grant Claimant the right under various circumstances to take possession of the property. Landlord need not inquire into the authenticity of the instrument or Tenant's or Tenant's predecessor's signature thereon. Landlord further need not investigate or inquire into the validity of the factual or legal basis on which Claimant purports to act. Tenant hereby indemnifies Landlord from all loss, cost, liability, or expense arising from or relating to Landlord's relinquishment of property to a Claimant. These rights of Landlord are additional to any other rights that Landlord has or may hereafter have at law or in equity. Tenant stipulates that the rights herein granted Landlord are commercially reasonable.

21.11. Cumulative Remedies. Each right and remedy provided to Landlord in this Lease is cumulative to every other right or remedy provided to Landlord by this Lease or applicable

law, including, but not limited to, suits for injunctive relief and specific performance. The exercise or beginning of the exercise by Landlord of one or more of the right or remedy does not preclude the simultaneous or later exercise by Landlord of another remedy. All costs incurred by Landlord in collecting any amounts and damages owed by Tenant under this Lease or to enforce any provision of it, including reasonable attorneys' fees from the date any such matter is turned over to litigation counsel, are also recoverable by Landlord from Tenant.

22. Landlord's Mitigation of Damages.

Any duty imposed by law on Landlord to mitigate damages after a default by Tenant under this Lease will be satisfied in full if Landlord undertakes to lease the Premises to another tenant (a "Substitute Tenant") in accordance with the following criteria:

22.01. Landlord will have no obligation to solicit or entertain negotiations with any other prospective tenants for the Premises until Landlord obtains full and complete possession of the Premises including without limitation, the final and unappealable legal right to relet the Premises free of any claim of Tenant;

22.02. Landlord will not be obligated to lease or show the Premises on a priority basis, or offer the Premises to a prospective tenant when other space in the Building suitable for the prospective tenant's use is (or soon will be) available;

22.03. Landlord will not be obligated to lease the Premises to a Substitute Tenant for a Rent less than the current fair market Rent then prevailing for similar uses in comparable buildings in the same market area as the Building, nor will Landlord be obligated to enter into a new lease under terms and conditions that are unacceptable to Landlord under Landlord's then current leasing policies for comparable space in the Building.

22.04. Landlord will not be obligated to enter into a lease with a Substitute Tenant whose use would:

- (i) violate any restriction, covenant, or requirement contained in the lease of another tenant of La Villita;
- (ii) adversely affect the reputation of La Villita; or
- (iii) be incompatible with other users of La Villita.

22.05. Landlord will not be obligated to enter into a lease with any proposed Substitute Tenant that does not have, in Landlord's reasonable opinion, sufficient financial resources to operate the Premises in a first class manner; and

22.06. Landlord will not be required to expend any amount of money to alter, remodel, or otherwise make the Premises suitable for use by a proposed Substitute Tenant unless:

(i) Tenant pays any such sum to Landlord in advance of Landlord's execution of a lease with the proposed Substitute Tenant (which payment will not be in lieu of any damages or other sums to which Landlord may be entitled as a result of Tenant's default under this Lease; or

(ii) Landlord, in Landlord's reasonable discretion, determines that any such expenditure is financially justified in connection with entering into a lease with the prospective Substitute Tenant.

23. Tenant's Bankruptcy.

23.01. In addition to other available remedies, if Tenant becomes the subject of a voluntary or involuntary bankruptcy, reorganization, composition, or other similar proceeding under the federal bankruptcy laws:

23.02. "Adequate protection" of Landlord's interest in the Premises pursuant to Sections 361 and 363 (or their successor sections) of the Bankruptcy Code, 11 U.S.C., Paragraph 101, et seq., as amended from time to time ("Bankruptcy Code"), before assumption or assignment of the Lease by Tenant include but are not limited to all (or any part) of the following:

(i) continued payment by Tenant of all Rent due and owing hereunder and the performance of all other covenants and obligations hereunder by Tenant;

(ii) hiring security guards to protect the Premises if Tenant abandons or ceases operations, the obligation of Tenant only to be effective so long as Tenant remains in possession and control of the Premises to the exclusion of Landlord;

(iii) furnishing an additional/new security deposit by Tenant in the amount of three times the then-current monthly Base Rental and Additional Rent payable hereunder.

23.03. "Adequate assurance of future performance" by Tenant or any assignee of Tenant pursuant to Bankruptcy Code Section 365 includes (but is not be limited to) payment of an additional/new Security Deposit in the amount of three times the then-current monthly Base Rental and Additional Rent payable hereunder.

23.04. Any person or entity to which this Lease is assigned pursuant to the Bankruptcy Code, assumes, without further act or deed, all obligations of Tenant arising under this Lease on and after the effective date of such assignment. Any such assignee must, on demand by Landlord, execute and deliver to Landlord an instrument confirming the assumption of liability.

23.05. Despite anything in this Lease to the contrary, all amounts payable by Tenant to or on behalf of the Landlord under this Lease, whether or not expressly denominated as "rent", constitute "rent" for the purposes of Section 502(b)(6) of the Bankruptcy Code.

23.06. If this Lease is assigned to any person or entity pursuant to the Bankruptcy Code, any and all monies or other considerations payable or otherwise to be delivered to Landlord (including Base Rentals and other rent hereunder) remain the exclusive property of Landlord and are not property of Tenant or of the bankruptcy estate of Tenant. Any and all monies or other considerations constituting Landlord's property under the preceding sentence not paid or delivered to Landlord must be held in trust by Tenant or Tenant's bankruptcy estate for the benefit of Landlord and must be promptly paid to Landlord.

23.07. If Tenant assumes this Lease and proposes to assign it to a specific assignee on specific terms, Tenant must deliver to Landlord notice of the proposed assignment. The notice must set forth (i) the name and address of the proposed assignee; (ii) all terms and conditions of the offer, and (iii) the adequate assurance to be provided Landlord to assure the assignee's future performance under the Lease. Tenant must deliver the notice no later than 20 days after Tenant's receipt of the proposal, but in no event later than 10 days before Tenant applies to a court of competent jurisdiction for authority and approval of the proposed assumption and assignment. Landlord thereupon has the prior right and option to accept the assignment itself on the same terms and conditions and for the same consideration, if any, as Tenant's proposed assignee, less any brokerage commission otherwise payable by the proposed assignee. Landlord must exercise its prior right and option by delivering notice to Tenant not later than 30 days after Landlord's receipt of the notice.

23.08. To the extent permitted by law, this Lease is a contract under which applicable law excuses Landlord from accepting performance from (or rendering performance to) any person other than Tenant.

24. Warranty Disclaimer.

24.01. There are no implied warranties of merchantability, of fitness for a particular purpose, or of any other kind arising out of this lease, and there are no warranties that extend beyond those expressly stated in this lease. Without limitation, this Lease contains no express or implied warranty that the Premises have no latent defects or that the Premises are or will remain suitable for Tenant's purposes.

24.02. Tenant acknowledges it has had ample opportunity to perform due diligence regarding the Premises and accepts the Premises in their present condition, as-is.

25. Abandoned Property.

25.01. Landlord may retain, destroy, or dispose of any property left on the Premises at the end of the Term.

26. Appropriations.

26.01. All obligations of the City of San Antonio under this instrument are funded through the City of San Antonio General Fund and are subject to the discretion of City Council whether to appropriate funding for any given year of a term. If the City Council fails to appropriate money for this Lease in an annual City of San Antonio Budget, the City may terminate this Lease and have no further liability.

27. Sublease, Assignment.

27.01. Tenant cannot assign or sublease this lease without Landlord's prior written consent. Assignments include any transaction in which (A) a material part of Tenant's assets are sold outside the ordinary course of business or (B) a change in the identity of those owning, holding, or controlling the power to vote of 50% of the equity interest in Tenant. Tenant shall pay to Landlord an assignment fee of \$2,000.00 for any assignment.

28. Dispute Resolution.

28.01. Before bringing any action arising out of this agreement, including an action for declaratory relief but not an action specifically excepted below, the disputants must first submit in good faith to mediation. The parties may not assert limitations, laches, waiver, and estoppel based upon attempts to mediate.

28.02. Filing suit on a claim that should be mediated waives the filer's right to demand mediation. But one party's waiver does not affect another party's right. A defendant does not waive mediation for so long as, within a reasonable time after appearing, the defendant gives written notice to the plaintiff or its counsel of intent to require compliance with this paragraph.

28.03. Mediation must be conducted in San Antonio, Bexar County, Texas.

28.04. The party desiring relief has the burden to initiate mediation. Waiting for another party to initiate mediation does not waive the right to it.

28.05. If the parties can otherwise agree on a mediator, they may do so. Alternatively, either party may petition any court of competent jurisdiction to appoint a mediator. The only predicate issues the court need consider before appointing a mediator are whether (i) the copy of the contract before the court is authentic and (ii) the contract was duly signed and delivered by

all parties to be bound to mediate. If neither of those issues is denied under oath, the court may appoint a mediator upon motion, without trial.

28.06. Mediator fees must be borne equally.

28.07. The parties need not mediate before going to court (1) for either party to seek emergency injunctive relief or (2) for Landlord to seek forcible entry and detainer relief against Tenant.

29. Miscellaneous.

29.01. *Applicable Law.* This Agreement is entered into in San Antonio, Bexar County, State of Texas. **It's Construction And The Rights, Remedies, And Obligations Arising Under It Are Governed by The Laws of The State Of Texas.** Both parties' obligations under this agreement are performable in San Antonio, Bexar County, Texas, and venue for any action arising under this agreement is only in Bexar County, Texas.

29.02. *Severability.* If any part of this agreement is found invalid or unenforceable, the finding does not affect the remainder.

29.03. *Successors.* This Agreement inures to the benefit of and binds the heirs, representatives, successors, and permitted assigns of each party. This clause does not authorize any assignment not otherwise authorized.

29.04. *Integration.* **This Written Agreement Represents The Final Agreement Between The Parties And May Not Be Contradicted By Evidence Of Prior, Contemporaneous, Or Subsequent Oral Agreements Of The Parties. There Are No Oral Agreements Between The Parties.**

29.05. *Modification.* This Agreement may be changed only by a written agreement, signed by the party against whom enforcement of any modification is sought. Subject to that restriction, any of this Agreement's terms may be modified by the party entitled to their benefit, but no modification, express or implied, affects the right of the modifying party either (i) to apply any other term or condition or (ii) to apply the same term or condition to a later or earlier occasion. Any modification of this Lease must be authorized by an ordinance adopted by City Council that specifically addresses the modification.

29.06. *Third Party Beneficiaries.* This Agreement benefits the parties and their successors and permitted assigns only. It has no third party beneficiaries.

29.07. *Notices.* Notices must be in writing and by certified mail, return receipt requested, addressed to the parties at their respective addresses set forth at the beginning. If the addressee is a corporation, notices must be addressed to the attention of its President. Notice is complete

three days after deposit, properly addressed and postage prepaid, with the United States Postal Service. Failure to use certified mail does not defeat the effectiveness of notice actually received, but such notice is effective only on actual receipt. Address for notice may be changed by giving notice.

29.08. *Pronouns.* Plural constructions include the singular, and singular constructions include the plural. Whether a pronoun is masculine, feminine, or neuter does not affect meaning or application of the relevant term. The words "herein," "hereof," and other, similar compounds of the word "here" refer to the entire Agreement, not just to a part of it.

29.09. *Captions.* Paragraph captions are for ease of reference only and do not affect the interpretation.

29.10. *Counterparts.* This Agreement may be executed in multiple counterparts, each of which is an original, whether or not all parties sign the same document. Regardless of their number, counterparts constitute only one agreement. In making proof of this agreement, one need not produce or account for more counterparts than necessary to show execution by or on behalf of all parties.

29.11. *Further Assurances.* The parties must execute and deliver such additional documents and instruments as may be necessary to effect fully the provisions hereof. But no such additional documents can alter the rights or obligations of the parties stated in this agreement.

29.12. *Administrative Actions and Agreements.* The Director of Capital Improvements Management Services ("CIMS") and the Assistant Director for Real Estate of CIMS may, without further council action, agree to, sign, and deliver on behalf of the City all consents, certificates, memoranda, estoppels, and modifications of nonmaterial rights and obligations arising under this Lease and may declare Tenant defaults and pursue remedies for such defaults, including terminating this Lease. This paragraph does not authorize lease amendments or renewals without council consent.

29.13. *Incorporation of Exhibits.* All exhibits to this Lease are incorporated into it for all purposes as if fully set forth.

29.14 Tenant understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate in its operations under this lease agreement on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

30. Night in Old San Antonio (NIOA) and Other Events.

30.01. The Landlord reserves the right to grant the San Antonio Conservation Society or its successors, assigns, or subcontractors a Lease of all or any portion of adjacent property (including Plaza Nacional) and/or a concession to sell beverages, food, and other items on all or any portion of La Villita, other than the premises hereby expressly demised, during specified hours on those dates in each year of the duration of the lease in which the Society may sponsor all or any part of the event known as NIOA within La Villita. The Tenant expressly recognized that any right, privilege, or leasehold interest granted to the San Antonio Conservation Society for NIOA under a separate lease and/or concession contract controlling access to La Villita is superior to any such right, privilege or leasehold interest granted Tenant under this Lease Agreement.

30.02. Base Rent will be abated during the 16 days annually during month which NIOA occurs. All other Fees will not be abated.

30.03. Except in the case of NIOA and holidays stated above, the gates to La Villita will remain open from 7:00 a.m. until 6:00 p.m. daily. However, the Tenant understands, acknowledges and agrees that the Landlord will also from time to time accommodate various functions or events. Such accommodation may require temporary closures of points of access to La Villita and plazas, streets, and open areas in and around La Villita and/or controlled or limited access to the Leased Premises. Such closures and/or controlled or limited access shall not prevent pedestrian access to the Leased Premises entrance free of charge before 6:00 P.M. The Tenant expressly recognizes that any such accommodation and also any and all of the Landlord's fee simple ownership rights and interest as Landlord hereunder are superior to any right, privilege or leasehold interest granted the Tenant under this Lease Agreement and the Tenant hereby agrees to cooperate fully with the Landlord on notification of such accommodation. The Tenant further waives any and all claims for damages, including but not limited to, loss of business, which the Tenant may suffer as a result of any such accommodation by the Landlord as limited by this paragraph.

31. Public Information.

31.01. Tenant acknowledges that this instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public. Nothing in this agreement waives an otherwise applicable exception to disclosure.

In Witness Whereof, the parties have caused their representatives to set their hands.

Landlord:

City of San Antonio, a Texas municipal corporation

Signature

Name

Title

Date

Attest:

City Clerk

Approved as to Form:

City Attorney

Tenant:

Bird and Pear, LLC



Signature

ELIZABETH LEATHERBURY
Name

OWNER
Title

6/2/17
Date

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Exhibit A: La Villita Building Map

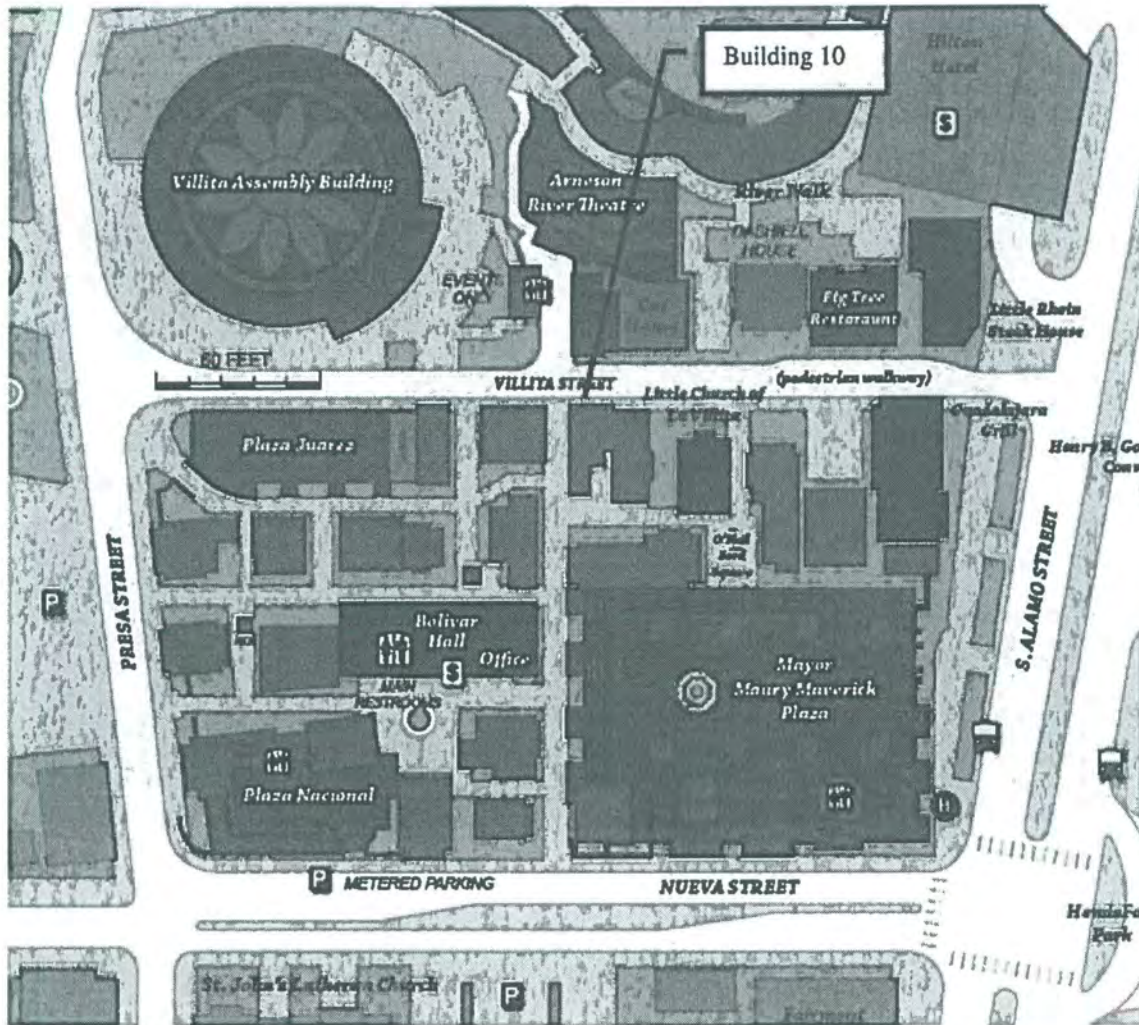


Exhibit B: Photos of Building 10



Attachment I: Tenant's Initial Inventory and Initial Merchandising Display Plan

Initial Inventory:

"We proposed to offer our existing eclectic mix of products consisting of Bird and Pear made merchandise, upscale gift lines, several offerings meant for children and young adults as well as our artificial plants and other larger accents pieces. Bird and Pear currently manufactures our own pillows, makeup bags, bowties and cummerbunds, medal sashes and other small accessory pieces from upcycled Mexican and Latin American textiles.

In addition to the items we make, we have also built and intend to continue to develop our business for children and young people. Our first and most important objective in this department is affording today's youth the opportunity to interact with other people in person. Every item we offer is meant to encourage kids to put down the screens! We have a carefully edited selection of books and games, brainteaser puzzles, jigsaw puzzles and small edition card games available for sale. We seek out games that are original, fun to play and often vintage such as jacks or pick up sticks. This has been a hugely successful area for us and we hope to expand this footprint in the new space.

Additionally, we hope to continue selling our candles, handbags, dishtowels, books, journals, containers and vases, framed art and other well designed items purchased from various gift companies. Many of our lines are from San Antonio-based companies such as Bear and Roo candles and Boyd's Farm personal care. Other lines while not necessarily from Texas are also made by individual artists or smaller artisanal producers such as Mama's Little Babies resin jewelry, Flower and Vine stationery or Mincing Mockingbird cards and art from artist Matt Adrian of Los Angeles. We strive to provide a vibrant marketplace for these small companies and will continue to seek out these small producers whenever possible. Several of our games such as Gloom are purchased directly from the game creator themselves."

Initial Merchandising Display Plan:

"Our signature "look" is a carefully planned part of building our brand. We will continue to use our layered displays of several related items artfully arranged on each of our natural wood shelves. Over several years of doing displays for both retail and wholesale situations, we have discovered that people enjoy shopping from displays that are visually interesting and full of things that keep the eye moving. We often hang things from the ceiling, pile things in bowls and otherwise cross merchandise all of our items with like items. For example, our floral art might look lovely next to a floral pillow, cosmetic bag or book jacket with a floral image on it.

Our display fixtures will consist of wooden shelving mounted to walls with tasteful wooden brackets, flexible, freestanding wooden shelving by Lundia of Sweden, in a natural blonde wood color and several glass topped tables with custom made tablecloths.

Framed art will be hung with the use of a picture rail or invisible picture hanger. We will not be using anything that is not modern, streamlined and high end looking for store displays such as prefabricated peg board wall covering, metal shelving or uncovered temporary tables. Any

accent furniture in the store will be refurbished or reupholstered as needed to maintain our carefully curated aesthetic.

Bird and Pear also stocks artificial planting materials such as succulents, faux orchids and large potted trees and palms. We use these throughout the store as needed to fill corners, soften displays and lend a fresh feeling to our seasonal offerings.”

Attachment II: Tenant's Capital Improvements

Capital Improvements	Value of Capital Improvements
Paint – entire interior excluding floors	\$5,000.00
Floor Treatment – refinish all downstairs hardwood floors. Repairs as needed	\$2,650.00
Electrical – install lighting	\$2,500.00
Carpentry – construct electrical chases to hide exposed electrical conduit or wiring. Replace odd first step in stairwell to alleviate trip hazards. Ensure water exclusions are in place at all openings to avoid leaks. Restore transom windows to working order for better ventilation.	\$2,500.00
Total	\$12,650.00

La Villita Working Artist Lease
Building 20

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1. Basic Information, Definitions.

Authorizing Ordinance:

Landlord: City of San Antonio

Landlord's Address: P.O. Box 839966, San Antonio, Texas 78283-3966

(Attention: Center City Development & Operations Department)

Tenant: San Antonio Conservation Society/NIOSA

Tenant's Address: La Villita, San Antonio Texas, 78205

Premises: Building 20 located at 418 Villita Street and is depicted on the attached Exhibit A. Premises include outdoor display areas depicted on Exhibit B. Total leasable area of building 20 is 575 square feet.

Permitted Use: Tenant's initial inventory and initial merchandise display plan is listed in Attachment I.

Commencement Date: July 1, 2017

Construction/Set up Phase: The time period of any construction of Tenant capital improvements or setup prior to opening for operations not to exceed 60 calendar days after Commencement Date.

Capital Improvements: Capital improvements are permanent structural and/or physical improvements or the restoration of some aspect of the business that will either enhance the building's overall value or increase its useful life.

Tenant's Capital Improvements is listed in Attachment II.

Initial Term: July 1, 2017 – June 30, 2020

Security Deposit: None

Base Rent: \$1.45 per square foot per month

Utilities Fees: \$0.25 per square foot per month

Common Area Maintenance (CAM)

Fees: \$0.12 per square foot per month

Address for Payment of Rent: City of San Antonio, Treasury Division, Central Billing Station, P.O. Box 839975, San Antonio, Texas 78283-3975

Common Areas: All areas, space, equipment, facilities, and services provided from time to time by Landlord for the

common use and benefit of the tenants of the La Villita Area, their employees, volunteers, agents, customers, and other invitees, including access roads, driveways, sidewalks, landscaped space, public washrooms, pedestrian walkways or plazas within La Villita.

Director: The Director of the City of San Antonio's Center City Development & Operations Department or such other successor department as designated by Landlord.

2. Grant, Use.

2.01. Landlord leases the Premises to Tenant, and Tenant takes the Premises from Landlord on the terms and conditions of this Lease.

2.02. Landlord hereby agrees to permit Tenant use of above described Premises. Tenant agrees that the Premises shall be utilized for the sole purpose of arts, crafts, and skills display and retail sales.

2.02.01. Tenant agrees that it will cooperate with CITY in facilitating the intended objectives set forth in Ordinance 01-355 dated October 12, 1939 which was re-confirmed by resolution dated July 7, 1981 defining the goals, objectives, and policies of La Villita insofar as they may still be applicable. The Tenant further agrees that its lease of the Premises is conditioned on Tenant's maintaining the Permitted Use.

2.02.02. The Tenant further agrees that its lease of the Premises is conditioned on following the Merchandising Display Plan attached hereto as Attachment I.

2.02.02. Both the Permitted Use and the Merchandising Display Plan contained in Attachment I may be changed with written approval of the Landlord, acting by and through the Director, provided any requests for changes must be submitted in writing at least 45 calendar days in advance of the requested change. Written request must include description and images of any new arts and or craft TENANT requests authority to sell, the proposed revised Merchandising Display Plan as well as valid goal and objective for said request. It shall be within the Director's sole discretion to determine whether a change in Tenant's Permitted Use or Merchandising Display Plan shall be allowed.

2.02.03. TENANT understands and agrees that any violation of the above stated inventory restrictions and Merchandising Display Plan would be a material breach

of this Agreement, that just compensation for the harm suffered by CITY that would be caused by such violations would be difficult to quantify, and that the following charges and procedures are a reasonable and good faith estimate by the parties of the extent of the damage which is reasonably certain to occur in the event of a violation:

1. The first violation shall result in a written notice from CITY. TENANT shall immediately cure matter upon receipt of this notice.
2. TENANT shall pay CITY \$50.00 for each violation thereafter. Each day during which TENANT has failed to cure the violation shall be deemed a separate violation.
3. At the Landlord's option, the fifth or any succeeding violation, including a single violation for which TENANT has failed to cure for 5 calendar days, may be deemed a material breach and default and cause for lease termination without opportunity to cure.

2.03. In using the Premises for the purposes described in this section, the Tenant may, with the prior written permission of the Director arrange for associates to learn, demonstrate, exhibit or practice a specific art or craft on said Leased Premises. Such associates shall be considered as invitees of the Tenant and not as sublessees.

2.04. The Tenant covenants and agrees that it will operate and conduct its business except during the Construction/Set Up Phase or while the Premises are untenable by reason of fire or other casualty. The Tenant agrees to conduct its business in the Premises at all time in a first-class manner consistent with reputable business standards and practices for such business.

2.05. The Tenant agrees to maintain the following minimum hours of operation except for during the Construction/Set Up Phase: 10:00 a.m. to 6:00 p.m. Monday through Saturday and 11:00 a.m. – 4:00 p.m. on Sundays. Tenant may close the Premises on the following traditional holidays: Easter Sunday, Thanksgiving Day, Christmas Day, and New Year's Day.

2.05.01. The Director or a designee of the Director shall have authority to approve temporary closings in emergency situations such as a death or medical emergency in the immediate family of Tenant or Tenant's employee. Tenant shall notify the Director within 24 hours of any such emergency closing.

2.05.02. The Director or a designee of the Director shall have authority authorize temporary closings in response to weather emergencies.

2.05.03. Tenant agrees to remain open for extended hours from 6:00 PM to 9:00 PM twice a month for special promotional days as may be designated by the Director. Landlord will give Tenant a minimum of 45 calendar days written notice prior to these events.

2.05.04. TENANT understands and agrees that any violation of the above stated

operating hours requirements would be a material breach of this Agreement, that just compensation for the harm suffered by CITY that would be caused by such violations would be difficult to quantify, and that the following charges and procedures are a reasonable and good faith estimate by the parties of the extent of the damage which is reasonably certain to occur in the event of a violation:

1. The first violation shall result in a written notice from CITY.
2. TENANT shall pay CITY \$50.00 for each violation thereafter.
3. At the Landlord's option, the fifth or any succeeding violation may be deemed a material breach and default and cause for lease termination without opportunity to cure.

2.06. The Tenant agrees to comply with any and all sign design guidelines, provisions, and limitations in place now or in the future, including those within the City of San Antonio Unified Development Code and any applicable Master Plans. Tenant shall not place any signs on the Premises that are not directly related to the provision of Tenant's commercial operations. Tenant shall not place any political signs on the Premises.

3. Rent.

3.01. Rent includes all sums due to Landlord under this lease, whether Base Rent, Common Area Maintenance (CAM) Fees, Utilities Fees, reimbursement for repairing damages caused by Tenant, express liquidated damages provided for herein, or otherwise, no matter how denominated.

3.02. Base Rent is comprised of charges for leased retail space. Tenant shall not be charged for any Outdoor Display Area depicted in Exhibit B. Base Rent, Common Area Maintenance (CAM) Fee, and Utilities Fee for the first year of the Initial Term are as follows:

	Amount Per Square Foot Per Month	Square Feet	Total Amount Per Month
Base Rent	\$1.45	575	\$833.75
Utilities Fee	\$0.25	575	\$143.75
Common Area Maintenance	\$0.12	575	\$69.00

3.03. Base Rent, CAM Fee, and Utilities Fee are as set forth above. Base Rent will increase 2% annually on each anniversary of the Commencement Date. CAM Fee will increase 2.5% annually on each anniversary of the Commencement Date. Utilities Fee will increase 2.5% annually on each anniversary of the Commencement Date.

3.04. Tenant must pay Base Rent, CAM Fee, and Utilities Fee payments in the amounts described in this section in advance on the first day of each month or within 10 days thereafter without penalty, beginning the earlier of 60 calendar days after Commencement Date or the day that Tenant begins commercial operations, i.e. no rent shall be paid during the Construction Phase. If Tenant begins commercial operations on a day other than the first day of the month Rent shall be prorated by the day for that month and shall be paid on the day on which commercial operations commence. If Tenant is delinquent in paying any Rent, Tenant must pay to Landlord upon demand a late charge of \$50.00. Tenant shall be charged a fee for any insufficient funds checks used to pay the rent and shall be subject to other rules and regulations adopted by Landlord's Treasury Division, including the insufficient funds fee. Late charges are in addition to all Landlord's other rights and remedies.

3.05. Tenant's covenant to pay Rent and Landlord's covenants are independent. Tenant may not abate Rent for any reason.

4. Common Areas.

4.01. "Common Areas" mean all areas, space, equipment, facilities, and services provided from time to time by Landlord for the common use and benefit of the tenants of the La Villita Area, their employees, volunteers, agents, customers, and other invitees, including access roads, driveways, sidewalks, landscaped space, public washrooms, pedestrian walkways or plazas within La Villita.

4.02. Tenant has 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 as the Landlord may from time to time prescribe. Such use must be requested in writing a minimum of 30 calendar days in advance.

4.03. Landlord may change the Common Areas, including, without limitation, their dimensions and location, without prior consultation with Tenant.

4.04. Landlord will, subject to events beyond its reasonable control, manage, operate, and maintain the Common Areas, except for damage caused by Tenant or those whose presence is through Tenant.

5. Term, Termination, Renewal.

5.01. The term of this Lease is the Initial Term, July 1, 2017 - June 30, 2020 unless sooner terminated as provided in this Lease.

5.02. Either party may terminate this lease with 90 calendar days' written notice.

5.03. If Tenant is not in default under the Lease, Tenant may ask to renew this Lease two additional one-year terms by giving Landlord six months prior written notice before expiration of the previous term. Landlord's acquiescence in Tenant's holding over is not acquiescence to renewal. Renewal is effected only after written notice of intent to renew, negotiated agreement on rent for the renewal term, and approval of the proposed renewal by further City Council ordinance. Though no renewal is effective unless approved by City Council, Landlord has no duty to present a proposed renewal to Council, even though Tenant has given the requisite notice.

5.04. Renewal Terms are governed by this Lease just as the Initial Term, except for Rent. Rent will be renegotiated prior to the Renewal Term.

6. Tenant's Affirmative Promises.

Tenant promises that it will:

6.01. Accept the Premises in their present "AS IS" condition.

6.02. Obey (a) all applicable Federal, State, and Local laws relating to the use, condition, and occupancy of the Premises and Building; (b) any requirements imposed by utility companies serving or insurance companies covering the Premises or Building; and (c) any rules and regulations for the Premises and Common Areas adopted by Landlord.

6.03. Cooperate with the Landlord in facilitating the intended objectives set forth in Ordinance 01-355 dated October 12, 1939 that was reconfirmed by resolution dated July 7, 1981 defining the goals, objectives, and policies of La Villita insofar as they may still be applicable.

6.04. Allow Landlord to enter the Premises to perform Landlord's obligations, inspect the Premises, and show the Premises to prospective purchasers or tenants.

6.05. Repair, replace, and maintain any part of the Premises that Landlord is not obligated to repair, replace, or maintain, normal wear excepted. Such maintenance shall include the provision of any necessary pest control measures subject to all applicable laws, rules and regulations and reasonable regulations established by Landlord.

6.06. After casualty loss not terminating the lease, rebuild the interior partitions/walls, ceilings, wiring, light fixtures, and plumbing.

6.07. Submit in writing to Landlord any request for repairs, replacement, and maintenance that are the obligations of Landlord.

6.08. Vacate the Premises and return all keys to the Premises on the last day of the Term, subject to any holdover rights.

6.09. On request, execute an estoppel certificate that states the Commencement Date and Expiration Date of the lease, identifies any amendments to the lease, describes any rights to extend the Term or purchase rights, lists defaults by Landlord, and provides any other information reasonably requested. If Landlord sells the Premises, Tenant must deliver to the buyer or the buyer's lender a subordination, nondisturbance, and attornment agreement reasonably satisfactory to the buyer and its lender. Tenant's obligation to deliver the agreement may be conditioned on buyer's agreement to honor this Lease according to its terms, but buyer will not be estopped to act on Tenant's default under this Lease.

6.10. Maintain a fully functioning lock system on the premises. Any changes to the lock systems shall receive the prior written approval of the Landlord through La Villita manager and any and all other necessary departments, boards or commissions of the City of San Antonio, including, but not limited to, the Historic and Design Review Commission; and ensure that the Landlord through La Villita manager be provided a copy of keys to the leased premises.

6.11. **Monthly and Annual Reports:** Tenant shall deliver to the Landlord: (a) within 15 calendar days after the expiration of each calendar month of the Lease Term, a written statement, on a form satisfactory to the Director, showing the Gross Receipts made from the Premises during such period including an itemization of any exclusions or deductions made to Gross Receipts ("Monthly Statement"); and (b) within 60 calendar days after the expiration of each 12 month period of the Lease term and after termination of this Agreement, a written statement, on a form satisfactory to the Director, showing in reasonable detail the amount of Gross Receipts made by Tenant from the Premises during the preceding 12 month period including an itemization of any exclusions or deductions made to Gross Receipts. Tenant shall certify in its Annual Statement that (i) such statements have been prepared in accordance with the terms of this Agreement and accounting procedures that adequately reflect the Gross Receipts of Tenant, and (ii) that all revenues derived from Tenant's activities hereunder which are required to be included in Gross Receipts have been so included. The Monthly Statements and Annual Statements prepared by Tenant shall also provide the total number of transactions. The Director may make reasonable changes to the form of the Monthly Statement or Annual Statement from time to time upon 30 calendar days prior notice to Tenant. Failure to provide the Monthly or Annual Statement shall be a material breach of the Lease.

6.12. **Records:** Tenant shall keep and maintain full and accurate books and source documents of the Gross Receipts, whether for cash, credit or otherwise, of Tenant's business at any time operated within the Premises (collectively, "Records"). The Records to be kept by Tenant at its principal business office in the United States shall include, without limitation, true copies of all federal, state and local sales and use tax returns and reports, daily receipts from all sales (including those from mail, electronic or telephone orders), duplicate bank deposit slips, invoices, journals, ledgers and other pertinent original sales records and records of any other transactions conducted in or from the Premises. Pertinent original sales records shall also include a point of sale system of record keeping and such other reasonable documentation of Tenant's

sales sufficient to provide determination and verification of Gross Receipts and the exclusions therefrom. The Records shall be preserved by Tenant for a period of two (2) years following the expiration of the Term or earlier termination of this Agreement. All Records maintained pursuant hereto shall at all reasonable times, during Tenant normal business hours after 20 days prior written notice, be open to the inspection of, in whole or in part, by, the City, or the City's designated management representatives or agents.

6.13. Definition of Gross Receipts. The term "Gross Receipts" as used herein shall mean and include all monies paid or payable to Tenant, whether for cash, credit or otherwise, for sales made and services rendered at or from La Villita regardless of when or where the order therefore is received including, without limitation: mail, catalogue, closed circuit television, computer, other electronic or telephone orders; all deposits not funded to or otherwise forfeited by customers; orders taken, although said orders may be filled elsewhere; the entire amount of the actual sales price and all other receipts for sales and services rendered; all insurance proceeds received due to loss of gross earnings paid under Tenant's business interruption insurance policy because of business interruptions. A "sale" shall be deemed to have been consummated for purposes hereof, and the entire amount of the sales price shall be included in Gross Receipts and deemed received at the time of determination of the amount due for each transaction, whether for cash, credit or otherwise, and not at the time of billing or payment. Losses from "bad" checks or credit card fee transactions shall not be excluded from Gross Receipts. Gross Receipts shall include all such sales, revenues or receipts generated by Tenant's subtenants or anyone else conducting business pursuant to an arrangement with Tenant within the Premises. Exclusions from Gross Receipts: Gross Receipts shall not include: (i) any sums collected for any federal, state, county and municipal sales taxes but only if separately stated from the sales price and only to the extent paid by Tenant to any duly constituted governmental/taxing authority; (ii) the portion of the sales price for all merchandise and products returned by customers and accepted for credit to the extent of the credit actually given to the customer as well as rebates, exchanges or allowances made to customers; (iii) shipping and delivery charges if there is no profit to Tenant and such charges are merely an accommodation to customers; (iv) sale of trade fixtures, equipment or property which are not stock in trade and not in the ordinary course of business; (v) receipts in the form of refunds from or the value of merchandise and products; services, supplies or equipment returned to vendors, shippers, suppliers or manufacturers including volume discounts received from vendors, suppliers or manufacturers; (vi) customary discounts given by Tenant on sales of merchandise and products or services to Tenant's employees, if separately stated, and limited in amount to not more than 1% of Tenant's Gross Receipts per Lease Month; (vii) gratuities for services performed by employees of Tenant which are paid by Tenant's customers to such employees; (viii) exchange of merchandise and products between stores or warehouses owned by or affiliated with Tenant (where such exchange is made solely for the convenient operation of the business of Tenant and not for purposes of consummating a sale which has theretofore been made in or from the Premises and/or for the purpose of depriving the Landlord of the benefit of a sale which otherwise would be made in or from the Premises); (ix) proceeds from the sale of gift certificates or like vouchers until such time as the gift certificates or like vouchers have been treated as a sale pursuant to Tenant's record keeping system; (x) the

sale or transfer in bulk of the inventory of Tenant to a purchaser of all or substantially all of Tenant's assets in a transaction not in the ordinary course of Tenant's business; (xi) except with respect to proceeds received for business interruptions paid on a gross earnings business interruption insurance policy as provided in above, receipts from all other insurance proceeds received by Tenant as a result of a loss or casualty, and (xii) sales reported by Tenant under another Lease with the Landlord.

6.14. Landlord's right to Examine Books. The Landlord shall have the right to examine Tenant's Records. Tenant shall make available to the Director within 10 business days following the Landlord's written request for the same for the purpose of examination, source documents, accounts, records and sales tax reports filed with applicable government agencies of Tenant and any subtenants, licensees and/or assignees, if any.

6.15. Tenant agrees to work with and/or participate in programs provided by the City to enhance and increase potential business practices and maximize business plans such as but not limited to: merchandising, display layout, finance, customer experience, sales, marketing, etc.

7. Indemnity.

7.01. TENANT covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and 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 the CITY directly or indirectly arising out of, resulting from or related to TENANT' activities under this Agreement, including any acts or omissions of TENANT, any agent, officer, director, representative, employee, Tenant or subcontractor of TENANT, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT TENANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

7.02. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. TENANT shall advise the CITY in writing within 36 hours of any claim or demand against the CITY or TENANT known to TENANT related to or arising out of TENANT' activities under this AGREEMENT and shall see to the investigation and

defense of such claim or demand at TENANT's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving TENANT of any of its obligations under this paragraph.

8. Tenant's Negative Promises.

Tenant promises that it will not:

8.01. Use the Premises for any purpose other than the Permitted Use.

8.02. Create a nuisance.

8.03. Interfere with any other tenant's normal business operations or Landlord's management of La Villita.

8.04. Permit waste.

8.05. Use the Premises in any way that would increase insurance premiums or void insurance on the Premises.

8.06. Alter the Premises without Landlord's written consent.

8.07. Allow a lien to be placed on the Premises.

8.08. Make repair, maintenance or cleaning requests to City personnel other than the City's La Villita manager.

9. Landlord's Affirmative Promises.

Landlord promises that it will:

9.01. Lease to Tenant the Premises for the entire Term beginning on the Commencement Date and ending on the Expiration Date.

9.02. Obey all applicable laws with respect to Landlord's operation of La Villita and its Common Areas.

9.03 Repair, replace, and maintain the (a) roof, (b) foundation, (c) Common Areas, (d) structural soundness of the exterior walls, doors, and windows, and (e) HVAC serving the Premises. Landlord's La Villita manager shall maintain a form for the reporting of repairs, shall track the progress of the requested repairs and be Tenant's point of contact for all official information regarding such repairs. Landlord shall within a reasonable period of time make all necessary repairs reported to the La Villita manager.

10. Landlord's Negative Promise.

10.01. Landlord promises that it will not interfere with Tenant's possession of the Premises as long as Tenant is not in default.

10.02. Landlord promises that it will not communicate with any person regarding lease and contract issues other than Tenant and such persons as Tenant has indicated in writing are Tenant's attorneys, agents and/or lobbyists.

11. Construction of Premises and Alterations.

11.01. All improvements required for Tenant's Capital Improvements to be made to the Premises shall be substantially as set forth in Attachment II and any other requirements required by the City. Tenant shall construct and install all of its improvements (including both fixtures and equipment) to the Premises so that the Premises will provide attractive, well-designed facilities that promote the marketing of merchandise, products and/or services and present a positive image to La Villita visitors.

11.02. Tenant shall immediately apply for and diligently pursue, at Tenant's expense, any and all permits required to perform Tenant's Work. Tenant, at its expense, shall construct, equip and complete the Tenant's Work at all times with due diligence and in a good and workmanlike manner in accordance with all applicable legal and code requirements, in order to complete the same and open the Premises for business to the public no later than 60 calendar days after the Commencement Date. Completion date of Tenant's Work may be adjusted with written approval of the Landlord, acting by and through the Director.

11.03. All such construction shall be completed free and clear of all liens, encumbrances and security instruments. If any mechanics', materialmen's or other lien is filed against the Premises or any interest in this Agreement as a result of any work or act of Tenant, Tenant shall fully and completely discharge the lien and have it released from record by payment or posting a bond within 20 calendar days after the filing thereof.

11.04. Tenant shall deliver to the Director a copy of the Certificate of Occupancy with respect to the Premises within 20 calendar days after Tenant's receipt thereof from the City.

11.05. Tenant shall not construct, or allow to be constructed, any improvements or structures on the Leased Premises nor shall Tenant make, or allow to be made, any alterations to the Leased Premises without the prior written approval of the Landlord through Director and any and all other necessary departments, boards or commissions of the City of San Antonio, including, but not limited to, the Historic and Design Review Commission.

11.06. Tenant shall not attach anything to the exterior of the Premises including but not

limited to telecommunications or other electronic equipment.

11.07. Physical additions or improvements to the Premises made by Tenant will become the property of Landlord. Landlord may require that Tenant, at the end of the Term and at Tenant's expense, remove any physical additions and improvements, repair any alterations, and restore the Premises to the condition existing at the Commencement Date, normal wear excepted.

11.08. The City may provide rental abatements in the amount of 80% of approved, documented, and verified capital improvements to the lease space over the first five (5) years of the lease agreement. Any and all improvements must be reviewed and approved in writing by City.

12. Insurance.

A) Prior to the commencement this Agreement, Tenant shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Center City Development & Downtown Operations Department, which shall be clearly labeled "La Villita Lease Bldg 20" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the Authorized Representative of the carrier, and list the agent's signature and phone number. The certificate shall be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Risk Management Division. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

B) The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereby City may incur increased risk.

C) A tenant's financial integrity is of interest to the City; therefore, subject to tenant's right to maintain reasonable deductibles in such amounts as are approved by the City, tenant shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at tenant's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
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1. Workers' Compensation 2. Employers' Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury *d. Environmental Impairment/ Impact – sufficiently broad to cover disposal liability. *e. Explosion, Collapse, Underground	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. *Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence
5. *Professional Liability (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	\$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.
6. *Builder's Risk	All Risk Policy written on an occurrence basis for 100% replacement cost during construction phase of any new or existing structure.
7. *Property Insurance: For physical damage to the property of LESSEE, including improvements and betterment to the Leased Premises	Coverage for replacement value with a minimum co-insurance factor of eighty percent (80%) of the cost of Contractor's property
*if applicable	

D) Tenant agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of tenant herein, and provide a certificate of insurance and endorsement that names the tenant and the City as additional insureds. Policy limits of the coverages carried by subcontractors will be

determined as a business decision of tenant. Tenant shall provide the City with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

E) As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all required endorsements. Tenant shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within 10 days. Tenant shall pay any costs incurred resulting from provision of said documents.

City of San Antonio
Attn: Center City Development & Downtown Operations Department
P.O. Box 839966
San Antonio, Texas 78283-3966

F) Tenant agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
- Provide advance written notice directly to City of any suspension or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

G) Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, tenant shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend tenant's Agreement should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

H) In addition to any other remedies the City may have upon tenant's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order tenant to stop work hereunder, and/or withhold any payment(s) which become due to tenant hereunder until tenant demonstrates compliance with the requirements hereof.

I) 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 or its subcontractors' performance of the work covered under this Agreement.

J) It is agreed that tenant's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

K) It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.

L) Tenant and any subcontractors are responsible for all damage to their own equipment and/or property.

13. Release of Claims/Subrogation.

The insurance requirements of this Lease are a bargained-for allocation of risk of loss. Landlord and Tenant release each other from claims arising from injury or loss to either of them or to third parties to which they are liable, if the injury or loss is covered by insurance the waiving party is required by this Lease to maintain, whether or not the party actually has the insurance ("Covered Claims"). This release is additional to and does not limit any other release contained in this lease. Landlord and Tenant, to the maximum extent allowable without causing cancellation of a required policy, will require their insurers to waive subrogation against each other for Covered Claims.

14. Environmental Matters.

14.01. "Environmental Laws" means applicable federal, state, and local laws relating to protection of the public health, welfare, and the environment, including without limitation, those laws relating to the storage, handling, and use of chemicals and other hazardous substances, those relating to the generation, processing, treatment, storage, transport, disposal, or other management of waste materials of any kind, and those relating to the protection of environmentally sensitive areas.

14.02. "Hazardous Material" means "hazardous substance," "pollution or contaminant," "petroleum," and "natural gas liquids," as those terms are defined by or used in Environmental

Laws, or that are regulated because of their effect or potential effect on human health and the environment.

14.03. "Release" means depositing, spilling, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing.

14.04. In its use of the Premises, Tenant must comply with all applicable Environmental Laws and must cause its employees, agents, and contractors on the Premises to do so as well. Tenant will obtain all permits required under Environmental Law for its use of the Premises. At least 180 days before expiration of any such permit, Tenant must present proof to Landlord that it has applied for renewal.

14.05. Tenant must not allow the Release of any Hazardous Material from its use of the Premises on, onto, or from the Property. Tenant further must not handle, use, or otherwise manage any Hazardous Material on the Premises or the Property in violation of any Environmental Laws or in any but a reasonable and prudent manner.

14.06. Tenant must immediately provide to Landlord copies of: (i) any documents required to be submitted to a Governmental Authority under Environmental Law; (ii) any notice alleging a violation of Environmental Law, or (iii) any demand from or allegation by any third party in relation to Hazardous Materials or Environmental Law. Tenant must promptly deliver to Landlord any information it receives regarding any Release of Hazardous Materials on, to, from, or about the Premises.

14.07. Landlord may conduct, at Tenant's expense, periodic inspections of the Premises and Tenant's operations thereon to assure compliance with Tenant's environmental covenants. Tenant need not pay the expense of more than one such inspection in any 12-month period.

14.08. If Tenant breaches any of its representations, warranties or covenants, Tenant at its sole expense, must take all actions required, including environmental cleanup of the Premises, to comply with the representations, warranties, and covenants or applicable law. Tenant must take all action required by applicable Environmental Laws. If Tenant's actions under this provision involve cleaning up a Release of Hazardous Materials, Tenant must perform the cleanup consistently with residential use of the Premises and will not use any institutional controls or engineering controls in lieu of clean-up. Tenant will further obtain a Certificate of Completion from the TCEQ's Voluntary Cleanup Program. Institutional controls include laws, rules, or regulations or private prohibitions limiting use of a property, such as a prohibition against water well use within a certain contaminated track or area of a local government's jurisdiction. Engineering controls mean physical apparatus such as an asphalt or concrete cap, detention basin, extraction well, or other engineered device to control, contain, or remove pollutants.

14.09. Tenant must indemnify Landlord and hold Landlord and its officials, employees, and contractors from loss, cost, liability, or expense (including, but not limited to, attorneys' fees

and expenses, including all attorney's fees and expenses incurred by Tenant in enforcing this indemnity) arising from or relating to breach of Tenant's environmental representations, warranties, and covenants.

15. Landlord's Municipal Powers.

15.01 Landlord is a municipality as well as landlord under this Lease. As a municipality, it may from time to time exercise municipal powers unrelated to the Lease that will nevertheless adversely affect Tenant. Such actions may include redirection of traffic, street closures, or other actions intended to facilitate public safety, the public interest, or the conduct of major events. No such action by Landlord as a municipality is a breach of Landlord's duties as landlord or entitles Tenant to any relief under this Lease. Likewise, no breach of contract or other duty by municipal utility providers is a breach of Landlord's duties as landlord or entitles Tenant to any relief under this Lease. Tenant has no more rights under this Lease than it would if its landlord were a private entity.

16. Prohibited Interests in Contracts.

16.01. The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of 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:

- (i) a City officer or employee;
- (ii) his parent, child or spouse;
- (iii) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;
- (iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

16.02. Tenant warrants and certifies as follows:

- (i) Tenant and its officers, employees and agents are neither officers nor employees of the City.
- (ii) Tenant has tendered to the City a Contracts Disclosure Statement in compliance with the City's Ethics Code.

16.03. Tenant acknowledges that City's reliance on the above warranties and certifications is reasonable.

17. Casualty/Total or Partial Destruction.

17.01. If the Premises are damaged by casualty and can be restored within ninety days, Landlord will, if funding is available, at its expense, restore the roof, foundation, exterior doors, windows, Common Areas, and structural soundness of the exterior walls of the Premises. Restoration must be to substantially the same condition existing before the casualty. If Landlord fails to complete the portion of the restoration for which Landlord is responsible within ninety days from the date of written notification by Tenant to Landlord of the casualty, Tenant may terminate this lease by written notice delivered to Landlord before Landlord completes Landlord's restoration obligations.

17.02. If the Premises cannot be restored within ninety days from the date of written notification by Tenant to Landlord, Landlord has an option to restore the Premises. If Landlord chooses not to restore, this lease will terminate. If Landlord chooses to restore, Landlord will notify Tenant of the estimated time to restore and give Tenant an option to terminate this lease by notifying Landlord within ten days. If Tenant does not terminate this lease, the lease will continue, and Landlord will restore the Premises as provided above.

17.03. To the extent the Premises are untenantable after the casualty; the Rent will be adjusted as may be deemed fair and reasonable by Landlord.

17.04. If Landlord is obligated to rebuild or chooses to do so, Tenant must promptly rebuild and restore all improvements the maintenance of which are its responsibility under this Lease. Restoration must be to substantially the same condition existing before the casualty.

17.05. As with the insurance requirements, the rebuilding obligations of this paragraph are a bargained-for allocation of risk.

17.06 If, during any approved renovations, the interior of the Premises is found to be damaged by water due to Landlord's failure to perform its maintenance obligations or asbestos or lead paint is discovered Landlord will, if funding is available, at its expense, restore the damaged interior areas of the Premises, excluding Tenant's furniture, fixtures and other personal property. If Landlord fails to complete the portion of the restoration for which Landlord is responsible within ninety days from the date of written notification by Tenant to Landlord of the casualty, Tenant may as its sole remedy terminate this lease by written notice delivered to Landlord before Landlord completes Landlord's restoration obligations.

17.07 If the Premises cannot be restored within ninety calendar days from the date of written notification by Tenant to Landlord, Landlord has an option to restore the Premises. If

Landlord chooses not to restore, this lease will terminate. If Landlord chooses to restore, Landlord will notify Tenant of the estimated time to restore and give Tenant an option to terminate this lease by notifying Landlord within ten days. If Tenant does not terminate this lease, the lease will continue, and Landlord will restore the Premises as provided above.

18. Condemnation/Substantial or Partial Taking.

18.01. If the Premises cannot be used for the purposes contemplated by this lease because of condemnation or purchase in lieu of condemnation, this lease will terminate.

18.02. If there is a condemnation or purchase in lieu of condemnation and this lease is not terminated, Landlord will, at Landlord's expense, restore the Premises, and the Rent payable during the unexpired portion of the Term will be adjusted as may be fair and reasonable.

18.03. Tenant will have no claim to the condemnation award or proceeds in lieu of condemnation.

19. Holdover.

19.01. If Tenant holds over after termination or expiration of this Lease, the terms of this Lease apply during the holdover period, except (A) the Lease shall have a month to month term, and (B) the Base Rent is 110% of what it was immediately before the term ended.

20. Contractual Lien.

20.01. To secure the payment of Rent and the full performance of this Lease by Tenant, Tenant hereby grants to Landlord an express first and prior security interest and contract lien on all property (including fixtures, furniture, furnishings, equipment, chattels, merchandise, goods, inventory, and all other personal property) that may now or hereafter be placed in the Premises and all additions, accessions and replacement thereto, and all proceeds therefrom and also upon all proceeds of any insurance that may accrue to Tenant by reason of destruction of or damage to any such property ("Collateral"). Tenant must not remove the Collateral from the Premises without Landlord's written consent until Rent arrearages then due to Landlord are paid in full. Tenant waives all exemption laws in favor of this lien and security interest. Landlord does not waive its statutory lien, and this lien and security interest is cumulative with the statutory lien.

20.02. In case of an event of default, Landlord may, in addition to any other remedies, enter the Premises and take possession of any and all personal property of Tenant situated on the Premises, without liability for trespass or conversion. This lien may be foreclosed with or without court proceedings by public or private sale provided Landlord gives Tenant at least 10-days notice of the time and place of sale. Landlord has the right to bid and purchase at the sale. Any sale or disposition of the Collateral made under this section is commercially reasonable (A) if held at the Premises or where the Collateral is located and (A) if the time, place, and method of

sale and a general description of the Collateral to be sold is advertised in a daily newspaper published in the county in which the property is located for five consecutive days before the date of sale. Tenant must inform Landlord as soon as reasonably possible after receiving the notice of sale about any and all prospects of whom Tenant is aware who have any interest in purchasing any of the Collateral. Tenant must further inform Landlord of any marketing or selling activity that Tenant believes will bring a fair sale price for the Collateral, balancing the cost of the activity. Should Tenant fail to cooperate in offering information to assist in the disposition of the Collateral, Tenant should not be heard to complain about the Landlord's disposition made according to this Lease.

20.03. The proceeds from any disposition of the Collateral, less any and all expenses connected with the taking of possession, holding and selling of the Collateral (including reasonable attorney's fees and other expenses), will be applied as a credit against the indebtedness secured by the security interest granted in this paragraph. Any surplus goes to Tenant or as otherwise required by law, and the Tenant must pay any deficiencies forthwith. Contemporaneously with the execution of this Lease (and if requested hereafter by Landlord), Tenant shall execute and deliver to Landlord Uniform Commercial Code financing statements in sufficient form so that, when properly filed, the security interest will be perfected. If Landlord requests, Tenant must also execute and deliver to Landlord Uniform Commercial Code financing statement change instruments in sufficient form to reflect any proper amendment of, modification in, or extension of the contract lien and security interest hereby granted. A carbon, photographic, or other reproduction of this Lease is sufficient as a financing statement. In addition to all of its rights, Landlord also has all the rights and remedies of a secured party under the Uniform Commercial Code as adopted in Texas. Landlord may execute any financing statement as agent for Tenant so that the document is in proper form to be filed.

21. Default, Remedies for Default.

21.01. *Events of Default.* If Tenant permits or fails to prevent any of the following occurrences, it is a Tenant event of default:

21.01.01. Tenant fails to pay any installment of Rent when due.

21.01.02. Tenant fails to comply with any term, provision or covenant of this Lease, other than the payment of rental or expenses demanded by Landlord and does not cure such failure within 30 calendar days after written notice thereof to Tenant, or any representation or warranty by Tenant is false or misleading in any material respect when given to Landlord.

21.01.03. This Lease for the Premises or any part thereof is taken upon execution or by other process of law directed against Tenant, or is taken upon or subject to any attachment at the instance of any creditor or claimant against Tenant, and the attachment is not to be discharged or disposed of within 30 calendar days after the levy thereof.

21.01.04. Tenant files a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or voluntarily takes advantage of any such law or act by answer or otherwise, or is dissolved, or makes a transfer in fraud of creditors or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts as they mature.

21.01.05. Involuntary proceedings under any such bankruptcy law or insolvency act or for the dissolution of Tenant is instituted against Tenant, as the case may be, or a receiver or trustee of all or substantially all of the property of Tenant is appointed, and such proceeding is not dismissed or such receivership or trusteeship vacated within sixty (60) days after such institution or appointment.

21.01.06. Tenant deserts, vacates or abandons all or any portion of the Premises, or ceases to physically occupy any substantial portion of the Premises and continuously operate its business on the Premises, or fails to commence business operations in the Premises on or before the Commencement Date. If Tenant removes or makes preparations to remove its goods, equipment, inventory, and fixtures (other than in the normal course of business) in amounts sufficient to indicate a probable intent to vacate the Premises, Tenant's breach is established conclusively.

21.01.07. Tenant does or permits to be done anything which creates a lien upon the Premises.

21.01.08. The business operated by Tenant is closed for failure to pay any State sales tax as required or for any other reason, other than repairs, death of the principals of Tenant, or normal business holidays.

21.01.09. This Lease or the estate of Tenant hereunder is transferred to, or passes to any other person or party except in a manner permitted herein.

21.02. *Remedies for Default.* Upon the occurrence of any Tenant event of default, Landlord has the option to pursue anyone or more of the following:

21.02.01. In addition to, and without limiting any other remedies available to Landlord at law or in equity, immediately terminate this Lease and all rights of Tenant hereunder. Upon termination, Tenant must immediately surrender the Premises to Landlord. If Tenant fails to do so, Landlord may, without prejudice to any other remedy, enter and take possession of the Premises or any part thereof and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof, by force if necessary, without being liable for prosecution or any claim of damages.

21.02.02. Enter upon and take possession of the Premises or any part thereof and expel or remove Tenant and any other person who may be occupying said Premises or any part thereof, by force if necessary, without being liable for prosecution or any claim for damages therefore without having terminated the Lease.

21.02.03. Enter upon the Premises, by force if necessary, without being liable for prosecution or any claim for damages, and do whatever Tenant is obligated to do under the terms of this Lease. In such case, Tenant must reimburse Landlord on demand for expenses Landlord may incur in thus effecting compliance with Tenant's obligations. Landlord is not liable for any damages resulting to the Tenant from such action.

21.02.04. Alter all locks and other security devices at the Premises without terminating this Lease. If Landlord does so:

(i) Landlord need not allow Tenant re-entry to the Premises or provide Tenant with a new key unless and until Tenant cures any and all defaults under this Lease,

(ii) Landlord may refuse to give Tenant a new key unless Tenant establishes a security deposit by an amount determined by Landlord,

(iii) If Landlord does provide Tenant with a key, it will do so only during the Landlord's regular business hours, and

(iv) Tenant must pay Landlord all costs and expenses incurred by Landlord in connection with altering the locks and other security devices.

Landlord's remedies and rights under this Lease entirely supersede and supplant the provisions of Texas Property Code § 93.002.

21.03. *Repossession and Alteration of Locks.* Landlord's exercise of one or more remedies is not acceptance of Tenant's purported surrender of the Premises, whether by agreement or by operation of law. Surrender can occur only by the written agreement of Landlord and Tenant. No such alteration of locks or other security devices and no removal or other exercise of dominion by Landlord over the property of Tenant or others at the Premises is unauthorized or constitutes conversion. Tenant consents to Landlord's exercise of dominion over Tenant's property within the Premises in case of Tenant's default. Tenant waives (A) all claims for damages by reason of such reentry, repossession, or alteration of locks or other security devices and (B) all claims for damages by reason of any distress warrant, forcible detainer proceedings, sequestration proceedings, or other legal process. Re-entry by Landlord may be pursuant to judgment obtained in forcible detainer proceedings or other legal proceedings or without the necessity for any legal proceedings, as Landlord may elect. Landlord is not liable

in trespass or otherwise for such re-entry. Landlord's remedies and rights under this Lease entirely supersede and supplant the provisions of Texas Property Code § 93.002.

21.04. *Effect of Termination.* If Landlord terminates the Lease for an event of default, then despite the termination, Tenant is liable for and must pay Landlord, at the Address for Payment of Rent, all Rent accrued to the date of termination. Landlord's acceptance of past-due rent after termination does not reinstate the Lease.

21.05. *Effect if No Termination.* If Landlord repossesses the Premises without terminating the Lease, then Tenant is liable for and must pay Landlord, at the Address for Payment of Rent, all Rent accrued to the date of repossession, plus Rent due during the remainder of the term until the date of expiration. Tenant's obligation is diminished by any net sums thereafter received by Landlord through reletting the Premises (after deducting expenses of reletting). Tenant is liable for the full Rent for the remainder of the Lease term if the Premises are not relet. In no event is Tenant entitled to any excess of any rental obtained by reletting over and above the Rent. Actions to collect amounts due by Tenant to Landlord may be brought at one time or from time to time, on one or more occasions, without the necessity of Landlord's waiting until expiration of the Lease term. In the alternative, if Landlord relets the Premises, Landlord may recover from Tenant (A) the unpaid Rent accrued before Tenant's default, plus (B) the then present value of the amount by which the Rent for the remainder of the term exceeds the rental received from reletting the Premises. Present value is computed by allowing interest at 1% in excess of the discount rate of the Federal Reserve Bank of Dallas, Texas. No repossession of the Premises by Landlord hereunder is either an acceptance of surrender or an election to terminate this Lease. Neither does it cause a forfeiture of Rent remaining to be paid during the balance of the Lease term, unless a written notice of such intention is given to Tenant or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding Landlord's right to relet and collect the difference in rental values, Landlord may, at any time after default, terminate this Lease. Landlord also may decline to repossess the Premises, and may from time to time, without terminating this Lease, recover all rent as it becomes due.

21.06. *Liability for Costs Incurred.* If Tenant defaults, in addition to any other sum required by this Lease, Tenant must also pay to Landlord, at the Address for Payment of Rent, (A) brokers and management fees incurred by Landlord in connection with reletting the whole or any part of the Premises; (B) the costs of removing and storing Tenant's or any other occupant's property, (C) the costs of repairing, altering, remodeling, or otherwise putting the Premises into a condition acceptable to a new tenant or tenants, (D) all rental concessions as a result of reletting, and (E) any and all other costs, fees, and expenses associated with reletting the Premises and all reasonable expenses incurred by Landlord in repossessing the Premises and in enforcing or defending Landlord's rights and/or remedies, including reasonable attorney's fees, which shall be not less than 10% of all sums then owing by Tenant to Landlord.

21.07. *Obligation to Reimburse.* If Tenant fails to timely make any payment or cure any default, Landlord, without an obligation to do so and without waiving default, may make the

payment or remedy the other default for the account of Tenant (and enter the Premises for such purposes). Thereupon Tenant must pay upon demand, all costs, expenses, and disbursements (including reasonable attorney's fees) incurred by Landlord in taking the remedial action.

21.08. *Default by Landlord.* If Landlord defaults, Tenant's exclusive remedy is an action for damages (Tenant hereby waiving the benefit of any laws granting it a lien upon the property of Landlord or on rent due Landlord). Tenant is not permitted to withhold Rent. Before filing any such action Tenant must give Landlord 30-days prior written notice specifying the alleged default and giving Landlord opportunity to cure. Unless and until Landlord fails to timely cure a default after written notice, Tenant has no remedy or cause of action by reason thereof. All obligations of Landlord are covenants, not conditions. Landlord's liability to Tenant for default is limited to actual, direct, but not consequential, damages. Tenant hereby waives its statutory lien under § 91.004 of the Texas Property Code.

21.09. *Payments After Termination.* Tenant's payment of money to Landlord after termination or after notice of default (other than a demand for payment of money within any applicable cure period) does not reinstate, continue, or extend the term or affect any notice given to Tenant prior to the payment. After the service of a suit or after any final judgment granting Landlord possession of the Premises, Landlord may receive and collect any sums due under the terms of this Lease or may otherwise exercise any of its rights and remedies hereunder. Such payment, whether as rent or otherwise, does not waive any notice or a termination of Tenant's right of possession, or in any manner affect any suit theretofore commenced or judgment previously obtained.

21.10. *Rights Respecting Personal Property.* If Landlord takes possession of the Premises under the authority of this Lease, Landlord may keep in place and use all furniture, fixtures, and equipment at the Premises, including that owned by or leased to Tenant at all times before foreclosure thereon by Landlord or repossession thereof by any lessor thereof or lienholder thereon. Landlord may also remove from the Premises (without obtaining a distress warrant, writ of sequestration, or other legal process) all or any part of the furniture, fixtures, equipment, and other property and place same in storage anywhere in the county in which the Premises are located. In such case, Tenant is liable to Landlord for costs incurred by Landlord in the removal and storage and must indemnify Landlord from all loss, damage, cost, expense, and liability arising from or relating to the removal and storage. Landlord also may relinquish all or any part of the furniture, fixtures, equipment, and other property to any person ("Claimant") who presents to Landlord a copy of any instrument represented to have been executed by Tenant, if the instrument purports to grant Claimant the right under various circumstances to take possession of the property. Landlord need not inquire into the authenticity of the instrument or Tenant's or Tenant's predecessor's signature thereon. Landlord further need not investigate or inquire into the validity of the factual or legal basis on which Claimant purports to act. Tenant hereby indemnifies Landlord from all loss, cost, liability, or expense arising from or relating to Landlord's relinquishment of property to a Claimant. These rights of Landlord are additional to

any other rights that Landlord has or may hereafter have at law or in equity. Tenant stipulates that the rights herein granted Landlord are commercially reasonable.

21.11. Cumulative Remedies. Each right and remedy provided to Landlord in this Lease is cumulative to every other right or remedy provided to Landlord by this Lease or applicable law, including, but not limited to, suits for injunctive relief and specific performance. The exercise or beginning of the exercise by Landlord of one or more of the right or remedy does not preclude the simultaneous or later exercise by Landlord of another remedy. All costs incurred by Landlord in collecting any amounts and damages owed by Tenant under this Lease or to enforce any provision of it, including reasonable attorneys' fees from the date any such matter is turned over to litigation counsel, are also recoverable by Landlord from Tenant.

22. Landlord's Mitigation of Damages.

Any duty imposed by law on Landlord to mitigate damages after a default by Tenant under this Lease will be satisfied in full if Landlord undertakes to lease the Premises to another tenant (a "Substitute Tenant") in accordance with the following criteria:

22.01. Landlord will have no obligation to solicit or entertain negotiations with any other prospective tenants for the Premises until Landlord obtains full and complete possession of the Premises including without limitation, the final and unappealable legal right to relet the Premises free of any claim of Tenant;

22.02. Landlord will not be obligated to lease or show the Premises on a priority basis, or offer the Premises to a prospective tenant when other space in the Building suitable for the prospective tenant's use is (or soon will be) available;

22.03. Landlord will not be obligated to lease the Premises to a Substitute Tenant for a Rent less than the current fair market Rent then prevailing for similar uses in comparable buildings in the same market area as the Building, nor will Landlord be obligated to enter into a new lease under terms and conditions that are unacceptable to Landlord under Landlord's then current leasing policies for comparable space in the Building.

22.04. Landlord will not be obligated to enter into a lease with a Substitute Tenant whose use would:

- (i) violate any restriction, covenant, or requirement contained in the lease of another tenant of La Villita;
- (ii) adversely affect the reputation of La Villita; or
- (iii) be incompatible with other users of La Villita.

22.05. Landlord will not be obligated to enter into a lease with any proposed Substitute Tenant that does not have, in Landlord's reasonable opinion, sufficient financial resources to operate the Premises in a first class manner; and

22.06. Landlord will not be required to expend any amount of money to alter, remodel, or otherwise make the Premises suitable for use by a proposed Substitute Tenant unless:

(i) Tenant pays any such sum to Landlord in advance of Landlord's execution of a lease with the proposed Substitute Tenant (which payment will not be in lieu of any damages or other sums to which Landlord may be entitled as a result of Tenant's default under this Lease; or

(ii) Landlord, in Landlord's reasonable discretion, determines that any such expenditure is financially justified in connection with entering into a lease with the prospective Substitute Tenant.

23. Tenant's Bankruptcy.

23.01. In addition to other available remedies, if Tenant becomes the subject of a voluntary or involuntary bankruptcy, reorganization, composition, or other similar proceeding under the federal bankruptcy laws:

23.02. "Adequate protection" of Landlord's interest in the Premises pursuant to Sections 361 and 363 (or their successor sections) of the Bankruptcy Code, 11 U.S.C., Paragraph 101, et seq., as amended from time to time ("Bankruptcy Code"), before assumption or assignment of the Lease by Tenant include but are not limited to all (or any part) of the following:

(i) continued payment by Tenant of all Rent due and owing hereunder and the performance of all other covenants and obligations hereunder by Tenant;

(ii) hiring security guards to protect the Premises if Tenant abandons or ceases operations, the obligation of Tenant only to be effective so long as Tenant remains in possession and control of the Premises to the exclusion of Landlord;

(iii) furnishing an additional/new security deposit by Tenant in the amount of three times the then-current monthly Base Rental and Additional Rent payable hereunder.

23.03. "Adequate assurance of future performance" by Tenant or any assignee of Tenant pursuant to Bankruptcy Code Section 365 includes (but is not be limited to) payment of an additional/new Security Deposit in the amount of three times the then-current monthly Base Rental and Additional Rent payable hereunder.

23.04. Any person or entity to which this Lease is assigned pursuant to the Bankruptcy Code, assumes, without further act or deed, all obligations of Tenant arising under this Lease on and after the effective date of such assignment. Any such assignee must, on demand by Landlord, execute and deliver to Landlord an instrument confirming the assumption of liability.

23.05. Despite anything in this Lease to the contrary, all amounts payable by Tenant to or on behalf of the Landlord under this Lease, whether or not expressly denominated as "rent", constitute "rent" for the purposes of Section 502(b)(6) of the Bankruptcy Code.

23.06. If this Lease is assigned to any person or entity pursuant to the Bankruptcy Code, any and all monies or other considerations payable or otherwise to be delivered to Landlord (including Base Rentals and other rent hereunder) remain the exclusive property of Landlord and are not property of Tenant or of the bankruptcy estate of Tenant. Any and all monies or other considerations constituting Landlord's property under the preceding sentence not paid or delivered to Landlord must be held in trust by Tenant or Tenant's bankruptcy estate for the benefit of Landlord and must be promptly paid to Landlord.

23.07. If Tenant assumes this Lease and proposes to assign it to a specific assignee on specific terms, Tenant must deliver to Landlord notice of the proposed assignment. The notice must set forth (i) the name and address of the proposed assignee; (ii) all terms and conditions of the offer, and (iii) the adequate assurance to be provided Landlord to assure the assignee's future performance under the Lease. Tenant must deliver the notice no later than 20 days after Tenant's receipt of the proposal, but in no event later than 10 days before Tenant applies to a court of competent jurisdiction for authority and approval of the proposed assumption and assignment. Landlord thereupon has the prior right and option to accept the assignment itself on the same terms and conditions and for the same consideration, if any, as Tenant's proposed assignee, less any brokerage commission otherwise payable by the proposed assignee. Landlord must exercise its prior right and option by delivering notice to Tenant not later than 30 days after Landlord's receipt of the notice.

23.08. To the extent permitted by law, this Lease is a contract under which applicable law excuses Landlord from accepting performance from (or rendering performance to) any person other than Tenant.

24. Warranty Disclaimer.

24.01. There are no implied warranties of merchantability, of fitness for a particular purpose, or of any other kind arising out of this lease, and there are no warranties that extend beyond those expressly stated in this lease. Without limitation, this Lease contains no express or implied warranty that the Premises have no latent defects or that the Premises are or will remain suitable for Tenant's purposes.

24.02. Tenant acknowledges it has had ample opportunity to perform due diligence regarding the Premises and accepts the Premises in their present condition, as-is.

25. Abandoned Property.

25.01. Landlord may retain, destroy, or dispose of any property left on the Premises at the end of the Term.

26. Appropriations.

26.01. All obligations of the City of San Antonio under this instrument are funded through the City of San Antonio General Fund and are subject to the discretion of City Council whether to appropriate funding for any given year of a term. If the City Council fails to appropriate money for this Lease in an annual City of San Antonio Budget, the City may terminate this Lease and have no further liability.

27. Sublease, Assignment.

27.01. Tenant cannot assign or sublease this lease without Landlord's prior written consent. Assignments include any transaction in which (A) a material part of Tenant's assets are sold outside the ordinary course of business or (B) a change in the identity of those owning, holding, or controlling the power to vote of 50% of the equity interest in Tenant. Tenant shall pay to Landlord an assignment fee of \$2,000.00 for any assignment.

28. Dispute Resolution.

28.01. Before bringing any action arising out of this agreement, including an action for declaratory relief but not an action specifically excepted below, the disputants must first submit in good faith to mediation. The parties may not assert limitations, laches, waiver, and estoppel based upon attempts to mediate.

28.02. Filing suit on a claim that should be mediated waives the filer's right to demand mediation. But one party's waiver does not affect another party's right. A defendant does not waive mediation for so long as, within a reasonable time after appearing, the defendant gives written notice to the plaintiff or its counsel of intent to require compliance with this paragraph.

28.03. Mediation must be conducted in San Antonio, Bexar County, Texas.

28.04. The party desiring relief has the burden to initiate mediation. Waiting for another party to initiate mediation does not waive the right to it.

28.05. If the parties can otherwise agree on a mediator, they may do so. Alternatively, either party may petition any court of competent jurisdiction to appoint a mediator. The only predicate issues the court need consider before appointing a mediator are whether (i) the copy of the contract before the court is authentic and (ii) the contract was duly signed and delivered by all parties to be bound to mediate. If neither of those issues is denied under oath, the court may appoint a mediator upon motion, without trial.

28.06. Mediator fees must be borne equally.

28.07. The parties need not mediate before going to court (1) for either party to seek emergency injunctive relief or (2) for Landlord to seek forcible entry and detainer relief against Tenant.

29. Miscellaneous.

29.01. *Applicable Law.* This Agreement is entered into in San Antonio, Bexar County, State of Texas. It's Construction And The Rights, Remedies, And Obligations Arising Under It Are Governed by The Laws of The State Of Texas. Both parties' obligations under this agreement are performable in San Antonio, Bexar County, Texas, and venue for any action arising under this agreement is only in Bexar County, Texas.

29.02. *Severability.* If any part of this agreement is found invalid or unenforceable, the finding does not affect the remainder.

29.03. *Successors.* This Agreement inures to the benefit of and binds the heirs, representatives, successors, and permitted assigns of each party. This clause does not authorize any assignment not otherwise authorized.

29.04. *Integration.* This Written Agreement Represents The Final Agreement Between The Parties And May Not Be Contradicted By Evidence Of Prior, Contemporaneous, Or Subsequent Oral Agreements Of The Parties. There Are No Oral Agreements Between The Parties.

29.05. *Modification.* This Agreement may be changed only by a written agreement, signed by the party against whom enforcement of any modification is sought. Subject to that restriction, any of this Agreement's terms may be modified by the party entitled to their benefit, but no modification, express or implied, affects the right of the modifying party either (i) to

apply any other term or condition or (ii) to apply the same term or condition to a later or earlier occasion. Any modification of this Lease must be authorized by an ordinance adopted by City Council that specifically addresses the modification.

29.06. *Third Party Beneficiaries.* This Agreement benefits the parties and their successors and permitted assigns only. It has no third party beneficiaries.

29.07. *Notices.* Notices must be in writing and by certified mail, return receipt requested, addressed to the parties at their respective addresses set forth at the beginning. If the addressee is a corporation, notices must be addressed to the attention of its President. Notice is complete three days after deposit, properly addressed and postage prepaid, with the United States Postal Service. Failure to use certified mail does not defeat the effectiveness of notice actually received, but such notice is effective only on actual receipt. Address for notice may be changed by giving notice.

29.08. *Pronouns.* Plural constructions include the singular, and singular constructions include the plural. Whether a pronoun is masculine, feminine, or neuter does not affect meaning or application of the relevant term. The words "herein," "hereof," and other, similar compounds of the word "here" refer to the entire Agreement, not just to a part of it.

29.09. *Captions.* Paragraph captions are for ease of reference only and do not affect the interpretation.

29.10. *Counterparts.* This Agreement may be executed in multiple counterparts, each of which is an original, whether or not all parties sign the same document. Regardless of their number, counterparts constitute only one agreement. In making proof of this agreement, one need not produce or account for more counterparts than necessary to show execution by or on behalf of all parties.

29.11. *Further Assurances.* The parties must execute and deliver such additional documents and instruments as may be necessary to effect fully the provisions hereof. But no such additional documents can alter the rights or obligations of the parties stated in this agreement.

29.12. *Administrative Actions and Agreements.* The Director of Capital Improvements Management Services ("CIMS") and the Assistant Director for Real Estate of CIMS may, without further council action, agree to, sign, and deliver on behalf of the City all consents, certificates, memoranda, estoppels, and modifications of nonmaterial rights and obligations arising under this Lease and may declare Tenant defaults and pursue remedies for such defaults, including terminating this Lease. This paragraph does not authorize lease amendments or renewals without council consent.

29.13. *Incorporation of Exhibits.* All exhibits to this Lease are incorporated into it for all purposes as if fully set forth.

29.14 Tenant understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate in its operations under this lease agreement on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

30. Night in Old San Antonio (NIOA) and Other Events.

30.01. The Landlord reserves the right to grant the San Antonio Conservation Society or its successors, assigns, or subcontractors a Lease of all or any portion of adjacent property (including Plaza Nacional) and/or a concession to sell beverages, food, and other items on all or any portion of La Villita, other than the premises hereby expressly demised, during specified hours on those dates in each year of the duration of the lease in which the Society may sponsor all or any part of the event known as NIOA within La Villita. The Tenant expressly recognized that any right, privilege, or leasehold interest granted to the San Antonio Conservation Society for NIOA under a separate lease and/or concession contract controlling access to La Villita is superior to any such right, privilege or leasehold interest granted Tenant under this Lease Agreement.

30.02. Base Rent will be abated during the 16 days annually during month which NIOA occurs. All other Fees will not be abated.

30.03. Except in the case of NIOA and holidays stated above, the gates to La Villita will remain open from 7:00 a.m. until 6:00 p.m. daily. However, the Tenant understands, acknowledges and agrees that the Landlord will also from time to time accommodate various functions or events. Such accommodation may require temporary closures of points of access to La Villita and plazas, streets, and open areas in and around La Villita and/or controlled or limited access to the Leased Premises. Such closures and/or controlled or limited access shall not prevent pedestrian access to the Leased Premises entrance free of charge before 6:00 P.M. The Tenant expressly recognizes that any such accommodation and also any and all of the Landlord's fee simple ownership rights and interest as Landlord hereunder are superior to any right, privilege or leasehold interest granted the Tenant under this Lease Agreement and the Tenant hereby agrees to cooperate fully with the Landlord on notification of such accommodation. The Tenant further waives any and all claims for damages, including but not limited to, loss of business, which the Tenant may suffer as a result of any such accommodation by the Landlord as limited by this paragraph.

31. Public Information.

31.01. Tenant acknowledges that this instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public. Nothing in this agreement waives an otherwise applicable exception to disclosure.

In Witness Whereof, the parties have caused their representatives to set their hands.

Landlord:

City of San Antonio, a Texas municipal corporation

Signature

Name

Title

Date

Attest:

City Clerk

Approved as to Form:

City Attorney

Tenant:

San Antonio Conservation Society/
NIOSA®

Janet Dietel

Signature

Janet Dietel

Name

President

Title

June 6, 2017

Date

Jeremy Schauer

Name

Secretary

Title

Exhibit A: La Villita Building Map

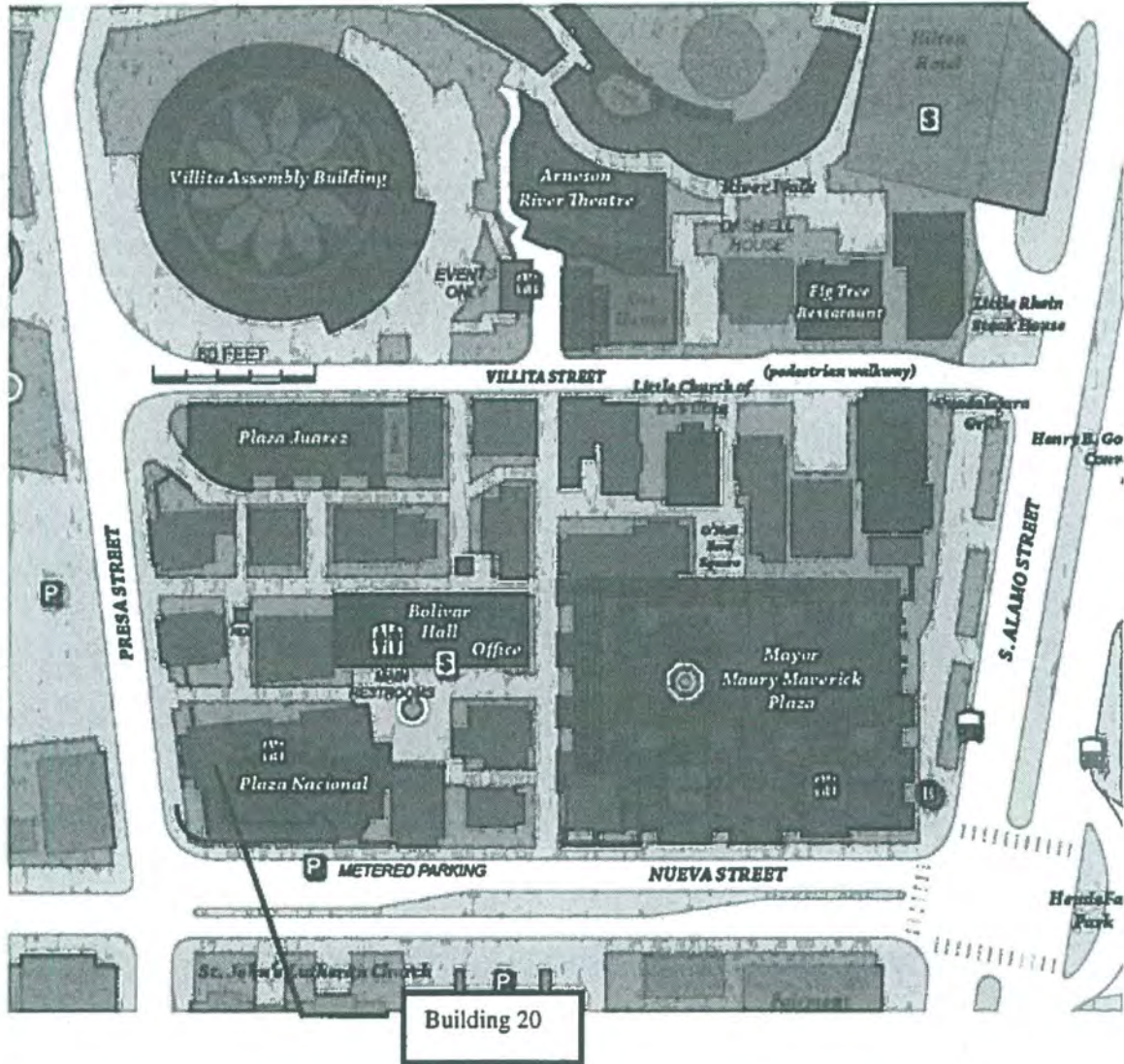


Exhibit B: Photos of Building 20



West Facade



East and South Facades

Attachment I: Tenant's Initial Inventory and Initial Merchandising Display Plan

Initial Inventory:

- Production and sale of handmade craft items and NIOSA and Fiesta souvenirs

Initial Merchandising Display Plan:

- Merchandise will be displayed on wall units and tables. Shelving and tables will be used for crafting.

Attachment II: Tenant's Capital Improvements

Capital Improvements	Value of Capital Improvements
Plaster repair and painting	\$1,300.00
Counter repair	\$600.00
Window repair; puttying	\$700.00
Total	\$2,600.00