

Hemisfair Lease Agreement - Instituto Cultural De Mexico

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1. Basic Information, Definitions.

Lessor: City of San Antonio, a Texas Municipal Corp.

Lessor's Address: P.O. Box 839966
San Antonio, Texas 78283

Lessee: Instituto Cultural de Mexico

Lessee's Address: 643 E. Nueva
San Antonio, Texas 78205

Premises: Museum building located at 643 E. Nueva, specifically Buildings 329-332, containing approximately 16,667 square feet.

Permitted Uses: Display of art, including design, creation, and sale of art. Operations of gift shop and administrative office.

Commencement Date: March 1, 2021

Expiration Date: February 28, 2026

Initial Term: 5 years

Renewal Term: 1, 5-year option

Common Areas: All areas, space, equipment and facilities provided from time to time by Lessor and/or Hemisfair Park Area Redevelopment Corp. (HPARC) for the common use and benefit of occupants and Lessees of the commercial space within the areas currently known as Yanaguana Garden and Hemisfair.

2. Grant, Use.

2.01 Lessor hereby agrees to permit Lessee to use the Premises for the Permitted Uses. Lessee agrees that the Premises shall be utilized solely for the Permitted Uses. Any use by Lessee of the Premises for purposes other than the Permitted Uses will be deemed a breach of this Agreement and will be grounds, at Lessor's option, for termination of this Agreement after providing Lessee written notice of ten (10) calendar day cure period. However, parties recognize there may arise a use for the Premises which is not identified within the Permitted Uses; in such instances, Lessee may submit written request to Lessor for authority to add new use to list of Permitted Uses and approval or denial of such request may be made by Center City Development & Operations Department director or his designee.

2.03 Lessee covenants and agrees that it will operate and conduct its business except while the Premises are unusable by reason of fire or other casualty. Lessee 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 operations.

2.04 Lessee agrees to comply with all local, state, and federal codes/rules/laws/provisions. In particular, Lessee 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, any design or operations standards adopted for Hemisfair or Yanaguana Garden, and any applicable Master Plans. All exterior signage requires Lessor's approval in writing prior to installation.

2.05 Lessee acknowledges that Hemisfair and Yanaguana Garden is intended to offer its visitors a family-friendly environment, and Lessee agrees to control any disruptive or incompatible behavior on the Lessee's Premises that could negatively affect a family-friendly environment.

3. Rent, Common Area Maintenance and Marketing Fee.

3.01. Lessee shall pay Lessor a sum of \$1.00 per year.

3.02 Lessee acknowledges the Lessor may assess a Common Area Maintenance (CAM) and Marketing Fee at a future date. Lessor will provide Lessee with twelve (12) months written notice prior to the effective date of the CAM and Marketing Fee to allow for inclusion in Lessee's operating budget. Lessee agrees to promptly pay such CAM and Marketing Fee within ten (10) days after Lessor delivers an invoice for such payment to Lessee.

4. Common Areas.

4.01. Lessee has the non-exclusive right to use the Hemisfair 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 Lessor or its agent may from time to time prescribe.

4.02. Hemisfair Common Areas may be modified by Lessor or its agent, including without limitation, their dimensions and location, without prior consultation

with, or approval of, Lessee.

4.03. Lessor or its agent will, subject to events beyond its reasonable control, manage, operate, and maintain the Hemisfair Common Areas, except for damage caused by Lessee or those whose presence is through Lessee.

5. Term, Termination, Renewal.

5.01. The “**Term**” of this Agreement includes the Initial Term of 5 years and the Renewal Term, unless sooner terminated as provided in this Agreement.

5.02. Provided Lessee is in good standing, Lessor may extend this Agreement past the end of the Renewal Term should Lessor find Agreement mutually beneficial.

5.02.01 Based on the good relationship between the parties and their goodwill, in order to facilitate HPARC’s ongoing efforts to redevelop and activate Hemisfair, once mutually agreed between two parties, Lessor may relocate Lessee to another location within Hemisfair or as mutually agreeable between the two parties. If both parties have agreed to relocation of Lessee, an Amendment Agreement will be signed by both parties where conditions of the relocation, time, new location, and all other will be determined. Lessor will work with Lessee to identify a long-term solution for an alternative building location where Lessee is able to move and continue with its activities. Lessor retains the right to modify the existing structure as needed, including partial removal, to accommodate adjacent projects. Any such actions will be preceded by at least 180-day written notice to Lessee.

5.03. Renewal Terms are governed by this Lease just as the Initial Term, except other provisions parties may agree to add, modify, or delete at time of renewal.

5.04. Lessee and/or Lessor may terminate this Agreement for convenience with 180 calendar days written notice.

6. Lessee’s Affirmative Promises.

Lessee’s promises that it will:

6.01. Accept the Premises in their present condition “AS IS.”

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

6.03. Allow Lessor to enter the Premises to perform Lessor’s obligations, inspect the Premises, and show the Premises to prospective purchasers or Lessees.

6.04. Maintain interior of Premises, including repair of damage to Premises to include but not be limited to:

6.04.01 HVAC maintenance and repairs

6.04.02 Elevator maintenance and repairs

6.04.03 Fire system maintenance and repairs

6.05. Keep Premises free of litter.

6.06. Maintain outside areas immediately adjoining Premises, including sidewalks adjacent to Premises free and clear at all times from obstruction of any kind.

6.07. Vacate the Premises and return all keys to the Premises on the last day of the Term.

6.08. On request, execute an estoppel certificate that states the Commencement Date and Termination Date of this Agreement, identifies any amendments to this Agreement, describes any rights to extend the Term or purchase rights, lists defaults by Lessor, and provides any other information reasonably requested.

6.09. Be solely responsible for and promptly pay all charges for all utilities, including water, sewer, gas, electricity, and any other utility used or consumed in the Premises or in providing service to the Premises. Lessee shall make all appropriate applications to local utility companies at such times as shall be necessary to ensure that utilities are available at the Premises no later than the date Lessee occupies the Premises, and shall pay all required deposits, connection fees and/or charges for meters within the applicable time period set by the applicable utility company.

6.10 Be responsible for regularly scheduled pest control.

7. Indemnity.

LESSEE 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 LESSEE'S activities under this Agreement, including any acts or omissions of LESSEE, any agent, officer, director, representative, employee, licensee or subcontractor of LESSEE, 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 LESSEE AND LESSOR 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 LESSOR UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

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. LESSEE shall advise LESSOR in writing within 24 hours of any claim or demand against the LESSOR known to LESSEE related to or arising out of LESSEE'S activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at LESSEE'S cost. LESSOR shall have the right, at its option and at its own expense, to participate in such defense without relieving LESSEE of any of its obligations under this paragraph.

8. Lessee's Negative Promises.

Lessee promises that it will not:

- 8.01. Use the Premises for any purpose other than the Permitted Uses.
- 8.02. Create a nuisance.
- 8.03. Interfere with normal operations of LESSOR, HPARC, or any other commercial, residential, or government entity within Hemisfair.
- 8.04. Permit waste of the Premises.
- 8.05. Use the Premises in any way that would increase insurance premiums or void insurance on the Premises.
- 8.06. Change Lessor's lock system without authorization.
- 8.07. Alter the Premises in any manner without prior written consent from Lessor, which may be given or withheld by Lessor in its sole discretion.
- 8.08. Allow any lien to be placed on the Premises.

9. Lessor's Affirmative Promises.

Lessor promises that it will:

- 9.01. Maintain roof, exterior walls, and other structural portions of the Premises exterior, subject to availability of funds.
- 9.02. Maintain and repair sidewalks, subject to availability of funds.

10. Lessor's Negative Promise.

10.01. Lessor promises that it will not interfere with Lessee's possession of the Premises as long as Lessee is not in default under this Agreement.

11. Alterations.

11.01 Physical additions or improvements to the Premises made by Lessee will become the property of Lessor. Lessor may require that Lessee, at the end of the Term and at Lessee’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.

12. Insurance.

12.01. Lessee must maintain throughout the Term of this Lease Agreement, as it may be extended, insurance coverage written on an occurrence form, by companies authorized, unless otherwise indicated, to do business in the State of Texas, rated A –(VII) or better by A.M. Best Company or otherwise acceptable to Lessor, in the following types and amounts:

<i>INSURANCE TYPE</i>	<i>LIMITS</i>
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. Contractual Liability e. Independent Contractors f. damage to property rented by you g. Plate Glass Coverage h. Host Liquor Liability, if alcoholic beverages are served on the Premise i. Liquor Legal Liability if alcoholic beverages are sold on premises. j. Sexual Abuse / Molestation	For Bodily Injury and Property Damage \$1,000,000 per occurrence; \$2,000,000 general aggregate, or its equivalent in Umbrella or Excess Liability Coverage. \$100,000.00
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence.

12.02. Each insurance policy required by this Lease Agreement must contain the following clauses:

“This insurance cannot be canceled, limited in scope or coverage, or non-renewed until prior written notice has been given to:

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

Attention: Director

"The insurance provided by Lessee is primary to any insurance or self-insurance maintained by the City of San Antonio."

"Any insurance or self-insurance maintained by the Hemisfair Park Area Redevelopment Corporation or the City of San Antonio applies in excess of, and does not contribute with, insurance provided by this policy."

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

"The Hemisfair Park Area Redevelopment Corporation and the City of San Antonio, and their officials, employees, representatives and volunteers are added as additional insureds by endorsements as respects operations and activities of, or on behalf of, the named insured performed under this Lease Agreement. This policy cannot be invalidated as to Lessor because of Lessee's breach of representation, warranty, declaration, or condition of this policy."

12.03. If Lessee makes leasehold improvements, Lessee must provide Builder's Risk Insurance Coverage, Worker's Compensation and Employer's Liability Insurance Coverage, Professional Liability Insurance Coverage and any other liability or other insurance required by the City's Risk Manager. The policies likewise must be in amounts required by City's Risk Manager and must cover all risks of physical loss during the term of any construction contract and until work is accepted by the City of San Antonio. Lessee must maintain the insurance during the construction phase. Lessee or its contractors or subcontractors must further provide payment and performance bonds naming Lessor as indemnitee. If the construction is minor, Lessee may request the requirements of this Section be waived, but a waiver may be granted only by City's Risk Manager. In deciding whether to waive, City's Risk manager has absolute discretion. The Risk Manager may make the waiver without further action of council.

12.04. Within 30 calendar days after the Commencement Date and promptly after Lessor's later request, Lessee must, at its own expense, deliver certificates to City's Risk Manager, Center City Development & Operations Department, and to the City Clerk, reflecting all required insurance coverage, together with copies of policies and endorsements. All endorsements and certificates must be signed by an authorized representative of the insurance company and must include the signatory's company affiliation and title. If requested by Lessor, Lessee must send Lessor documentation acceptable to Lessor that confirms that the individual signing the endorsements and certificates is authorized to do so by the insurance company. Lessor may request changes in policy terms, conditions, limitations, or exclusions (except where established by law). If Lessor does so and the changes would increase premiums, Lessor will discuss the changes. If Lessor still wants the changes after discussion, Lessee must make the changes and pay

the cost thereof. Lessor's review and approval of a certificate does not waive the certificate's noncompliance with the requirements of this Lease Agreement.

12.05. The Notices and Certificates of Insurance must be provided to the same addresses as for notices of cancellation.

12.06. Nothing in this Lease Agreement limits Lessee's liability for damages to persons or property resulting from Lessee's activities or the activities of Lessee's agents, employees, sublessees, or invitees.

12.07. Lessor disclaims an employee, agent, or invitee relationship with any person whose presence on the Premises is through Lessee. Claims resulting from assertions of tort liability or any obligation for which Lessee may be liable under any workers' compensation, unemployment compensation, disability benefits, similar statutory scheme are the sole obligation of Lessee.

12.08. Lessor will self-insure as it deems advisable. As a political subdivision of the State of Texas, Lessor is subject to the Texas Tort Claims Act, and the obligations of Lessor and the rights of persons claiming against Lessor are subject to that Act.

12.09. 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 on or behalf of the Lessor shall be limited to insurance coverage provided.

12.10. Lessee understands and agrees that violation of the insurance requirements of this section would be a material breach of this Lease Agreement and cause for the Lessor to terminate without the opportunity to cure. While Lessor's damages from such a breach would be difficult to estimate or quantify, Lessee accepts a fine of \$50.00 per day in violation of this section as a reasonable, negotiated estimate of Lessor's damages.

13. Release of Claims/Subrogation.

The insurance requirements of this Lease Agreement are a bargained-for allocation of risk of loss. Lessor and Lessee 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 Agreement 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 Agreement. Lessor and Lessee, 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.

Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.

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

14.05. Lessee must not allow the Release of any Hazardous Material from its use of the Premises on, onto, or from the Premises, any portion of Hemisfair, Yanaguana Garden, or any surrounding area. Lessee further must not to handle, use, or otherwise manage any Hazardous Material on the Premises, any portion of Hemisfair, Yanaguana Garden, or any surrounding area in violation of any Environmental Laws or in any but a reasonable and prudent manner.

14.06. Lessee must immediately provide to Lessor 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. Lessee must promptly deliver to Lessor any information it receives regarding any Release of Hazardous Materials on, to, from, or about the Premises.

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

14.08. If Lessee breaches any of its representations, warranties or covenants, Lessee 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. Lessee must take all action required by applicable Environmental Laws. If Lessee's actions under this provision involve cleaning up a Release of Hazardous Materials, Lessee 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. Lessee 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 devices to control, contain, or remove pollutants.

14.09. Lessee must indemnify Lessor and hold Lessor 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 Lessee in enforcing this indemnity) arising from or relating to breach of Lessee's environmental representations, warranties, and covenants.

15. Municipal Powers.

The City of San Antonio remains the owner of the Premises and that the City, and as a municipality, may from time to time exercise municipal powers unrelated to the Lease Agreement that will nevertheless adversely affect Lessee. 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 City as a municipality is a breach of Lessor's duties as Lessor or entitles Lessee to any relief under this Lease Agreement. Likewise, no breach of contract or other duty by municipal utility providers is a breach of Lessor's duties as Lessor or entitles Lessee to any relief under this Lease Agreement.

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. Lessee warrants and certifies as follows:

- (i) Lessee and its officers, employees and agents are neither officers nor employees of the City.
- (ii) Lessee has tendered to the City a Discretionary Contracts Disclosure Statement

in compliance with the City's Ethics Code.

16.03. Lessee 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 (90) days, Lessor will, 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 Lessor fails to complete the portion of the restoration for which Lessor is responsible within ninety (90) days from the date of written notification by Lessee to Lessor of the casualty, Lessee may terminate this Agreement by written notice delivered to Lessor before Lessor completes Lessor's restoration obligations.

17.02. If the Premises cannot be restored within ninety (90) days from the date of written notification by Lessee to Lessor, Lessor has an option to restore the Premises. If Lessor chooses not to restore, this Agreement will terminate. If Lessor chooses to restore, Lessor will notify Lessee of the estimated time to restore and give Lessee an option to terminate this Agreement by notifying Lessor within ten (10) days. If Lessee does not terminate this Agreement, the Agreement will continue, and Lessor will restore the Premises as provided above.

17.03. To the extent the Premises are cannot be occupied or used after the casualty, the Rent will be adjusted as may be fair and reasonable.

17.04. If Lessor is obligated to rebuild or chooses to do so, Lessee must promptly rebuild and restore all improvements the maintenance of which are its responsibility under this Agreement. 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.

18. Condemnation/Substantial or Partial Taking.

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

18.02. If there is a condemnation or purchase in lieu of condemnation and this Agreement is not terminated, Lessor will, at Lessor'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. Lessee will have no claim to the condemnation award or proceeds in lieu of condemnation.

19. Holdover.

19.01 If Lessee holds over after termination or expiration of this Agreement, the terms of this Agreement apply during the holdover period, except Lessee is a Lessee at sufferance.

21. Default, Remedies for Default.

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

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

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

21.01.03. Lessee 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.

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

21.01.05. Lessee 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 Lessee 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, Lessee's breach is established conclusively.

21.01.06. Lessee does or permits to be done anything which creates a lien upon the Premises.

21.01.07. Lessee's operation 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 Lessee, or normal business holidays.

21.02. *Remedies for Default.* Upon the occurrence of any Lessee event of default, Lessor 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 Lessor at law or in equity, immediately terminate this Agreement and all rights of Lessee hereunder. Upon termination, Lessee must immediately surrender the Premises to Lessor. If Lessee fails to do so, Lessor may, without prejudice to any other remedy, enter and take possession of the Premises or any part thereof and expel or remove Lessee 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 Lessee 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 therefor without having terminated the Agreement.

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

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

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

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

(iii) if Lessor does provide Lessee with a key, it will do so only during the Lessor's regular business hours, and

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

Lessor's remedies and rights under this Agreement entirely supersede and supplant the provisions of Texas Property Code § 93.002 to the extent such code section is applicable to this Agreement.

21.03. *Repossession and Alteration of Locks.* Lessor's exercise of one or more remedies is not acceptance of Lessee's purported surrender of the Premises, whether by agreement or by operation of law. Surrender can occur only by the written agreement of

Lessor and Lessee. No such alteration of locks or other security devices and no removal or other exercise of dominion by Lessor over the property of Lessee or others at the Premises is unauthorized or constitutes conversion. Lessee consents to Lessor's exercise of dominion over Lessee's property within the Premises in case of Lessee's default. Lessee 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 Lessor may be pursuant to judgment obtained in forcible detainer proceedings or other legal proceedings or without the necessity for any legal proceedings, as Lessor may elect. Lessor is not liable in trespass or otherwise for such re-entry. Lessor's remedies and rights under this Agreement entirely supersede and supplant the provisions of Texas Property Code § 93.002 to the extent such code section is applicable to this Lease Agreement.

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

21.05. *Effect if No Termination.* If Lessor repossesses the Premises without terminating the Agreement, then Lessee is liable for and must pay Lessor, 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. Lessee's obligation is diminished by any net sums thereafter received by Lessor through reletting the Premises (after deducting expenses of reletting). Lessee is liable for the full Rent for the remainder of the Term if the Premises are not relet. In no event is Lessee entitled to any excess of any rental obtained by reletting over and above the Rent. Actions to collect amounts due by Lessee to Lessor may be brought at one time or from time to time, on one or more occasions, without the necessity of Lessor's waiting until expiration of the Term. In the alternative, if Lessor relets the Premises, Lessor may recover from Lessee (A) the unpaid Rent accrued before Lessee'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 Lessor hereunder is either an acceptance of surrender or an election to terminate this Agreement. Neither does it cause a forfeiture of Rent remaining to be paid during the balance of the Term, unless a written notice of such intention is given to Lessee or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding Lessor's right to relet and collect the difference in rental values, Lessor may, at any time after default, terminate this Agreement. Lessor also may decline to repossess the Premises, and may from time to time, without terminating this Agreement, recover all rent as it becomes due.

21.06. *Liability for Costs Incurred.* If Lessee defaults, in addition to any other sum required by this Agreement, Lessee must also pay to Lessor, at the Address for Payment of Rent, (A) brokers and management fees incurred by Lessor in connection with reletting the whole or any part of the Premises; (B) the costs of removing and storing Lessee'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 Lessee or Lessees, (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 Lessor in repossessing the Premises and in enforcing or defending Lessor's rights and/or remedies, including reasonable attorney's fees, which shall be not less than 10% of all sums then owing by Lessee to Lessor.

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

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

21.09. *Payments After Termination.* Lessee's payment of money to Lessor 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 Lessee prior to the payment. After the service a suit or after any final judgment granting Lessor possession of the Premises, Lessor may receive and collect any sums due under the terms of this Agreement 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 Lessee's right of possession, or in any manner affect any suit theretofore commenced or judgment previously obtained.

21.10. *Rights Respecting Personal Property.* If Lessor takes possession of the Premises under the authority of this Agreement, Lessor may keep in place and use all furniture, fixtures, and equipment at the Premises, including that owned by or leased to Lessee at all times before foreclosure thereon by Lessor or repossession thereof by any lessor thereof or lienholder thereon. Lessor 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, Lessee is liable to Lessor for costs incurred by Lessor in the removal and storage and must indemnify Lessor from all loss, damage, cost, expense, and liability arising from or relating to the removal and storage. Lessor also may relinquish all or any part of the furniture, fixtures, equipment, and other property to any person ("**Claimant**") who presents to Lessor a copy of any instrument represented to have been executed by Lessee, if the instrument purports to grant Claimant the right under various circumstances to take possession of the property. Lessor

need not inquire into the authenticity of the instrument or Lessee's predecessor's signature thereon. Lessor further need not investigate or inquire into the validity of the factual or legal basis on which Claimant purports to act. Lessee indemnifies Lessor from all loss, cost, liability, or expense arising from or relating to Lessor's relinquishment of property to a Claimant. These rights of Lessor are additional to any other rights that Lessor has or may hereafter have at law or in equity. Lessee stipulates that the rights herein granted Lessor are commercially reasonable.

21.11. *Cumulative Remedies.* Each right and remedy provided to Lessor in this Agreement is cumulative to every other right or remedy provided to Lessor by this Agreement or applicable law, including, but not limited to, suits for injunctive relief and specific performance. The exercise or beginning of the exercise by Lessor of one or more of the right or remedy does not preclude the simultaneous or later exercise by Lessor of another remedy. All costs incurred by Lessor in collecting any amounts and damages owed by Lessee under this Agreement 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 Lessor from Lessee.

22. Lessor's Mitigation of Damages.

Any duty imposed by law on Lessor to mitigate damages after a default by Lessee under this Agreement will be satisfied in full if Lessor undertakes to lease the Premises to another lessee (a "**Substitute Lessee**") in accordance with the following criteria:

22.01. Lessor will have no obligation to solicit or entertain negotiations with any other prospective Lessees for the Premises until Lessor obtains full and complete possession of the Premises including without limitation, the final and un-appealable legal right to relet the Premises free of any claim of Lessee;

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

22.03. Lessor will not be obligated to lease the Premises to a Substitute Lessee 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 Premises, nor will Lessor be obligated to enter into a new agreement under terms and conditions that are unacceptable to Lessor under Lessor's then current leasing policies for comparable space in the Premises.

22.04. Lessor will not be obligated to enter into an agreement with a Substitute Lessee whose use would:

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

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

22.06. Lessor 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 Lessee unless:

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

(ii) Lessor, in Lessor's reasonable discretion, determines that any such expenditure is financially justified in connection with entering into an agreement with the prospective Substitute Lessee.

23. Lessee's Bankruptcy.

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

23.01. "Adequate protection" of Lessor'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 Agreement by Lessee include but are not limited to all (or any part) of the following:

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

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

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

23.02. "Adequate assurance of future performance" by Lessee or any assignee of Lessee 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 Rent payable hereunder.

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

23.04. Despite anything in this Agreement to the contrary, all amounts payable by Lessee to or on behalf of the Lessor under this Agreement, whether or not expressly denominated as “rent”, constitute “rent” for the purposes of Section 502(b)(6) of the Bankruptcy Code.

23.05. If this Agreement 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 Lessor (including Rent hereunder) remain the exclusive property of Lessor and are not property of Lessee or of the bankruptcy estate of Lessee. Any and all monies or other considerations constituting Lessor’s property under the preceding sentence not paid or delivered to Lessor must be held in trust by Lessee or Lessee’s bankruptcy estate for the benefit of Lessor and must be promptly paid to Lessor.

23.06. If Lessee assumes this Agreement and proposes to assign it to a specific assignee on specific terms, Lessee must deliver to Lessor 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 Lessor to assure the assignee’s future performance under the Agreement. Lessee must deliver the notice no later than 20 days after Lessee’s receipt of the proposal, but in no event later than 10 days before Lessee applies to a court of competent jurisdiction for authority and approval of the proposed assumption and assignment. Lessor 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 Lessee’s proposed assignee, less any brokerage commission otherwise payable by the proposed assignee. Lessor must exercise its prior right and option by delivering notice to Lessee not later than 30 calendar days after Lessor’s receipt of the notice.

23.07. To the extent permitted by law, this Agreement is a contract under which applicable law excuses Lessor from accepting performance from (or rendering performance to) any person other than Lessee.

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 Agreement, and there are no warranties that extend beyond those expressly stated in this Agreement. Without limitation, this Agreement contains no express or implied warranty that the Premises have no latent defects or that the Premises are or will remain suitable for Lessee’s purposes.

24.01. Lessee 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.

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

26. Appropriations.

All obligations of the Lessor 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 Agreement in an annual City of San Antonio Budget, Lessor may terminate this Agreement and have no further liability.

27. Sublease, Assignment.

27.01 Lessee cannot assign this Agreement without Lessor's prior written consent. Assignments include any transaction in which (A) a material part of Lessee'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 Lessee.

27.02 Lessor may assign this Agreement without Lessee's consent.

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 Lessor to seek forcible entry and detainer relief against Lessee.

29. Miscellaneous.

29.01. *Applicable Law.* This Agreement is entered into in San Antonio, Bexar County, State of Texas. **ITS CONSTRUCTION AND THE RIGHTS, REMEDIES, AND OBLIGATIONS ARISING UNDER IT ARE GOVERNED BY THE LAWS OF THE STATE OF TEXAS.** But the Texas conflicts of law rules must not be used to apply the laws of a jurisdiction other than 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. Modifications or amendments to Agreement may be approved by Center City Development & Operations Department director or his designee.

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. Notice is complete three calendar 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. *Conflicts Between Numbers Stated Two Ways.* Whenever this Agreement states numbers more than one way, either by using both words and numerals or by stating a fixed amount and a calculation for arriving at an amount, and there is a conflict, the highest number controls.

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

30. Other Events/Construction Activities.

The Lessee understands, acknowledges and agrees that the Lessor will also from time to time accommodate various functions or events and that Lessor and HPARC have plans for substantial construction activities in the vicinity of Hemisfair and Yanaguana Garden. Such events and/or construction may require temporary closures of points of access to Hemisfair and Yanaguana Garden and plazas, streets, and open areas in and around Hemisfair and Yanaguana Garden and/or controlled or limited access to the Premises. The Lessee expressly recognizes that any such accommodation and/construction and also any and all of the Lessor's fee simple ownership rights and interest as Lessor hereunder are superior to any right, privilege or interest granted the Lessee under this Agreement and the Lessee agrees to cooperate fully with the Lessor on notification of such accommodation or construction. The Lessee further waives any and all claims for damages, including but not limited to loss of business, which the Lessee may suffer as a result of any such accommodation or construction by the Lessor or HPARC as limited by this paragraph. Lessor agrees to make reasonable accommodations, including placing signage and providing access to the Premises during events of construction or other events.

31. Public Information.

Lessee 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.

[Signatures on next page]

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

LESSOR:

City of San Antonio, a Texas
municipal corporation

LESSEE:

Instituto Cultural de Mexico, through
the Government of Mexico

Signature

Signature

Printed Name

Printed Name

Title

Title

Date

Date

APPROVED AS TO FORM:

City Attorney

ATTEST:

Exhibit A – Premises

