

AN ORDINANCE **2016-12-15-0992**

**AUTHORIZING THE EXECUTION OF AMENDMENT NO. 6
TO THE LEASE WITH THE SAN ANTONIO MUSEUM
ASSOCIATION D/B/A/ THE WITTE MUSEUM (WITTE)
TRANSFERRING OWNERSHIP INTEREST OF SPECIFIC
BUILDING IMPROVEMENTS FULLY FUNDED BY THE
WITTE AND EXERCISING TWO CURRENT 25-YEAR LEASE
EXTENSION OPTIONS.**

* * * * *

WHEREAS, the San Antonio Museum Association d/b/a The Witte Museum (Witte) is a non-profit organization whose mission is to promote lifelong learning through innovative exhibitions, programs and collections in natural history, science and South Texas heritage; and

WHEREAS, the Witte, which first opened in 1923, has an average of 600,000 visitors annually including approximately 250,000 school aged children; and

WHEREAS, the developed Witte master plan is identified in three main phases: 1) South Texas Heritage Center and the Witte Research Center; 2) the New Witte; and 3) World of Water; and

WHEREAS, Phase I is complete and Phase II, the New Witte is currently under construction and includes renovations and additions to the existing (original) Main Building with additional new gallery space; and

WHEREAS, through previous Council action the City has contributed \$16 million toward the \$23 million original construction costs of the Main Building; and

WHEREAS, Phase II, the New Witte transformation, has encountered unforeseen structural conditions in the Main Building resulting in \$6 million in additional construction costs; and

WHEREAS, the Witte approached the City to discuss the issue and share their commitment to raise the required additional funds necessary to complete the New Witte; and

WHEREAS, however, the situation of temporary bridge funding exists while they continue their capital campaign efforts; and

WHEREAS, transferring the City's ownership interest in the Mays Family Center, Feik Family Pavilion and adjoining admissions building to the Witte and their potential use of those assets as collateral will assist the Witte in solidifying a financial position that allows them to secure financing or a line of credit if necessary; and

WHEREAS, the new improvements proposed to be transferred to the Witte were fully funded by the Witte with no City funding, and the City will maintain its ownership of the underlying land; and

WHEREAS, in order to secure the City's interest in the transferred improvements three requirements are included in the lease amendment: 1) ownership of the transferred improvements will revert to the City at the termination of the lease; 2) continued use of the buildings and improvements as a public museum or other appropriate City Council approved use; 3) default notice and option to remedy by the City included in any financial instrument associated with the improvements; and

WHEREAS, additionally, the current lease extension options would be exercised and extend the lease fifty (50) years to 2072; and

WHEREAS, ownership of the other improvements on the lease premises as well all other terms of the current lease including admissions pricing regulations will not change; **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 Parks and Recreation Department or his designee, is hereby authorized to execute Amendment No. 6 to the lease with the San Antonio Museum Association d/b/a/ The Witte Museum (Witte) transferring ownership interest of specific building improvements fully funded by the Witte. A copy of the amendment in substantially final form is attached hereto and incorporated herein for all purposes as **Attachment I**.

SECTION 2. The exercise by the Witte of its two 25-year lease extension options is hereby approved extending the term of the lease to 2072.

SECTION 3. The City Manager or her designee or the Director of the Parks and Recreation Department or his designee, is hereby authorized to execute such additional documents, after review and approval by the City Attorney or his designee, as may be required to facilitate the additional financing required by The Witte.

SECTION 4. 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 5. 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 December, 2016.

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

City Attorney

Agenda Item:	14 (in consent vote: 4, 5, 6, 8, 9, 10, 12A, 12B, 12C, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 26, 27, 30A, 30B)						
Date:	12/15/2016						
Time:	09:27:16 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing the execution of Amendment No. 6 to the lease with the San Antonio Museum Association d/b/a/ The Witte Museum transferring ownership interest of specific building improvements fully funded by the Witte and exercising two current 25-year lease extension options. [Erik Walsh, Deputy City Manager; Xavier D. Urrutia, Director, Parks and Recreation]						
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			x	
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

**AMENDMENT NO. 6 TO
WITTE MUSEUM LEASE WITH OPERATING STANDARDS**

THIS AMENDMENT NO. 6 TO MUSEUM LEASE WITH OPERATING STANDARDS (this "*Sixth Amendment*") is executed by and between CITY OF SAN ANTONIO, a Texas municipal corporation ("*CITY*"), pursuant to Ordinance 2016-12-__-_____, passed and approved by the San Antonio City Council on December ___, 2016, and THE WITTE MUSEUM, a Texas not-for-profit corporation ("*WITTE*"), to be effective as of the later date on which this Sixth Amendment has been signed by CITY or WITTE. CITY and WITTE are sometimes referred to herein individually as a "*Party*" and collectively as the "*Parties.*"

RECITALS

- A. The Parties entered into that certain Witte Museum Lease with Operating Standards dated August 28, 1997 (the "*Lease*"), which has been amended by CITY and WITTE as follows:
- (1) Amendment No. 1 to Witte Museum Lease with Operating Standards dated June 4, 2003;
 - (2) Amendment No. 2 to Witte Museum Lease with Operating Standards dated May 31, 2007;
 - (3) Amendment No. 3 to Witte Museum Lease with Operating Standards dated May 31, 2012;
 - (4) Amendment No. 4 to Witte Museum Lease with Operating Standards dated September 13, 2012; and
 - (5) Amendment No. 5 to Witte Museum Lease with Operating Standards dated March 9, 2015 (the *Lease*, as so amended, herein called the "*Agreement*").
- B. Capitalized words or phrases not otherwise defined in this Sixth Amendment will have the same meaning ascribed to such words or phrases in the *Agreement*, unless the context clearly indicates otherwise.
- C. WITTE has constructed or caused to be constructed, from time to time, buildings and other improvements on the Premises, including (but not limited to):
- (1) The completed Mays Family Center (herein so called), as more particularly described and depicted on an instrument attached to this Sixth Amendment as **Exhibit A-1** for all purposes;

- (2) The completed Feik Family Pavilion (herein so called) as more particularly described and depicted on an instrument attached to this Sixth Amendment as **Exhibit A-2** for all purposes;
- (3) The Admissions Building (herein so called) as more particularly described and depicted on an instrument attached to this Sixth Amendment as **Exhibit A-3** for all purposes;
- (4) The on-going renovation and expansion of the Main Building (herein so called, being the original structure on the Premises); and
- (5) The addition of other new gallery space.

D. WITTE requires additional funding for the renovation and expansion of the Main Building and construction of new gallery space (collectively herein, the "*New Witte*") and has requested that CITY agree to amend the Agreement to provide that:

- (1) The Mays Family Center, Feik Family Pavilion and Admissions Building are leasehold improvements on the Premises that, for and during the remainder of the term of the Agreement, title and beneficial ownership to all such leasehold improvements shall be held by WITTE;
- (2) WITTE may encumber the Mays Family Center, Feik Family Pavilion and Admissions Building, or any part thereof or interest therein, to secure one or more mortgage loans that conform to applicable terms of the Agreement and this Sixth Amendment; and
- (3) The term of the Agreement may be extended as necessary to accommodate the repayment terms of loans obtained by WITTE.

E. The Witte Museum is also known as "The City's Museum" and "The People's Museum" and CITY recognizes the public benefit of the renovation, expansion and construction of the New Witte and desires to amend the Agreement as requested by WITTE.

NOW, THEREFORE, for the mutual benefits accruing hereunder to each of the undersigned Parties, each Party has agreed to amend the Agreement as set forth in this Sixth Amendment.

ARTICLE 1 AMENDMENTS TO LEASE

1.1 Ownership of Certain Improvements. Section 4.2 of the Agreement is amended to add the following additional sentences following the last sentence of such section:

"Notwithstanding the foregoing to the contrary, the improvements to the Premises comprising and constituting the Mays Family Center, the Feik Family Pavilion and the Admissions Building (as depicted on EXHIBIT A-1, EXHIBIT A-2 AND EXHIBIT A-3, respectively), together with all personal property, equipment and fixtures in anywise

appertaining, belonging, affixed or incidental to such improvements (collectively herein, the "***Privately Funded Improvements***") shall be beneficially owned and title held by WITTE for and during the term of this Agreement only (including all extensions of the term of this Agreement, if any). Upon the termination of the beneficiary Agreement, all rights and interests of WITTE in the Privately Funded Improvements, together with all other Premises, shall be the sole property of CITY for all purposes, whether real, personal or mixed property, as if any ownership of WITTE therein had not occurred. CITY and WITTE shall execute a Memorandum of Lease in the form attached hereto as EXHIBIT B, which recognizes the ownership rights of WITTE in the Privately Funded Improvements as herein set forth. Notwithstanding such ownership by WITTE, the Privately Funded Improvements shall continue to be subject to the terms of this Agreement, including (without limitation) Article III, USE, of this Agreement. At its election, WITTE may transfer, assign or convey its ownership interests in the Privately Funded Improvements only to the Witte Museum Foundation, subject in all respects to the Agreement. Subject to the rights granted to WITTE to encumber its interests pursuant to Section 5.1, below, any other transfer, assignment or conveyance of WITTE's interests shall be subject to the prior written consent of CITY."

1.2 Encumbrances. Article V, Encumbrances, of the Agreement is amended to add the following additional Sections:

"5.12 Subject to the provisions of Sections 5.1 through 5.11, inclusive, which shall be applicable only to the portion of the Premises assigned to the Witte Title Co. in the Partial Assignment and Assumption of Lease Agreement pursuant to Ordinance No. 2012-09-13-0703, WITTE may at any time and from time to time encumber its leasehold interest, its collections and/or the Privately Funded Improvements (the "***Collateral***") by deed of trust, mortgage, pledge, collateral assignment or other security instrument ("***Mortgage***") to the holder of indebtedness thereby secured ("***Mortgagee***"), without obtaining the consent of CITY, if:

(a) No Lien on CITY Interests. The Mortgage shall not constitute a lien on the fee title or other interests of CITY under this Agreement.

(b) No Subordination. The Mortgage and the indebtedness thereby secured shall at all times be and remain inferior and subordinate to all of the conditions, covenants and obligations of this Agreement and to all rights of CITY in and to the Collateral.

(c) Notice to CITY. The Mortgage (or other instrument reasonably acceptable to CITY) shall obligate the Mortgagee to provide to CITY (simultaneously with any service on WITTE, if given) notice of any default under the Mortgage (including, without limitation, a duplicate of any and all notices or demands given by Mortgagee to WITTE).

(d) Optional Cure by CITY. Upon any default by WITTE under the Mortgage, CITY will have the privilege of performing any of WITTE's covenants, curing any defaults by WITTE or exercising any election, option or privilege conferred upon WITTE by the terms of the Mortgage. Mortgagee may not exercise any remedies under

the Mortgage to proceed against or foreclose or execute on the Collateral or otherwise enforce any rights against the Collateral if, within a period of thirty (30) days after the expiration of the period of time within which WITTE must cure such default, such default is cured or caused to be cured by CITY or, if within a period of thirty (30) days after the expiration of the period of time within which WITTE must commence to eliminate the cause of such default, CITY commences to eliminate the cause of such default and proceeds therewith diligently and with reasonable dispatch. CITY shall have no liability for the performance of any of WITTE's covenants and agreements under the Mortgage.

(e) Covenant to Operate Public Museum. The Mortgage shall obligate the WITTE and its successors-in-title to the Collateral (including, without limitation, Mortgagee) to operate the Collateral in a manner consistent with the operation of the Premises (including all buildings and improvements thereon) as a public museum in accordance with this Agreement, or such other use as is approved the City Council of the City of San Antonio by passage of an appropriate ordinance, and, unless otherwise approved by the Board of Trustees of WITTE, to take no action to alter the names by which the buildings, improvements, gardens, walkways, exhibits or any other areas of the Premises are identified as of the date of the Mortgage.

(f) Loan Purpose. The proceeds of the loan secured to be repaid by a Mortgage encumbering the Privately Funded Improvements shall be used solely for the purposes of completing the construction and renovation of the Main Building.

(g) Loan Document Approval. CITY shall be provided copies of all documents to be executed in connection with the Mortgage and shall have approved them prior to execution, such approval to be not unreasonably withheld. The liens and/or security interests created by the Mortgage shall not be prohibited by Article VII, LIENS PROHIBITED, of this Agreement.

A Mortgage upon the Privately Funded Improvements that complies with the requirements of Sections 5.12 and 5.13 will not be a prohibited lien under Article VII, LIENS PROHIBITED, of the Agreement.

5.13 With respect to a Mortgage other than a Mortgage covered by Sections 5.1 through 5.11, inclusive, WITTE shall notify CITY in writing of the execution of a Mortgage, the name and place for service of notices upon the Mortgagee and shall promptly provide all information requested by CITY regarding such Mortgage. Provided that WITTE is in compliance with the requirements of the foregoing sentence, then and in such event, CITY hereby agrees, for the benefit of WITTE and the Mortgagee:

(a) Notice to Mortgagee. CITY will provide to Mortgagee (simultaneously with any service on WITTE, if given) notice of any default of WITTE under this Agreement (including, without limitation, a duplicate of any and all notices or demands given by CITY to WITTE).

(b) Cure by Mortgagee. Upon any default by WITTE under this Agreement, or under the terms of the Mortgage, the Mortgagee will have the privilege of performing any of WITTE's covenants, curing any defaults by WITTE or of exercising any election,

option or privilege conferred upon WITTE by the terms of this Agreement. CITY may not terminate this Agreement or WITTE's right of possession for any default of WITTE if, within a period of thirty (30) days after the expiration of the period of time within which WITTE must cure such default, such default is cured or caused to be cured by the Mortgagee or, if within a period of thirty (30) days after the expiration of the period of time within which WITTE must commence to eliminate the cause of such default, the Mortgagee commences to eliminate the cause of such default and proceeds therewith diligently and with reasonable dispatch. No liability for the performance of any of WITTE's covenants and agreements under this Agreement shall attach to or be imposed upon the Mortgagee unless Mortgagee (or its assignee, agent or representative) is in possession of the Premises (or portion thereof).

(c) Mortgage Not an Assignment. The execution, delivery or filing of record of a Mortgage by WITTE shall not be considered an assignment in breach of Article X, ASSIGNMENT, of this Agreement. WITTE agrees and covenants that the Mortgage will be subordinate to CITY's fee interest in the Premises and all rights of CITY under this Agreement.

(d) Estoppel, Non-Disturbance. Upon request of the Mortgagee, CITY will provide to Mortgagee (i) an estoppel letter which provides current information relating to the status of this Agreement and/or (ii) a non-disturbance and attornment agreement in a form reasonably acceptable to the Mortgagee.

(e) Extension of Agreement Term. If required by the Mortgagee as a condition to the Mortgage, CITY and WITTE shall amend this Agreement to extend the term hereof for the duration of the Mortgage.”

1.03 Exhibits. The following additional exhibits are attached as exhibits to the Agreement: Exhibit A-1, Description of Mays Family Center; Exhibit A-2, Description of Feik Family Pavilion, Exhibit A-3, Description of Admissions Building and Exhibit B, form of Memorandum of Lease.

ARTICLE 2 MISCELLANEOUS

2.1 Ratification of Agreement. Except as expressly amended by this Sixth Amendment, all terms and provisions of the Agreement remain in full force and effect as therein set forth. The Amendment, as so amended, and all rights and powers created pursuant thereto, are in all respects ratified and confirmed. From and after the execution of this Sixth Amendment by all Parties, all references to the Amendment shall be deemed to mean the Amendment as amended by this Sixth Amendment. The amendments to the Agreement set forth in this Sixth Amendment and the exhibits added to the Agreement by this Sixth Amendment will be deemed to be a part of the Agreement as if originally set forth therein or attached thereto.

2.2 Validity and Authority. The execution and delivery of this Sixth Amendment by each undersigned Party has been duly and validly authorized, and no other proceeding on the part of any Party is necessary, as a matter of law or otherwise, to authorize this Sixth Amendment or to effect the amendments to the Agreement set forth in this Sixth Amendment. This Sixth Amendment has been duly and validly executed and delivered by the

Parties. The execution hereof by the Parties complies with all requirements for a valid and binding amendment of the Agreement.

2.3 Counterparts. This Sixth Amendment may be executed in counterparts, each of which, when executed and delivered, shall for all purposes be deemed an original. All of the counterparts, when taken together, shall constitute but one and the same Sixth Amendment. The Parties agree to circulate for execution all executed such counterparts in order that each Party may obtain a counterpart executed by all Parties. Electronic or facsimile signatures will have the same force and effect as original signatures.

EXHIBITS: Exhibit A-1: Description of Mays Family Center
 Exhibit A-2: Description of Feik Family Pavilion
 Exhibit A-3: Description of Admissions Building
 Exhibit B: Form of Memorandum of Lease

Executed to be effective as of the later date on which this Sixth Amendment has been signed by each of the undersigned Parties.

CITY:

CITY OF SAN ANTONIO

By: _____
Name: _____
Title: _____

Date: _____, 2016

ATTEST:

By: _____
CITY CLERK


APPROVED AS TO FORM:

CITY ATTORNEY

[Signatures continue on following page.]

WITTE:

THE WITTE MUSEUM

By: 
Name: Manise McDermott
Title: President and CEO

Date: December 14, 2016

EXHIBIT A-1 TO SIXTH AMENDMENT
DESCRIPTION OF MAYS FAMILY CENTER
[TO BE ATTACHED]

EXHIBIT A-2 TO AMENDMENT NO. 6
DESCRIPTION OF FEIK FAMILY PAVILION
[TO BE ATTACHED]

EXHIBIT A-3 TO AMENDMENT NO. 6
DESCRIPTION OF ADMISSIONS BUILDING
[TO BE ATTACHED]

EXHIBIT B TO AMENDMENT NO. 6

MEMORANDUM OF LEASE

THE STATE OF TEXAS §

COUNTY OF BEXAR §

This Memorandum of Lease ("*Memorandum*") is entered into by and between CITY OF SAN ANTONIO, a Texas municipal corporation ("*CITY*"), and THE WITTE MUSEUM, a Texas not-for-profit corporation ("*WITTE*").

1. **Lease.** CITY, as landlord, and WITTE, as tenant, entered into that certain Witte Museum Lease With Operating Standards dated August 28, 1997, which has been amended by CITY and WITTE by Amendment No. 1 to Witte Museum Lease with Operating Standards dated June 4, 2003, Amendment No. 2 to Witte Museum Lease with Operating Standards dated May 31, 2007, Amendment No. 3 to Witte Museum Lease with Operating Standards dated May 31, 2012, Amendment No. 4 to Witte Museum Lease with Operating Standards dated September 13, 2012, Amendment No. 5 to Witte Museum Lease with Operating Standards dated March 9, 2015, and Amendment No. 6 to Witte Museum Lease with Operating Standards dated December __, 2016 (as amended, "*Lease*") under which CITY has leased to WITTE and WITTE has leased from CITY the tracts of land described on Exhibit "A" attached hereto and incorporated herein by reference for all purposes ("*Premises*").

2. **Purpose of Memorandum.** This Memorandum is entered into by CITY and WITTE and recorded in the Official Public Records of Real Property of Bexar County, Texas, for the sole purpose of giving record notice to the public of the existence of the Lease and of certain terms thereof.

3. **Ownership of Certain Improvements.** WITTE has constructed or caused to be constructed, from time to time, buildings and other improvements on the Premises with funds provided with private donations, including (but not limited to):

- a. The completed Mays Family Center (herein so called), as more particularly described and depicted on an instrument attached to this Memorandum as **Exhibit A-1** for all purposes;
- b. The completed Feik Family Pavilion (herein so called) as more particularly described and depicted on an instrument attached to this Memorandum as **Exhibit A-2** for all purposes; and
- c. The Admissions Building (herein so called) as more particularly described and depicted on an instrument attached to this Memorandum as **Exhibit A-3** for all purposes.

Pursuant to the Lease and subject to the terms thereof title and beneficial ownership of the improvements to the Premises comprising and constituting the Mays Family Center, the Feik Family Pavilion and the Admissions Building, together with all personal property, equipment and fixtures in anywise appertaining, belonging, affixed or incidental to such improvements (collectively herein, the "*Privately Funded Improvements*") shall be held by WITTE for and during the term of the Lease only (including all extensions of the term of the Lease, if any). Upon the termination of the Lease, all rights and interests of WITTE in the Privately Funded Improvements, together with all other Premises, shall be the sole property of CITY for all purposes, whether real, personal or mixed property, as if any ownership of WITTE therein had not occurred.

4. **Interpretation.** The provisions of this Memorandum are not intended to, and shall not, amend, modify or alter the terms and provisions of the Lease or otherwise affect the agreements, responsibilities and obligations of the parties under the Lease. Provisions of this Memorandum shall not be used in interpreting the Lease. In the event of a conflict between the Lease and this Memorandum, the Lease shall control.

5. **Mechanic's and Materialman's Liens.** CITY shall not be liable for any labor, services or materials furnished to WITTE or delivered to the Premises, or to anyone holding the Premises through or under WITTE, upon credit and that no mechanic's or other lien for such labor, services or materials shall attach to or affect the estate or interest of CITY in and to the Premises. WITTE has no rights under the Lease to serve as the CITY's agent or to bind the fee interest of the CITY in the Premises.

[Remainder of page intentionally blank; signatures appear on following pages.]

EXECUTED the ____ day of _____, 2016.

CITY:

CITY OF SAN ANTONIO

By: _____
Name: _____
Title: _____

ATTEST:

By: _____
CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

THE STATE OF TEXAS §

§

COUNTY OF BEXAR §


This instrument was acknowledged before me on the ____ day of _____, 2016,
by _____ of CITY OF SAN ANTONIO,
a Texas municipal corporation, on behalf of said corporation.

[Seal]

Notary Public in and for the State of Texas

WITTE:

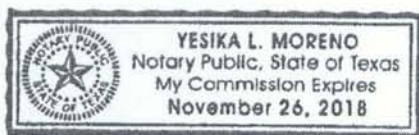
THE WITTE MUSEUM

By: 
Name: Marise McDermott
Title: President and CEO

THE STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This instrument was acknowledged before me on the 14 day of December, 2016,
by Marise McDermott, President and CEO of THE WITTE MUSEUM, a
Texas not-for-profit corporation, on behalf of said corporation.

[Seal]



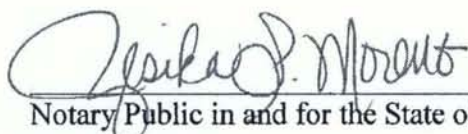

Notary Public in and for the State of Texas

EXHIBIT A
TO
MEMORANDUM OF LEASE

DESCRIPTION OF PREMISES

[To be attached]

Existing Leased Area = 4.30 acres
Proposed Lease Area = 4.28 acres
Total Proposed Area = 8.58 acres

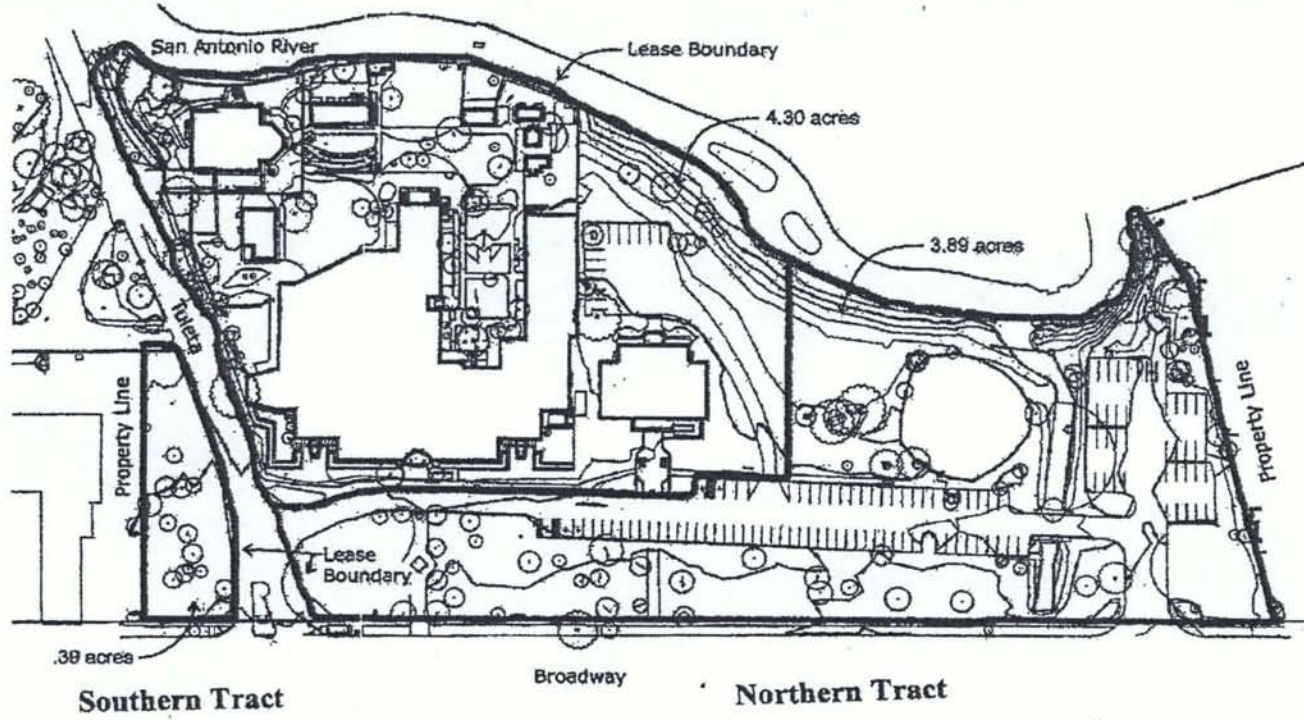


EXHIBIT A-1
TO
MEMORANDUM OF LEASE

DESCRIPTION OF MAYS FAMILY CENTER

[To be attached.]

EXHIBIT A-2
TO
MEMORANDUM OF LEASE

DESCRIPTION OF FEIK FAMILY PAVILION

[To be attached.]

EXHIBIT A-3
TO
MEMORANDUM OF LEASE

DESCRIPTION OF ADMISSION BUILDING

[To be attached.]