

AN ORDINANCE 2017-08-31-0621

AUTHORIZING A MASTER LEASE AGREEMENT WITH THE ALAMEDA THEATER CONSERVANCY FOR CITY-OWNED PROPERTY LOCATED AT 318 W. HOUSTON IN CITY COUNCIL DISTRICT 1 AND KNOWN AS THE ALAMEDA THEATER AND ANNEX PROPERTY.

* * * * *

WHEREAS, the City of San Antonio (the "City"), Bexar County (the "County"), Alameda Theater Conservancy ("ATC") and Texas Public Radio ("TPR") have negotiated the terms and conditions of a Funding and Development Agreement to provide a cumulative amount of \$23 million for the renovation and restoration of the historic Alameda Theater and adjacent annex (the "Project"); and

WHEREAS, the City will maintain ownership of the property, including the theater and annex, and has agreed to lease the property to the Alameda Theater Conservancy (ATC) to undertake project management of the restoration and renovation of the theater and to oversee TPR's construction of improvements to the annex property to be occupied by TPR and used as its corporate headquarters and broadcasting operations; and

WHEREAS, ATC shall be the property manager of the Project serving as landlord to TPR and operator of the Alameda Theater; **NOW THEREFORE:**

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

SECTION 1. The City Council approves the terms and conditions of a Master Lease Agreement with ATC for the Alameda Theater property, to include the annex, located at 318 W. Houston in City Council District 1.

SECTION 2. The City Manager or her designee is authorized to execute the Master Lease Agreement in accordance with this Ordinance. A copy of the Master Lease Agreement shall be attached to this Ordinance upon execution as **Exhibit A**.

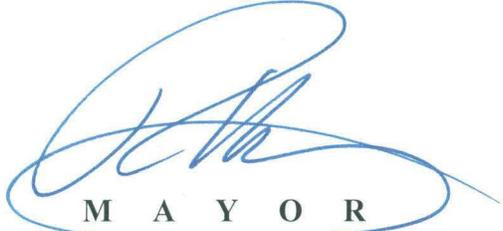
SECTION 3. Funds generated by this ordinance will be deposited into Fund 11001000, Internal Order 219000000025 and General Ledger 4401110.

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.

RR
08/31/17
Item No. 28B

SECTION 5. This Ordinance shall be effective immediately upon passage by at least eight (8) votes and the 10th day after passage by fewer than eight (8) votes.

PASSED AND APPROVED this 31st day of August, 2017.



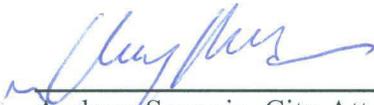
M A Y O R
Ron Nirenberg

ATTEST:



Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:



Andrew Segovia, City Attorney

Agenda Item:	28B (in consent vote: 7, 8, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28A, 28B)						
Date:	08/31/2017						
Time:	09:24:59 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing a Master Lease Agreement with the Alameda Theater Conservancy for city-owned property located at 318 W. Houston in City Council District 1 and known as the Alameda Theater and Annex Property.						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ron Nirenberg	Mayor		x				
Roberto C. Treviño	District 1		x			x	
William Cruz Shaw	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Greg Brockhouse	District 6		x				
Ana E. Sandoval	District 7		x				
Manny Pelaez	District 8		x				
John Courage	District 9		x				x
Clayton H. Perry	District 10		x				

RR
08/31/17
Item No. 28B

EXHIBIT A

ALAMEDA THEATER MASTER LEASE AGREEMENT

BETWEEN THE CITY OF SAN ANTONIO AND THE ALAMEDA THEATER CONSERVANCY

THIS ALAMEDA THEATER MASTER LEASE AGREEMENT (this "*Lease*") is executed by and between the CITY OF SAN ANTONIO, a Texas municipal corporation, ("*Landlord*") and the ALAMEDA THEATER CONSERVANCY, a Texas non-profit entity ("*Tenant*") to be effective September ___, 2017 (the "*Effective Date*"). Capitalized terms used in this Lease that are not defined in the body of this Lease are defined in Appendix 1 attached hereto.

RECITALS

A. Landlord is owner of real property located at 318 W. Houston St., San Antonio, TX 78205 as more particularly described in Exhibit A (the "*Property*").

B. A local effort to redevelop the Property has resulted in a Funding and Development Agreement (the "*Funding Agreement*") among Landlord, Tenant, Bexar County and Texas Public Radio ("*TPR*") that provides funds for redevelopment of the Property and designates Tenant as the entity to manage and oversee such redevelopment and the future operations and programming of the Property.

C. The pursuit and completion of such redevelopment project will further important Landlord policy goals, including the preservation of historic and culturally significant resources and increasing jobs, investment and cultural programing in downtown San Antonio.

D. Landlord expressly acknowledges and agrees that, in accordance with the Funding Agreement and this Lease, Tenant is providing goods and services directly to and for the benefit of Landlord, and the goods and services provided by Landlord directly and substantially benefit Landlord.

E. Under the terms of this Lease, Landlord and Tenant shall each be responsible for their respective obligations.

F. Landlord and Tenant agree to diligently pursue tax credits, including historic and new market tax credits, for the benefit of the Alameda Project and to take necessary steps in the future to pursue and obtain such tax credits, to include amending the terms of this Agreement should it be necessary, in an expedient manner

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, Landlord and Tenant do hereby agree as follows:

ARTICLE I
DESCRIPTION OF PREMISES; TERM

1.1 Premises. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises to be redeveloped, occupied and used solely for the Permitted Uses.

1.2 Initial Term. The initial term of this Lease (the "**Initial Term**") shall be for a period of nineteen (19) years commencing on the Effective Date and expiring at 11:59 p.m., local time, on _____, 20__ (the "**Expiration Date**"), unless sooner terminated or extended in accordance with the provisions of this Lease.

1.3 Extension Options. The Term of this Lease may be extended for up to three (3) successive periods of ten (10) years (each, an "**Extension Period**") unless Tenant delivers to Landlord written notice electing not to exercise such option, such notice to be delivered to Landlord on or before the two hundred seventieth (270th) day preceding the expiration of the Initial Term or the Extension Period then in effect. References to the word "**Term**" in this Lease shall include the Initial Term and each effective Extension Period, collectively.

ARTICLE II
PERMITTED USES

2.1 Permitted Uses. The Premises may be used for the following purposes: performing arts venue, community events venue, school uses and uses commonly associated with amphitheatres, general offices uses, radio studio space, and any other purpose permitted under an Approved Sublease, or other uses approved by the board of ATC. The Premises may also be used for purposed of completion the construction, repair and renovations contemplated pursuant to the Funding Agreement and any other construction, repair, renovations or rebuilding permitted under this Lease or any Approved Sublease.

2.2 Non-Discrimination. Tenant shall not discriminate against any person or persons because of race, color, religion, national origin, age, sex, sexual orientation, gender identity, veteran status or disability in the development, improvement and conduct of operations on the Premises.

ARTICLE III
SUBLEASES AND ENCUMBRANCE OF SUBLEASE PREMISES

3.1 Approved Sublease. Referenced is hereby made to that certain Sublease Agreement (the "**TPR Sublease**") by and between Tenant, as sublessor, and TPR, as sublessee, dated as of even date herewith and that certain Recognition, Non-Disturbance and Attornment Agreement (the "**TPR Recognition Agreement**") between Landlord and TPR. Except for the TPR Sublease, Tenant may not transfer or assign its interest under this Lease, in whole or in part, or sublet the Premises, in whole or in part, without the prior, written approval of Landlord, which approval shall be obtained prior to the execution of any such sublease by Tenant (any such approved sublease and the TPR Sublease being referred to herein sometimes as an "**Approved Sublease**").

3.2 No Encumbrance of Landlord's Interests. Irrespective of any terms set forth in any Approved Sublease, Landlord will not be required to encumber its fee simple estate in the Premises with any lien or other encumbrance whatsoever and will not be obligated to execute or subordinate its interest in the Premises to any Leasehold Mortgage securing any indebtedness of any Subtenant or Tenant. Neither Tenant nor any Subtenant may grant any underground, surface or aerial easements encumbering any part of the Land without first obtaining Landlord's approval unless such easements expressly terminate upon the termination of this Lease or the Approved Sublease (as applicable).

3.3 Non-Disturbance and Attornment. Landlord, at the request of a Tenant or a Subtenant, shall enter into non-disturbance and attornment agreements with one or more Leasehold Lenders in a form reasonably acceptable to Landlord.

3.4 Notice of Default. Each Approved Sublease shall obligate each party to the Approved Sublease to provide to Landlord copies of any notice(s) of default given by such party to the other party at the same time that such notice(s) of default are given.

3.5 Tenant's Right to Finance. Tenant shall not have the right to mortgage its leasehold estate under this Lease unless it obtains the prior written consent of Landlord, to be given or withheld in Landlord's sole discretion.

3.6 Subtenant's Leasehold Mortgage. If authorized under the terms of an Approved Sublease, a Subtenant may encumber its leasehold estate thereunder by a Leasehold Mortgage that is consistent with the terms of the Approved Sublease.

3.7 Covenant to Enforce. Tenant covenants and agrees to enforce the payment and performance obligations of each Subtenant under each Approved Sublease.

3.8 Right of Re-Entry. Landlord reserves the right of ingress and egress for its agents, employees and permittees over and across the Premises for all reasonable purposes of Landlord. The exercise of such rights by Landlord shall not unreasonably interfere with or disturb the operations of Tenant or any Subtenant and Landlord shall give reasonable notice (not less than 48 hours) prior to exercising such rights, except in the case of an emergency.

ARTICLE IV RENT AND EXPENSES

4.1 Base Rent. For each calendar year during the Term, Tenant agrees to pay in advance the sum of Ten Dollars (\$10.00) (the "**Base Rent**"). Base Rent for the first year shall be payable upon execution of this Lease, and thereafter on or before January 1 of each succeeding calendar year. The Base Rent shall be paid in lawful money of the United States of America, at such place or places as Landlord may from time to time designate. The obligations of Tenant hereunder shall be separate and independent covenants and agreements, and the Base Rent, Additional Rent (defined below), and all other sums payable by Tenant hereunder shall continue to be payable in all events without deduction or offset, prior notice or demand.

4.2 Other Expenses. Except for the Landlord Maintenance Obligations or otherwise expressly provided in this Lease, Tenant shall pay directly all expenses of every kind and nature relating to or arising from the Premises, including Impositions and expenses arising from the leasing, management, operation, maintenance, repair, use or occupancy of the Premises.

4.3 Net Lease. Except for the Landlord Maintenance Obligations or otherwise expressly provided in this Lease, this is an absolutely net lease. Accordingly, Landlord shall not have any liability or responsibility for any expense or charge for the Premises.

4.4 Impositions. Throughout the Term, Tenant shall pay, or cause to be paid, all Impositions as and when same shall become due and payable, provided that Tenant may pay any Imposition in installments if permitted by Law. Notwithstanding the foregoing, Tenant shall not be responsible for any Impositions that accrued prior to the Effective Date, or any fines, fees, charges, penalties or interest imposed by any Governmental Authority with respect to periods of time prior to the Effective Date or with respect to any violation of Law issued and outstanding as of the Effective Date not caused by Tenant.

a. Tenant shall pay or cause to be paid all Impositions directly to the Governmental Authority charged with the collection thereof and provide to Landlord, upon request, copies or other evidence reasonably satisfactory to Landlord of payment. Tenant may contest or permit a Subtenant to contest the collection or assessment of any Imposition by legal proceedings or other appropriate action. If Tenant so elects to contest or permit a Subtenant to contest such amounts, Tenant shall, prior to the prosecution or defense of any such claim, notify Landlord in writing of its decision to pursue such contest and, to the extent procedurally required and to avoid the consequences of delinquency, Tenant (or the Subtenant) shall pay the amount in question prior to initiating the contest. After the conclusion of such contest, Tenant or the Subtenant (as applicable) shall pay the amount, if any, determined to be due.

b. If a Leasehold Mortgage requires escrow payments of any Impositions, such escrow will be evidence of satisfaction of Section 4.4, above, provided that Tenant shall remain obligated to cause all Impositions to be timely paid to the applicable Governmental Authorities in accordance with such Approved Sublease and provide Landlord with proof of timely payment.

c. If all or any part of an Imposition is refunded (whether through cash payment or credit against future or other Impositions), the party who paid the Imposition to which the refund relates shall be entitled to the refund.

d. Because the Premises are publicly owned and/or currently used for public purposes, Landlord and Tenant contemplate that Tenant's leasehold estate will be exempt from taxation. If taxes are assessed in the future, Tenant may protest such assessment, as set forth in Section 4.4.a, above. However, in no event shall Landlord be required to join in such protest by Tenant or incur any costs associated with the protest.

4.5 Invoices for Additional Rent. Landlord may (but shall have no duty to) invoice Tenant for any amounts representing Additional Rent, and such invoices shall be paid by Tenant within thirty (30) days of the date of such invoice. Landlord's delay in rendering, or failure to

render, any statement or bill for Additional Rent for any expense will not waive Landlord's right to thereafter render a statement or collect such Additional Rent for that or any subsequent period. If Landlord delivers to Tenant an incorrect statement or invoice for any Additional Rent, Landlord shall have the right to give Tenant a corrected statement and to collect the corrected amount without liability of any kind to Tenant.

ARTICLE V
DELIVERY OF PREMISES

5.1 "AS IS", "WHERE IS". Except as otherwise expressly provided in this Lease, Tenant hereby accepts the Premises from Landlord on an "**AS IS**", "**WHERE IS**" basis with all faults. Tenant hereby accepts the Premises as being in good and satisfactory condition and suitable for Tenant's intended purposes.

5.2 No Representations or Warranties. OTHER THAN THE FUNDING AGREEMENT, THIS LEASE CONTAINS THE ENTIRE AGREEMENT BETWEEN LANDLORD AND TENANT WITH RESPECT TO THE SUBJECT MATTER HEREOF AND SUPERSEDES ANY AND ALL PRIOR AND CONTEMPORANEOUS AGREEMENTS, UNDERSTANDINGS, PROMISES AND REPRESENTATIONS MADE BY EITHER PARTY TO THE OTHER CONCERNING THE SUBJECT MATTER HEREOF AND THE TERMS APPLICABLE HERETO OTHER THAN THE FUNDING AGREEMENT. AS A MATERIAL CONSIDERATION FOR THE EXECUTION OF THIS LEASE, THERE HAVE BEEN NO REPRESENTATIONS, UNDERSTANDINGS, STIPULATIONS, AGREEMENTS OR PROMISES PERTAINING TO THE PREMISES, IMPROVEMENTS THEREON OR THIS LEASE NOT INCORPORATED IN WRITING HEREIN, AND THIS LEASE SHALL NOT BE ALTERED, WAIVED, AMENDED OR EXTENDED, EXCEPT BY A WRITTEN AGREEMENT SIGNED BY THE PARTIES HERETO, UNLESS OTHERWISE EXPRESSLY PROVIDED HEREIN. LANDLORD'S OBLIGATIONS ARE LIMITED TO THOSE EXPRESSLY SET FORTH IN THIS LEASE, AND SHALL NOT INCLUDE ANY IMPLIED OBLIGATIONS, DUTIES OR WARRANTIES, ALL OF WHICH ARE DISCLAIMED BY LANDLORD AND WAIVED BY TENANT. IN PARTICULAR, AND WITHOUT LIMITING THE FOREGOING, LANDLORD DISCLAIMS, AND TENANT WAIVES, ANY WARRANTY AS TO THE CONDITION OF THE PREMISES (AND ALL IMPROVEMENTS THEREON), THE ACCURACY OF THE LEGAL DESCRIPTION SET FORTH ON EXHIBIT A ATTACHED HERETO, THE EXISTENCE OF ANY ENCROACHMENTS, AND THE MERCHANTABILITY, HABITABILITY, SUITABILITY OR FITNESS FOR ANY PARTICULAR USE OR PURPOSE OF THE PREMISES OR ANY PART THEREOF. TENANT ACKNOWLEDGES THAT TENANT HAS HAD ADEQUATE OPPORTUNITIES TO INSPECT THE PREMISES, ALL IMPROVEMENTS THEREON AND ALL OTHER ASPECTS OF THE PREMISES WHICH ARE CONTAINED IN THIS DISCLAIMER OR OTHERWISE.

5.3 Ingress-Egress. Without limiting the foregoing, Landlord makes no representation or warranty of any kind concerning access to and from the Premises, or any part thereof. Tenant shall be solely responsible for securing access to the Premises and all parts thereof.

ARTICLE VI
UTILITIES, STORMWATER CONTAINMENT AND INFRASTRUCTURE

6.1 Utilities. Landlord shall have no responsibility or liability for the availability, unavailability, discontinuation, use or loss of use of water, wastewater, gas, electricity, sewer, telephone, cable television, Internet, communication services, and all other services and utilities, and the connections or hook-ups for such utilities for the Premises, and any costs associated therewith.

6.2 Stormwater Detention. Landlord shall have no responsibility or liability for compliance with any requirements of any Governmental Authority for the capture, containment or detention of stormwater run-off on any part of the Premises.

6.3 Utility Infrastructure. Landlord shall have no responsibility or liability for the installation of future utility infrastructure or the maintenance or repair of any existing utility infrastructure.

ARTICLE VII
INDEMNIFICATION

7.1 Indemnity. The Parties acknowledge that Landlord is a political subdivision of the State of Texas and is subject to, and complies with the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001, *et. seq.*, and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death.

7.2 Landlord's Disclaimer of Liability. Landlord shall not be liable for any bodily or personal injury or property damage to either persons or property sustained by Tenant, its employees, agents, contractors, workers or other persons if caused by any act or omission of Tenant, its employees, agents or contractors or any other occupants of the Premises. Any and all persons performing any work in the Premises on behalf of Tenant, whether as an employee, representative, agent, volunteer or otherwise, will be the sole responsibility and obligation of Tenant. Any and all Claims for which Tenant may be held liable under any workers' compensation, unemployment compensation, disability benefits law or under any similar law applicable to such employees, agents, contractors or workers will be the sole obligation and responsibility of Tenant.

7.3 Governmental Immunity and Third-Party Rights. The provisions of this Article VII are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity or waive any governmental immunity available to Tenant or Landlord under Texas law or waive any other defenses available to Tenant or Landlord under Texas law.

ARTICLE VIII
INSURANCE

8.1 Tenant's Insurance Requirements. Throughout the Term of this Lease Tenant shall be required to maintain the insurance described on the attached Exhibit "C".

8.2 Notices for Insurance Purposes. So long as such endorsements and coverage is commercially available, any insurance policies required from Tenant hereunder shall provide for notification of Landlord in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, or ten (10) days' notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement certificate of insurance.

8.3 Right to Purchase Insurance Upon Default. If Tenant fails to secure or maintain insurance required under this Lease, or fails to secure and maintain the aforementioned endorsements, Landlord may (but will have no obligation or duty to) obtain such insurance and shall be reimbursed for the amount of the premiums for such insurance and other related costs by Tenant upon demand and/or deduct and retain such amounts from any sums due to Tenant under this Lease, if any, at Landlord's sole discretion. Procuring of said insurance by Landlord, however, is not the exclusive remedy for failure of Tenant to maintain said insurance or secure said endorsements. In addition to any other remedies Landlord may have upon Tenant's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required or fails to reimburse Landlord if Landlord should elect to purchase any such insurance in accordance herewith, Landlord shall have the right to terminate this Lease.

8.4 Governmental Immunity and Third-Party Rights. The provisions of this Article VIII are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity or waive any governmental immunity available to Tenant or Landlord under Texas law or waive any other defenses available to Tenant or Landlord under Texas law.

ARTICLE IX
CASUALTY

9.1 Landlord Self-Insurance. The Parties agree that Landlord shall self-insure the Property against damage from any Casualty during the Term of this Lease. As such, Landlord shall release funds to Tenant sufficient to fully complete the Restoration Work and reimburse Tenant and any Subtenant for any Casualty Loss (excluding damages to the personal property of Tenant or any Subtenant).

9.2 Approvals. Following a Casualty, Tenant shall submit all proposed plans and specifications for the Restoration Work to the City Manager or his/her designee for review and approval prior to submitting any plans to obtain a building permit (such review and approval to be separate and apart from any approvals which may be required to be obtained from City in the exercise of its municipal authority). If the City Manager or his/her designee fails to raise any objection to the proposed plans and specifications within thirty (30) days following their submission to the City Manager or his/her designee, the proposed plans and specifications shall

be deemed approved. The City Manager or his/her designee's prior, written approval shall be required prior to any Restoration Work and for any material modification, alteration or amendment of any plans and specifications for such Restoration Work.

9.3 Abatement During Restoration. All obligations of Landlord and Tenant under the terms of this Lease that are inconsistent with the damaged state of the Improvements shall be abated from the date of such Casualty until the restoration and rebuilding of the Improvements to Substantial Completion.

9.4 Delivery of Information. In the event of a Casualty, Landlord and Tenant agree to promptly deliver to the other any and all information it has or may receive concerning the Casualty including, without limitation, its causation, the Casualty Loss and the availability of Insurance Proceeds.

9.5 Restoration Work. Upon receipt of the funding from the City, Tenant shall promptly commence and diligently pursue to completion the Restoration Work in accordance with the plans approved pursuant to Section 9.2 above.

ARTICLE X CONSTRUCTION STANDARDS

Any and all construction, alterations, renovations, repairs, Restoration Work or other work with regard to the Premises (whether or not undertaken in response to a Casualty) shall be performed, in all material respects, in accordance with the terms of the City Manager or his/her designee's approval under Section 9.2 (as applicable to Restoration Work) and the following Construction Standards:

10.1 Good and Workmanlike Manner. All work shall be performed in a good and workmanlike manner, substantially in accordance with plans and specifications and good industry practices for the type of work in question.

10.2 Compliance. All work shall be done in compliance with all applicable building codes, ordinances and other Law or regulations of governmental authorities having jurisdiction over the Premises, or any portion thereof.

10.3 Governmental Approvals. No work shall commence prior to the receipt of all required licenses, permits and authorizations required by all governmental authorities having jurisdiction over the Premises or any portion thereof.

10.4 Insurance; Bonds. No work shall commence until Landlord has been provided with insurance coverage and payment and performance bonds reasonably acceptable to Landlord.

10.5 Exclusions. The provisions of this Article X shall not apply to any construction, alterations, renovations, repairs, restoration work or other work related to any Improvements that are subject to the Funding Agreement or an Approved Sublease. Landlord and Tenant agree that the terms of the applicable Approved Sublease will govern all rights and obligations related to

any construction, alterations, renovations, repairs, restoration work or other work related to the portion(s) of the Premises subject to that Approved Sublease and that the terms of the Funding Agreement will govern all rights and obligations related to any construction, alterations, renovations, repairs, restoration work or other work performed under the Funding Agreement.

ARTICLE XI CONDEMNATION

11.1 Conditions for Termination. If all or any part of the Premises should be taken for any public or quasi-public use under applicable Law, or by right of eminent domain or should be sold to the condemning authority in lieu of condemnation, then this Lease shall terminate as to that portion of the Premises taken of the date when physical possession of such Premises is taken by the condemning authority. This Lease shall not terminate as to any portion of the Premises that is not taken.

11.2 Restoration Upon Condemnation. If the remaining Premises are capable of restoration to permit the Permitted Uses, the procedures and requirements set forth in this Lease concerning the Restoration Work will apply to the restoration following such taking or sale as if the award in condemnation or consideration received from the condemning authority were the Insurance Proceeds, it being understood that the restoration of any portion of the Premises covered by an Approved Sublease shall be governed by the Approved Sublease.

11.3 Rights to Condemnation Proceeds. For any taking described in Section 11.1, above, Landlord shall be entitled to all of the consideration (whether payment or award) for such Premises so taken or sold, subject to the rights of a Subtenant under an Approved Sublease.

ARTICLE XII REPAIRS AND MAINTENANCE

12.1 Landlord Maintenance Obligations. Landlord shall, at its own risk and expense, maintain or cause to be maintained (a) all portions of the building roof, (b) all portions of the building foundation, (c) all portions of the building walls and exterior facades, and (d) all heating and air conditioning systems for the building (collectively, the “**Landlord Maintenance Obligations**”). Landlord shall perform the Landlord Maintenance Obligations in a manner so as to the keep the building’s roof, foundation, walls, exterior facades, and heating and air conditioning systems in first class condition and repair, reasonable wear and tear excepted. Landlord hereby expressly acknowledges TPR as a third party beneficiary of the Landlord Maintenance Obligations.

12.2 Tenant Maintenance Obligations. Excluding the Landlord Maintenance Obligations, Tenant shall, at its own risk and expense, maintain or cause to be maintained (a) all parts of the Improvements including (without limitation) the equipment, furniture, fixtures, mechanical systems, boiler, plumbing systems, utility connections and infrastructure, lighting systems, sound systems, or other similar items, all of which shall at all times be kept in first class condition and repair (whether new or restored Improvements), reasonable wear and tear excepted; and (b) all parts of the Improvements free from waste at all times, and in a clean, sanitary and safe condition in accordance with all applicable Law, ordinances, regulations and

standards of any governmental authority having jurisdiction over the operation of the Premises. Tenant shall keep or cause to be kept the Premises reasonably neat, clean, and free from dirt or rubbish at all times.

ARTICLE XIII EVENTS OF DEFAULT

13.1 Tenant's Default. An Event of Default by Tenant will exist if:

a. Monetary Default. Tenant fails to pay or perform any of its monetary obligations under this Lease within thirty (30) days after Landlord has furnished written notice of such default to Tenant.

b. Insolvency. The sale of Tenant's interest in the Premises (or any part thereof) under attachment, execution or similar legal process, or the making by Tenant of an assignment for the benefit of creditors, or the appointment of a receiver or trustee for the business or property of Tenant, unless such appointment shall be vacated within sixty (60) days of its entry, or Tenant shall make a transfer in fraud of its creditors.

c. Bankruptcy. The commencement of a case under the Federal Bankruptcy Code by or against Tenant, or the filing of a voluntary or involuntary petition proposing the adjudication of Tenant as bankrupt or insolvent under any state or federal bankruptcy or insolvency law, or an arrangement by Tenant with its creditors, unless the petition is filed by a party other than Tenant and is withdrawn or dismissed within sixty (60) days after the date of its filing.

d. Termination of Existence. Tenant's existence shall have terminated, whether voluntarily or involuntarily.

e. Execution or Levy on Premises. A lien, judgment or attachment is filed against any portion of the Land or Improvements (except as permitted under an Approved Sublease) for any other reason, and such lien, judgment or attachment is not released or removed within sixty (60) days of the creation of such lien, by bonding, substitution of collateral or otherwise.

f. Other Non-Monetary Defaults. Tenant fails to cure a default by Tenant in the performance of any covenant, agreement or obligation of Tenant under this Lease (excluding a default described in Sections 13.1. a through 13.1. e, above) within sixty (60) days after Landlord has furnished to Tenant written notice of such default, provided, however, if such default is curable but cannot reasonably be cured by the exercise of reasonable diligence within such sixty (60) day period, then such failure to cure will not be an Event of Default if (i) within such sixty (60) day period Tenant gives written notice to Landlord setting forth the reasons that such default cannot be cured by the exercise of reasonable diligence within such sixty (60) day period and Tenant's reasonable estimate of the amount of time which will be required to effect such cure, (ii) Tenant commences curative action within such sixty (60) day period and thereafter diligently pursues the curative action, (iii) upon request of Landlord, but in no event more often than monthly, Tenant provides written notice to Landlord of the efforts undertaken by

Tenant, the curative work remaining to be done and the estimated time required for completion of the curative action, and (iv) such default is cured within six (6) months from the date of Tenant's receipt of the notice of default.

13.2 Remedies. Upon the occurrence of an uncured Event of Default, Landlord may do any one or more of the following:

a. Terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord, and if Tenant fails to do so, Landlord may, without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying said Premises or any part thereof (subject to any Recognition and Non-Disturbance Agreement previously entered into between Landlord and a Subtenant);

b. Without terminating this Lease, enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying said Premises or any part thereof (subject to any Recognition and Non-Disturbance Agreement previously entered into between Landlord and a Subtenant), and, if Landlord so elects, relet the Premises (subject to any Recognition and Non-Disturbance Agreement previously entered into between Landlord and a Subtenant) on such terms as are reasonable and as Landlord may deem advisable and receive the rent therefor;

c. Perform, at Landlord's sole election and on behalf and at the expense of Tenant, any obligation of Tenant under this Lease which Tenant has failed to perform and of which Landlord shall have given Tenant notice, the cost of which performance by Landlord, together with interest thereon at the highest lawful rate, shall be payable by Tenant to Landlord upon demand; or

d. Exercise any other legal or equitable right or remedy which it may have, subject to the non-recourse limitations in this Lease, including the right to enjoin prohibited uses and to specifically enforce the Permitted Uses restrictions of this Lease.

13.3 No Election of Remedies, Non-Waiver. If Landlord elects to re-enter or take possession of the Premises after Tenant's default, Tenant hereby waives notice of such re-entry or repossession and of Landlord's intent to re-enter or retake possession. Pursuit of any of the remedies set forth in Section 13.2 above will not preclude pursuit of any other remedies herein provided or provided by Law, nor shall pursuit of any other such remedy constitute a forfeiture or waiver of any rent due to Landlord hereunder or of any damages occurring to Landlord by reason of the violation of any of the terms, provisions and covenants herein contained. Forbearance by Landlord to enforce one or more of the remedies herein provided upon an Event of Default shall not be deemed or construed to constitute a waiver of the Event of Default that is the basis therefor. The loss or damage which Landlord may suffer by reason of termination of this Lease or the deficiency arising by reason of any reletting by Landlord, as above provided, shall include the expense of repossession and of correcting any unrepaired conditions in the Premises.

13.4 Re-entry by Landlord. Tenant agrees that any 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, and Landlord shall not be liable in trespass or otherwise. Rightful exercise by Landlord of any one or more remedies hereunder granted or otherwise available shall not be deemed to be an acceptance of surrender of the Premises by Tenant, whether by oral agreement or by operation of Law, it being understood that such surrender can be affected only by the written acceptance by Landlord. No alteration of security devices and no removal or other exercise of dominion by Landlord over the property of Tenant or others at the Premises shall be deemed unauthorized or constitute a conversion, Tenant hereby consenting, after any Event of Default, to the aforesaid exercise of dominion over Tenant's property (or others) within the Premises.

13.5 Tenant's Continuing Liability. If Landlord elects to repossess the Premises without terminating this Lease, Tenant shall be liable for and shall pay to Landlord all rent, Sublease Revenue and other indebtedness incurred or accrued to the date of such repossession, plus rent required to be paid by Tenant to Landlord during the remainder of this Lease Term until the date of expiration of the Term as provided for herein, diminished by any net sums thereafter received by Landlord through reletting the Premises during said period (after deducting expenses incurred by Landlord as provided for herein). In no event shall Tenant be entitled to any excess of any rent obtained by reletting over and above the rent herein reserved. Landlord shall use its best efforts to attempt to relet the Premises.

13.6 Landlord's Expenses of Enforcement. Following any Event of Default by Tenant, Tenant shall also be liable for and shall pay to Landlord, in addition to any sum provided to be paid above, and all reasonable expenses incurred by Landlord in enforcing Landlord's remedies, including without implied limitation, reasonable attorney's fees.

13.7 Remedies in Event of Bankruptcy or Other Proceeding. In addition to Landlord's rights and remedies established by Law or set forth elsewhere in this Lease, upon the occurrence of any insolvency event described in Section 13.1, Landlord shall have the following rights and remedies with respect to Tenant or Tenant as debtor-in-possession or the trustee appointed in any such proceeding, being collectively referred to as "Tenant" only for the purposes of this Section 13.7:

a. If Tenant assumes this Lease and proposes to assign the same (pursuant to Title 11 U.S.C. § 365, or as the same may be amended) then notice of such proposed assignment, setting forth (x) the name and address of such proposed assignee, (y) all of the terms and conditions of such offer, and (z) the adequate assurance to be provided to Landlord including, without limitation, the assurances referred to in Title 11 U.S.C. § 365(b)(1)(C), as it may be amended, must be provided to Landlord no later than thirty (30) days prior to the date that Tenant shall make application to such court for approval to enter into such assignment, and Landlord shall thereupon have the prior right and option, to be exercised by notice to Tenant given at any time prior to the effective date of such proposed assignment, to accept, or to cause Landlord's designee to accept, an assignment of this Lease upon the same terms and conditions and for the same consideration, if any, as the bona fide offer made by such proposed assignee less any brokerage commissions which may be payable out of the consideration to be paid by such proposed assignee for the assignment of this Lease;

b. If Tenant assumes this Lease and proposes to assign the same, and Landlord does not exercise its option pursuant to Section 13.7. a, above, in addition to all of Landlord's rights and remedies established by Law or set forth elsewhere in this Lease, Tenant hereby agrees that:

i. such assignee shall assume in writing all of the terms, covenants and conditions of this Lease and such assignee shall provide Landlord with assurances satisfactory to Landlord that it has the experience in operating facilities having the same or substantially similar uses as the Permitted Use, sufficient to enable it so to comply with the terms, covenants and conditions of this Lease and successfully operate the Premises;

ii. if such assignee makes any payment to Tenant, or for Tenant's account, for the right to assume this Lease (including, without limitation, any lump sum payment, installment payment or payment in the nature of rent over and above the Base Rent and Impositions payable under this Lease), Tenant shall pay over to Landlord ninety percent (90%) of any such payment; and

iii. such assignee shall be a non-profit corporation chartered by City.

c. All reasonable costs and fees of attorneys and other professionals expended by Landlord as a result of any of the insolvency events described in Section 13.1 or in this Section 13.7 shall be repaid to Landlord by Tenant upon demand.

13.8 Surrender of the Premises. Upon the expiration or earlier termination of this Lease, or upon the exercise by Landlord of its right to re-enter the Premises without terminating this Lease, Tenant shall immediately surrender the Premises and all keys, security codes and other access requirements for the Premises to Landlord, together with all of Tenant's permanent alterations, and all of Tenant's other permanent Improvements in good order, condition and repair, except for ordinary wear and tear and casualty. Upon the expiration of this Lease, Tenant will, if requested by Landlord, execute a Release of Lease, in recordable form, containing Tenant's release of all its interest in the Premises and such other documents as Landlord may reasonably request in connection therewith. The provisions of this Section 13.8 are subject to the terms of any Recognition and Non-Disturbance Agreement previously entered into between Landlord and a Subtenant.

13.9 Ownership. All Improvements, alterations, additions and betterments to the Premises by Tenant or all Subtenants shall become the property of Landlord on the Expiration Date or earlier date of the termination of this Lease (subject to any Recognition and Non-Disturbance Agreement previously entered into between Landlord and a Subtenant).

13.10 Force Majeure. Whenever a period of time is prescribed for the performance of a party's covenant, agreement or obligation under this Lease, other than the covenant, agreement or obligation to pay money, there will be excluded from the computation of such period of time any delay in such party's performance resulting from a Force Majeure Event. Each party shall use commercially reasonable efforts to mitigate delays caused by such Force Majeure Event. When such Force Majeure Event has occurred, each affected party shall provide notice to the

other party, within a reasonable time after the Force Majeure Event, of (a) the nature of the Force Majeure Event, (b) the effect of the Force Majeure Event on such party's ability to perform under this Lease, and (c) the expected duration of such inability to perform, if known. When a Force Majeure Event no longer prevents such party from (x) performance of its obligations under this Lease, or (y) satisfying the conditions precedent to such party's obligations, it shall immediately give the party written notice to that effect and shall resume performance under this Lease no later than two (2) Business Days after the notice is delivered.

ARTICLE XIV
NOTICES

Any notice or communication required or permitted hereunder shall be in writing and (a) personally delivered, (b) sent by United States regular and/or registered or certified mail, postage prepaid, return receipt requested, (c) sent by Federal Express or similar nationally recognized overnight courier service, or (d) transmitted by facsimile with a hard copy sent within two (2) Business Days by any of the foregoing means. Any address, including billing address, for notice may be changed by written notice. Such notice shall be deemed to have been given upon the date of actual receipt or delivery (or refusal to accept delivery), as evidenced by the notifying party's receipt of written or electronic confirmation of such delivery or refusal, if received by the party to be notified before 5:00 p.m., San Antonio, Texas time, with delivery made after 5:00 p.m. to be deemed received on the following business day. For purposes of notice, the addresses of the parties shall be as follows:

If to Landlord:

100 Military Plaza, First Floor
San Antonio, Texas 78207
Attention: City Clerk of the City

With copy to:

100 Military Plaza, Third Floor
San Antonio, Texas 78207
Attention: City Attorney

If to Tenant:

San Antonio, TX 782__

Each party may, from time to time, change its respective address(es), and each has the right to specify as its address any other address within the United States of America by giving at least five (5) days' written notice to the other party.

ARTICLE XV
MISCELLANEOUS

15.1 Entire Agreement. Neither Landlord nor Tenant nor any of their agents have made any statement, promises or agreements verbally or in writing in conflict with terms of this Lease. Any and all representations by either of the parties or their agents made during the negotiations prior to execution of this Lease and which representations are not contained in the provisions hereof shall not be binding upon either of the parties hereto. It is further agreed that this Lease contains the entire agreement between the parties, and no rights are to be conferred upon Landlord or Tenant until this Lease has been executed by both parties hereto.

15.2 Meaning. All terms and words used in this Lease, regardless of the number and gender in which they are used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context or sense of this Lease or any section or clause herein may require, the same as if such words had been fully and properly written in number and gender.

15.3 Counterparts. This Lease may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but such counterparts together shall constitute one and the same instrument.

15.4 No Partnership. The Landlord and Tenant are not and shall not be considered either joint venturers or partners and neither shall have power to bind or obligate the other except as set forth herein.

15.5 Severability. If any provision of this Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons whose circumstances are other than those to which it is held invalid or unenforceable, shall not be affected thereby.

15.6 Amendment. No modification, alteration or amendment of this Lease shall be binding unless in writing and executed by the parties hereto, their successors or assigns, and to the extent any modifications, alterations or amendments of this Lease materially affects the rights or obligations of TPR under its Sublease, consented to by TPR for so long as the TPR Sublease remains in effect. Any amendments required for the sole purpose of pursuing or acquiring tax credits, including new market and historic, may, for the purpose of City approval, be made by the City Manager or her designee in consultation with the City Attorney's Office.

15.7 Headings. The headnotes to the sections of this Lease are inserted only as a matter of convenience and for reference, and in no way confine, limit or proscribe the scope or intent of any section of this Lease, nor in any way affect this Lease.

15.8 Law. THIS LEASE SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF TEXAS.

15.9 Permitted Entry. In any circumstances where Landlord is permitted to enter upon the Premises during the Term, whether to cure any default by Tenant, perform any repairs, replacements or maintenance or for any reason permitted hereunder or by applicable Law, no such entry shall constitute an eviction or disturbance of Tenant's use and possession of the Premises or render Landlord liable for damage for loss of business or otherwise or entitle Tenant to be relieved from any of its obligations hereunder or grant Tenant any right of offset, recoupment or other remedy, provided such entry is made in such a manner as to avoid any material interference of Tenant's business operations, to the extent practical.

15.10 Time is of the Essence. Time is of the essence of this Lease.

15.11 Maximum Interest. Nothing in this Lease shall ever entitle Landlord to charge or collect or shall Tenant be obligated to pay interest in excess of the highest rate allowed by Law of the United States of America or the State of Texas. It shall be deemed an error if any excess amount be collected and such excess shall be refunded.

15.12 Independent Covenant. Except as otherwise provided in this Lease, the obligation of Tenant to pay rent and other sums provided under this Lease and the obligation to perform Tenant's other covenants and duties under this Lease constitute independent, unconditional obligations to be performed at all times provided for under this Lease.

15.13 Partial Payments Deemed. Except as otherwise provided herein, no check or payment made by Tenant or received by Landlord in any amount less than the amount stipulated in this Lease shall be deemed other than a partial tender or partial payment and no endorsement, statement or other representation by Tenant or any other action by Tenant in tendering such payment shall be binding upon Landlord or be deemed full payment or an accord and satisfaction, and Landlord may accept and deposit any such check or payment without prejudice to Landlord's right to recover the balance of such amount or to pursue any other remedy granted Landlord under this Lease or under applicable Law or in equity.

15.14 Exhibits and References. All exhibits and other documents attached to or referred to in this Lease Agreement are incorporated herein by reference for the purposes set forth in this Lease Agreement. References in this Lease to articles, sections, subsections, sub-subsections, exhibits, or schedules are to such articles, sections, subsections, sub-subsections, exhibits, schedules unless otherwise specified.

15.15 Authority. Each person signing this Lease in a representative capacity hereby represents and warrants that he or she has full authority to execute this Lease in such capacity to fully bind the entity represented under the terms and condition of this Lease.

15.16 Approvals. Approvals required under this Lease are authorized to be made through the City Manager, or her designee, in consultation with the City Attorney's Office.

15.16 Compliance with Applicable Laws. Landlord and Tenant shall obey all Laws, and any violation shall be cured within the notice and cure periods set forth in this Lease. Subject to any notice and cure periods, Landlord may cancel this Lease if any actions to be taken herein violate any Law.

15.17 Successors. This Lease shall be binding upon and inure to the benefit of the parties hereto, their successors, legal representatives and assigns; however, this clause does not constitute a consent by Landlord to any assignment by Tenant, except as expressly set forth herein.

15.18 Memorandum of Lease. Within thirty (30) days after the Effective Date, the parties hereto shall execute and record a memorandum of this Lease in the Official Public Records of Real Property Records of Bexar County, Texas, in the form attached hereto as Exhibit B.

15.19 Operational Funding for Tenant. Notwithstanding the requirements of Sections 4.4, 4.5, 6.1 – 6.3 and 8.1 to the contrary, Landlord and Tenant acknowledge and agree that Landlord shall use reasonable efforts to fund, or cause to be funded, Tenant's initial operational funds for the Property until such time as Tenant commences to operate and receive income for the Theater that is part of the Property. To the extent such operational funds are not available within the first five (5) years of this Lease, Tenant's failure to pay those costs and expenses associated with Sections 4.4, 4.5, 6.1 – 6.3 and 8.1 shall not be a default under the provisions of this Lease, unless Tenant has operational funds available for payment of those costs and expenses and fails or refuses to pay the costs and expenses due under such provisions.

EXHIBITS:

- Exhibit A - Description of the Land
- Exhibit B - Memorandum of Lease
- Exhibit C - Tenant's Insurance Requirements

[SIGNATURES ON FOLLOWING PAGES]

LANDLORD:

CITY OF SAN ANTONIO

By: _____

Name: _____

Title: _____

Date: _____

TENANT:

ALAMEDA THEATER CONSERVANCY

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A

DESCRIPTION OF THE LAND

EXHIBIT B

MEMORANDUM OF LEASE

THE STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This Memorandum of Lease ("Memorandum") is entered into by and between the City of San Antonio, a municipal corporation ("Landlord") and Alameda Theater Conservancy, a Texas non-profit corporation ("Tenant").

1. **Lease.** Landlord and Tenant have entered into a Master Lease Agreement with an effective date of _____ ("Lease") under which Landlord has leased to Tenant and Tenant has leased from Landlord the tract 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 Landlord and Tenant 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.

3. **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.

4. **Mechanic's and Materialman's Liens.** Landlord shall not be liable for any labor, services or materials furnished to Tenant or delivered to the Premises, or to anyone holding the Premises through or under Tenant, 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 Landlord in and to the Premises. Tenant has no rights under the Lease to serve as the Landlord's agent or to bind the fee interest of the Landlord in the Premises.

EXECUTED the ____ day of _____, 2017.

LANDLORD:

CITY OF SAN ANTONIO

By: _____
Name:
Title:

TENANT:

ALAMEDA THEATER CONSERVANCY

By: _____
Name: _____
Title: _____

THE STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This instrument was acknowledged before me on the _____ day of _____, 2017,
by _____, _____ of ALAMEDA THEATER
CONSERVANCY, a Texas non-profit corporation, on behalf of said corporation.

[Seal]

Notary Public in and for the State of Texas

THE STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This instrument was acknowledged before me on the _____ day of _____, 2017,
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

EXHIBIT C

INSURANCE REQUIREMENTS [NEED TO REVIEW]

Throughout the Term of this Lease, Tenant shall maintain insurance in accordance with the following:

(1) Tenant shall, at its sole cost and expense, obtain and maintain a (i) commercial general liability insurance insuring Tenant, and with Landlord as an additional insured, against all claims, demands, or actions arising out of or in connection with injury to or death of a person or persons and for damage to or destruction of property occasioned by or arising out of or in connection with the use or occupancy of the Premises and any and all Improvements situated thereon, or by the condition of the Premises, the limits of such policy or policies to be in an amount not less than \$1,000,000 per occurrence; (ii) a business automobile policy or policies extending to all owned, non-owned, hired, and borrowed automobiles, the limits of such policy or policies to be in an amount not less than \$1,000,000, (iii) workers' compensation insurance with statutory limits, and employer's liability with limits of not less than \$1,000,000 in respect of bodily injury by accident, \$1,000,000 in respect of bodily injury by disease, and (iv) commercial umbrella/excess liability insurance with limits of not less than \$5,000,000 per occurrence and in the aggregate. Tenant will implement reasonable increases in any such limits consistent with the insurance being required by institutional owners of similar properties in the San Antonio, Texas area; provided, however, that if Landlord and Tenant disagree on what constitute reasonable increases in such limits, then such insurance limits shall be increased to equal such amounts in Constant Dollars. "Constant Dollars" for these purposes shall mean the value of the U.S. dollar to which such phrase refers, as adjusted from time to time. Within sixty (60) days of written notice from Landlord, an adjustment shall occur on the first day of January immediately following the tenth (10th) anniversary of the Effective Date, and thereafter at ten (10) year intervals. Constant Dollars shall be determined by multiplying the dollar amount to be adjusted by a fraction, the numerator of which is the Current CPI and the denominator of which is the Base CPI. The "Base CPI" shall be the CPI for the calendar year in which the Effective Date occurs; and the "Current CPI" shall be the CPI for the calendar year preceding the adjustment year. In connection with the construction of any improvements or any alterations at the Premises, Tenant shall maintain (and cause its contractors to maintain) Builder's Risk insurance on an All Risk basis (including collapse) on a completed value (non-reporting) form, for full replacement value covering all work incorporated in the Improvements and all materials and equipment in or about the Premises. Tenant will cause Landlord to be named as an additional insured on all contractor general liability insurance policies for both ongoing work and completed operations. In addition, all contractor's workers compensation policies shall name Landlord as an additional insured.

(2) All policies of insurance shall be issued by an insurance company or companies having an AM Best's rating of not less than A- and a financial rating of Class VII as stated in the most current available Best's insurance reports (or comparable rating service if Best's reports are not currently being published), licensed to do business in the State of Texas. Tenant shall deliver to Landlord a standard ACORD certificate evidencing the required insurance on or before the Effective Date. Ten (10) days prior to the expiration of each of the policies required hereunder,

Tenant shall furnish Landlord with certificate of insurance in force or replacement coverage and meeting the standards hereinabove provided, all as required by this Lease. In the event Tenant fails to maintain, or cause to be maintained, the insurance required by this Lease, Landlord may procure such insurance for the benefit only of Landlord for such risks covering their respective interests, and Tenant will pay all premiums thereon within thirty (30) days after demand by Landlord.

APPENDIX 1

The following basic terms, as used in this Lease and in all amendments to the Lease (unless otherwise specified or unless the context otherwise requires), shall have the meanings set forth below:

1. **Additional Rent:** All amounts payable by Tenant directly to Landlord under this Lease, other than the Base Rent, and whether or not designated as Additional Rent, are deemed "Additional Rent."
2. **Affiliate:** With respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term "control" (including, with correlation meanings, the terms "controlled by" and "under common control with"), as applied to any Person, means the possession, direct or indirect, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities or other interests, by contract or otherwise, and shall be deemed to include the beneficial ownership of more than 50% of the voting securities or other interests of any Person.
3. **Appurtenances:** All rights, privileges, easements, encroachments and immunities now or hereafter existing in, belonging to, situated upon, under or over, or in any way appertaining to the Land and Improvements including, but not limited to, any and all easements, rights, encroachments on property located adjacent to the Land or Improvements.
4. **Base Rent:** As defined in Section 4.1.
5. **Business Days:** Monday through Friday, excluding holidays observed by the State of Texas and the federal government of the United States.
6. **Casualty:** A complete or partial destruction of property resulting from an identifiable event of a sudden, unexpected, or unusual nature affecting any part of the Premises (whether or not covered by a policy of insurance).
7. **Casualty Loss:** Any damage or loss caused directly or indirectly by a Casualty.
8. **Casualty Loss Insurance:** Insurance which is intended to provide proceeds in the event of a Casualty to the Premises or any portion thereof whether maintained by the Landlord, Tenant, or a Subtenant.
9. **City:** City of San Antonio, Texas, a municipal corporation.
10. **Claims:** Any and all liability, claims, demands, damages, expenses, fees, fines, penalties, suits, proceedings, actions and causes of action of any and every kind or nature arising from or out of the occupancy or use by Tenant, its subtenants,

licensees, officers, agents, contractors, employees or invitees of the Premises or any part thereof.

11. **Construction Standards:** means the enumerated standards for any and all alterations, renovations, repairs, Restoration Work or other work with regard to the Premises set forth in Article X.
12. **Effective Date:** The date first appearing on the initial page of this Lease.
13. **Event of Default:** An uncured monetary or non-monetary default of Tenant as described in Section 13.1 of this Lease.
14. **Expiration Date:** December 31, 2042.
15. **Force Majeure Event:** Any event or circumstance that is beyond the commercially reasonable control of such party (excluding the unavailability of funds to the party that has the obligation to perform) and does not result from the fault or negligence of such party, including but not limited to a Casualty, strike, lockout, war, civil commotion, riot or insurrection, act of God, generally applicable shortage of labor or materials, and act of the public enemy or terrorists.
16. **Governmental Authority:** Any federal, state, county, municipal or other governmental or regulatory authority, agency, board, department, bureau, body, commission, or instrumentality, or quasi-governmental authority, and any court, arbitrator, or other administrative, judicial or quasi-judicial tribunal, or any other public or quasi-public authority, having jurisdiction over the Premises or the matter at issue.
17. **Impositions:** All taxes, assessments for local improvements, use and occupancy taxes, water, storm and sanitary sewer rates and charges, licenses and permit fees, tap fees and other governmental levies and charges which are assessed, levied, confirmed, imposed or become a lien upon Tenant's leasehold interest in the Premises, or become payable or accrue during the Term.
18. **Improvements:** All buildings and other improvements now located, or hereafter erected, on the Land, together with all fixtures now or in the future installed or erected in or upon the Land or such improvements and owned or leased by Landlord or Tenant (including boiler(s), equipment, elevators, escalators, machinery, pipes, conduit, wiring, septic systems, wells, heating, ventilation and air conditioning systems).
19. **Including:** "including" means including but not limited to and "includes" means without limitation.
20. **Insurance Proceeds:** The amount of the proceeds available under the Casualty Loss Insurance, if any.

21. **Land:** more particularly described on Exhibit A.
22. **Landlord:** As defined in the introductory paragraph hereof.
23. **Landlord Parties:** Landlord and all of its Affiliates, officers, directors, shareholders, members, managers, partners, and employees.
24. **Law:** Any present or future law, statute, ordinance, regulation, code, judgment, injunction, arbitral award, order, rule, directive, proclamation, decree, common law or other requirement, ordinary or extraordinary, foreseen or unforeseen, of the Federal or any state or local government, or any political subdivision, arbitrator, department, commission, board, bureau, agency or instrumentality thereof, or of any court or other administrative, judicial or quasi-judicial tribunal or agency of competent jurisdiction, or of any other public or quasi-public authority or group, having jurisdiction over the Premises; and any reciprocal easement, covenant, restriction, or other agreement, restriction or easement of record affecting the Premises as of the date of this Lease.
25. **Lease:** As defined in the introductory paragraph hereof.
26. **Leasehold Lender:** Any lender providing financing or refinancing to a Subtenant with a mortgage lien encumbering Subtenant's interest in the Subtenant's subleasehold estate and its interest in, to and under this Lease, if any, together with an assignment of leases and rents and a security interest in any Personal Property owned by such Subtenant, in order to secure the repayment of such financing, including interest thereon, and the performance of all of the terms, covenants and agreements on the Tenant's part to be performed or observed under the Leasehold Mortgage, and each holder of a Leasehold Mortgage.
27. **Leasehold Mortgage:** All agreements executed in connection with the financing or refinancing provided by a Leasehold Lender to a Subtenant.
28. **Liabilities:** All losses, claims, suits, demands, costs, liabilities, and expenses, including reasonable attorneys' fees, penalties, interest, fines, judgment amounts, fees, and damages, of whatever kind or nature arising from a Claim.
29. **Permitted Uses:** As defined and described in Section 2.1.
30. **Person:** Any individual, corporation, partnership, firm or other legal entity.
31. **Personal Property:** All furniture and other personal property owned or leased by Landlord or Tenant or any Affiliate of Landlord or Tenant, located upon the Premises and used in the operation of the Premises.
32. **Plans and Specifications:** The approved plans and specifications for Restoration Work following a Casualty.

33. **Premises:** The Land, Improvements and Appurtenances. References in this Lease to the "Premises" shall be construed as if followed by the phrase "or any part thereof" unless the context otherwise requires.
34. **Recognition and Non-Disturbance Agreement:** Any agreement, including without limitation the TPR Recognition Agreement, entered into between Landlord and a Subtenant whereby, should this Lease terminate, Landlord shall agree to assume Tenant's obligations as Sublandlord under an Approved Sublease and Subtenant shall agree to recognize and attorn to Landlord as the Sublandlord thereunder.
35. **Restoration Work:** The work to restore, repair and/or replace the Premises damaged or destroyed in connection with a Casualty to the same condition as existed prior to the Casualty.
36. **Substantial Completion:** Improvements shall be deemed "**Substantially Complete**" or "**Substantially Completed,**" and "**Substantial Completion**" shall be deemed to have occurred, when (a) the project architect delivers a certification that the Improvements have been completed with the exception of minor punch list items and insubstantial details of construction, mechanical adjustment or decoration, in accordance with the plans and specifications approved by the City Manager or his/her designee, and (b) Tenant shall have obtained and furnished to Landlord all approvals, permits, sign-offs, and other documents required by Law to be issued in connection with such Improvements, including any letter of completion, permanent or temporary certificate of occupancy, and/or amendment of certificate of occupancy, and (c) Landlord receives a final release and waiver of mechanics lien covering all of the Improvements, in form and substance reasonably satisfactory to Landlord, executed by, as applicable, the general contractor, construction manager and/or design-builder.
37. **Sublandlord:** Tenant, in its capacity as sublessor under an Approved Sublease, or upon termination of this Lease, Landlord under the terms of a Recognition and Non-Disturbance Agreement.
38. **Subtenant:** A Person who is a subtenant under an Approved Sublease, including TPR pursuant to the TPR Sublease.
39. **Tenant:** As defined in the introductory paragraph hereof.
40. **Term:** As defined in Section 1.3.