

LEASE AGREEMENT

STATE OF TEXAS §
 § **KNOW ALL MEN BY THESE PRESENTS:**
COUNTY OF COMAL §

WHEREAS, WEST SAN ANTONIO 111 LLC., (the “Lessor” or “Owner”) a Texas limited liability company, hereinafter referred to as Lessor, and the CITY OF NEW BRAUNFELS, TEXAS (the “Lessee” or “City”), a home rule municipal corporation, hereinafter referred to as Lessee, have entered into the following lease agreement (the “Lease”) effective as of the date indicated below:

WITNESSETH:

I. Leased Premises

A. The Lessor owns the following described property (the “Property”), to wit:

approximately 1.143 acres of land consisting of .722 acres, Lot 76A, City Block 1004 and .421 acres, Lot 74, City Block 1004, New Braunfels, Comal County, Texas.

B. The Lessee in consideration and subject to the conditions set out below, agrees to lease from Lessor, all of the following described property (the “Leased Premises”), to wit:

120 parking spaces located on the Property, as shown on Exhibit “A” attached hereto and incorporated herein.,

together with all rights, privileges, easements and appurtenances belonging to or in any way pertaining to the Leased Premises.

II. Lease Term

The term of this Lease shall be for a period of three (3) years commencing on the ____ day of July, 2017 and ending on the 30th day of July, 2020. If Lessor agrees, in Lessor’s discretion, the Lease may be extended for an additional one year under the terms and conditions agreed to by the parties as set forth in IV. N. below.

III. Rent

As consideration for this Lease, the Lessee agrees and the Lessor accepts the following obligations in connection to the Leased Premises:

Lessee agrees to make an annual lease payment in the amount of \$10,000.00 to Lessor. Said lease payment shall be made on or before July 1st of each year.

Maintain the entire parking lot, including drive areas and parking spaces, within the Leased Premises (the "Parking Lot") in good order, free, clean and clear of rubbish and debris. Additionally, Lessee shall place signs in the Parking Lot, which signage states that public parking is only permitted Monday through Friday from 5:01 p.m. until 12:00 a.m. (midnight) and Saturday from 1:31 p.m. until 12:00 a.m. (midnight). The number, size and location of such signs shall be mutually agreed by Lessor and Lessee.

Lessee shall, at a time mutually deemed appropriate by Lessor and Lessee, undertake the following repairs before May 31, 2018:

A one time Reseal and Restripe of the surface of the Parking Lot. Lessor and Lessee shall cooperate regarding the time at which such resealing and restriping can be pursued so as to minimize the disturbance of Lessor's other tenants in the Property.

IV. Terms and Conditions

The Lessor agrees to lease the Leased Premises to the Lessee and the Lessee agrees to lease the Leased Premises from the Lessor pursuant to the following terms and conditions:

- A. The Leased Premises shall be used only as a parking lot. No other uses are permitted without the prior written approval from the Lessor;
- B. The Leased Premises will be available for public parking from Monday through Friday of each week from 5:01 p.m. until 12 a.m. (midnight). On each Saturday, approximately one half of the parking lot (more accurately shown on Exhibit B) will be available to the Lessee for public parking starting at 7:00 a.m. and continue until 1:30 p.m. At 1:31 p.m., all the Leased Premises will be available to the Lessee as public parking until 12:00 a.m. (midnight) Monday morning.
- C. The Lessee shall obey all laws, ordinances, orders, rules, regulations, and covenants applicable to the use, condition, and occupancy of the Leased Premises;

- D. The Lessee shall not sublease the Leased Premises to any other person or entity without the express prior written consent of the Lessor. Other than the improvements referenced in Article III above, no other improvements, changes, or modifications to the Property may be made without the express prior written consent of the Lessor, which consent shall be in Lessor's sole discretion. All approved improvements, changes, or modifications to the Leased Premises shall be in accordance with all City codes, ordinances and regulations;
- E. The Lessee acknowledges that the Parking Lot provides the parking for the building owned by the Lessor, which building is immediately adjacent to the Parking Lot. All tenants located in such building have the right to park in the Parking Lot. Should Lessor, as lessor of the building, lease additional space in such building, the tenants under such new lease shall have the right to park in the Parking Lot. However, notwithstanding the Lessor's rights to give new tenants in the building the right to park in the Parking Lot, Lessor shall not provide any such new tenant with parking rights that would materially interfere with the rights granted to Lessee in this Lease;
- F. No debt, lien, or encumbrance of any kind shall be allowed to be placed against the Leased Premises or improvements thereon;
- G. Lessee may not store any personal property on the Leased Premises. Notwithstanding the foregoing, during Lessee's replacement of the Parking Lot, Lessee may store needed construction equipment and/or supplies on the Leased Premises, provided that such storage is at the sole risk and liability of Lessee and such storage shall not utilize more than two parking spaces for a period of no more than five consecutive (5) days. Subject to the above, the Lessor may retain, destroy, or dispose of any property left on the Leased Premises by Lessee at the end of the Lease term;
- H. After the first anniversary of this Lease, Lessor may terminate this Lease upon 60 days written notice to Lessee, provided that if Lessee replaced the Parking Lot in part or in whole prior to such termination, Lessor shall reimburse the Lessee for unamortized portion of the cost of so replacing the Parking Lot. In connection to such reimbursement, Lessor's obligation shall be based upon the following: the initial cost of such parking lot resurfacing shall not exceed \$20,000 to Lessor and the Lessee shall amortize the cost in three (3) year straight line amortization schedule. Other than the foregoing, this Lease may only be terminated by mutual agreement in writing between Lessor and Lessee. Should Lessor request termination of this lease, Lessee shall be reimbursed on a prorated basis, all reasonable expenses incurred by Lessee in the performance of the terms and conditions of this Lease;

- I. Lessee shall not be liable for claims that result from occurrences when the Lessor has use of the Leased Premises unless such claim results from the negligence of the Lessee;
- J. The Lessee shall maintain and keep in force liability insurance and shall protect the Lessor from claims which may arise out of or in connection with Lessee's use of the Property: The minimum amounts of liability insurance required are as follows:

Bodily Injury:

Per Person	\$500,000.00
Per Accident	\$1,000,000.00

Property Damage Liability:

Per Accident	\$250,000.00
Aggregate	\$250,000.00

The required insurance shall be written so that the Lessor will be notified in writing, in the event of cancellation, restrictive amendment or non-renewal at least thirty (30) days prior to action. Certificates of Insurance shall be filed with the Lessor. All required insurance shall be written with the Lessor as an additional insured. In any event, the Lessee is fully responsible for all losses arising out of, resulting from or connected with its (and by extension the public's) use of the Leased Premises under this Lease whether or not the losses are covered by insurance. All insurance required under this section shall be primary over any other insurance coverage the City may have. The burden of maintaining proper insurance coverage and compliance with this subsection lies solely with the Lessee;

- K. Notwithstanding anything to the contrary herein, the City does not waive any of its rights, defenses, or immunity provided under the Texas Tort Claims Act, but to the extent possible contractually agrees to responsibilities as stated herein; and
- L. As a condition to renew the Lease, Lessee shall repair or replace all failing asphalt within the Parking Lot, and based upon the useful life and condition of the existing Parking Lot, reseal the surface of the Parking Lot and restripe the entire Parking Lot. The responsibility of Lessee pursuant to this provision shall not exceed \$5,000.

V. Acceptance of Property; Repair

The Lessee accepts the Property in its present condition "AS IS," the Leased Premises being currently suitable for the Lessee's intended use and agrees to take good care of the Parking Lot. Lessee agrees to make no alterations, additions, repairs, or improvements without the prior written consent of Lessor, based upon the negotiated terms of this Lease. Lessee knowingly and voluntarily agrees that Lessee, at Lessee's sole expense, shall be responsible for making agreed resealing to all portions of the Parking Lot.

VI. Default

In the event of default by the Lessee of any condition set out herein, the Lessor will notify the Lessee of such default and the Lessee will have thirty (30)) days to correct the default. In the event the Lessee fails or refuses to correct the default or if the particular default is repeated, the Lessor may immediately terminate the Lease. Upon termination of the Lease, the Lessee agrees to immediately surrender possession of the Leased Premises to the Lessor without further notice.

VII. Binding Effect

The terms, conditions and covenants contained in this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

VIII. Notices

All notices required to be furnished in writing under the terms of this Lease shall be furnished to the City at the following address:

City of New Braunfels, Texas
550 Landa Street
New Braunfels, TX 78130
Attention: City Manager

and shall be provided to the Lessor/Owner at the following address:

West San Antonio 111, LLC.
111 W San Antonio St, Ste. 150
New Braunfels, TX 78130
Attention: R. Mike Gribble

Any notice sent to any other address shall be insufficient to comply with the provisions of this Lease. Notices will be deemed furnished when deposited in the United States mail postage prepaid.

IX. Miscellaneous

- A. *Attorney Fees.* If either party retains an attorney to enforce this Lease, the Party prevailing in litigation is entitled to recover reasonable attorney's fees and court or other reasonable costs.
- B. *Venue.* Venue is in Comal County, the county in which the Property is located.
- C. *Entire Agreement.* This Lease is the entire agreement of the parties, and there are no oral representations, warranties, agreements, or promises pertaining to this Lease.
- D. *Invalid Provisions.* If any provision or condition of this Agreement shall be held to be invalid or unenforceable by any Court, or regulatory or self-regulatory agency or body, such invalidity or unenforceability shall attach only to such provision or condition. The validity of the remaining provisions and conditions shall not be affected, and this Agreement shall be carried out as if any such invalid or unenforceable provision or condition were not contained herein.
- E. *Amendment of Lease.* The Lease may be amended only by an instrument in writing approved and signed by the Owner and the City by and through its City Manager.

EXECUTED on this the _____ day of _____, 2017.

WEST SAN ANTONIO 111, LLC, LESSOR

By: _____

Name: R. Mike Gribble

Title: Manager of West San Antonio 111, LLC

CITY OF NEW BRAUNFELS, LESSEE

By: _____

Robert Camareno, City Manager

ATTEST:

Patrick D. Aten, City Secretary

APPROVED AS TO FORM:

Valeria Acevedo, City Attorney