

ORDINANCE 2022-06-23-0513

AUTHORIZING A LEASE AGREEMENT BETWEEN THE CITY OF SAN ANTONIO AS TENANT AND PORT AUTHORITY OF SAN ANTONIO AS LANDLORD TO LEASE KELLY CENTER BUNGALOW COLONY LOCATED AT PORT SAN ANTONIO TO OPERATE THE CITY'S LIVING HERITAGE TRADES ACADEMY, MATERIAL INNOVATION CENTER PROGRAM, MAKE REPAIRS AND CONDUCT RELATED ACTIVITIES, FOR AN INITIAL TERM OF ONE YEAR WITH TWO AUTOMATIC TWO-YEAR RENEWAL PERIODS.

* * * * *

WHEREAS, the City of San Antonio ("City") and Port San Antonio, a non-profit redevelopment authority, seek to enter into a Lease Agreement for the City of San Antonio Office of Historic Preservation to operate the City's Living Heritage Trades Academy and Material Innovation Center at the Bungalow Colony; and

WHEREAS, the Kelly Center Bungalow Colony National Register Historic District encompasses Port San Antonio's oldest complex of residential buildings located on the former Kelly Air Force Base; and

WHEREAS, the City's Living Heritage Trades Academy empowers students through apprenticeships, hands-on training and classroom instruction focused on traditional building construction methods and materials; and

WHEREAS, the Materials Innovation Center will divert construction and demolition materials while providing support for the Academy's workforce training programs and serving as a community tool library; and

WHEREAS, this Lease Agreement will support the preservation of the Kelly Center Bungalow Colony structures and activate this section of the Port San Antonio campus for community benefit, to include potential building improvements, construction workforce trainings and diversion of construction and demolition materials programs; **NOW THEREFORE:**

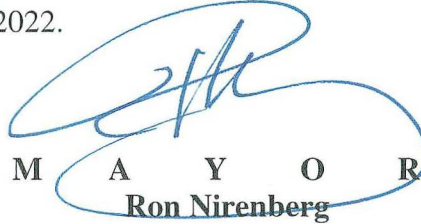
BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager or designee or the Director of the Office of Historic Preservation is authorized to execute a Lease Agreement with Port San Antonio to operate the City's Living Heritage Trades Academy and Material Innovation Center at the Kelly Center Bungalow Colony located at 107 Robins Drive, 108 Robins Drive, 122 Robins Drive, San Antonio, Texas, 78226, to operate the City's Living Heritage Trades Academy, Material Innovation Center Program, make repairs and conduct related activities, including the use of 14 additional bungalows on as need basis, for an initial

term of one year with two automatic extensions of two-year renewal periods. A copy of the Lease, in substantially final form, is attached hereto for all purposes as **Attachment I**.

SECTION 2. This Ordinance becomes effective immediately upon its passage by eight (8) votes or more and 10 days after passage upon its approval by less than eight (8) votes.

PASSED AND APPROVED this 23 day of June, 2022.


M A Y O R
Ron Nirenberg

ATTEST:


Debbie Racca-Sittre, City Clerk

APPROVED AS TO FORM:


Andrew Segovia, City Attorney



City of San Antonio

City Council A Session Meeting June 23, 2022

23.

2022-06-23-0513

Ordinance authorizing a Lease Agreement between the City of San Antonio as Tenant and Port Authority of San Antonio as Landlord to lease Kelly Center Bungalow Colony located at Port San Antonio to operate the City's Living Heritage Trades Academy, Material Innovation Center program, make repairs and conduct related activities, for an initial term of one year with two automatic extensions of twoyear renewal periods. [Lori Houston, Assistant City Manager; Shanon Shea Miller, Director, Office of Historic Preservation]

Councilmember Rocha Garcia moved to Approve on the Consent Agenda. Councilmember Castillo seconded the motion. The motion carried by the following vote:

Aye: Nirenberg, Bravo, McKeeRodriguez, Viagran, Rocha Garcia, Castillo, Cabello
Havrda, Pelaez, Courage, Perry

Absent: Sandoval

LEASE AGREEMENT

(Kelly Center Bungalow Colony: 107 Robins Drive, 108 Robins Drive, and 122 Robins, San Antonio, Texas 78226)

THIS LEASE AGREEMENT ("Lease") is made by **Port Authority of San Antonio**, a Defense Base Development Authority, which is a political subdivision of the state of Texas ("Landlord") as lessor, and **City of San Antonio**, a Texas Municipality ("Tenant"), as lessee.

1. Identifying Information, Definitions.

Authorizing Ordinance:	
Landlord:	PORT AUTHORITY OF SAN ANTONIO
Landlord's Address:	907 Billy Mitchell Road San Antonio, Texas 78226-1802 (210) 362-7800 Attn: President & CEO
Tenant:	CITY OF SAN ANTONIO
Tenant's Address:	Office of Historic Preservation P.O. Box 839966 San Antonio, Texas 78282 (210) 207-7723 Attn: OHP Director
Premises:	Three buildings, two of which are bungalows located at 107 Robins Drive, and 108 Robins Drive, and one free-standing garage located at 122 Robins, San Antonio, Texas 78226, and the Additional Structures (defined below) when they have been activated for use (the "Premises" or "Bungalow Colony"), together with non-exclusive ingress/egress thereto; the Premises being more particularly described on APPENDIX A-1 .
Term:	One year
Commencement Date:	July 1, 2022
Termination Date:	June 30, 2023
Extended Term:	Two automatic two-year renewal periods, unless either Landlord or Tenant gives 30 days' notice to the other party that it has elected not to renew.

Termination Option:	Either party may terminate this Lease at any time with 120 days' written notice to the other party.
Landlord's Work:	Landlord retains the right to repair, maintain and perform work on the Premises and Additional Structures, as more particularly described on APPENDIX B-1 .
Tenant Repairs:	Tenant will construct those Tenant Repairs set out on APPENDIX B-2 .
License for Fundraiser Event:	On October 27, 2022, from 6:30 pm to midnight, Tenant may use the Licensed Premises, outlined on the map attached as APPENDIX A-2 , for a fundraiser event. After the event, Tenant will clean-up all trash and restore the streets, grounds, and buildings to their original condition.
Historic Structures:	Notwithstanding anything to the contrary contained in the Lease or its appendices, Tenant understands that the buildings in the Bungalow Colony are on the National Register of Historic Places, and in addition to all Landlord approvals made or required under this Lease, the Bungalow Colony and their grounds are subject to the Cultural Resource Management Plan ("CRMP") for the former Kelly AFB; therefore, Tenant agrees that modifications made to the buildings as part of the Tenant Repairs set out on APPENDIX B-2 must comply with the CRMP and must be made in consultation with the City of San Antonio's Unified Development Code and its Historic Design Guidelines.
Rent:	\$0.00 per year. Consideration will be the Tenant Repairs to the Premises.
Permitted Use:	Tenant's Living Heritage Trades Academy, Materials Innovation Center program, and storage of related materials.

DEFINITIONS

For purposes of this Lease, the following terms will be defined as set out below:

- 1.1 "Additional Structures" means 14 Bungalows located at 111 Robins Drive; 112 Robins Drive; 114 Robins Drive; 115 Robins Drive; 118 Robins Drive; 119 Robins Drive; 120 Robins Drive; 121 Robins Drive; 124 Robins Drive; 127 Robins Drive; 128 Robins Drive; 131 Robins Drive; 132 Robins Drive; 133 Robins Drive located at Port San Antonio in San Antonio, Texas, as more particularly described and attached to this Lease Agreement in **APPENDIX A-1**.

- 1.2 “Common Areas” means all facilities and areas of the Premises and within Port San Antonio that are intended and designated by Landlord from time to time for the common, general, and nonexclusive use of all tenants of Port San Antonio, including parking lots, driveways, sidewalks, landscaping, loading areas, private streets and alleys and exterior lighting facilities. Landlord has the exclusive control over and right to manage the Common Areas.
- 1.3 “General Terms” means, the terms “herein,” “herewith,” and “hereof” are references to this Lease, taken as a whole, the term “includes” or “including” means “including, without limitation,” and references to a “Section,” “subsection,” “Paragraph,” “subparagraph,” or “Appendix” means a Section, subsection, Paragraph, subparagraph or Appendix of this Lease, as the case may be, unless in any such case the context requires otherwise. All references to Landlord or Tenant include their successors and permitted assigns. All references to a given agreement, instrument or other document will be a reference to that agreement, instrument or other document as modified, amended, supplemented and restated through the date as of which such reference is made, and reference to a Law includes any amendment or modification thereof. The singular includes the plural.
- 1.4 “Hazardous Substances” means any substance, the use or the removal of which is regulated, restricted or prohibited by any “Environmental Law(s),” which term means any federal, state or local statute, ordinance or regulation relating to pollution or protection of the environment or the regulation of the storage or handling of Hazardous Substances.
- 1.5 “Injury” means (a) harm to or impairment or loss of property or its use, (b) harm to or death of a person, or (c) “personal and advertising injury” as defined in the form of liability insurance Tenant is required to maintain.
- 1.6 “Landlord” means Landlord and its agents, employees, invitees, licensees, or visitors.
- 1.7 “Lienholder” means the holder of a deed of trust covering the Premises.
- 1.8 “Rent” means Base Rent, CAM Charge, Infrastructure Charge and Landlord’s Property Insurance plus any other amounts of money payable by Tenant to Landlord.
- 1.9 “Tenant” means Tenant and its agents, contractors, employees, invitees, licensees, or visitors.

2. Tenant’s Promises.

- 2.1 Tenant’s Affirmative Promises. Tenant promises that it will:
- a. Accept the Premises in their present condition “AS IS,” the Premises being currently suitable for the Permitted Use.
 - b. Obtain keys to Premises from Landlord’s Property Manager (Tel: (210) 362-7800) on an “as needed” basis and return said keys after Tenant leaves the Premises.

- c. Obtain and pay for any required Certificate of Occupancy or building permits.
- d. Repair and maintain the Premises.
- e. Pay all costs caused by Tenant's introduction of materials, other than ordinary human waste, into the sanitary sewer system.
- f. Pay all costs for installation of telecommunication lines from the building's communication room to the Premises for security services. Tenant will contact Landlord for information on obtaining T-1, cable, or DSL Service, prior to entering into contracts or agreements to obtain such services with local exchange carriers or other third-party providers
- g. Keep the sidewalks, service ways, and loading areas adjacent to the Premises clean and unobstructed.
- h. Provide portable toilet services during Tenant's scheduled events on the Premises.
- i. Submit in writing to Landlord any request for repairs, replacement, and maintenance that are the obligations of Landlord.
- j. Allow Landlord to enter the Premises to perform Landlord's Work, to make repairs and alterations, to inspect the Premises, and show the Premises to prospective purchasers or tenants or tenants provided that Tenant is provided at least 24 hours prior notice to such entry or showing.
- k. Vacate the Premises and return all keys to the Premises on the last day of the Term.
- l. Obey (a) all applicable laws relating to the use, condition, and occupancy of the Premises; (b) any requirements imposed by utility companies serving or insurance companies covering the Premises; and (c) any rules and regulations for the Bungalow Colony and Common Areas adopted by Landlord provided that Tenant will have at least 5 business days' notice to enforcement of any rules or regulations not in place at the time of the execution of this Lease.

2.2 Tenant's Negative Promises. Tenant promises that it will not:

- a. Use the Premises for any purpose other than the Permitted Use.
- b. Create a nuisance.
- c. Interfere with any other tenant's normal business operations or Landlord's management of the Premises.
- d. Permit any waste.

- e. Use the Premises in any way that would increase insurance premiums or void insurance on the Premises.
- f. Change Landlord's lock system.
- g. Alter the Premises without Landlord's written consent.
- h. Allow a lien to be placed on the Premises.
- i. Assign this Lease or sublease any portion of the Premises without Landlord's written consent, which may be withheld for any reason.
- j. Place any signs on the Premises without Landlord's written consent.
- k. Encumber its leasehold interest without Landlord's written consent.
- l. Conduct or permit any activity that will produce any Hazardous Substances or store Hazardous Substances on the Premises without Landlord's written consent.

3. Landlord's Promises.

3.1 Landlord's Affirmative Promises. Landlord promises that it will:

- a. Lease to Tenant the Premises for the entire Term beginning on the Commencement Date and ending on the Termination Date.
- b. Obtain and pay for such utility services as Landlord deems appropriate.
- c. Upon written request provide Tenant with the environmental reports related to the Premises (if any), prepared by the Air Force.
- d. Obey all applicable laws with respect to Landlord's operation of the Premises.

3.2 Landlord's Negative Promise. Landlord agrees not to interfere with Tenant's possession of the Premises as long as Tenant is not in default; provided, however, Landlord retains the right to use (or grant the right to a third party to use) any part of the Premises which is outside the Buildings for drainage, utilities, and similar uses so long as such right does not interfere with Tenant's use of the Premises.

4. Alterations and Additional Structures.

4.1 Alterations. Tenant will notify Landlord of alterations or restorations planned for the Premises. Notification of planned alterations or restorations must be received by Landlord 10 days in advance. Tenant will not alter the Premises without Landlord's written consent. Any physical additions or improvements to the Premises made by Tenant will become the property of Landlord.

4.2 Additional Structures. Tenant has the option to use the following 14 Bungalows on an as-needed basis: 111 Robins Drive; 112 Robins Drive; 114 Robins Drive; 115 Robins Drive; 118 Robins Drive; 119 Robins Drive; 120 Robins Drive; 121 Robins Drive; 124 Robins Drive; 127 Robins Drive; 128 Robins Drive; 131 Robins Drive; 132 Robins Drive; 133 Robins Drive (the "Additional Structures").

a. Tenant may activate (or deactivate), with prior approval of Landlord, the use of an Additional Structure, by giving Landlord 10 days' prior written notice of its intent to activate (or deactivate) to Landlord's Property Manager (Tel: (210) 362-7800). Any reference in this Lease to "Premises" will include any Additional Structure that has been activated for use. Upon receipt of notice, Landlord will be deemed to have approved the activation or deactivation unless written notice otherwise is received by Tenant prior to the expiration of the 10 days.

b. Upon receipt of Tenant's notice to activate, keys for the activated Additional Structure will be "checked out" to Tenant. Tenant must "check in" keys to Landlord's Property Manager when Tenant submits the notice of deactivation.

5. Utilities.

5.1 Utilities at Tenant's Cost. Landlord agrees to make available, through third party utility providers, water, sanitary sewer, gas, and electricity service to the Premises.

5.2 Telephone Services. Tenant is responsible for the installation of communication lines and systems from the main communications room from the building's communication room to the Premises for security services.

6. Environmental Matters.

6.1 Tenant's Activities Related to Hazardous Waste. Tenant agrees that:

a. No activity will be conducted on the Premises that will produce Hazardous Substances, except for activities that are part of the ordinary course of Tenant's business activities, provided that the activities are conducted in accordance with all environmental laws.

b. The Premises will not be used in any manner for the storage of Hazardous Substances, except for the temporary storage of materials provided that the materials are properly stored in a manner and location meeting the requirements of all environmental laws.

6.2 Lead Based Paint (LBP) Disclosure. The Bungalow Colony located on the Premises are presumed to contain LBP since they were constructed prior to 1978. Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Tenant hereby acknowledges receipt of the required disclosure in accordance with the Residential Lead-Paint Hazard Reduction Act of 1992, 42 U.S.C. Section 4852d (Title X), of the presence of any known LBP and/or LBP hazards in target housing constructed prior to 1978. This disclosure includes the receipt

of available records and reports pertaining to LBP and/or LBP hazards; receipt of the lead hazard information pamphlet; and inclusion of the 24 C.F.R. Part 35, Subpart H and 40 C.F.R. Part 745, Subpart F, disclosure, and lead warning language in this Section.

- 6.3 Asbestos. The Bungalow Colony located on the Premises may contain asbestos-containing material or presumed asbestos-containing material as defined by OSHA regulations. Tenant has inspected the Premises and conducted such tests and inspections as Tenant deems necessary or desirable. Tenant will provide Landlord with copies of all such test results and inspections. Tenant will comply with all rules and regulations relating to asbestos in performing any maintenance, housekeeping, construction, renovation, or remodeling of the Premises, and Tenant will bear all costs related to removal and disposal of asbestos from the Premises.

7. Insurance.

- 7.1 Landlord's Insurance. During the Term of this Lease, Landlord, at its expense, will maintain in effect "All-Risk" (broad form) insurance coverage for the Premises ("Landlord's Property Insurance"), but excluding Tenant's trade fixtures, equipment, inventory, and personal property located therein (even that personal property owned by Landlord and leased or supplied to Tenant).
- 7.2 Tenant's (City of San Antonio) Insurance. Tenant maintains self-insurance for Workers' Compensation, General Liability, and Business Automobile as a political subdivision of the State of Texas, City is subject to the Texas Tort Claims Act and the obligations of Tenant and the rights of persons claiming against Tenant are subject to that Act. Tenant, upon request from Landlord, can provide evidence of self-insurance.

8. Notices.

Any notice under this Lease will be in writing and will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown for Landlord and Tenant in this Lease. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided in this Lease.

9. Liability and Indemnification.

- 9.1 Limits on Liability of Landlord, et al. Neither Landlord, nor its board of directors, agents, employees, officers, or representatives, individually and collectively ("Landlord, Et Al") will be liable in any event for personal injury or loss of Tenant's property caused by fire, flood, water leaks, rain, hail, ice, snow, smoke, lightning, wind, explosion, interruption of utilities or other occurrences. Tenant will give prompt notice to Landlord of any significant accidents involving injury to persons or property. Furthermore, Landlord, Et Al, will not be responsible for lost

or stolen personal property, equipment, money, or jewelry from the Premises or from the public areas of Port San Antonio, regardless of whether such loss occurs when the area is locked against entry. Landlord, Et Al will not be liable to Tenant or Tenant's employees, customers or invitees for any damages or losses to persons or property caused by any sublessee or their agents or invitees anywhere on Port San Antonio, or for any damages or losses caused by theft, burglary, assault, vandalism, or other crimes. Tenant will give Landlord prompt notice of any criminal conduct it actually observes within or about the Premises, or any personal injury or property damage caused thereby. Landlord may, but is not obligated to, enter into agreements with third parties for the provision, monitoring, maintenance and repair of any courtesy patrols or similar services or fire protective systems and equipment and, to the extent these are obtained at Landlord's sole discretion, Landlord, Et Al, will not be liable to Tenant for any damages, costs or expenses which occur for any reason in the event any such system or equipment is not properly installed, monitored or maintained or any such services are not properly provided. Landlord will use reasonable diligence in the maintenance of existing lighting, if any, in the parking areas servicing the Premises, and Landlord will not be responsible for additional lighting or any security measures in Port San Antonio, the Premises, or the parking areas.

9.2 Indemnity. Intentionally omitted

10. Release of Claims/Subrogation.

Release of Claims/Subrogation. The insurance requirements of this Lease are a bargained-for allocation of risk of loss. LANDLORD AND TENANT RELEASE EACH OTHER FROM ALL CLAIMS OR LIABILITIES FOR DAMAGE TO THE PREMISES, DAMAGE TO OR LOSS OF PERSONAL PROPERTY WITHIN THE PREMISES, AND LOSS OF BUSINESS OR REVENUES THAT ARE COVERED BY THE RELEASING PARTY'S PROPERTY INSURANCE OR THAT WOULD HAVE BEEN COVERED BY THE REQUIRED INSURANCE IF THE PARTY FAILS TO MAINTAIN THE PROPERTY COVERAGES REQUIRED BY THIS LEASE. THE PARTY INCURRING THE DAMAGE OR LOSS WILL BE RESPONSIBLE FOR ANY DEDUCTIBLE OR SELF-INSURED RETENTION UNDER ITS PROPERTY INSURANCE. LANDLORD AND TENANT WILL NOTIFY THE ISSUING PROPERTY INSURANCE COMPANIES OF THE RELEASE SET FORTH IN THIS PARAGRAPH AND WILL HAVE THE PROPERTY INSURANCE POLICIES ENDORSED, IF NECESSARY, TO PREVENT INVALIDATION OF COVERAGE. THIS RELEASE WILL NOT APPLY IF IT INVALIDATES THE PROPERTY INSURANCE COVERAGE OF THE RELEASING PARTY. THE RELEASE IN THIS PARAGRAPH WILL APPLY EVEN IF THE DAMAGE OR LOSS IS CAUSED IN WHOLE OR IN PART BY THE ORDINARY NEGLIGENCE OR STRICT LIABILITY OF THE RELEASED PARTY BUT WILL NOT APPLY TO THE EXTENT THE DAMAGE OR LOSS IS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE RELEASED PARTY.

11. Inspection, Right Of Entry and Closeout Inspection.

- 11.1 Inspection of Premises. Prior to occupancy, representatives of both parties will inspect the Premises and will note any discrepancies on the inspection form. Prior to vacating the Premises, representatives of both parties will again inspect the Premises to note any discrepancies on the release form. Normal wear and tear is considered to be the responsibility of Landlord. Except for alterations approved in writing by Landlord, the Premises will be returned to Landlord in the same condition as it was when occupied by Tenant or where not feasible or appropriate, Landlord will be compensated at fair market value for any and all damages to the Premises and related personal property.
- 11.2 Right of Entry. Landlord's agents and representatives have the right to enter the Premises at any reasonable time during business hours, with at least 24-hour notice (or at any time in case of emergency): to inspect the Premises for any reason; to maintain, repair, connect, extend, and modify utilities; to make any other repairs as may be required or permitted pursuant to this Lease; and during the last 2 months of the Term, for the purpose of showing the Premises and to install signs stating the Premises are available for lease.
- 11.3 Closeout Inspection. Tenant will notify Landlord in writing at least 90 days prior to vacating the Premises and Tenant will arrange to meet with Landlord for a joint operational close-out inspection by Landlord's property manager. Tenant will pay to close-out all of Tenant's regulatory permits.

12. Condemnation/Substantial or Partial Taking.

- 12.1 If the Premises cannot be used for the purposes contemplated by this Lease because of condemnation or purchase in lieu of condemnation, this Lease will terminate.
- 12.2 Tenant will have no claim to the condemnation award or proceeds in lieu of condemnation.

13. Holdover.

If Tenant does not vacate the Premises following termination of this Lease, Tenant will become a tenant at will and must vacate the Premises on receipt of notice from Landlord. No holding over by Tenant, whether with or without the consent of Landlord, will extend the Term.

14. Quiet Enjoyment.

Tenant will peaceably and quietly hold and enjoy the Premises for the term hereby demised without hindrance or interruption by Landlord or any other person lawfully or equitably claiming by, through or under Landlord.

15. Default.

- 15.1 Default by Landlord/Events. Default by Landlord is failing to comply with any provision of this Lease within thirty days after written notice to Tenant.
- 15.2 Default by Landlord/Tenant's Remedies. Tenant's exclusive remedy for Landlord's default is to sue for damages.
- 15.3 Default by Tenant/Events. Default by Tenant is failing to comply within ten business days after written notice with any provision of this Lease.
- 15.4 Default by Tenant/Landlord's Remedies. Landlord's remedies for Tenant's default is to terminate this Lease by giving 10 business day's written notice to Tenant and to sue for damages (if any). Landlord may enter and take possession of the Premises by self-help, by picking or changing locks if necessary, and may lock out Tenant, until the default is cured, without being liable for damages.
- 15.5 Default/Waiver/Mitigation. It is not a waiver of default if the non-defaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this Lease does not preclude pursuit of other remedies in this Lease or provided by applicable law. Landlord and Tenant have a duty to mitigate damages.
- 15.6 Casualty/Total or Partial Destruction. If the Premises are damaged by casualty (total or partial destruction), Landlord has the option to restore the Premises. If Landlord chooses not to restore, this Lease will terminate.

16. Modification.

- 16.1 Modification. Any modification to this Lease will only be made by a written amendment, which has been executed by both Landlord and Tenant. Unless otherwise set forth in this Lease, any modification to this Lease will be authorized by the San Antonio City Council through an ordinance.
- 16.2 Administrative Actions and Agreements. The Director of the City of San Antonio Office of Historic Preservation may, without further council action, agree to sign, and deliver on behalf of Tenant all consents, certificates, memoranda, estoppels, and modifications of nonmaterial rights and obligations arising under this Lease and may declare defaults and pursue remedies for such defaults. This paragraph does not authorize Lease amendments or renewals that are not otherwise authorized in this Lease.

17. Miscellaneous.

- 17.1 Abandoned Property. Landlord may retain, destroy, or dispose of any property left on the Premises at the end of the Term.

- 17.2 Alternative Dispute Resolution. Landlord and Tenant agree to mediate in good faith before filing a suit for damages.
- 17.3 Applicable Law and Venue. This Lease is entered into in San Antonio, Bexar County, State of Texas. Its construction and the rights, remedies, and obligations arising under it will be governed by the laws of the State of Texas and City of San Antonio, Bexar County, Texas. The Texas conflicts of law rules must not be used to apply the laws of a jurisdiction other than Texas. Both Landlord's and Tenant's obligations under this Lease are performable in San Antonio, Bexar County, Texas, and any action arising under this Lease will be filed in Bexar County, Texas.
- 17.4 Non-Discrimination. As a Party to this Lease, Tenant understands and agrees to comply with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X of the City Code and further will not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law.
- 17.5 Force Majeure. Neither the Landlord nor Tenant, together with their respective agents, employees, officers, and representatives, individually and collectively, will be held responsible for delays in the performance of its obligations under this Lease when caused by material shortages, acts of God, labor disputes or other events beyond the control of Landlord or Tenant, as the case may be.
- 17.6 Severability. If any part of this Lease is found invalid or unenforceable, the finding does not affect the remainder.
- 17.8 Limitation of Warranties. THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OR OF ANY OTHER KIND ARISING OUT OF THIS LEASE, AND THERE ARE NO WARRANTIES THAT EXTEND BEYOND THOSE EXPRESSLY STATED IN THIS LEASE.
- 17.9 Consent by Landlord/Tenant. Whenever in this Lease, Landlord's or Tenant's consent, permission or approval is required and has been properly requested, such consent, permission or approval will not be unreasonably withheld, delayed or conditioned, unless such right has been specifically reserved elsewhere in this Lease.
- 17.10 Use of Common Areas. Tenant will have the nonexclusive right to use the Common Areas subject to any reasonable rules and regulations that Landlord may prescribe.
- 17.11 Landlord's Mortgage Loan. If Landlord places a deed of trust lien on a building, Tenant (a) subordinates this Lease and all of Tenant's rights under it to the Deed of Trust lien; (b) agrees that the Deed of Trust lien will remain superior to this Lease and all of Tenant's rights under it, regardless of the frequency and manner of renewal, extension, or alteration of the promissory note and the liens securing it; and (c) warrants that the Rent specified in this Lease is being paid to Landlord.

- 17.12 Incorporation of Attachments. All appendixes attached to this Lease are incorporated to it for all purposes as if fully set forth in the Lease.
- 17.13 Integration. This written agreement represents the final agreement between Landlord and Tenant and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties.
- 17.14 Public Information. The Parties acknowledge that this instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public.

18. Final Agreement.

Entire Agreement. This Lease, together with the attached appendices, is the entire agreement of the parties, and there are no oral representations, warranties, agreements, or promises pertaining to this Lease or to any expressly mentioned appendices not incorporated in writing in this Lease.

IN WITNESS WHEREOF, the Parties have caused their representatives to set their hands.

LANDLORD

TENANT

PORT AUTHORITY OF SAN ANTONIO

CITY OF SAN ANTONIO

James E. Perschbach

Printed Name:

Title: President & CEO

Title:

Date: _____

Date: _____

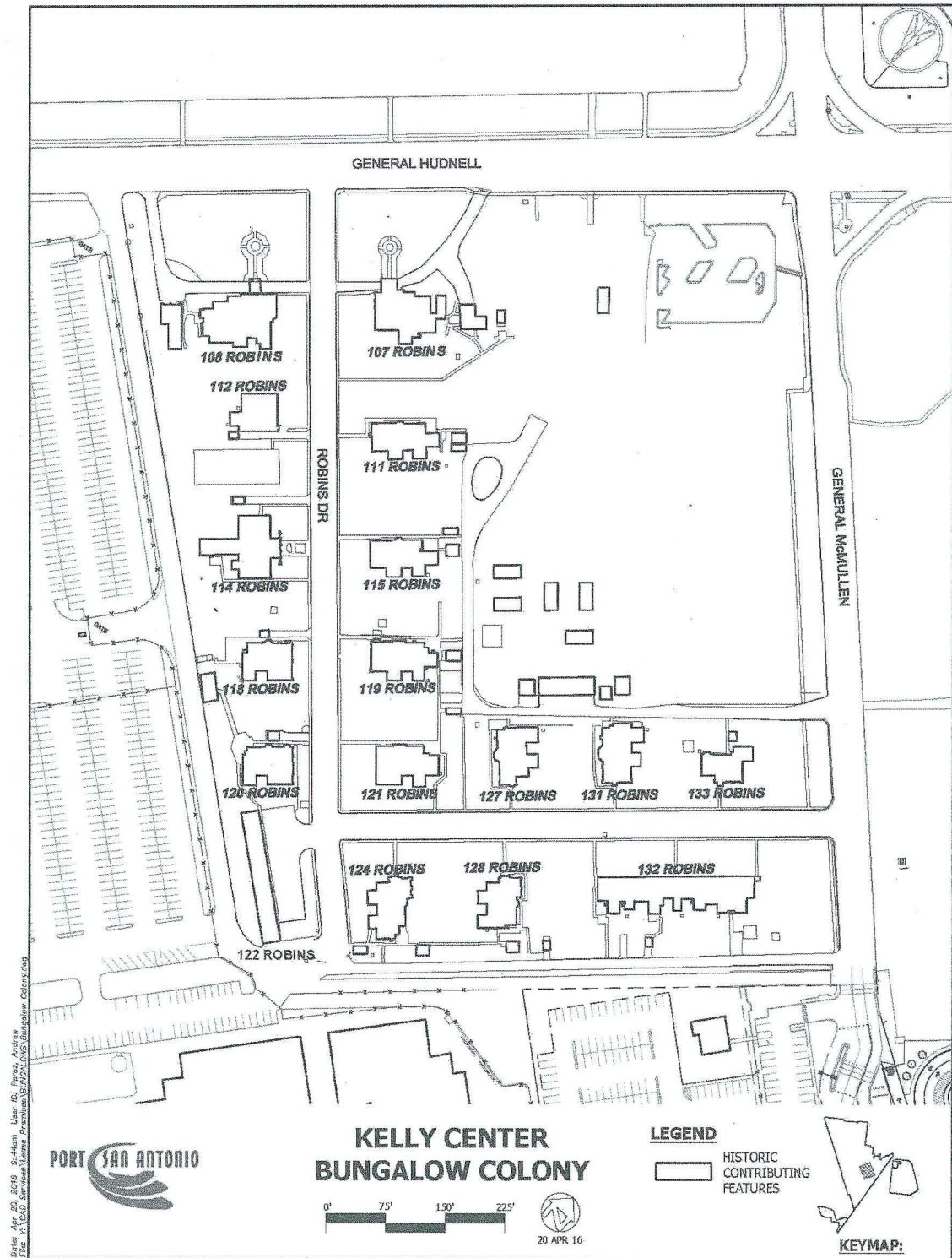
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APPROVED AS TO FORM:

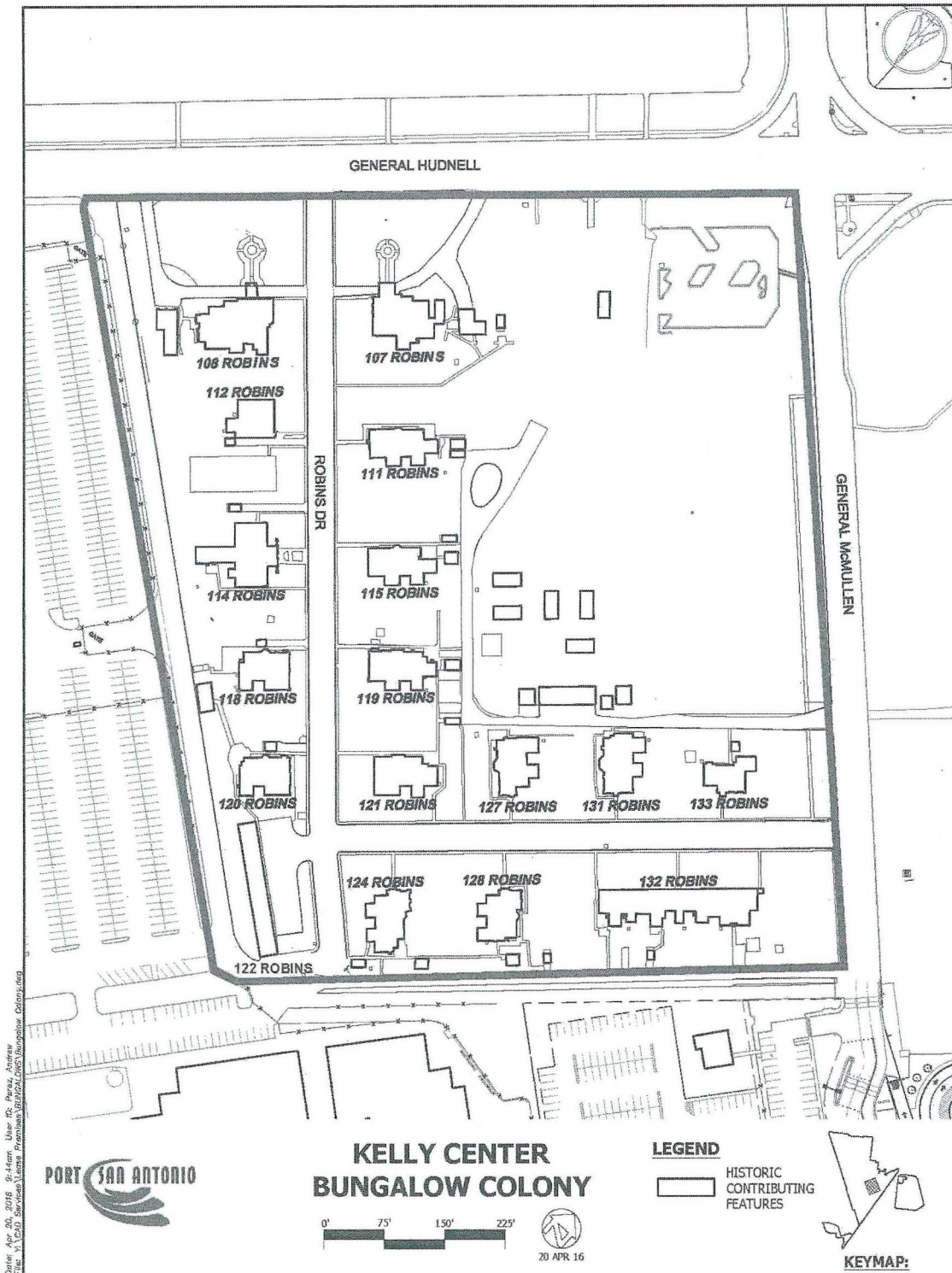
City Clerk

City Attorney

APPENDIX A-1 Leased Premises



APPENDIX A-2 Licensed Premises



APPENDIX B-2

Tenant Repairs

1. **Repairs.** Under the Lease, Tenant has agreed to accept the Premises "As Is," without any obligations for the performance of improvements or other work by Landlord and Tenant desires to perform certain improvements (the "Repairs"). Such Work will be in accordance with the provisions of this **APPENDIX B-2**.

2. **Cost of Repairs.** Tenant will pay the entire costs of Tenant's repairs, including all fees associated with the Tenant improvements.

3. **Space Plan and Specifications.**

a. Tenant will submit 2 sets of a "Space Plan" to Landlord for approval. "Space Plan" means a floor plan drawn to scale showing all details of the floor plan including, without limitation, demising walls, doors, restrooms, kitchens, file rooms, and communication systems.

b. Landlord will, within 10 days after receipt thereof, either approve the Space Plan, or disapprove the same advising Tenant of the reasons for such disapproval. In the event Landlord disapproves the Space Plan, Tenant will modify the Space Plan, taking into account the reasons given by Landlord for the disapproval, and will submit two sets of the revised Space Plan to Landlord within 5 days after receipt of Landlord's initial disapproval.

4. **Changes to Approved Plans.** If any of either the Space Plan or the construction plans is necessitated by Tenant's requested changes (all of which are subject to approval by Landlord and, if applicable, the Texas Department of Licensing and Regulation or any other governmental agency or authority to which the plans and specifications are required to be submitted), the expense of any such drawing or drafting required in connection therewith and the expense of any Repair necessitated will be at Tenant's sole cost and expense.

5. **Compliance.** Tenant's Work will comply in all respects with the following: (a) the Building Codes of the City of San Antonio, Bexar County and the State of Texas and all other applicable state, county, city or other laws, codes, ordinances, and regulations, (b) applicable standards of the National Board of Fire Underwriters and National Electrical Code, (c) building material manufacturer's specifications and (d) the Americans with Disabilities Act.

6. **Payment & Performance Bonds.** Tenant will obtain a payment bond for all improvements over \$25,000 and a performance bond for all improvements over \$100,000, in form and content acceptable to Landlord before beginning the Alterations. In addition to the foregoing, jobs exceeding \$25,000 in lead-based paint hazard control work will require a payment bond prior to issuance of the Notice to Proceed (NTP) by Tenant to its contractor, whereas jobs exceeding \$100,000 will require both a performance and payment bond prior to issuance of NTP by Tenant to its contractor. When required, bonds must be in an amount not less than the cost of the job.