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October 30, 2013
Folder: 970-71

DANIEL ANDERSON
201 S. LBJ DRIVE
SAN MARCOS, TEXAS 78666

RE: Proposed sale of land in San Marcos, Texas

Dear Mr.Anderson:

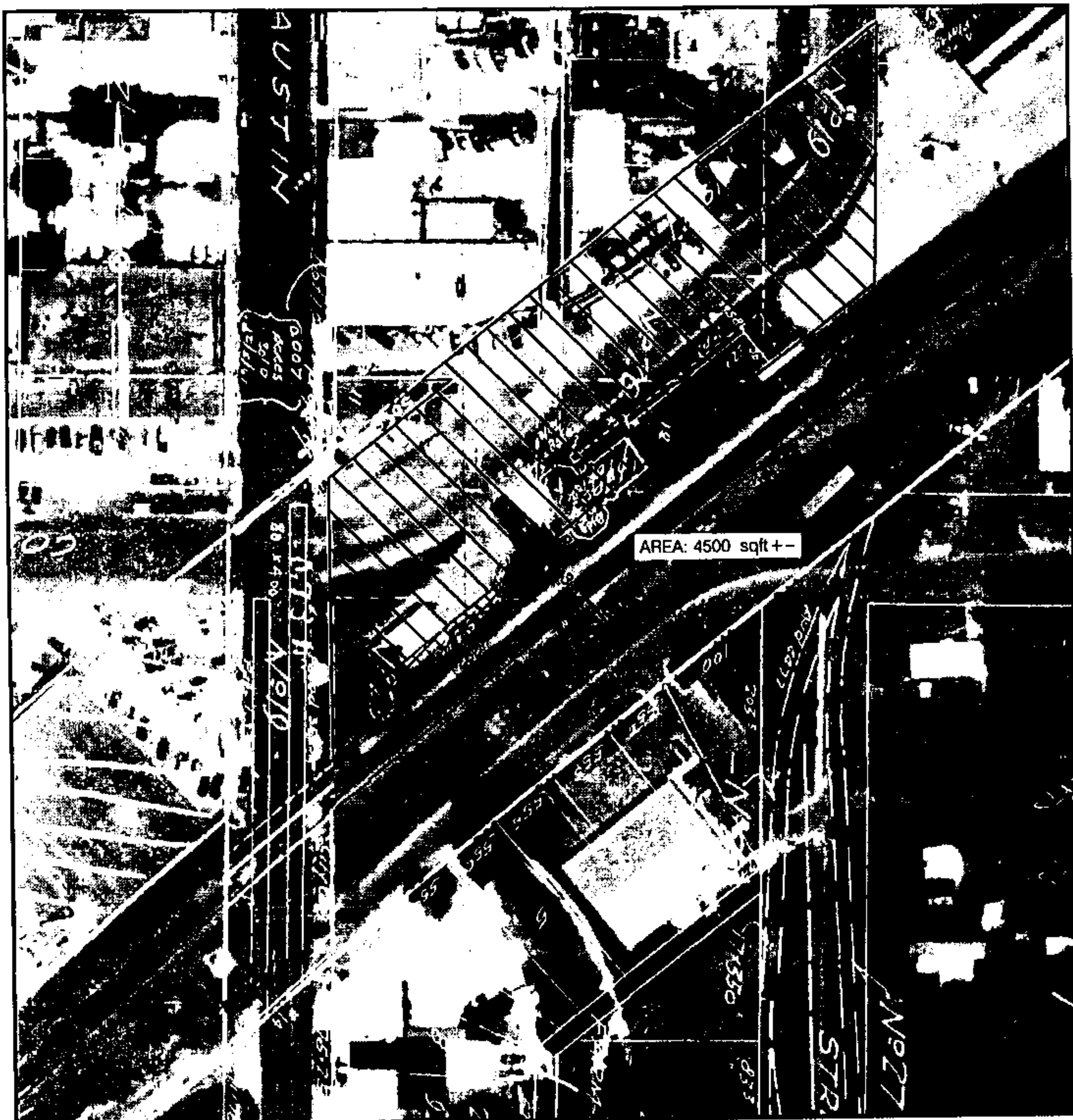
Union Pacific Railroad and you have a land lease described as Audit Number LA25314 in San Marcos, Texas.

This letter will serve as notification that the Union Pacific Railroad Company has entered into a sale agreement with a third party for land in San Marcos, Texas that will include a portion of your lease site. I have attached a map that shows the area to be included in the sale. The remaining portion of your lease site that will sit upon railroad property after closing of the sale will be a 20 foot x 232 foot strip. Union Pacific Railroad and you as the tenant will need to enter into a Supplemental Agreement to remove the area that will be sold. Union Pacific will also need to reevaluate your rent as you will be leasing a much smaller area from the Railroad. I am preparing a Supplemental Agreement and new lease map and will pass on to you as soon as completed. Closing of this sale is scheduled for November 20, 2013.

If you have any questions about this transaction or how it will affect your lease site, please contact me.

Sincerely,

Jim Hild
Sr. Manager - Real Estate
(402) 544-8614
jlhild@up.com



SCALE: 1" = 100'

LEGEND

U.P.R.R. RIGHT OF WAY

LEASE AREA SHOWN

EXHIBIT "A"

UNION PACIFIC RAILROAD CO.

TO ACCOMPANY AGREEMENT WITH
DANIEL C. ANDERSON

SAN MARCOS, HAYS COUNTY, TX.

M.P. 209.7+- AUSTIN SUB.
IGN TX V 9 / S-8

REAL ESTATE DEPARTMENT OMAHA NE.

FILE #0970-71 DATE: 10-30-2013 T.D.A.

AUDIT 8A25314

Duplicate Original-Railroad Copy

Industrial Lease (Year To Year) 09-01-06
(Unimproved Property)
Form Approved, law

Folder No. 00970-71
Audit No. ____________

LEASE OF PROPERTY
(INDUSTRIAL LEASE - UNIMPROVED - YEAR TO YEAR)

THIS LEASE ("Lease") is entered into on MARCH 22, 2011, between UNION PACIFIC RAILROAD COMPANY ("Lessor") and DANIEL C. ANDERSON, whose address is 201 S. LBJ Drive, San Marcos, Texas 78666-5575 ("Lessee").

IT IS AGREED BETWEEN THE PARTIES AS FOLLOWS:

Article 1. **PREMISES; USE.**

Lessor leases to Lessee and Lessee leases from Lessor the premises ("Premises") at San Marcos, Texas, shown on the print dated December 2, 2004, marked Exhibit A, hereto attached and made a part hereof, subject to the provisions of this Lease and of Exhibit B attached hereto and made a part hereof. The Premises may be used for maintenance and operation of lessee-owned building in connection with a Dixie Cream Do-Nut Shop, and purposes incidental thereto, only, and for no other purpose.

Article 2. **TERM.**

The term of this Lease shall commence February 1, 2011, and, unless sooner terminated as provided in this Lease, shall extend for one year and thereafter shall automatically be extended from year to year.

Article 3. **FIXED RENT.**

A. Lessee shall pay to Lessor, in advance, fixed rent of Five Thousand Five Hundred Dollars ($5,500.00) annually. The rent shall be automatically increased by Three percent (3%) annually, cumulative and compounded.

B. Not more than once every three (3) years, Lessor may redetermine the fixed rent. If Lessor redetermines the rent, Lessor shall notify Lessee of such change.

Article 4. **INSURANCE.**

A. Before commencement of the term of this Lease, Lessee shall provide to Lessor a certificate issued by its insurance carrier evidencing the insurance coverage required under Exhibit C hereto attached and made a part hereof.

B. Not more frequently than once every two years, Lessor may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

C. All insurance correspondence, certificates and endorsements shall be directed to: Real Estate Department, 1400 Douglas Street STOP 1690, Omaha, Nebraska 68179-1690, Folder No. 970-71.

Article 5. **SPECIAL PROVISION – CANCELLATION.**

Effective upon commencement of the term of this Lease, the Lease dated 11/11/1964, identified as Audit No. LA25314 (the 'Prior Lease'), together with any and all supplements and amendments, is canceled and superseded by this Lease, except for any rights, obligations or liabilities arising under the Prior Lease before cancellation, including any consent to conditional assignment, chattel agreement, or consent to sublease. The security deposit provision or rental payment, if any, contained in the Prior Lease, will survive the cancellation of the Prior Lease and be made a part of this Lease.

IN WITNESS WHEREOF, the parties have executed this Lease as of the day and year first herein written.

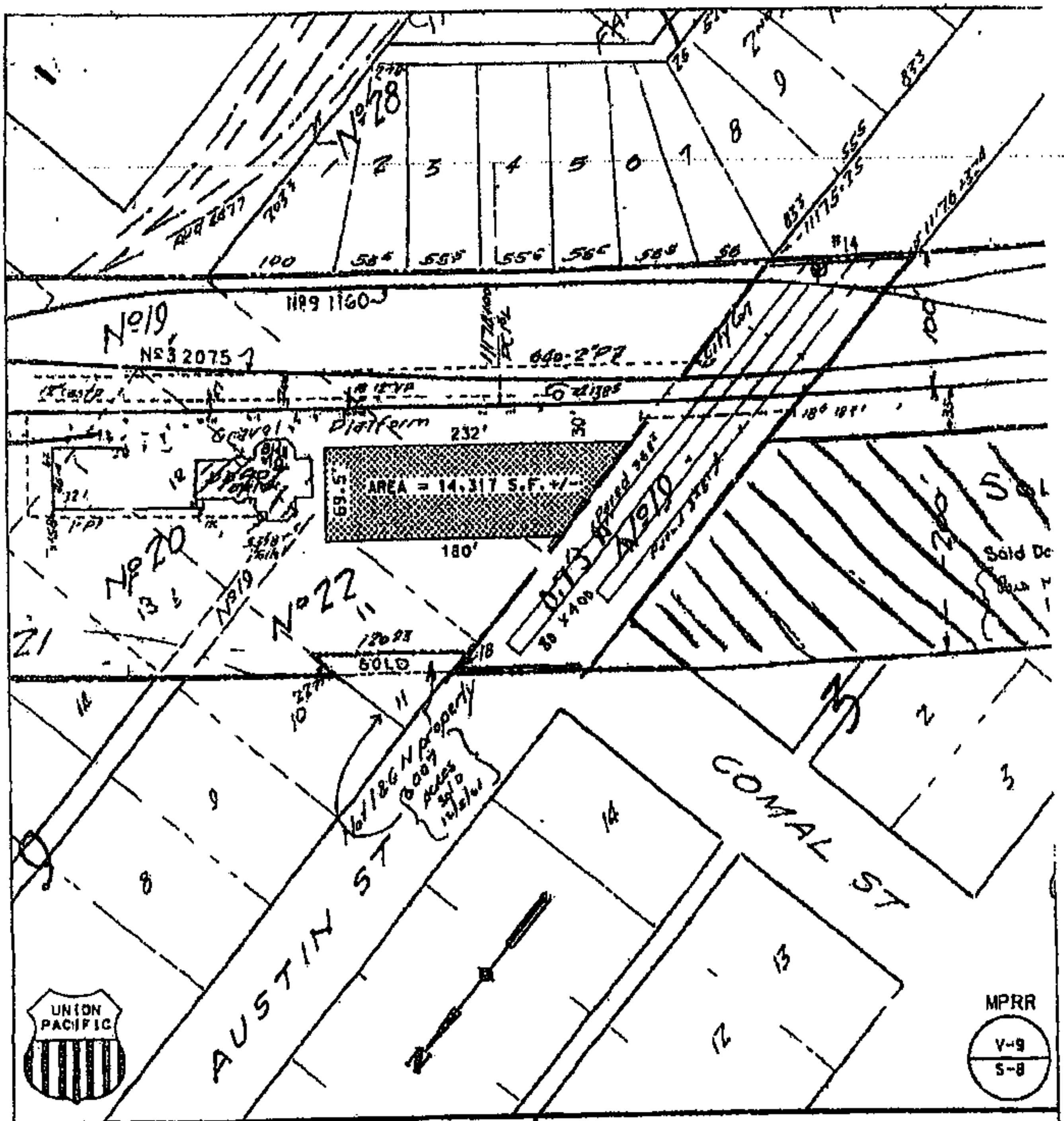
Lessor:
UNION PACIFIC RAILROAD COMPANY

By: James E. Matza
Senior Manager - Real Estate

Lessee:
DANIEL C. ANDERSON

By: Daniel Anderson

NOTE: Cancels and supersedes Lease Audit LA25314 dated November 11, 1964 with J.R. Younger.



LEGEND:

LEASE AREA SHOWN ....

UPRRCO. R/W OUTLINED ....

NOTE: BEFORE YOU BEGIN ANY WORK, SEE AGREEMENT FOR FIBER OPTIC PROVISIONS.

EXHIBIT "A"

UNION PACIFIC RAILROAD COMPANY

SAN MARCOS, HAYS COUNTY, TEXAS

M.P. 209.7 - AUSTIN SUB.

TO ACCOMPANY AGREEMENT WITH

DANIEL C. ANDERSON

SCALE: 1" = 100'

OFFICE OF REAL ESTATE

OMAHA, NEBRASKA DATE: 12/2/2004

RLH FILE: 970-71

CADD FILENAME	970-71.DGN
SCAN FILENAME	M:/MPMKT TEXAS_UPDATE/1005/T105K058.TIF

Industrial Lease (Year To Year) 09-01-06
(Unimproved Property)
Form Approved, Law

EXHIBIT B
TO
INDUSTRIAL LEASE (UNIMPROVED YEAR TO YEAR)

Section 1. **IMPROVEMENTS.**

No improvements placed upon the Premises by Lessee shall become a part of the realty.

Section 2. **RESERVATIONS, TITLE AND PRIOR RIGHTS.**

A. Lessor reserves to itself, its agents and contractors, the right to enter the Premises at such times as will not unreasonably interfere with Lessee's use of the Premises.

B. Lessor reserves (i) the exclusive right to permit third party placement of advertising signs on the Premises, and (ii) the right to construct, maintain and operate new and existing facilities (including, without limitation, trackage, fences, communication facilities, roadways and utilities) upon, over, across or under the Premises, and to grant to others such rights, provided that Lessee's use of the Premises is not interfered with unreasonably.

C. Lessee acknowledges that Lessor makes no representations or warranties, express or implied, concerning the title to the Premises, and that the rights granted to Lessee under this Lease do not extend beyond such right, title or interest as Lessor may have in and to the Premises. Without limitation of the foregoing, this Lease is made subject to all outstanding rights, whether or not of record. Lessor reserves the right to renew any such outstanding rights granted by Lessor or Lessor's predecessors.

D. Without limitation of Subparagraphs B. and C. above, Lessee shall not interfere in any manner with the use or operation of any signboards now or hereafter placed on the Premises or with any property uses in connection with such signboards (such as, by way of example and not in limitation, roadways providing access to such signboards). In no event may Lessee construct on the Premises any improvements that interfere in any manner with the visibility or operation of any signboards now or hereafter on the Premises or on property in proximity to the Premises.

Section 3. **PAYMENT OF RENT.**

Rent (which includes the fixed advance rent and all other amounts to be paid by Lessee under this Lease) shall be paid in lawful money of the United States of America, at such place as shall be designated by the Lessor, and without offset or deduction.

Section 4. **TAXES AND ASSESSMENTS.**

A. Lessee shall pay, prior to delinquency, all taxes levied during the life of this Lease on all personal property and improvements on the Premises not belonging to Lessor. If such taxes are paid by Lessor, either separately or as a part of the levy on Lessor's real property, Lessee shall reimburse Lessor in full within thirty (30) days after rendition of Lessor's bill.

B. If the Premises are specially assessed for public improvements, the annual rent will be automatically increased by 12% of the full assessment amount.

Section 5. **WATER RIGHTS.**

This Lease does not include any right to the use of water under any water right of Lessor, or to establish any water rights except in the name of Lessor.

Section 6. **CARE AND USE OF PREMISES.**

A. Lessee shall use reasonable care and caution against damage or destruction to the Premises. Lessee shall not use or permit the use of the Premises for any unlawful purpose, maintain any nuisance, permit any waste, or use the Premises in any way that creates a hazard to persons or property. Lessee shall keep the sidewalks and public ways on the Premises, and the walkways appurtenant to any railroad spur track(s) on or serving the Premises, free and clear from any substance which might create a hazard.

B. Lessee shall not permit any sign on the Premises, except signs relating to Lessee's business.

C. If any improvement on the Premises other than the Lessor Improvements is damaged or destroyed by fire or other casualty, Lessee shall, within thirty (30) days after such casualty, remove all debris resulting therefrom. If Lessee fails to do so, Lessor may remove such debris, and Lessee agrees to reimburse Lessor for all expenses incurred within thirty (30) days after rendition of Lessor's bill.

D. Lessee shall comply with all governmental laws, ordinances, rules, regulations and orders relating to Lessee's use of the Premises and this Lease, including, without limitation, any requirements for subdividing or platting the Premises.

Section 7. **HAZARDOUS MATERIALS, SUBSTANCES AND WASTES.**

A. Without the prior written consent of Lessor, Lessee shall not use or permit the use of the Premises for the generation, use, treatment, manufacture, production, storage or recycling of any Hazardous Substances, except that Lessee may use, if lawful, small quantities of common chemicals such as adhesives, lubricants and cleaning fluids in order to conduct business at the Premises. The consent of Lessor may be withheld by Lessor for any reason whatsoever, and may be subject to conditions in addition to those set forth below. It shall be the sole responsibility of Lessee to determine whether or not a contemplated use of the Premises is a Hazardous Substance use.

B. In no event shall Lessee (i) release, discharge or dispose of any Hazardous Substances, (ii) bring any hazardous wastes as defined in RCRA onto the Premises, (iii) install or use on the Premises any underground storage tanks, or (iv) store any Hazardous Substances within one hundred feet (100') of the center line of any main track.

C. If Lessee uses or permits the use of the Premises for a Hazardous Substance use, with or without Lessor's consent, Lessee shall furnish to Lessor copies of all permits, identification numbers and notices issued by governmental agencies in connection with such Hazardous Substance use, together with such other information on the Hazardous Substance use as may be requested by Lessor. If requested by Lessor, Lessee shall cause to be performed an environmental assessment of the Premises upon termination of the Lease and shall furnish Lessor a copy of such report, at Lessee's sole cost and expense.

D. Without limitation of the provisions of Section 12 of this Exhibit B, Lessee shall be responsible for all damages, losses, costs, expenses, claims, fines and penalties related in any manner to any Hazardous Substance use of the Premises (or any property in proximity to the Premises) during the

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Rev 010706

ASSIGNMENT AND ASSUMPTION AGREEMENT

FOR VALUE RECEIVED, **UNION PACIFIC RAILROAD COMPANY,** a Delaware corporation ("Assignor"), ASSIGNS AND TRANSFERS to **CITY OF SAN MARCOS** ("Assignee"), its successors and assigns, all of Assignor's right, title and interest in and to the leases and licenses (collectively, "Licenses") to the extent the Licenses affect the real property ("Property") described on **Exhibit A**, which Licenses are listed on **Exhibit B**.

Assignee agrees, to the extent permitted by law, to (a) perform all of the obligations of Assignor pursuant to the Licenses as they relate to the Property accruing on and after the date hereof, and (b) indemnify, defend and hold Assignor harmless from and against any and all claims, causes of actions and expenses (including reasonable attorney's fees) incurred by Assignor and arising out of (1) Assignee's failure to comply with terms of the Licenses as they relate to the Property on and after the date hereof, or (2) claims under the Licenses as they relate to the Property by the licensees named in the Licenses accruing on and after the date hereof.

This assignment is made and accepted without recourse against Assignor as to the performance by any party under such Licenses.

All exhibits attached to this Agreement are incorporated herein for all purposes.

Dated the _____ day of _______________, 2013.

UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation

By: ____________________
Title: RODNEY S. CARROLL
DIRECTOR - REAL ESTATE

CITY OF SAN MARCOS
a Texas Municipality

By: ____________________
Title: Assistant City Manager

EXHIBIT "B"

U.P.R.R. REAL ESTATE DEPARTMENT

SALE OF LAND

CITY OF SAN MARCOS,TX

MILE POST NO. 209.5

FOLDER NO. 0234960

PROJECT	AUDIT	FOLDER	# of FNET IMAGES	LEG STAT	PARTY NAME	PURPOSE	MANAGER	COUNTY	CITY	ST	SUBDV	MP START	ANNUAL AMT	DISPOSITION	CONTAINED
57285	UPX2872		1	Active	TEXAS POWER & LIGHT COMPANY	Crossing - Wireline	Kathleen L. Nesser	Hays	SAN MARCOS	TX	AUSTIN 1	209.53	$0	Assigned	Partially
71723	LA25314	97071	6	Active	ANDERSON, DANIEL C.	Lease of Land for Industrial Purposes	Jim Matza	HAYS	SAN MARCOS	TX	AUSTIN 1	209.7	$5,834.95	Assigned	Partially
73268	LA30933	97068	6	Active	STOKES, FRAYE B.	Lease of Land for Industrial Purposes	Jim Matza	HAYS	SAN MARCOS	TX	AUSTIN 1	209.7	$5,204.59	Assigned	Totally
73987	LA32259	97062	4	Active	TED BREIHAN COMPANY	Lease of Land for Storage and Handling	Jim Matza	HAYS	SAN MARCOS	TX	Austin 1	209.47	$0	Assigned	Totally
133420	159504		1	Active	SOUTHWESTERN BELL TELEPHONE CO	Crossing - Wire Exhibit to Master	Kathleen L. Nesser	HAYS	SAN MARCOS	TX	Austin	209.63	$0	Assigned	Totally
523349	T11852		1	Active	ENTEX, INC	Encroachment - Pipeline	Kathleen L. Nesser	Hays	SAN MARCOS	TX	AUSTIN 1	209.62	$	Assigned	Partially
633883	221242	199755	1	Active	GRANDE COMMUNICATIONS, INC.	Consent Wire Crossing in Public ROW	Kathleen L. Nesser	Hays	SAN MARCOS	TX	Austin 1	209.65	$	Assigned	Partially

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Audit: LA25314
Folder: 00970-71

ASSIGNMENT

Daniel C. Anderson, an individual, to be addressed at 201 S. LBJ Drive, San Marcos, TX 78666 ("Assignor"), and UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, ("Railroad"), or their predecessors in interest, have heretofore entered into an agreement dated March 22, 2011, bearing Railroad's Audit Number LA25314 (hereinafter "Lease Agreement") covering located at San Marcos, Texas.

Effective as of May 01, 2015, the Assignor does hereby sell, assign, transfer and set over, unto RUBEN BECERRA, an individual, to be addressed at P.O. Box 752, San Marcos, TX 78666 ("Assignee") all of Assignor's right, title and interest in and to the Lease Agreement including any supplement or amendment thereto (if any).

The Assignee hereby accepts the above assignment and agrees to be bound by and to perform and observe fully and faithfully all of the covenants, stipulations and conditions contained in the Lease Agreement and any supplement or amendment thereto (if any) to be performed and observed by the Assignor and assumes all liabilities and obligations mentioned in the Lease Agreement and any supplement or amendment thereto (if any) to be assumed by the Assignor.

Assignee represents and warrants to Railroad that Assignee has purchased and is the owner of all improvements located on, in or under the premises leased under the Lease Agreement.

The Railroad, in consideration of the covenants and agreements of the Assignor and the Assignee herein contained, gives its consent to the aforesaid assignment; PROVIDED, however, that such consent shall not be deemed or construed to authorize any further assignment of the Lease Agreement, whether voluntary, by operation of law, or otherwise, without the prior consent in writing of the Railroad; and PROVIDED, FURTHER, that, as between the Assignor and the Railroad, neither said assignment nor anything herein contained shall be construed as releasing the Assignor, in the event of default by the Assignee, from the obligation to perform all of the covenants contained in the Lease Agreement or any supplement or amendment thereto (if any) to be performed by the Assignor, or from any of the liabilities assumed by the Assignor under said agreement(s).

Article 1. RENT.

A. Effective February 1, 2016, Assignor/Assignee shall pay to Railroad, in advance, rent of Three Thousand Two Hundred Fifty Eight and 29/100 Dollars ($3,258.29) annually. The rent shall be automatically increased by Three percent (3%) annually, cumulative and compounded.

B. Not more than once every one (1) year, Lessor may redetermine the fixed rent. If Lessor redetermines the rent, Lessor shall notify Lessee of such change.

Article 2. **INSURANCE.**

A. Throughout the entire term of this Lease, Assignee shall maintain the insurance coverage required under **Exhibit C** hereto attached and made a part hereof.

B. Not more frequently than once every two years, Railroad may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

C. Upon request of Railroad, Assignee shall provide to Railroad a certificate issued by its insurance carrier evidencing the insurance coverage required under **Exhibit C**.

D. All insurance correspondence shall be directed to: Real Estate Department, 1400 Douglas Street STOP 1690, Omaha, Nebraska 68179-1690, Folder No. 00970-71

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first herein written.

Witness: **UNION PACIFIC RAILROAD COMPANY**

X________________________ ______________________________

Senior Manager - Real Estate

Witness: **DANIEL C. ANDERSON**

X________________________ ______________________________

(Assignor)

Witness: **RUBEN BECERRA**

X________________________ ______________________________

(Assignee)

AUDIT &A25314

Duplicate Original-Railroad Copy

Industrial Lease (Year To Year) 09-01-06
(Unimproved Property)
Form Approved, law

Folder No. 00970-71
Audit No. ____________

LEASE OF PROPERTY
(INDUSTRIAL LEASE - UNIMPROVED - YEAR TO YEAR)

THIS LEASE ("Lease") is entered into on MARCH 22, 2011, between UNION PACIFIC RAILROAD COMPANY ("Lessor") and DANIEL C. ANDERSON, whose address is 201 S. LBJ Drive, San Marcos, Texas 78666-5575 ("Lessee").

IT IS AGREED BETWEEN THE PARTIES AS FOLLOWS:

Article 1. PREMISES; USE.

Lessor leases to Lessee and Lessee leases from Lessor the premises ("Premises") at San Marcos, Texas, shown on the print dated December 2, 2004, marked Exhibit A, hereto attached and made a part hereof, subject to the provisions of this Lease and of Exhibit B attached hereto and made a part hereof. The Premises may be used for maintenance and operation of lessee-owned building in connection with a Dixie Cream Do-Nut Shop, and purposes incidental thereto, only, and for no other purpose.

Article 2. TERM.

The term of this Lease shall commence February 1, 2011, and, unless sooner terminated as provided in this Lease, shall extend for one year and thereafter shall automatically be extended from year to year.

Article 3. FIXED RENT.

A. Lessee shall pay to Lessor, in advance, fixed rent of Five Thousand Five Hundred Dollars ($5,500.00) annually. The rent shall be automatically increased by Three percent (3%) annually, cumulative and compounded.

B. Not more than once every three (3) years, Lessor may redetermine the fixed rent. If Lessor redetermines the rent, Lessor shall notify Lessee of such change.

Article 4. INSURANCE.

A. Before commencement of the term of this Lease, Lessee shall provide to Lessor a certificate issued by its insurance carrier evidencing the insurance coverage required under Exhibit C hereto attached and made a part hereof.

B. Not more frequently than once every two years, Lessor may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

C. All insurance correspondence, certificates and endorsements shall be directed to: Real Estate Department, 1400 Douglas Street STOP 1690, Omaha, Nebraska 68179-1690, Folder No. 970-71.

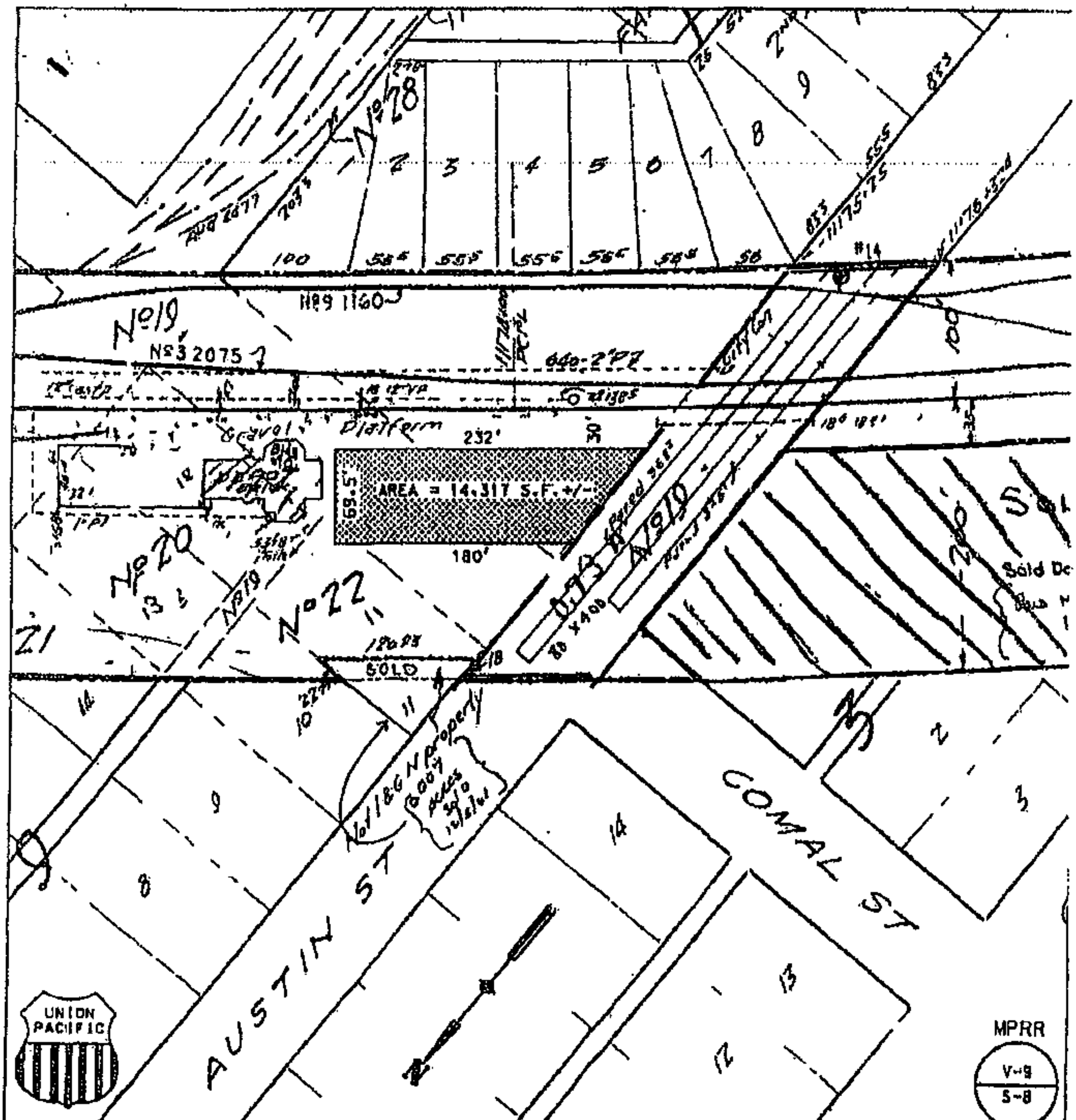
Article 5. **SPECIAL PROVISION – CANCELLATION.**

Effective upon commencement of the term of this Lease, the Lease dated 11/11/1964, identified as Audit No. LA25314 (the 'Prior Lease'), together with any and all supplements and amendments, is canceled and superseded by this Lease, except for any rights, obligations or liabilities arising under the Prior Lease before cancellation, including any consent to conditional assignment, chattel agreement, or consent to sublease. The security deposit provision or rental payment, if any, contained in the Prior Lease, will survive the cancellation of the Prior Lease and be made a part of this Lease.

IN WITNESS WHEREOF, the parties have executed this Lease as of the day and year first herein written.

Lessor: **UNION PACIFIC RAILROAD COMPANY**	Lessee: **DANIEL C. ANDERSON**
By: ______________________ Senior Manager - Real Estate	By: ______________________

NOTE: Cancels and supersedes Lease Audit LA25314 dated November 11, 1964 with J.E. Younger.



LEGEND:

LEASE AREA SHOWN ....

UPRRCO. R/W OUTLINED ....

NOTE: BEFORE YOU BEGIN ANY WORK, SEE AGREEMENT FOR FIBER OPTIC PROVISIONS.

EXHIBIT "A"

UNION PACIFIC RAILROAD COMPANY

SAN MARCOS, HAYS COUNTY, TEXAS

M.P. 209.7 - AUSTIN SUB.

TO ACCOMPANY AGREEMENT WITH

DANIEL C. ANDERSON

SCALE: 1" = 100'

OFFICE OF REAL ESTATE

OMAHA, NEBRASKA DATE: 12/2/2004

RLH FILE: 970-71

CADD FILENAME	970-71.DGN
SCAN FILENAME	M:/MPMKT TEXAS_UPDATE/100S/T105K058.TIF

EXHIBIT B
TO
INDUSTRIAL LEASE (UNIMPROVED YEAR TO YEAR)

Section 1. **IMPROVEMENTS.**

No improvements placed upon the Premises by Lessee shall become a part of the realty.

Section 2. **RESERVATIONS, TITLE AND PRIOR RIGHTS.**

A. Lessor reserves to itself, its agents and contractors, the right to enter the Premises at such times as will not unreasonably interfere with Lessee's use of the Premises.

B. Lessor reserves (i) the exclusive right to permit third party placement of advertising signs on the Premises, and (ii) the right to construct, maintain and operate new and existing facilities (including, without limitation, trackage, fences, communication facilities, roadways and utilities) upon, over, across or under the Premises, and to grant to others such rights, provided that Lessee's use of the Premises is not interfered with unreasonably.

C. Lessee acknowledges that Lessor makes no representations or warranties, express or implied, concerning the title to the Premises, and that the rights granted to Lessee under this Lease do not extend beyond such right, title or interest as Lessor may have in and to the Premises. Without limitation of the foregoing, this Lease is made subject to all outstanding rights, whether or not of record. Lessor reserves the right to renew any such outstanding rights granted by Lessor or Lessor's predecessors.

D. Without limitation of Subparagraphs B. and C. above, Lessee shall not interfere in any manner with the use or operation of any signboards now or hereafter placed on the Premises or with any property uses in connection with such signboards (such as, by way of example and not in limitation, roadways providing access to such signboards). In no event may Lessee construct on the Premises any improvements that interfere in any manner with the visibility or operation of any signboards now or hereafter on the Premises or on property in proximity to the Premises.

Section 3. **PAYMENT OF RENT.**

Rent (which includes the fixed advance rent and all other amounts to be paid by Lessee under this Lease) shall be paid in lawful money of the United States of America, at such place as shall be designated by the Lessor, and without offset or deduction.

Section 4. **TAXES AND ASSESSMENTS.**

A. Lessee shall pay, prior to delinquency, all taxes levied during the life of this Lease on all personal property and improvements on the Premises not belonging to Lessor. If such taxes are paid by Lessor, either separately or as a part of the levy on Lessor's real property, Lessee shall reimburse Lessor in full within thirty (30) days after rendition of Lessor's bill.

B. If the Premises are specially assessed for public improvements, the annual rent will be automatically increased by 12% of the full assessment amount.

Section 5. **WATER RIGHTS.**

This Lease does not include any right to the use of water under any water right of Lessor, or to establish any water rights except in the name of Lessor.

Section 6. **CARE AND USE OF PREMISES.**

A. Lessee shall use reasonable care and caution against damage or destruction to the Premises. Lessee shall not use or permit the use of the Premises for any unlawful purpose, maintain any nuisance, permit any waste, or use the Premises in any way that creates a hazard to persons or property. Lessee shall keep the sidewalks and public ways on the Premises, and the walkways appurtenant to any railroad spur track(s) on or serving the Premises, free and clear from any substance which might create a hazard.

B. Lessee shall not permit any sign on the Premises, except signs relating to Lessee's business.

C. If any improvement on the Premises other than the Lessor Improvements is damaged or destroyed by fire or other casualty, Lessee shall, within thirty (30) days after such casualty, remove all debris resulting therefrom. If Lessee fails to do so, Lessor may remove such debris, and Lessee agrees to reimburse Lessor for all expenses incurred within thirty (30) days after rendition of Lessor's bill.

D. Lessee shall comply with all governmental laws, ordinances, rules, regulations and orders relating to Lessee's use of the Premises and this Lease, including, without limitation, any requirements for subdividing or platting the Premises.

Section 7. **HAZARDOUS MATERIALS, SUBSTANCES AND WASTES.**

A. Without the prior written consent of Lessor, Lessee shall not use or permit the use of the Premises for the generation, use, treatment, manufacture, production, storage or recycling of any Hazardous Substances, except that Lessee may use, if lawful, small quantities of common chemicals such as adhesives, lubricants and cleaning fluids in order to conduct business at the Premises. The consent of Lessor may be withheld by Lessor for any reason whatsoever, and may be subject to conditions in addition to those set forth below. It shall be the sole responsibility of Lessee to determine whether or not a contemplated use of the Premises is a Hazardous Substance use.

B. In no event shall Lessee (i) release, discharge or dispose of any Hazardous Substances, (ii) bring any hazardous wastes as defined in RCRA onto the Premises, (iii) install or use on the Premises any underground storage tanks, or (iv) store any Hazardous Substances within one hundred feet (100') of the center line of any main track.

C. If Lessee uses or permits the use of the Premises for a Hazardous Substance use, with or without Lessor's consent, Lessee shall furnish to Lessor copies of all permits, identification numbers and notices issued by governmental agencies in connection with such Hazardous Substance use, together with such other information on the Hazardous Substance use as may be requested by Lessor. If requested by Lessor, Lessee shall cause to be performed an environmental assessment of the Premises upon termination of the Lease and shall furnish Lessor a copy of such report, at Lessee's sole cost and expense.

D. Without limitation of the provisions of Section 12 of this Exhibit B, Lessee shall be responsible for all damages, losses, costs, expenses, claims, fines and penalties related in any manner to any Hazardous Substance use of the Premises (or any property in proximity to the Premises) during the term of this Lease or, if longer, during Lessee's occupancy of the Premises, regardless of Lessor's consent to such use or any negligence, misconduct or strict liability of any Indemnified Party (as defined in Section 12), and including, without limitation, (i) any diminution in the value of the Premises and/or any adjacent property of any of the Indemnified Parties, and (ii) the cost and expense of clean-up, restoration, containment, remediation, decontamination, removal, investigation, monitoring, closure or post-closure. Notwithstanding the foregoing, Lessee shall not be responsible for Hazardous Substances (i) existing on, in or under the Premises prior to the earlier to occur of the commencement of the term of the Lease or Lessee's taking occupancy of the Premises, or (ii) migrating from adjacent property not controlled by Lessee, or (iii) placed on, in or under the Premises by any of the Indemnified Parties; except where the Hazardous Substance is discovered by, or the contamination is exacerbated by, any excavation or investigation undertaken by or at the behest of Lessee. Lessee shall have the burden of proving by a preponderance of the evidence that any of the foregoing exceptions to Lessee's responsibility for Hazardous Substances applies.

E. In addition to the other rights and remedies of Lessor under this Lease or as may be provided by law, if Lessor reasonably determines that the Premises may have been used during the term of this Lease or any prior lease with Lessee for all or any portion of the Premises, or are being used for any Hazardous Substance use, with or without Lessor's consent thereto, and that a release or other contamination may have occurred, Lessor may, at its election and at any time during the life of this Lease or thereafter (i) cause the Premises and/or any adjacent premises of Lessor to be tested, investigated, or monitored for the presence of any Hazardous Substance, (ii) cause any Hazardous Substance to be removed from the Premises and any adjacent lands of Lessor, (iii) cause to be performed any restoration of the Premises and any adjacent lands of Lessor, and (iv) cause to be performed any remediation of, or response to, the environmental condition of the Premises and the adjacent lands of Lessor, as Lessor reasonably may deem necessary or desirable, and the cost and expense thereof shall be reimbursed by Lessee to Lessor within thirty (30) days after rendition of Lessor's bill. In addition, Lessor may, at its election, require Lessee, at Lessee's sole cost and expense, to perform such work, in which event, Lessee shall promptly commence to perform and thereafter diligently prosecute to completion such work, using one or more contractors and a supervising consulting engineer approved in advance by Lessor.

F. For purposes of this Section 7, the term "Hazardous Substance" shall mean (i) those substances included within the definitions of "hazardous substance", "pollutant", "contaminant", or "hazardous waste", in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601, et seq., as amended or in RCRA, the regulations promulgated pursuant to either such Act, or state laws and regulations similar to or promulgated pursuant to either such Act, (ii) any material, waste or substance which is (A) petroleum, (B) asbestos, (C) flammable or explosive, or (D) radioactive; and (iii) such other substances, materials and wastes which are or become regulated or classified as hazardous or toxic under any existing or future federal, state or local law.

Section 8. UTILITIES.

A. Lessee will arrange and pay for all utilities and services supplied to the Premises or to Lessee.

B. All utilities and services will be separately metered to Lessee. If not separately metered, Lessee shall pay its proportionate share as reasonably determined by Lessor.

Section 9. LIENS.

Lessee shall not allow any liens to attach to the Premises for any services, labor or materials furnished to the Premises or otherwise arising from Lessee's use of the Premises. Lessor shall have the right to discharge any such liens at Lessee's expense.

Section 10. ALTERATIONS AND IMPROVEMENTS; CLEARANCES.

A. No alterations, improvements or installations may be made on the Premises without the prior consent of Lessor. Such consent, if given, shall be subject to the needs and requirements of the Lessor in the operation of its Railroad and to such other conditions as Lessor determines to impose. In all events such consent shall be conditioned upon strict conformance with all applicable governmental requirements and Lessor's then-current clearance standards.

B. All alterations, improvements or installations shall be at Lessee's sole cost and expense.

C. Lessee shall comply with Lessor's then-current clearance standards, except (i) where to do so would cause Lessee to violate an applicable governmental requirement, or (ii) for any improvement or device in place prior to Lessee taking possession of the Premises if such improvement or device complied with Lessor's clearance standards at the time of its installation.

D. Any actual or implied knowledge of Lessor of a violation of the clearance requirements of this Lease or of any governmental requirements shall not relieve Lessee of the obligation to comply with such requirements, nor shall any consent of Lessor be deemed to be a representation of such compliance.

Section 11. AS-IS.

Lessee accepts the Premises in its present condition with all faults, whether patent or latent, and without warranties or covenants, express or implied. Lessee acknowledges that Lessor shall have no duty to maintain, repair or improve the Premises.

Section 12. RELEASE AND INDEMNITY.

A. As a material part of the consideration for this Lease, Lessee, to the extent it may lawfully do so, waives and releases any and all claims against Lessor for, and agrees to indemnify, defend and hold harmless Lessor, its affiliates, and its and their officers, agents and employees ("Indemnified Parties") from and against, any loss, damage (including, without limitation, punitive or consequential damages), injury, liability, claim, demand, cost or expense (including, without limitation, attorneys' fees and court costs), fine or penalty (collectively, "Loss") incurred by any person (including, without limitation, Lessor, Lessee, or any employee of Lessor or Lessee) (i) for personal injury or property damage caused to any person while on or about the Premises, or (ii) arising from or related to any use of the Premises by Lessee or any invitee or licensee of Lessee, any act or omission of Lessee, its officers, agents, employees, licensees or invitees, or any breach of this Lease by Lessee.

B. The foregoing release and indemnity shall apply regardless of any negligence, misconduct or strict liability of any Indemnified Party, except that the indemnity, only, shall not apply to any Loss determined by final order of a court of competent jurisdiction to have been caused by the sole active direct negligence of any Indemnified Party.

C. Where applicable to the Loss, the liability provisions of any contract between Lessor and Lessee covering the carriage of shipments or trackage serving the Premises shall govern the Loss and shall supersede the provisions of this Section 12.

D. No provision of this Lease with respect to insurance shall limit the extent of the release and indemnity provisions of this Section 12.

Section 13. **TERMINATION.**

A. Lessor may terminate this Lease for Lessee's default by giving Lessee notice of termination; if Lessee (i) defaults under any obligation of Lessee under this Lease and, after written notice is given by Lessor to Lessee specifying the default, Lessee fails either to immediately commence to cure the default, or to complete the cure expeditiously but in all events within thirty (30) days after the default notice is given, or (ii) Lessee abandons the Premises for a period of one hundred twenty (120) consecutive days.

B. Notwithstanding the terms of this Lease set forth in Article II, Lessor or Lessee may terminate this Lease without cause upon thirty (30) day's written notice to the other party; provided, however, that at Lessor's election, no such termination by Lessee shall be effective unless and until Lessee has vacated and restored the Premises as required in Section 15A, at which time Lessor shall refund to Lessee, on a pro rata basis, any unearned rental paid in advance. **Notwithstanding anything to the contrary in this Lease, if Lessee has not complied with the requirements of Section 15 A, this Lease, together with all terms contained herein (including payment of rent) will remain in effect until the requirements of Section 15A are met, unless Lessor, in its sole discretion, elects to terminate this Lease.**

Section 14. **LESSOR'S REMEDIES.**

Lessor's remedies for Lessee's default are to (a) enter and take possession of the Premises, without terminating this Lease, and relet the Premises on behalf of Lessee, collect and receive the rent from reletting, and charge Lessee for the cost of reletting, and/or (b) terminate this Lease as provided in Section 13 above and sue Lessee for damages, and/or (c) exercise such other remedies as Lessor may have at law or in equity. Lessor may enter and take possession of the Premises by self-help, by changing locks, if necessary, and may lock out Lessee, all without being liable for damages.

Section 15. **VACATION OF PREMISES; REMOVAL OF LESSEE'S PROPERTY.**

A. Upon termination howsoever of this Lease, Lessee (i) shall have peaceably and quietly vacated and surrendered possession of the Premises to Lessor, without Lessor giving any notice to quit or demand for possession, and (ii) shall have removed from the Premises all structures, property and other materials not belonging to Lessor, including all personal property and restored the surface to as good a condition as the same was in before such structures were erected, including, without limitation, the removal of foundations, the filling in of excavations and pits, and the removal of debris and rubbish.

B. If Lessee has not completed such removal and restoration prior to termination of this Lease, Lessor may, at its election, and at any time or times, (i) perform the work and Lessee shall reimburse Lessor for the cost thereof within thirty (30) days after bill is rendered, (ii) take title to all or any portion of such structures or property by giving notice of such election to Lessee, and/or (iii) treat Lessee as a holdover tenant at will until such removal and restoration is completed.

Section 16. **FIBER OPTICS.**

Lessee shall telephone Lessor during normal business hours (7:00 a.m. to 9:00 p.m., Central Time, Monday through Fridays, except for holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried on the Premises. Lessor may change the telephone number and hours of operation by giving Lessee notice of the change. If cable is buried on the Premises, Lessee will telephone the telecommunications company(ies), arrange for a cable locator, and make arrangements for relocation or other protection of the cable. Notwithstanding compliance by Lessee with this Section 16, the release and indemnity provisions of Section 12 above shall apply fully to any damage or destruction of any telecommunications system.

Section 17. **NOTICES.**

Any notice, consent or approval to be given under this Lease shall be in writing, and personally served, sent by facsimile to (402) 501-0340, by email or by reputable courier service, or sent by certified mail, postage prepaid, return receipt requested, to Lessor at: Union Pacific Railroad Company, Attn: General Manager - Real Estate, Real Estate Department, 1400 Douglas Street, Stop 1690, Omaha, Nebraska 68179; and to Lessee at the above address, or such other address as a party may designate in notice given to the other party. Mailed notices shall be deemed served five (5) days after deposit in the U.S. Mail. Notices which are faxed, emailed, are personally served or sent by courier service shall be deemed served upon receipt.

Section 18. **ASSIGNMENT.**

A. Lessee shall not sublease the Premises, in whole or in part, or assign, encumber or transfer (by operation of law or otherwise) this Lease, without the prior consent of Lessor, which consent may be denied at Lessor's sole and absolute discretion. Any purported transfer or assignment without Lessor's consent shall be void and shall be a default by Lessee.

B. Subject to this Section 18, this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

Section 19. **CONDEMNATION.**

If, as reasonably determined by Lessor, the Premises cannot be used by Lessee because of a condemnation or sale in lieu of condemnation, then this Lease shall automatically terminate. Lessor shall be entitled to the entire award or proceeds for any total or partial condemnation or sale in lieu thereof, including, without limitation, any award or proceeds for the value of the leasehold estate created by this Lease. Notwithstanding the foregoing, Lessee shall have the right to pursue recovery from the condemning authority of such compensation as may be separately awarded to Lessee for Lessee's relocation expenses, the taking of Lessee's personal property and fixtures, and the interruption of or damage to Lessee's business.

Section 20. **ATTORNEY'S FEES.**

If either party retains an attorney to enforce this Lease (including, without limitation, the indemnity provisions of this Lease), the prevailing party is entitled to recover reasonable attorney's fees.

Section 21. **RIGHTS AND OBLIGATIONS OF LESSOR.**

If any of the rights and obligations of Lessor under this Lease are substantially and negatively affected by any changes in the laws applicable to this Lease, whether statutory, regulatory or under federal or state judicial precedent, then Lessor may require Lessee to enter into an amendment to this Lease to eliminate the negative effect on Lessor's rights and obligations to the extent reasonably possible.

Section 22. **ENTIRE AGREEMENT.**

This Lease is the entire agreement between the parties, and supersedes all other oral or written agreements between the parties pertaining to this transaction, including, without limitation, Lease Audit

No. _______ and any other lease under which all or any portion of the Premises was leased to Lessee. Notwithstanding the prior sentence, Lessee shall retain any and all obligations and liabilities which may have accrued under any other such agreements prior to the commencement of the term of this Lease. This Lease may be amended only by a written instrument signed by Lessor and Lessee.

Approved: Insurance Group
Created: 2/10/06
Last Modified: 7/2/07

EXHIBIT C

Union Pacific Railroad
Contract Insurance Requirements

Lease of Land

Lessee shall, at its sole cost and expense, procure and maintain during the life of this Lease (except as otherwise provided in this Lease) the following insurance coverage:

A. Commercial General Liability insurance. Commercial general liability (CGL) with a limit of not less than $2,000,000 each occurrence and an aggregate limit of not less than $4,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage). The policy must also contain the following endorsement, which must be stated on the certificate of insurance: Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Premises" as the Designated Job Site.

B. Business Automobile Coverage insurance. Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less $2,000,000 for each accident, and coverage must include liability arising out of any auto (including owned, hired, and non-owned autos).

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Premises" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

C. Workers Compensation and Employers Liability insurance. Coverage must include but not be limited to:

- Contractor's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement.
- Employers' Liability (Part B) with limits of at least $500,000 each accident, $500,000 disease policy limit $500,000 each employee.

If Lessee is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

In any and all Claims against Lessor by any employee of Lessee, Lessee's indemnification obligation under this section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable under any workers compensation acts, disability benefits acts or other employee benefits acts.

D. <u>Pollution Liability</u> insurance. If permitted use as defined in this Lease includes any generation, handling, enrichment, storage, manufacture, or production of hazardous materials pollution liability insurance is required. Pollution liability coverage must be written on ISO form Pollution Liability Coverage Form Designated Sites CG 00 39 12 04 (or a substitute form providing equivalent liability coverage), with limits of at least $5,000,000 per occurrence and an aggregate limit of $10,000,000.

If hazardous materials are disposed of from the Premises, Lessee must furnish to Lessor evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of $1,000,000 per loss, and an annual aggregate of $2,000,000.

E. <u>Umbrella or Excess</u> insurance. If Lessee utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.

Other Requirements

F. All policy(ies) required above must include Lessor as "Additional Insured" using ISO Additional Insured Endorsement CG 20 11 (or a substitute form providing equivalent coverage). The coverage provided to Lessor as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 11, provide coverage for Lessor's negligence whether sole or partial, active or passive, and shall not be limited by Lessee's liability under the indemnity provisions of this Lease.

G. Lessee waives all rights against Lessor and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the workers compensation and employers' liability or commercial umbrella or excess liability insurance obtained by Lessee required by this agreement.

H. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this Lease, or (b) all punitive damages are prohibited by all states in which the Premises are located.

I. Prior to execution of this Lease, Lessee shall furnish Lessor with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Lease.

J. All insurance policies must be written by a reputable insurance company acceptable to Lessor or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state where the Premises are located.

K. The fact that insurance is obtained by Lessee, or by Lessor on behalf of Lessee, will not be deemed to release or diminish the liability of Lessee, including, without limitation, liability under the indemnity provisions of this Lease. Damages recoverable by Lessor from Lessee or any third party will not be limited by the amount of the required insurance coverage.

BILL OF SALE

Date: May 1, 2015

Seller: DANIEL C. ANDERSON

Seller's Mailing Address:

109 Catclaw Cove
San Marcos, Texas 78666

Buyer: RUBEN BECERRA

Buyer's Mailing Address:

Post Office Box 752
San Marcos, Texas 78667-0752

Consideration: [redacted] cash and other good and valuable consideration, Buyer's execution of a note for [redacted] on the terms set out on the attached Promissory Note and Buyer entering into a new lease agreement with Union Pacific Railroad Company, as Lessor, effective May 1, 2015, whereby Buyer assumes all liability for removing the personal property hereby conveyed upon termination of his lease with Union Pacific and whereby Seller's lease with Union Pacific is terminated effective April 30, 2015 and Seller is relieved of any responsibility and liability for the removal of the personal property upon termination of Seller's lease, as well as removal of the building when lease ends or business closes.

Transferred Properties: All of the right, title, and interest of Seller in 40' by 28' brick building with concrete floor located on a tract of land owned by Union Pacific Railroad Company, being 14,371 square feet more or less, known locally as 201 S. LBJ Drive, San Marcos, Hays County, Texas (the "Property").

Reservations from Transfer: None

Exceptions to Transfer and Warranty: None

Seller, for the Consideration and subject to the Reservations from Transfer and the Exceptions to Transfer and Warranty, sells, transfers, and delivers the Transferred Properties to Buyer, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold it to Buyer and Buyer's heirs, successors, and assigns forever. Seller binds Seller and Seller's heirs and successors to warrant and forever defend all and singular the Transferred Properties to Buyer and Buyer's heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof when the claim is by, through, or under Seller but not otherwise.

As a material part of the Consideration for this sale, Seller and Buyer agree that Buyer is taking the Transferred Properties "AS IS" and that there are no representations, disclosures, or express or implied warranties except those contained in the purchase Agreement and in this Bill of Sale. Buyer has not relied on any information other than Buyer's inspection and the representations and warranties expressly contained in the purchase Agreement and in this Bill of Sale. Buyer specifically waives any warranty, guaranty or representation, oral or written, past or present, express or implied, concerning the property. Buyer agrees that Buyer is accepting the Property based solely on Buyer's own independent investigations and findings and not in reliance on any information provided by Seller.

When the context requires, singular nouns and pronouns include the plural.

DANIEL C. ANDERSON

RUBEN BECERRA

STATE OF TEXAS)

COUNTY OF HAYS)

This instrument was acknowledged before me on April 28, 2015, by DANIEL C. ANDERSON.

PAT NAEF NOTARY PUBLIC STATE OF TEXAS EXPIRES AUG. 18, 2016

Pat Naef
Notary Public, State of Texas

STATE OF TEXAS)

COUNTY OF HAYS)

This instrument was acknowledged before me on April 28, 2015, by RUBEN BECERRA.

Pat Naef
Notary Public, State of Texas

PAT NAEF NOTARY PUBLIC STATE OF TEXAS EXPIRES AUG. 18, 2016

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From:	Parker, Steve
To:	Cosentino, Michael; Mattingly, Shannon; Moyer, Laurie; Hurlbert, He
Cc:	Burke, Kevin; Miller, Jared; Jamison, Collette
Subject:	FW: Dixie Cream / UPRR lease
Date:	Monday, November 28, 2016 10:28:20 AM
Attachments:	Lease of Property.pdf image001.png

Hi everyone, we got an email from a councilmember asking about the lease of the dixie cream donuts at 201 S. LBJ. Kevin had the original lease to Mr. Anderson in 2011. We are not showing anything for Ruben Becerra who now owns and operates this business. Does anyone know if this lease has been amended? Have they been making their payments? Let me know what you find out?

Steve Parker
Assistant City Manager/CFO
630 East Hopkins
San Marcos, TX 78666
Phone: (512) 393-8106
Cell: (210) 273-6266
Fax: (855) 759-2844
E-mail: sparker@sanmarcostx.gov

Get Notifications of Upcoming City Contracts:
sanmarcostx.gov/purchasing
Follow us on: Twitter and RSS Feeds

"Courage is what it takes to stand up and speak; Courage is also what it takes to sit down and listen"
- *Winston Churchill*

From: Burke, Kevin
Sent: Monday, November 28, 2016 10:17 AM
To: Parker, Steve <SParker@sanmarcostx.gov>
Subject: Dixie Cream / UPRR lease

Steve,

The 2011 lease agreement with Dan Anderson is attached. I have not seen a revised agreement.

Thank you,

-Kevin

Kevin J. Burke, AICP
Economic Development & Downtown Administrator
City of San Marcos, TX

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"Courage is what it takes to stand up and speak; Courage is also what it takes to sit down and listen"
- *Winston Churchill*

From: Parker, Steve
Sent: Tuesday, December 06, 2016 5:49 PM
To: Ruben Becerra <rubenbecerrasr@gmail.com>
Subject: FW: Dixie Cream Lease

Dear Mr. Becerra,

With this e-mail I am forwarding a copy of the Assignment and Assumption Agreement between the City and UPRR from 2013 whereby UPRR assigned its rights in the leases to the City. The City of San Marcos purchased a 1.813 acre tract, being a portion of Lot 1 and Lots 10 Thru 14, Block 9, Original Town Site, from Union Pacific Railroad Company on December 17, 2013.

In connection with the purchase, UPRR and the City executed an Assignment and Assumption Agreement whereby the City acquired all of UPRR's right title and interest in leases and licenses affecting the property.

The attached lease, dated March 22, 2011, is still in effect.

Steve Parker
Assistant City Manager/CFO
630 East Hopkins
San Marcos, TX 78666
Phone: (512) 393-8106
Cell: (210) 273-6266
Fax: (855) 759-2844
E-mail: sparker@sanmarcostx.gov

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Follow us on: Twitter and RSS Feeds

"Courage is what it takes to stand up and speak; Courage is also what it takes to sit down and listen" - *Winston Churchill*

From: Parker, Steve
Sent: Thursday, February 16, 2017 1:48 PM
To: Ruben Becerra <rubenbecerrasr@gmail.com>
Subject: FW: Dixie Cream Lease

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Here is the lease with Anderson. We can create a bill. We showed Anderson last paid $6,010 in 2014 which would have escalated 3% a year. The City has 68.56%of the land and UPRR has the rest. The City has 9,817 square feet and UP44 has 4,500 square feet. They would mean 2 payments with a 3 percent escalation have not been made:

Feb 1, 2015 to Jan 31 2016 6190.29x 68.57%= $4,244.61
February 1, 2016 to January 31, 2017 $6,376 x.68.57%=$4,371.95

And then there would be a new bill which would be for February 1, 2017 to January 31, 2018 either adjusted by the 3% or readjusted to current market rates. My understanding is that your UPRR lease was reset to $1.38 per square foot now to readjust to market. Before we complete a bill I wanted to confirm the amounts above to see if that is what you got when reading the Anderson agreement. Thanks, call me if you have any questions or we can set up a meeting. Have a good one.

Steve Parker
Assistant City Manager/CFO
630 East Hopkins
San Marcos, TX 78666
Phone: (512) 393-8106
Cell: (210) 273-6266
Fax: (855) 759-2844
E-mail: sparker@sanmarcostx.gov

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From: Derrick, Melissa
Sent: Thursday, April 06, 2017 10:26 PM
To: Daniels, Charles <CDaniels@sanmarcostx.gov>; Case, Jamie Lee <JCase@sanmarcostx.gov>; Parker, Steve <SParker@sanmarcostx.gov>
Subject: Request for info on Ruben Bacerra's Dixie Cream Location

All,

After looking at at the Rolling agenda, I'd like to request the amount per month owed, price per square foot or acre (whichever makes sense) and would also like to request the amount per ft/acre that Ted Breihan pays for similar city leased property from the Rail Road - at least I believe it's' their right of way is it not? If Fray Stokes still owns some of that particular type of property I'd like the same information to use as a comp.

I'd also like to know how much Mr. Bacerra is in a rears, and to see the purchase contract that includes said piece of property that outllines his obligation to pay each month. In addition, please fill me in on who is responsible for sending this bill to Mr. Barrera, and what excuse we have for not having sent it for....how many years?

Collette or Steve can you provide or find someone who can provide institutional knowledge in regards to whether we have had such a situation before, and if so, how such a gross error handled at that time. Additionally I would like all emails in reference to this site for perspective and will need to know exactly who recognized this issue initially, who reported it, and who reported it to city management. I know I'm not alone in my desire to find out how on earth this happened. I know the former owner had the p lace for decades, but what system failed us on this one and what can be done to ensure it doesn't happen in the future? And one more, is the city going to be prepared with a payment plan for Mr. Becerra that seeks not to put undo and immediate financial burden on he and his family. Perhaps a payment schedule from a bandk for a similar loan could be presented to Council, so that we can be assured the the timeline is appropriate. Please also make sure we are informed of debt forgiveness due to city error is ab option and reasoning, as well as if there could be legal consequences for the city should we be found "at fault" for the situation we have created for this locally owned small business.

All Best,

Melissa

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From: Molina, Holley
To: Parker, Steve
Cc: Lumbreras, Bert; Jamison, Collette; Cosentino, Michael
Subject: Ruben Becerra - Dixie Cream
Date: Wednesday, September 27, 2017 8:27:16 AM

Steve—

Ruben Becerra left me a voicemail yesterday wanting an update on the Dixie Cream lot located at 201 S. LBJ. I know you, Michael and Bert have been working on this. Would you please call him at 512.787.2755 to discuss?

Holley Molina
Management Assistant Senior | City Managers Office | City of San Marcos
630 E Hopkins | San Marcos TX, 78666
(512) 393-8101 W | HMolina@sanmarcostx.gov
sanmarcos
Website | Facebook | Twitter | Instagram

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September 29, 2017

Mr. Ruben Becerra
208 East Mimosa Circle
San Marcos, Texas 78666

Re: Unpaid Rent – Dixie Cream Do-Nut Shop Lease

Dear Mr. Becerra:

This letter shall serve as notice of unpaid rent pursuant to Exhibit B, Section 13A of the Dixie Cream Do-Nut Shop Lease dated March 22, 2011 entered into between Union Pacific Railroad Company (UPRR) and Daniel C. Anderson and partially assigned by UPRR to the City of San Marcos, Texas on December 5, 2013. A copy of the Lease of Real Property (the "Lease") and the Assignment and Assumption Agreement are enclosed with this letter.

The original leased premises consisted of 14,317 square feet. On December 5, 2013, UPRR sold 9,817 square feet of the leased premises to the City of San Marcos and partially assigned its rights under the Lease to the City. Prior to the sale and assignment, UPRR notified Daniel Anderson, by letter dated October 30, 2013, of the pending sale and attached a map depicting the 4,500 square foot area of the leased premises that UPRR would continue to own. A copy of that notification letter and the map are enclosed with this letter. Mr. Anderson should have disclosed this information to you at the time you purchased the Dixie Cream Donuts business from him; but even if he failed to do so, you would still be responsible to honor the terms of the lease. The City of San Marcos is not in a position to allow you to continue to use city-owned property for operation of your business at no charge.

Article 3, Paragraph A of the Lease provides for a fixed rent of $5,500 per year, to be paid in advance, and automatically increased by 3% annually, cumulative and compounded. No rent has been paid to the City of San Marcos since the City acquired ownership of 9,817 square feet of the leased premises on December 5, 2013. The City's ownership constitutes 68.6% of the leased premises. By virtue of the City's purchase and UPRR's partial assignment of the lease, the City of San Marcos is entitled to receive 68.6% of the annual rent due under the Lease.

Per the City's documents, the annual unpaid rent amounts under the Lease would be calculated as follows:

2015: $4,244.62 (this sum equals 68.6% of the annual rent of $6,190.30)
2016: $4,371.95 (this sum equals 68.6% of the annual rent of $6,376.01)
2017: $4,503.11 (this sum equals 68.6% of the annual rent of $6,567.29)

If you have any written documents per your real estate transactions with UPRR or Mr. Anderson that denote otherwise, we would be glad to review those on your behalf. We are still more than willing to work with you on an acceptable payment plan. I would appreciate you contacting me as soon as possible to discuss this important matter, to determine how best to resolve it.

Sincerely,

Bert Lumbreras
City Manager

Enclosures

12

From:	Smith, Karen
To:	ruben@becerra.us
Subject:	City of San Marcos Lease with Dixie Cream Donut Shop
Date:	Tuesday, October 3, 2017 10:51:58 AM
Attachments:	Dixie Cream Donut Shop Lease.pdf UPRR - COSM Assignment and Assumption Agreement.pdf UPRR Letter to Daniel Anderson - October 30 2013.pdf Ruben Becerra Letter 09.29.17.pdf

Good morning Mr. Becerra,

Attached is a letter along with attachments regarding the City of San Marcos Lease with Dixie Cream Donut Shop. The original letter was sent to you by Certified Mail on Friday, September 29, 2017, but wanted to also provide an electronic copy to you.

Please feel free to contact City Manager Bert Lumbreras at 512-393-8100 or blumbreras@sanmarcostx.gov with any questions.

Thank you,

Karen Smith
Management Assistant | City Managers Office | City of San Marcos
630 E Hopkins | San Marcos TX, 78666
(512) 393-8102 W | KSmith@sanmarcostx.gov

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10/12/17 13

Mr. Lumbreras,

Thank you for finding time in your schedule to visit with me today over the phone.

When I purchased Dixie Cream from Dan Anderson there were two entities that had control of the land where the building currently occupied by Dixie Cream Artisan Donuts is located. Those two entities are Union Pacific and the City of San Marcos. When the sale of Dixie Cream Donuts was final Mr. Anderson put me in contact with representatives from Union Pacific to transfer the contact. Mr. Anderson also explained the longstanding agreement he had with the City of San Marcos. The arrangement was quite simple. The tenant of the building, Dixie Cream Artisan Donuts, was to maintain the property and easement as payment for the city owned parcel. This arrangement was in effect for many years, and Dixie Cream Artisan Donuts never received any type of communication related to alleged monies owed for the parcel of land currently in question.

Coincidentally enough, this issue was brought to our attention during the fall of 2016 during my mayoral campaign. Now that this situation has been brought to our attention, my family and I look forward to resolving this matter in the best interests of everyone in our community.

I appreciate your time and your willingness to work with the Becerra Family to find an amicable solution.

Respectfully,

Ruben Becerra
512-787-2755

15

Case, Jamie Lee

From: Lumbreras, Bert
Sent: Thursday, October 26, 2017 10:59 AM
To: 'ruben@becerra.us'
Subject: Follow up Info.

Ruben,

Hope all is going well.

I wanted to follow up with you and request the following information. If you can, please provide the following so I can make a final determination so we can resolve the outstanding issues with lease payments.

- Copy of your agreement with UPRR or bill? I want to determine if any portion of your payment included the city's lease payment
- Copy of the property layout with UPRR or agreement with Mr. Anderson? I want to verify UPRR's calculation for your payment based on the percentage allocation we discussed.
- Any other documents that you believe would provide any supporting documentation.

I would ask for your response. Thanks.

Bert

Bert Lumbreras
City Manager | City Managers Office | City of San Marcos
630 E Hopkins | San Marcos TX, 78666
(512) 393-8103 W | BLumbreras@sanmarcostx.gov

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Case, Jamie Lee

From:	Ruben Becerra <ruben@becerra.us>
Sent:	Thursday, October 26, 2017 3:49 PM
To:	Lumbreras, Bert
Subject:	Railroad contract with Dixie
Attachments:	Assignment Agreeement Feb 10 2015.pdf; ATT00001.txt

Bert,

I'd like to see this end as much as you would.

I hope this helps in some way.

Please keep me posted.

Ruben Becerra

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16

Case, Jamie Lee

From: Lumbreras, Bert
Sent: Friday, October 27, 2017 1:40 PM
To: 'Ruben Becerra'
Subject: RE: Railroad contract with Dixie

Ruben,

I totally understand and we need to resolve it.

I am trying to make sure I have all the right information when I am dealing with conflicting aspects. It is safe to say I am trying to find a solution.

Thanks.

Bert

Bert Lumbreras

City Manager | City Managers Office | City of San Marcos
630 E Hopkins | San Marcos TX, 78666
(512) 393-8103 W | BLumbreras@sanmarcostx.gov

Website: www.sanmarcostx.gov

Facebook: http://www.facebook.com/cityofsanmarcos
Twitter: http://www.twitter.com/cityofsanmarcos
Instagram: https://www.instagram.com/cityofsanmarcos/

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-----Original Message-----
From: Ruben Becerra [mailto:ruben@becerra.us]
Sent: Friday, October 27, 2017 1:22 PM
To: Lumbreras, Bert <BLumbreras@sanmarcostx.gov>
Subject: Re: Railroad contract with Dixie

Hi Bert,

Is it safe to say we will work this out? As I've mentioned, my family is on HOLD over this and we'd like to move on.

I know you're working very hard for our fantastic city. I'll patiently wait for your response.

Warm regards,

Ruben Becerra

Let's rekindle the sense of community

> On Oct 27, 2017, at 11:28 AM, Lumbreras, Bert <BLumbreras@sanmarcostx.gov> wrote:
>
> Thanks Ruben! I will review and be back in touch.
>
> Take care.
>
> Bert
>
> Bert Lumbreras
>
> City Manager | City Managers Office | City of San Marcos
> 630 E Hopkins | San Marcos TX, 78666
> (512) 393-8103 W | BLumbreras@sanmarcostx.gov
>
> Website: www.sanmarcostx.gov
>
> Facebook: http://www.facebook.com/cityofsanmarcos
> Twitter: http://www.twitter.com/cityofsanmarcos
> Instagram: https://www.instagram.com/cityofsanmarcos/
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>
>
> -----Original Message-----
> From: Ruben Becerra [mailto:ruben@becerra.us]
> Sent: Thursday, October 26, 2017 3:49 PM
> To: Lumbreras, Bert <BLumbreras@sanmarcostx.gov>
> Subject: Railroad contract with Dixie
>
> Bert,
>
> I'd like to see this end as much as you would.
>
> I hope this helps in some way.

>
> Please keep me posted.
>
>
> Ruben Becerra
>
>
> CAUTION: This is an email from an EXTERNAL source. DO NOT click links or open attachments without positive sender verification of purpose. Never enter USERNAME, PASSWORD or sensitive information on linked pages from this email.
>

17

From: Lumbreras, Bert
To: Ruben Becerra
Cc: Parker, Steve; Cosentino, Michael
Subject: Dixie Cream Lease
Date: Tuesday, November 21, 2017 11:07:34 PM

Ruben,

I wanted to give you my final position on this pending issue of land lease payments with the City of San Marcos.

- The UPRR agreement rate for your lease is $3,356.04 for 4,500 SF or price of 0.746 price per SF/yr. This represents about 31.4% of the property.
- The City agreement rate for your lease is $4,503.11 for 9,817 SF or price of 0.459 price per SF/yr. This represents about 68.6% of the property.

As we discussed, you were notified last November of this outstanding issue with non-payment of lease payments. It is safe to say the City did not properly bill you for the previous last 3 years. As a result, it is our responsibility to insure we are properly billing and I can assure you we will do that from now on.

In conclusion, I am notifying you we will bill you for one payment of $4,503.11 which coincides with when you were first made aware of these outstanding payments. This will fully address any and all outstanding land lease payments with the City once this payment is made. I will be happy to discuss this with you further.

Take care.

Bert

Bert Lumbreras
City Manager | City Managers Office | City of San Marcos
630 E Hopkins | San Marcos, TX 78666
(512) 393-8103 W | BLumbreras@sanmarcostx.gov

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Invoice

THE CITY OF SAN MARCOS

18

Attention/Bill To: Mr. Ruben Becerra	
Address 1: 208 East Mimosa Circle	
Address 2:	
City: San Marcos	
State/Province: Texas	
Zip/Postal code: 78666	
Phone:	
Contact Name:	

Invoice: AR18028	
Date: 12/04/2017	
Terms: NET 30	

	Description	Quantity	Price	Amount
	Dixie Cream Shop Lease – year 2017			4,503.11
			Sub-total	4,503.11
			Grand Total	4,503.11

Comments:

Thank you.
We appreciate your business.

INTERNAL USE ONLY
JE:
Period:
GL Code:

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SANMARCOSTX.GOV

19

THE CITY OF SAN MARCOS

CITY MANAGER'S OFFICE

January 17, 2018

Mr. Ruben Becerra
208 East Mimosa Circle
San Marcos, Texas 78666

Re: Unpaid Rent – Dixie Cream Do-Nut Shop Lease

Dear Mr. Becerra:

I wanted to provide you a written response as a follow-up to our phone conversation held on January 8, 2018 to discuss the Dixie Cream property lease. Per that conversation, the City committed to research several items in an attempt to find alternatives methods for potential resolution. Unfortunately, after exploration of the options, the only course of action the City can recommend is the proposal provided to you via email on November 21, 2017. That proposal stated that the City would only seek the 2017 lease payment of $4,503.11. Because we could not prove that you were appropriately notified until November 2016 of lease amounts due to the City for previous years, which correspond to the 68.6% of the property where the Dixie Cream building is located, the City will forgive these payments. I did want to explain why the other alternatives we researched were not viable options.

The first alternative was the possibility of selling the land in question. After meeting with staff, it was determined that this site is still a prime location for a future rail transit stop. Although the LoneStar Rail Project is dead at this time, the Capital Area Metropolitan Planning Organization (CAMPO), Alamo Area Metropolitan Planning Organization (AAMPO), and TXDOT are still exploring mass transit alternatives to potentially find a solution that works for the corridor. It would be ill advised on the City's part to sell this piece of property at this time only to repurchase it at a future date.

The second alternative dealt with the use of a license agreement with a profit sharing component tied to the land. While the City has done license agreements in the past, they typically have been done when private property infrastructure has been installed over existing City ROW. The profit sharing component also adds a layer of complexity. We feel it would be very difficult to prove what was owed as compared to a conventional lease payment determined by fair market value. Additionally, when comparing the $0.46 price per square foot charged by the City with the $0.75 price per square foot charged by Union Pacific for their portion of the lease, the City is well below fair market value pricing.

Regarding the storage container located on the adjacent property, it was relayed to Assistant City Manager Steve Parker in August 2017 that the storage container would be on the property for 3 or 4 months while you consolidated storage from your various facilities. The City is requesting the removal of the storage container or the formulation of an agreement with the City for the continued use of the container on the property.

I would like to get this matter resolved as soon as possible. Therefore, I have attached the corresponding invoice for the 2017 lease payment of $4,503.11. The 2018 lease payment will be due in February 2018. If you would like to continue to lease this property, we need to discuss a payment plan for the continued lease payments. Please let me know at your earliest convenience how you would like to proceed.

Sincerely,

Bert Lumbreras
City Manager

Invoice

Attention/Bill To: Mr. Ruben Becerra	
Address 1: 208 East Mimosa Circle	
Address 2:	
City: San Marcos	
State/Province: Texas	
Zip/Postal code: 78666	
Phone:	
Contact Name:	

Invoice: AR18028	
Date: 01/19/2018	
Terms: NET 30	

	Description	Quantity	Price	Amount
	Dixie Cream Shop Lease – year 2017			4,503.11
			Sub-total	4,503.11
			Grand Total	4,503.11

Comments:

Thank you.
We appreciate your business.

INTERNAL USE ONLY
JE:
Period:
GL Code:

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20

From:	Smith, Karen
To:	Parker, Steve
Subject:	Ruben Becerra Phone Call
Date:	Thursday, February 1, 2018 9:33:54 AM

Steve,

Ruben Becerra called this morning. Per Bert you and he are supposed to get together on site at Dixie Cream to determine square footage. Please return his call at 512-787-2755.

Thanks,

Karen Smith
Management Assistant | City Managers Office | City of San Marcos
630 E Hopkins | San Marcos, TX 78666
(512) 393-8102 W | KSmith@sanmarcostx.gov
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From:	Smith, Karen
To:	Parker, Steve
Subject:	FW: Letter Re: Dixie Cream Do-Nut Shop Lease
Date:	Friday, February 2, 2018 5:21:17 PM
Attachments:	Dixie Cream Do-Nut Shop Lease Letter 01.17.18.pdf

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Steve,

I see you are meeting Monday at Dixie Donuts. If you need, attached is the most recent letter Bert sent to Ruben.

Karen Smith
Management Assistant | City Managers Office | City of San Marcos
630 E Hopkins | San Marcos, TX 78666
(512) 393-8102 W | KSmith@sanmarcostx.gov
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From: Smith, Karen **On Behalf Of** Lumbreras, Bert
Sent: Friday, January 19, 2018 11:58 AM
To: ruben@becerra.us
Cc: blumbreras@sanmarcostx.gov; Cosentino, Michael <MCosentino@sanmarcostx.gov>; Parker, Steve <SParker@sanmarcostx.gov>
Subject: Letter Re: Dixie Cream Do-Nut Shop Lease

Mr. Becerra,

Attached is a letter regarding the Dixie Cream Do-Nut Lease. The original letter has been sent to you via certified mail. After reviewing please let me know how you would like to proceed.

Thank you,
Bert Lumbreras
City Manager | City Managers Office | City of San Marcos
630 E Hopkins | San Marcos, TX 78666
(512) 393-8103 W | BLumbreras@sanmarcostx.gov
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22

From:	Parker, Steve
To:	Ruben Becerra
Cc:	Lumbreras, Bert
Subject:	Dixie Cream Lease
Date:	Monday, February 5, 2018 5:51:00 PM

Hello Ruben, the Dixie Cream new measurement we came out with today was 4,495 square feet. In 2017, the rate per square foot was $.459 which is increases by 3% each year. This would indicate the following would be due for 2017 and 2018.

2017 $2,061.88
2018 $2,123.74

We will work up a new lease with Legal.

Steve Parker
Assistant City Manager/CFO | City Managers Office | City of San Marcos
630 E Hopkins | San Marcos, TX 78666
(512) 393-8106 W | (210) 273-6266 M | SParker@sanmarcostx.gov

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23

CERTIFICATE OF OCCUPANCY APPLICATION FORM

Updated: March, 2017

Permit # ________

CONTACT INFORMATION

Applicant's Name	Willie D. Adams	Phone Number	512-749-8898
Applicant's Mailing Address	2106 Stone haven San Marcos	Email Address	Keme5bbq@gmail.com

PROPERTY INFORMATION

Business Name: Keme's BBQ & Soul Food LLC Name of Business Owner: Willie & Ramika Adams

Business Address: 201 S LBJ San Marcos, TX 78666

Shared Building or Lot? ☒ Yes ☐ No Number of Off Street Parking Spaces Provided: ________

List Hazardous Materials on site: Barbeque Pit

Please provide a detailed description of the proposed business, including Intended Use: BBQ and Soul Food

Name and Phone Number of Building Owner: Ruth Molina 512-738-1949 Ruben

DESCRIPTION OF REQUEST

Inspection Date Requested: ________

Inspection Time Preference: ________

AUTHORIZATION

I understand that if any of the information provided is incorrect the certificate may be revoked.

Filing Fee Single Tenant Space $29 Technology Fee $11 TOTAL FEE $40

Filing Fee Entire Building $29 per unit Technology Fee $11 MAXIMUM FEE $165

Applicant's Signature: Willie D. Adams Jr. Date: 2-9-18

Printed Name: Willie D. Adams, Jr.

25

From: Burke, Kevin
To: Elizabeth Ehlers (EEhlers@sanmarcostx.gov)
Subject: permit hold
Date: Thursday, March 22, 2018 2:39:00 PM
Attachments: image001.jpg

Elizabeth,

Could you please place a hold on any permit applications submitted for the former Dixie Cream site, located at 201 S. LBJ?

Thank you,

-Kevin

Kevin Burke, AICP
Economic Development & Downtown Administrator | City Manager's Office
630 E Hopkins | San Marcos TX 78666
512.585.8295 M | KBurke@sanmarcostx.gov

28

From: Parker, Steve
To: Ruben Becerra
Subject: FW: Dixie Cream Lease
Date: Tuesday, April 10, 2018 11:57:00 AM
Attachments: Dixie Cream Lease.pdf

Hello Mr. Becerra,

I am sorry for just getting back to you after our meeting week before last. After our meeting, we discovered we had not created an exhibit outlining the property in question nor had we included any restrictions into the lease regarding the type of business use that would be allowed on the premise. I was out two days last week due to illness plus we had a Director's Advance last week to discuss the goals of our Directors for the upcoming year. Per our discussion, I am including an updated lease including the Lease Exhibit. I also promised to formerly request in writing the items we discussed during our meeting.

1. We need to receive proof of ownership of the building located at 201 S. LBJ
2. We need a copy of the lease agreement with the proposed tenant who will occupy the building at 201 S. LBJ
3. We will need the deposit amount of $2063.21 which represents last year's rent paid in full before we will take this proposed lease to the City Council. Once the lease is approved by the City Council, the current rent of $2,125.11 will be due.

We are prepared to take this to the City Council on May 1st but we would need to have the executed copy back to us by April 20th due to the posting requirement of the City Clerk. Please let us know if you have any questions.

Steve Parker
Assistant City Manager/CFO | City Managers Office | City of San Marcos
630 E Hopkins | San Marcos, TX 78666
512.393.8106 W | 210.273.6266 M | SParker@sanmarcostx.gov
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From: Parker, Steve
To: Ruben Becerra
Cc: Lumbreras, Bert
Bcc: Reyes, Stephanie; Jamison, Collette; Cosentino, Michael
Subject: 201 S. LBJ
Date: Thursday, April 12, 2018 12:00:00 PM

Hi Ruben, I thought I would respond to you via email regarding your text that you were not comfortable paying the 2017 lease payment without a lease being approved by the City Council. The City is of the position that we have an existing valid lease in place that calls for a higher square footage and gives us the ability to reset the lease to market. We have agreed to waive previous amounts due for 2015 and 2016 under this lease and only seek the 2017 amount which correlates to the beginning of the period we know you were initially notified directly by us in October/November of 2016 that the lease existed. We are not of the opinion that it is the City's fault that Mr. Anderson didn't notify you about the existing lease with the City. We were not required to reduce the square footage but graciously did that in order to get this matter resolved and moving forward. Unfortunately, we are not in the position to let Mrs. Molina move in to this building without the 2017 lease amount being paid and her acknowledgement that a 2018 lease needs to be approved by the City Council and the risk associated with that. Once Ms. Molina moves into this building with a ground lease approved by the City Council in her name, the City has no method of recourse if you decide not to pay. Plus it makes it much more defensible for us when we take a lease to the council to say the tenant is paid up on obligations due under the previous agreement even though that could still be debated since we have agreed to lower the square footage which ultimately altered the lease payment to a lower amount. The City is doing everything in its power to act in good faith to get this matter resolved but not receiving some good faith on your part to pay the 2017 lease payment in advance is something that is definitely going to be required to move forward. This is the direction I received after Bert and I talked. Bert said he is willing to set up a conference call with you and me if you like. He is out of town until Monday and I am out of town tomorrow and Monday so I will have to check on his availability to make that happen. Please believe me when I say that we are really trying every feasible way to get this issue resolved.

Steve Parker
Assistant City Manager/CFO | City Managers Office | City of San Marcos
630 E Hopkins | San Marcos, TX 78666
512.393.8106 W | 210.273.6266 M | SParker@sanmarcostx.gov
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From:	Lumbreras, Bert
To:	Parker, Steve; Reyes, Stephanie
Cc:	Case, Jamie Lee
Subject:	RE: 201 s LBj
Date:	Monday, April 23, 2018 7:43:20 AM

Steve,

Catch me this morning. I am need to be clear about the timeline and may be off on my end.

Thanks.

Bert

Bert Lumbreras
City Manager | City Manager's Office
630 E Hopkins, San Marcos, TX 78666
512.393.8103

From: Parker, Steve
Sent: Sunday, April 22, 2018 9:38 PM
To: Lumbreras, Bert <BLumbreras@sanmarcostx.gov>; Reyes, Stephanie <SReyes@sanmarcostx.gov>
Cc: Case, Jamie Lee <JCase@sanmarcostx.gov>
Subject: 201 s LBj

Can you read over the proposed language for the ARF for the lease of the old Dixie Cream property? I wanted to provide a pretty good history but wanted to make sure I wasn't overly descriptive or too down in the weeds.

Steve Parker
Assistant City Manager/CFO | City Manager's Office
630 E Hopkins, San Marcos, TX 78666
512.393.8106 | Mobile 210.273.6266

From:	Parker, Steve
To:	Ruth Molina
Subject:	Re: [EXTERNAL] Re: Ground Lease
Date:	Sunday, April 22, 2018 10:36:08 PM

i gave it to mr. becerra about two or three weeks ago. I believe he told me the previous thursday you would be doing the lease so i assumed he showed it to you. He was originally going to be the one on the lease. i was off that friday and monday and I sent it Wednesday. I am trying to expedite this so you will know what your options are. I need to know by 10:00 tomorrow if we are pushing this to the 15th. It doesn't matter to us. Once again, i apologize that you were misinformed as to the status of this lease.

Sent from my Sprint Samsung Galaxy S8+.

-------- Original message --------
From: Ruth Molina <gmmechanicalhvac@gmail.com>
Date: 4/22/18 10:05 PM (GMT-06:00)
To: "Parker, Steve" <SParker@sanmarcostx.gov>
Subject: [EXTERNAL] Re: Ground Lease

When is the next council meeting?

I'm not really sure that it's okay to send this to me so late on a Thursday afternoon and expect me to return it or have to wait another go round.

Thanks.

On Wed, Apr 18, 2018 at 3:06 PM, Parker, Steve <SParker@sanmarcostx.gov> wrote:

Steve Parker
Assistant City Manager/CFO | City Manager's Office
630 E Hopkins, San Marcos, TX 78666
512.393.8106 | 210.273.6266 M

From:	Ruth Molina
To:	Parker, Steve
Subject:	Re: [EXTERNAL] Re: Ground Lease
Date:	Sunday, April 22, 2018 10:49:43 PM

To clarify, I am still to be eligible for a Temporary co prior to council's approval? You have received the funds needed?

The lease has several clauses in it that require advice from my insurance agent and attorney.

Yes I did receive late on Wednesday but have been busy with previously scheduled surgery for my son and unexpected complications.

On Sun, Apr 22, 2018, 10:36 PM Parker, Steve <SParker@sanmarcostx.gov> wrote:

i gave it to mr. becerra about two or three weeks ago. I believe he told me the previous thursday you would be doing the lease so i assumed he showed it to you. He was originally going to be the one on the lease. i was off that friday and monday and I sent it Wednesday. I am trying to expedite this so you will know what your options are. I need to know by 10:00 tomorrow if we are pushing this to the 15th. It doesn't matter to us. Once again, i apologize that you were misinformed as to the status of this lease.

Sent from my Sprint Samsung Galaxy S8+.

-------- Original message --------
From: Ruth Molina <gmmechanicalhvac@gmail.com>
Date: 4/22/18 10:05 PM (GMT-06:00)
To: "Parker, Steve" <SParker@sanmarcostx.gov>
Subject: [EXTERNAL] Re: Ground Lease

When is the next council meeting?

I'm not really sure that it's okay to send this to me so late on a Thursday afternoon and expect me to return it or have to wait another go round.

Thanks.

On Wed, Apr 18, 2018 at 3:06 PM, Parker, Steve <SParker@sanmarcostx.gov> wrote:

From: Parker, Steve
To: Ruth Molina
Subject: Re: [EXTERNAL] Re: Ground Lease
Date: Sunday, April 22, 2018 10:55:14 PM

---

yes to the temp c of o as long as we get the funds from Mr. Becerra which he has promised me by tomorrow morning along with proof of ownership. i just want to reiterate that we can't guarantee council approval of the lease. We are fine with pushing but i really need to get that check tomorrow.

Sent from my Sprint Samsung Galaxy S8+.

From:	Aguirre, Sam
To:	Case, Jamie Lee; Cosentino, Michael
Cc:	Parker, Steve
Subject:	RE: Dixie Cream Lease
Date:	Monday, April 23, 2018 2:22:41 PM
Attachments:	UPRR Dixie Cream Site New Lease.docx

Jamie,

Attached is the resolution.

Can you please rename the document simply to "Resolution" when you attach. The name I gave the document was simply my way of indexing it for my files.

Thanks.

Sam Aguirre
Assistant City Attorney
City of San Marcos, Texas
512.393.8154
Fax 855.759.2846

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DO NOT CIRCULATE TO THIRD PARTIES.

From: Case, Jamie Lee
Sent: Monday, April 23, 2018 1:44 PM
To: Cosentino, Michael <MCosentino@sanmarcostx.gov>; Aguirre, Sam <SAguirre@sanmarcostx.gov>
Subject: FW: Dixie Cream Lease

THE CITY OF SAN MARCOS

Jamie Lee Case, TRMC
City Clerk | City Clerk
630 E Hopkins, San Marcos, TX 78666
512.393.8089

From: Parker, Steve
Sent: Monday, April 23, 2018 1:23 PM
To: Case, Jamie Lee <JCase@sanmarcostx.gov>
Subject: Dixie Cream Lease

I have the page where she signed.

From:	Parker, Steve
To:	"gmmechanicalhvac@gmail.com"
Subject:	Lease on the next agenda
Date:	Tuesday, April 24, 2018 11:40:00 AM

Hello Ms. Molina, thanks for coming in yesterday and bringing Mr. Becerra's check for 2017. As we have discussed many times in the past few weeks over the phone, I thought it would be good to clarify in writing that we can't guarantee the approval of the lease by the City Council. The City can approve the terms that we are recommending, they could terminate the old lease and not do a new lease with anyone or they could adjust the terms they are willing to accept for the new lease. We are willing to allow you to proceed with the permitting and renovation process and are willing to allow a temporary c of o as long as you understand the risk that approval of the lease can't be guaranteed. Hopefully we can get this resolved by next Tuesday and move forward as we understand that you are in a difficult situation. We will make sure we are expediting reviews and inspections as much as possible to facilitate the expediency of your project. Can you please respond and let me know that you got this email?

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