TM 6/16/16
Item No. 10.

AN ORDINANCE 2016-06-16-0453

AUTHORIZING THE EXECUTION OF AN AMENDMENT TO A LEASE AGREEMENT BETWEEN THE CITY OF SAN ANTONIO AND MERCADO O'LIVA, LLC FOR RETAIL SPACE LOCATED AT 115 PLAZA DE ARMAS.

* * * * *

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

SECTION 1. The City Manager and her designee, severally, are authorized and directed to execute and deliver on behalf of the City an amended lease agreement substantially in the form of **Attachment I**, which is incorporated by reference for all purposes as if fully set forth. The City Manager and designee, severally, should take all other actions reasonably necessary or convenient to effectuate the transaction, including agreeing to non-material changes to the approved form and executing and delivering all ancillary instruments and agreements conducive to effectuating the transaction.

SECTION 2. Funds generated by this ordinance will be deposited into Fund 11001000, Internal Order 219000000000 and General Ledger 4407720.

SECTION 3. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 4. This Ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

SECTION 5. PASSED AND APPROVED this **16th** day of **June**, **2016**.

Ivy R. Taylor

M A Y O R
Ivy R. Taylor

Attest:

Leticia M. Vacek, City Clerk

Approved As To Form:

Martha G. Sepeda, Acting City Attorney

Agenda Item:	**10 (in consent vote: 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18A, 20, 21, 22, 26, 28, 30, 31, 33, 34, 35, 36, 37A, 37B, 37C, 37D, 37E)**
Date:	06/16/2016
Time:	09:35:28 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing the execution of an amendment to a lease agreement between the City of San Antonio and Mercado O'liva, LLC. for retail space located at 115 Plaza de Armas. [Lori Houston, Assistant City Manager, John Jacks, Interim Director, Center City Development]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Treviño	District 1		x				
Alan Warrick	District 2		x			x	
Rebecca Viagran	District 3		x				x
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

ATTACHMENT 1

1st Amendment to Lease Agreement
(Plaza de Armas Retail Lease)

This 1st Amendment to Lease Agreement is entered into between Landlord and Tenant as of the Effective Date.

1. Identifying Information.

Authorizing Ordinance:

Landlord:	City of San Antonio
Landlord's Address:	P.O. Box 839966, San Antonio, Texas 78283-3966
Tenant:	Mercado O'Liva, LLC
Tenant's Address:	549 Ruiz Street San Antonio, Texas 78207
Lease:	Lease Agreement between the City of San Antonio and O'Liva, LLC dated April 15, 2014, pertaining to 2,509 net rentable square feet for retail use on the first floor, and 296 square feet of storage space in the basement, and use of the public exterior sidewalk for outdoor patio space subject to the policies and procedures for sidewalk cafes in the downtown area all of which is located at 115 Plaza de Armas, Suite 107, located on a portion of Lots A2-A5, NCB 117, San Antonio, Bexar County, Texas 78235 and authorized by the Ordinance Authorizing Original Lease.
Ordinance Authorizing Original Lease:	2014-03-20-0175

2. Defined Terms.

All terms defined in the Lease and not otherwise defined in this amendment, when used in this amendment, have the meanings ascribed to them in the Lease. References to "Lease" in this amendment include the original Lease.

Occupancy Commencement Date means March 1, 2015

Rent Commencement Date means September 1, 2015

3. Rent.

Section 3 *Rent*, subsection 3.02 of the Lease is deleted in its entirety and the following is substituted therefore:

3.02. Rent Schedule

3.02.01. Rent for the Initial Term shall be paid in a nominal amount of $10 as consideration.

3.02.02. In addition to the Nominal Rent, rent shall be paid pursuant to the following schedule.

Term	Monthly Gross Sales	Rent
9/1/15 – 8/31/16	Not Applicable	$0
9/1/16 – 8/31/18	$0-$49,999.99	$0
	≥$50,000.00	4.5% of sales

3.02.03. Gross sales shall include all income whatsoever derived resulting either directly or indirectly from Tenant's occupancy including, but not limited to, sale of food, alcohol, fees for private events, and merchandising. This sales amount is exclusive of any reductions such as tax.

3.02.04. **Monthly Sales Report.** Tenant shall provide Landlord with a sales report each month identifying generated income resulting from sales. The sales report shall be in a format similar to that attached as **Exhibit A** to this amendment. Sales reports must be provided to Landlord in writing on or before the 10th of the month immediately following the month for which the sales figures are applicable. Failure to provide the sales reports by the 10th of the month will result in a penalty fee of $150.00 due immediately. This is exclusive of the late payment penalty imposed under section 3.03 of the Lease. Accompanying each sales report will be a check equal to the percentage rent figure as calculated based on the formula listed in subsection 3.02.03. Any payment returned as nonsufficient funds (NSF) shall result in payments being made with certified funds.

4. Intended Interpretation.

The Lease as amended shall be interpreted to implement percentage rent as described above, despite any Lease provision to the contrary. In case of conflict, the percentage rent provision shall control.

5. Security Deposit.

Commencing July 1, 2016, Tenant shall make six equal monthly payments in the amount of $755.83 for the balance of the security deposit required under the Lease. Failure to pay the entire balance of the security deposit due by September 1, 2016 is a breach of this Lease. No penalty shall accrue for early payments.

6. No Default.

Neither Landlord nor Tenant is in default under the Lease and neither party is aware of a cause of action against the other arising out of or relating to the period before the date of Landlord's signature on this amendment.

7. Same Terms and Conditions.

This amendment is a fully integrated expression of the changes the parties intend to make to the Lease. Tenant name is corrected as "Mercado O'Liva, LLC" in this first Amendment to reflect the accurate corporate name; there has been no change in Tenant. The parties acknowledge that, except as expressly set forth in this amendment, the Lease remains in full force and effect according to its terms, and the parties reaffirm the obligations thereof. Both Landlord and Tenant are bound thereby. Neither party is in default under the Lease as amended herein. There have been no amendments or other modifications to the Lease except as expressly described in this amendment.

8. Public Information.

Landlord acknowledges 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.

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In Witness Whereof, the parties have caused their representatives to set their hands.

Landlord	**Tenant**
City of San Antonio, a Texas municipal corporation	**Mercado O'Liva, LLC** , a Texas limited liability company
Signature:_____	Signature: Charles E. Hernandez
Printed Name:_____	Printed Name: CHARLES E. HERNANDEZ
Title:_____	Title: OWNER
Date:_____	Date: June 7. 2016

Attest:

_____
City Clerk

Approved as to Form:

_____
City Attorney

EXHIBIT A

1 - Mercado O'liva
116 Plaza De Armas
STE 107

Sales Report
09/01/2015 – 09/30/2015

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Sales (GROSS)	38512.84	(less Voids Burch. Order Charges Add Chgs)	
Taxes			
Exclusive:			
Food/Non-Alc	2700.61		
Mixed Beverage	0.00		
Merchandise	8.28		
Non-Taxable	0.00		
Inclusive:			
Total	2708.89		
Non-Cash Payments	Qty	Amount	
	1219	35854.18	
Rounding Benefit	0.00 *		

Sales by Category

	Net Sls	Comps	Promos	Surf/Ord	Taxes	Grs Sls
Totals	34010.81	1792.94	0.00	0.00	2708.89	38512.84

Sales by Day Part by Cat

	Breakfast	Lunch	Dinner	Total
FOOD	2238.80	18098.07	11021.46	31357.33
NON-ALC BEVS	303.00	1911.53	276.70	2490.23
BEER	0.00	0.00	0.00	0.00
LIQUOR	0.00	0.00	0.00	0.00
WINE	0.00	0.00	0.00	0.00
MERCHANDISE	0.00	46.25	117.00	163.25
GIFT CARDS	0.00	0.00	0.00	0.00
Totals	2542.80	20053.85	11414.16	34010.81
Check Avg	20.51	17.61	38.12	21.42
Guest Avg	12.84	12.66	19.46	14.37
Avg Guests/Check	1.60	1.39	1.80	1.49

Gst Cnt by Day Part

Breakfast	198
Lunch	1582
Dinner	586
Total	2366

********** End of Report **********