

AN ORDINANCE 2008-12-11-1151

**APPROVING THE ASSIGNMENT OF A FARMERS MARKET LEASE AGREEMENT FROM MS. ROSAMARIA DEMIGUEL D/B/A "LA PALOMITA" TO MS. ADELA RIVERA D/B/A "LA PALOMITA," FOR THE USE OF FARMERS MARKET AREA NUMBER S-9.**

\* \* \* \* \*

**WHEREAS**, on March 01, 2004, City Council approved a Farmers Market Lease Agreement with Ms. Rosamaria DeMiguel d/b/a "La Palomita" for lease of area number S-9 containing approximately 228 square feet of space; and

**WHEREAS**, Ms. Rosamaria DeMiguel has requested the City grant an assignment of this Lease Agreement to Ms. Adela Rivera d/b/a "La Palomita"; and

**WHEREAS**, Ms. Rosamaria DeMiguel has maintained her account with the City in good standing and Ms. Adela Rivera has provided the Downtown Operations Department with all required documentation, including financial information and personal references; and

**WHEREAS**, Ms. Adela Rivera will take over lease payments and use of the space after approval by City Council for the period remaining in the agreement, which expires on August 31, 2009;  
**NOW THEREFORE:**

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

**SECTION 1.** The assignment of a Farmers Market Lease Agreement from Ms. Rosamaria DeMiguel d/b/a "La Palomita" to Ms. Adela Rivera d/b/a "La Palomita" for the use of Farmers Market Area Number S-9 is hereby approved. The City Manager or her designee, or the Director of the Downtown Operations Department or her designee, is authorized to execute the assignment of lease agreement. A copy of the Assignment of Lease Agreement is attached hereto and incorporated herein for all purposes as **Attachment I**.

**SECTION 2.** The application fee of \$1,500.00 generated by this ordinance was deposited in Fund 11001000 General Fund, Internal Order 219000000004 Market Square Farmer's Market, General Ledger 4407720 Lease- Land and Buildings.

**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

SW/mgc  
12/11/08  
Item # 23

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 shall be effective on and after December 21, 2008.

PASSED AND APPROVED this 11<sup>th</sup> day of December, 2008.

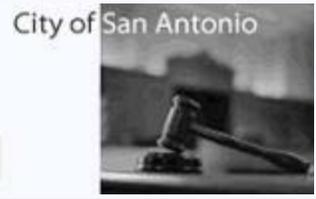
ATTEST: *Lucia M. Reed*  
City Clerk

*Phil Hardberger*  
M A Y O R  
PHIL HARDBERGER

APPROVED AS TO FORM: *Hollis Young*  
for City Attorney



Request for  
**COUNCIL  
ACTION**



**Agenda Voting Results - 23**


<b>Name:</b>	8, 9, 11, 12, 13, 15, 18, 19, 21, 22, 23, 24, 25, 27, 28, 29, 30, 34, 35A, 35B, 35C, 35D, 35E, 36, 37, 38, 39, 41, 42, 46, 47
<b>Date:</b>	12/11/2008
<b>Time:</b>	05:03:36 PM
<b>Vote Type:</b>	Motion to Approve
<b>Description:</b>	An Ordinance approving the assignment of a Farmers Market lease agreement from Ms. Rosamaria DeMiguel d/b/a "La Palomita" to Ms. Adela Rivera d/b/a "La Palomita" for the use of Farmers Market area number S-9. [Pat DiGiovanni, Deputy City Manager; Paula X. Stallcup, Director, Downtown Operations]
<b>Result:</b>	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Phil Hardberger	Mayor		x				
Mary Alice P. Cisneros	District 1		x				
Sheila D. McNeil	District 2		x				
Jennifer V. Ramos	District 3		x				
Philip A. Cortez	District 4		x				
Lourdes Galvan	District 5		x				
Delicia Herrera	District 6		x				x
Justin Rodriguez	District 7		x				
Diane G. Cibrian	District 8		x				
Louis E. Rowe	District 9		x				
John G. Clamp	District 10		x			x	

**ASSIGNMENT AND AMENDMENT OF LEASE AGREEMENT  
FARMERS MARKET AREA NUMBER S-9  
(WITH LANDLORD'S CONSENT)**

**WHEREAS**, the City of San Antonio, a Texas Municipal Corporation, acting by and through its City Manager pursuant to Ordinance No. 98919, passed and approved by the City Council on March 04, 2004, as LANDLORD ("CITY"), entered into that certain Lease Agreement effective **March 1, 2004** ("**LEASE**") with **Ms. Rosamaria DeMiguel d/b/a "La Palomita"** ("**ASSIGNOR**"), for the lease of the following described tract or parcel of real property situated in Farmers Market Plaza at Market Square, San Antonio, Bexar County, Texas to-wit:

A portion of the real property and improvements owned by CITY located at 612 W. Commerce Street, San Antonio Bexar County, Texas within the area commonly known as Farmers Market Plaza at Market Square (said real property and improvements hereinafter referred to as the "**Leased Premises**"). Said **Leased Premises** contain approximately 228 square feet and is identified as Farmers Market Plaza area number S-9; and.

**WHEREAS**, **Ms. Rosamaria DeMiguel d/b/a "La Palomita"**, desires, as **ASSIGNOR**, to convey and assign **TENANT'S** leasehold interest under the **LEASE** to **Ms. Adela Rivera, d/b/a "La Palomita"**, as **ASSIGNEE**; and

**WHEREAS**, said assignment is authorized with prior approval of **CITY**; and

**WHEREAS**, **ASSIGNEE** desires to assume from **ASSIGNOR** all of **ASSIGNOR'S** rights, title, and interest as **TENANT** in and to the **LEASE**, and all of **ASSIGNOR'S** benefits and obligations there under; and

**WHEREAS**, **ASSIGNEE** has satisfied the **CITY** that they are financially able to undertake the obligations of **TENANT** under said **LEASE**, and **CITY** desires to give its consent to **ASSIGNOR'S** assignment of **ASSIGNOR'S** interest in the **LEASE** to **ASSIGNEE** and to **ASSIGNEE'S** assumption of **TENANT'S** obligations there under; and

**WHEREAS**, amending the **LEASE** is in **CITY** and **TENANT'S** best interest; **NOW THEREFORE**,

In consideration of the mutual covenants and agreements set forth below the parties agree as follows:

1. **CONVEYANCE AND ASSIGNMENT**: **ASSIGNOR** does hereby grant, bargain, sell, convey, assign, transfer, set over, and deliver to **ASSIGNEE**, all of **ASSIGNOR'S** rights, title, and interest in and to the **LEASE**, including and also without limitation, all of the rights, duties, obligations, and liabilities of **ASSIGNOR** in, to, and under the **LEASE** to pay rent and to observe and perform all other covenants and duties of **TENANT** there under.
2. **ASSUMPTION**: By its execution hereof, **ASSIGNEE** hereby assumes and agrees to perform all of the terms, covenants, and conditions of the **LEASE** on the part of the **TENANT** therein required to be performed arising from and after the date hereof, and **ASSIGNEE** releases **ASSIGNOR** from all liability for such obligations.

**ASSIGNEE** hereby accepts the assignment of said **ASSIGNOR'S** rights, title and interest in and to the **LEASE** and; **ASSIGNEE** recognizes the superior fee title in and to the land and

premises held by the CITY, as Landlord, and CITY'S right of reversion at the end of the LEASE term, whether occasioned by default or passage of time, as well as, the rights and benefits of every description whatsoever belonging to or accruing to the benefits of the CITY under the LEASE.

3. **CONSENT:** CITY hereby consents to the assignment by Ms. Rosamaria DeMiguel d/b/a "La Palomita", as ASSIGNOR, and the assumption by Ms. Adela Rivera d/b/a "La Palomita", as ASSIGNEE of said ASSIGNOR'S liability and obligations as TENANT, in that certain LEASE between the CITY and Ms. Rosamaria DeMiguel d/b/a "La Palomita", originally approved by City Council pursuant to Ordinance number 98919, passed and approved on March 01, 2004.
4. **REPRESENTATION AND WARRANTIES:** ASSIGNOR and ASSIGNEE represent and warrant that the following statements are true.

Ms. Adela Rivera, as the ASSIGNEE, will be the exclusive owner of the business, formerly owned by Ms. Rosamaria DeMiguel and operating as "La Palomita". Ms. Adela Rivera will take full control of the business immediately upon City Council approval and will operate as "La Palomita".

Ms. Rosamaria DeMiguel will not have any ownership or serve as employee, or agent in the new enterprise operating from the premises. This individual will have no authority, financial or otherwise, in the new enterprise operating from the premises.

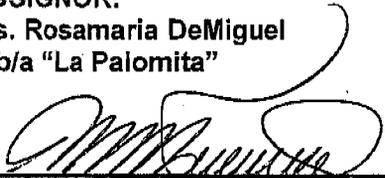
In the event that any such representations and warranties are found by CITY not to be true, then CITY shall have authority to revoke its consent to this assignment and automatically terminate the contract without allowing ASSIGNOR or ASSIGNEE an opportunity to cure.

5. **USE OF PREMISES:** ASSIGNEE agrees that that the Leased Premises shall be utilized for the sole purpose of retail sales of products reflecting an open market with a Mexican Market theme and excluding alcoholic goods and beverages in accordance with applicable statutes, laws, ordinances, rules and regulations of the United States of America, the State of Texas, and the City of San Antonio, Texas.
6. **AMENDING USE AND CARE OF PREMISES:** Section 2.4 of LEASE is amended to include the following provisions:
  - 2.4.1 Further, TENANT covenants and agrees, in keeping with the intent and spirit of Farmers Market Plaza and Market Square, to operate the business conducted on the Leased Premises in an "OWNER PRESENCE" capacity, physically participating in the day-to-day operations of TENANT'S business, as opposed to employing a non-owner manager of said premises, hence an "absentee owner" posture, unless such management is first approved by the Director, Downtown Operations Department, or her designee. Failure to operate the business on the Leased Premises in such a manner will constitute an act of default hereunder and will be grounds, at CITY'S option to terminate this Lease Agreement upon ten (10) days written notice to TENANT.

7. **ACKNOWLEDGEMENT OF READING:** The parties hereto acknowledge that they have thoroughly read this Agreement, including any exhibits or attachments hereto, and have sought and received whatsoever competent advice and counsel which was necessary for them to form a full and complete understanding of their rights and obligations herein, and having done so, do hereby execute this Agreement.

EXECUTED this \_\_\_\_\_, 2008.

**ASSIGNOR:**  
Ms. Rosamaria DeMiguel  
d/b/a "La Palomita"

  
\_\_\_\_\_  
Ms. Rosemaria DeMiguel

**ASSIGNEE:**  
Ms. Adela Rivera  
d/b/a "La Palomita"

  
\_\_\_\_\_  
Ms. Adela Rivera

1612 W. Commerce - street #9  
Address

San Antonio, TX 78207  
City, State, Zip Code

210-223-6862  
Business Telephone Number

210-490-0052  
Other Telephone Number

**LANDLORD:**  
CITY OF SAN ANTONIO, a Texas Municipal  
Corporation

ATTEST:

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney



**CITY OF SAN ANTONIO**  
**Request for Council Action**

Agenda Item # 23  
Council Meeting Date: 12/11/2008  
RFCA Tracking No: R-4281

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**DEPARTMENT:** Downtown Operations

**DEPARTMENT HEAD:** Paula Stallcup

**COUNCIL DISTRICT(S) IMPACTED:**  
Council District 1

**SUBJECT:**  
La Palomita Farmers Market

**SUMMARY:**

This ordinance approves the assignment of a Farmers Market lease agreement from Ms. Rosamaria DeMiguel d/b/a "La Palomita" to Ms. Adela Rivera d/b/a "La Palomita," for the use of approximately 228 square feet in Farmers Market area number S-9.

**BACKGROUND INFORMATION:**

On March 01, 2004, City Council approved a Farmers Market Lease Agreement with Ms. Rosamaria DeMiguel d/b/a "La Palomita" for lease of area number S-9 containing approximately 228 square feet of space. Ms. Rosamaria DeMiguel has requested the City grant an assignment of this Lease Agreement to Ms. Adela Rivera d/b/a "La Palomita". Ms. Rosamaria DeMiguel has maintained her account with the City in good standing and Ms. Adela Rivera has provided the Downtown Operations Department with all required documentation, including financial information and personal references. Ms. Adela Rivera will take over lease payments and use of the space after approval by City Council for the period remaining in the agreement, which expires on August 31, 2009.

**ISSUE:**

Approval of this ordinance is consistent with City of San Antonio policy to lease public property in Farmers Market for retail sales purposes under regulations established in Chapter 32, Article II of the City Code of the City of San Antonio. The assignment of a Lease Agreement requires passage of a City Council ordinance.

**ALTERNATIVES:**

City Council has the option to not approve this Lease Assignment and maintain Ms. Rosamaria DeMiguel as the tenant of Farmers Market area number S-9.

**FISCAL IMPACT:**

No Fiscal Impact. Ms. Adela Rivera will continue payments according to the original Lease Agreement at a rate of \$650.00 per month and will continue until the end of the

contract agreement on August 31, 2009. The assignment application required a fee of \$1,500.00, which has been paid by Ms. Rosamaria DeMiguel and deposited into the City's General Fund.

**RECOMMENDATION:**

Staff recommends approval of this ordinance assigning a Farmers Market Lease Agreement from Ms. Rosamaria DeMiguel d/b/a "La Palomita" to Ms. Adela Rivera d/b/a "La Palomita," for the use of approximately 228 square feet in Farmers Market area number S-9.

**ATTACHMENT(S):**

File Description	File Name
<a href="#">Lease Assignment</a>	Lease Assignment - La Palomita.pdf
<a href="#">Discretionary Contract Disclosure</a>	Discretionay Contract Disclosure.pdf
<a href="#">Voting Results</a>	
<a href="#">Ordinance/Supplement Documents</a>	200812111151.pdf

**DEPARTMENT HEAD AUTHORIZATIONS:**

Colleen Swain Assistant Director Downtown Operations

**APPROVED FOR COUNCIL CONSIDERATION:**

Pat DiGiovanni Deputy City Manager