

AN ORDINANCE 2010-05-20-0440

**AUTHORIZING LEASE AGREEMENTS WITH LORENZA'S AND  
CHULERIAS, LOCATED IN FARMER'S MARKET STALLS S-1 AND S-3  
RESPECTIVELY, IN MARKET SQUARE.**

\* \* \* \* \*

**WHEREAS**, on January 24, 2010, in accordance with the City's Procurement Policy and Procedures Manual, a Request for Proposals (RFP) was issued for Stalls S-1 and S-3 at Farmers Market, a pre-submittal conference was conducted February 3, 2010 and proposals were received February 24, 2010; and

**WHEREAS**, nine proposals were reviewed by an Evaluation Team composed of representatives from the following departments: Convention & Visitor's Bureau, Downtown Operations, Purchasing, Economic Development, Finance, and Parks & Recreation; and

**WHEREAS**, the Evaluation Team rated the proposals from Lorenza's and Chulerias the highest;  
**NOW THEREFORE:**

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

**SECTION 1.** The City Manager or her designee or the Director of the Downtown Operations Department or her designee, is authorized to execute lease agreements with Lorenza's and Chulerias, for Farmer's Market stalls S-1 and S-3 respectively, in Market Square. Copies of the lease agreements are attached hereto and incorporated herein for all purposes as **Attachment I and II**.

**SECTION 2.** Funds generated by this ordinance will be deposited into Fund 11001000, Internal Order 219000000004, General Ledger 4407720.

**SECTION 3.** The financial allocations in this Ordinance are subject to approval by the Chief Financial Officer (CFO), City of San Antonio. The CFO may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

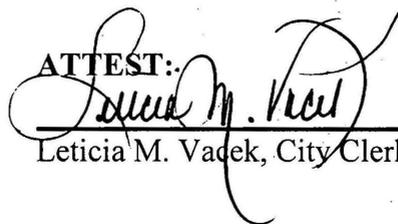
**SECTION 4.** This ordinance shall become effective immediately upon passage by eight (8) or more affirmative votes of the entire City Council; otherwise, said effective date shall be ten (10) days from the date of passage hereof.

PASSED AND APPROVED this 20<sup>th</sup> day of May, 2010.

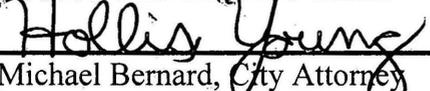


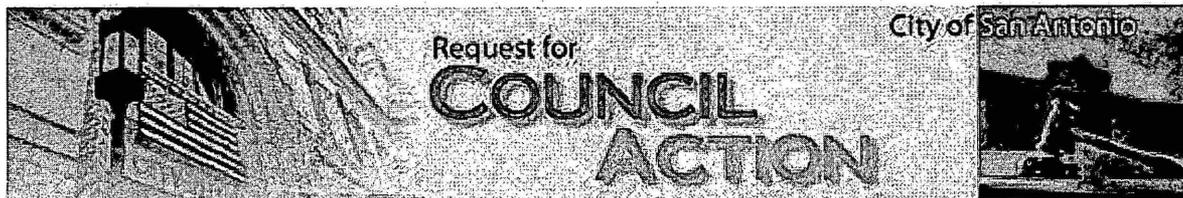
M A Y O R  
Julián Castro

ATTEST:

  
\_\_\_\_\_  
Leticia M. Vadek, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
for Michael Bernard, City Attorney



### Agenda Voting Results - 8

<b>Name:</b>	4, 5, 7, 8, 11, 13, 16, 18, 19						
<b>Date:</b>	05/20/2010						
<b>Time:</b>	09:22:12 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance authorizing lease agreements with Lorenza's and Chulerias, located in Farmer's Market stalls S-1 and S-3 respectively, in Market Square. [Pat DiGiovanni, Deputy City Manager; Paula X. Stallcup, Director, Downtown Operations]						
<b>Result:</b>	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Mary Alice P. Cisneros	District 1		x				x
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x			x	
Philip A. Cortez	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Justin Rodriguez	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
John G. Clamp	District 10		x				

CITY OF SAN ANTONIO  
FARMERS MARKET PLAZA LEASE AGREEMENT

Store Stalls

This Lease Agreement is made and entered into by and between the CITY OF SAN ANTONIO, a Texas Municipal Corporation, acting herein through its City Manager, or her designated representative (hereinafter referred to as "CITY"),

AND

Maria L Reyna and Javier Roman, Sole Proprietor, d/b/a Lorenza's (hereinafter referred to as "TENANT"), acting by and through its duly authorized officers,

WITNESSETH:

1. DEMISE OF PREMISES

- 1.1 CITY, for and in consideration of the rents, covenants and promises herein contained to be kept, performed and observed by TENANT, does hereby Lease and demise to TENANT, and TENANT does hereby rent and accept from CITY 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 the Farmers Market Plaza at Market Square Plaza (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 Stall S-1 in Exhibit A "Floor Plan" attached hereto and incorporated by reference herein for the purposes of this Lease Agreement, the same as if fully copied and set forth at length.
- 1.2 Condition to Use: The CITY reserves the right to enter the Leased Premises at reasonable hours and, if in the opinion of the CITY, an emergency exists requiring immediate action, at any time, to inspect, to make replacements, repairs or restorations, and to carry out any work or activities in connection with the protection of the public health, safety and welfare, or the preservation of the Leased Premises. TENANT acknowledges the above reservation by CITY and agrees to respect and be subordinate to same. Reasonable notice shall be construed as giving notice the day before the CITY proposes to enter the Leased Premises, except for an emergency, which will not require prior notice.

2. USE AND CARE OF PREMISES

- 2.1 The Leased Premises shall be used only for the sale of the following retail items:
- Talavera and Mexican hand-made pottery and crafts (non-duplicate of other tenants at Farmers Market)
  - Latin American hand-made pottery and crafts (non-duplicate of other tenants at Farmers Market)
  - Hand-Made flowers made of corn husks
  - Table clothes and napkins "Deshilados"
  - Crosses and Nativity sets (non-duplicate)

Tenant understands and agrees that any violation of the above stated restrictions would be a material breach of this Agreement and that just compensation for the harm suffered by CITY that would be caused by such violations cannot be accurately estimated and would be difficult to quantify, and that the following charges and procedures are a reasonable and good faith estimate by the parties of the extent of the damage which is reasonably certain to occur in the

event of a violation.

- The first violation shall result in a written notice from CITY
- For each of the next three violations TENANT shall pay CITY \$50.00
- The fifth violation shall be deemed a material breach and default and cause for lease termination without opportunity to cure.

- 2.2 The merchandising concept for this project is to create a blend of merchandise that is representative of the local culture, as well as the artistic and ethnic influences indigenous to Texas, the Southwest United States, and Mexico. The project is intended to enhance the Mexican market theme of Market Square and will avoid duplication of the products sold by the existing Farmers Market and/or El Mercado **TENANTS** to the extent possible.
- 2.3 Any change in the foregoing use(s) and purpose(s) in the Leased Space must be approved in advance and in writing by the **CITY'S** Market Square Facilities Coordinator; however, any such change of more than twenty-five percent (25%) in the items identified in 2.1 must be approved by the Director, Downtown Operations Department, or her designee. Any new use must also be approved by said Director, Downtown Operations Department, or her designee.
- 2.3.1 Any use by **TENANT** of the Leased Premises for purposes not shown above, or otherwise changed in writing as provided herein, will be deemed a breach of this Lease Agreement and will be grounds, at **CITY'S** option, for termination of this Agreement upon ten (5) days written notice to **TENANT**.
- 2.4 In using the Leased Premises for the purpose(s) hereinbefore described, **TENANT** may, with the written permission of **CITY**, demonstrate, exhibit or practice a specific art or craft on the Leased Premises related to **TENANT'S** approved retail purpose.
- 2.5 The following minimum hours of operation are hereby specifically agreed to by the parties hereto:
- 2.5.1 During the months of January, February, March, April, May, September, October, November, and December, **TENANT** agrees to open each and every day by 10:00 a.m. and agrees to operate and conduct business from the time of opening until 6:00 p.m.
- 2.5.2 During the months of June, July, and August, **TENANT** agrees to open business each day by 10:00 a.m. and agrees to operate and conduct business from the time of opening until 8:00 p.m., seven days a week. **CITY** shall post business hours on all major entry and exit points.
- 2.5.2.1 With the exceptions of Sections 2.7 and 2.8 below, failure to comply with above stated minimum operating hours shall result in a written warning on the first offense; a \$25.00 fine for the second offense; a \$50.00 fine for the third offense; and a \$500.00 fine for the fourth offense. The fifth offense shall be deemed as default and cause for lease termination as set forth in Article 18 "Defaults and Remedies".
- 2.5.2.2 **SPECIAL SITUATIONS:** **CITY** agrees that in special situations regarding weather conditions and/or extending hours of operation, **CITY** shall cooperate, to the best of its ability, with the Farmers Market Tenants based on their majority vote, as to temporary closings and/or extended hours of operation.
- 2.6 The preceding hours of operation shall not apply while the Farmers Market Plaza is closed for **THANKSGIVING DAY, EASTER, CHRISTMAS DAY, and NEW YEAR'S DAY**, or during such time as the Leased Premises become untenable because of casualty, repair or restoration.
- 2.7 **TENANT** may not close **TENANT'S** business under any circumstances, except where an emergency exists. **TENANT** must notify the Market Square Facilities Coordinator within 24

hours after closure to inform the Market Square Facilities Coordinator of the nature of the emergency.

2.7.1 Emergencies are defined as follows: A) Death in the **TENANT'S** or **TENANT'S** employee(s) family; B) Medical Emergency; C) Automobile Accident; and/or any other such occurrence, which may be deemed an Emergency by the Market Square Facilities Coordinator.

2.8 No **TENANT** may own, or operate as a "shop owner", more than two (2) stores in the Market Square Complex. The definition of "stores" includes, in-line stores, food court stalls, and store stalls. A **TENANT** may not have more than two of any combination of the above Farmers Market retail sites.

### 3. TERMS AND EXPIRATION DATE

3.1 Subject to earlier termination as hereinafter set forth, the term of this Lease is for a period beginning July 1, 2010 and ending on June 30, 2011. The right is expressly reserved to the **CITY**, acting through City Council, to terminate this Agreement for the following:

3.1.1 In the event this Lease Agreement is deemed to be inconsistent with the best public use of the property, or

3.1.2 In the event the use of the Leased Premises shall have been deemed a nuisance by a court of competent jurisdiction, or

3.1.3 In the event **TENANT** shall default in the performance of any covenants of agreements contained herein and shall fail following thirty (30) days written notice of such default, to remedy same, save and except a ten (10) days' notice period will apply in the case of default in the payment of rent.

3.2 In the event of termination by City Council in relation to 3.1.1 or 3.1.2 above, **CITY** shall give **TENANT** notice in writing at least thirty (30) days prior to the termination date.

3.3 **TENANT** may cancel this Lease Agreement by giving thirty (30) days written notice to the **CITY**.

3.4 In the event City plans to change the use of Farmers Market and/or chooses to not renew Lease at the end of the Lease term, City shall provide six (6) months advance written notice of same to **TENANT** or the remaining months of the terms, whichever is greater.

### 4. ACCEPTANCE AND CONDITION OF PREMISES

4.1 **TENANT** has had full opportunity to examine the Leased Premises and acknowledges that there is in and about them nothing dangerous to life, limb or health and hereby waives any claim for damages that may arise from defects of that character after occupancy. **TENANT'S** taking possession of the Leased Premises shall be conclusive evidence of **TENANT'S** acceptance thereof in good order and satisfactory condition, and **TENANT** hereby accepts the Leased Premises in its present condition as suitable for the purpose for which it is leased. **CITY** specifically disclaims any warranty of suitability for **TENANT'S** intended commercial purposes.

4.2 **TENANT** agrees that no representations, respecting the condition of the Leased Premises, and no promises to decorate, alter, repair or improve the Leased Premises, either before or after the execution hereof, have been made by **CITY** or its agents to **TENANT** unless the same are contained herein or made a part hereof by specific reference herein.

## 5. RENTAL AND UTILITIES

**RENTAL:** In consideration of this Lease Agreement, **TENANT** agrees to pay to **CITY** at the office of the City Treasury, or at such other place as may be designated by the **CITY** in writing, monthly rental as follows:

Lease Year	Rental Rate Adjustment	Area (Sq. Ft.)	Total Monthly Rental Payment
7/1/2010 – 12/31/2010		228	\$650.00
1/1/2011 - 06/30/2011	Rental rate will be adjusted based on CPI Inflation Rate from March 2008 through December 2010 **	228	TBD

\*\* City will use the most current rate available in the consumer price index for the month of December 2010 when calculating the rental rate adjustments. The U.S. Department of Labor Bureau of Labor Statistics (All Urban Consumers) report consumer price index shall be utilized. If CPI is negative at the time of adjustment, the monthly rental payment will remain the same.

5.1 Said monthly rental is payable in monthly increments on the first (1<sup>st</sup>) day of each month, being due in advance, starting on the Commencement Date of July 1, 2010 of this Lease Agreement, and ending June 30, 2011 thereafter, unless otherwise extended. Such payments and amounts are subject to adjustments listed below.

5.1.1 In the event the **CITY** should determine that the Farmers Market Plaza Building would benefit from the opening of the arched windows on any street side of the building, the **CITY** has the right to calculate a higher rent for those shops having the benefit of direct access through these individual arched entrances. **TENANT** agrees to pay the higher rent or give **CITY** thirty (30) days notice that **TENANT** elects to, and will, vacate the Leased Premises prior to the rent increase.

5.2 **GARBAGE FEES:** In further consideration of this Lease Agreement, **TENANT** agrees to pay to the **CITY** at the office of the City Treasury or at such other place as may be designated by the **CITY** in writing, a monthly garbage collection fee in the amount equal to \$5.70 (\$0.025 per square foot X 228 square feet) due on the first day of each month, starting on Commencement Date of July 1, 2010 and ending June 30, 2011 thereafter.

5.3 **UTILITIES:** In addition to consideration of rent, **TENANT** hereby agrees to pay a pro-rata share, based on **square footage**, for electricity, lighting, air conditioning and gas service provided by the **CITY** to the Leased Premises per month based on fifty percent (50%) of the total of the utility services. In cases where individual meters are installed, **TENANT** agrees to pay the entire cost of the utility services.

5.3.1 **TENANT'S** pro-rata share of utilities is based upon the square foot space that the **TENANT** leases from **CITY**. See example below:

Current City Public Service (CPS) bill for \$21,280 divided by 60,800 square feet (total square footage for Farmers Market), equals \$0.35 to cool or heat one square foot. Due to the amount of "Common Area" space within Farmers Market, **only 50%** of the CPS bill will be charged back to the **TENANT**.

Tenant Jones' shop contains 228 square feet; his portion of the above monthly CPS bill equals  $228 \times \$0.35 \times .50 = \$39.90$ .

- 5.4 Rental, garbage, and utility fees specified in this Article 5 are to be paid promptly on the first day of each month by check or money order. All checks and money orders must be payable to the CITY OF SAN ANTONIO and payments should be made at the City Treasury. If rental payments are not received on or before the 10<sup>th</sup> day of the applicable calendar month, said payment shall be considered past due and **TENANT** will be deemed delinquent and in default hereunder; a Twenty (\$20.00) Dollar late charge will be assessed on any payment received on the eleventh (11<sup>th</sup>) day of the applicable calendar month or any day thereafter. **TENANT** also agrees that any rental payment received after the thirtieth (30<sup>th</sup>) day of the respective month shall be due with interest charged at a rate of ten percent (10%) per annum. If **TENANT** accumulates three (3) past due notices in a twelve (12) month period, the **TENANT** will be in Default as specified in Article 18 and may be terminated without notification.
- 5.4.1 The ten (10) day period before the twenty (\$20.00) dollar late charge is applied should not be considered a "grace period"; nor shall the late charge provision be considered as an "option" for rental payments to be made late. All payments are considered late if not received in the City's Treasury office by the close of the business on the first (1<sup>st</sup>) day of each month.
- 5.4.2 At any time during the Lease term more than two (2) Insufficient Funds Checks are presented to the **CITY** in payment of rental or other considerations during a two (2) year calendar period, **TENANT** will be placed on a cash or money order basis for the following two (2) Lease years. No exceptions will be made. Since this type of action is the result of **TENANT'S** failure to comply with the terms of Article 5, a third (3<sup>rd</sup>) incident during the term of this Lease Agreement will be considered a default in the terms of the contract and termination action may be taken without notification.
- 5.4.3 At any such time should the **CITY'S** Department of Finance establish and issue uniform policies related to late payment of rent and/or Insufficient Funds Checks, which may be contrary to the terms stated in sections 5.5.1 – 5.5.2 above, the Department of Finance's policies shall prevail. **CITY** shall use its best efforts to formally notify **TENANT** of any such change(s) in advance.
- 5.5 **Notwithstanding anything to the contrary set forth in this Lease, if TENANT shall fail to make the timely payment of any rent or any additional charges due CITY from TENANT or the payment of any other money due CITY from TENANT under the terms of this Lease, and any such failure shall be repeated two (2) times in any period of twelve (12) consecutive months, then notwithstanding that such failure shall have been cured within the period after notice, as provided in this Lease, any further similar failure within said twelve (12) month period shall be deemed to be a Repeated Event of Default.**
- 5.5.1 **In the event of a Repeated Event of Default, CITY, without giving TENANT any notice and without affording TENANT an opportunity to cure the default, may terminate this Lease forthwith without notice to TENANT.**

## 6. IMPROVEMENTS

- 6.1 **TENANT** shall not make or allow to be made any interior or exterior structural or electrical construction, repairs, alterations, remodeling, renovations, reconstruction, or improvements in any portion of the Leased Premises, nor any alterations in the store-front of the exterior of the Leased Premises (collectively, or, as applicable, individually referred to as improvements) without first obtaining the written consent of **CITY**; which consent may in the sole and absolute discretion of **CITY** be denied, except in accordance with Paragraph 6.2 hereof.
- 6.1.1 Tenant shall not be allowed to cut, knock down, open or expand the walls of a

large stall.

- 6.2 If, however, **CITY** gives such consent, then **TENANT** agrees that the improvements to be constructed by **TENANT** shall be in accordance with approved retail and tenant mix plans and design specifications (hereafter "plans"), which, in all instances, have received the prior written approval of the City Market Square Facilities Coordinator, and where applicable, the Historic Design and Review Commission and any other City of San Antonio Board, Commission, Department, or agency having authority and jurisdiction over the approval of said plans, and further **TENANT** agrees that all improvements will be constructed to meet all Federal, State and local building codes. **TENANT** agrees that no construction or preliminary work of any kind will be done in connection with the aforementioned renovations and improvements until all written approvals and, if applicable, oral approvals are secured.
- 6.3 Furthermore, **TENANT** covenants that it shall not bind, or attempt to bind, **CITY** for the payment of any money in connection with the construction, repair, alteration, addition, remodeling, renovation, or reconstruction (collectively or individually) in, on or about the Leased Premises. Article 8 shall apply in case such improvements are made.
- 6.4 All permanent construction, repairs, alterations, additions, remodeling, renovations, reconstruction, and improvements, and **TENANT'S** work provided herein, shall become, upon expiration or other termination of the term of the Lease Agreement, the property of **CITY** without compensation by **CITY** to **TENANT**. Personal property, including, but not limited to, trade fixtures and merchandise not removed within ten (10) days after the expiration and/or termination date of this Lease Agreement, shall become the property of **CITY** without compensation or liability by **CITY** to **TENANT** for any disposition thereafter at private or public sale or otherwise.
- 6.5 In the construction of improvements to the Leased Premises and at all times thereafter, **TENANT** shall conform to and comply with all Federal, State and local laws, ordinances, permits, rules and regulations applicable to the Leased Premises and the operation of **TENANT'S** business therein.
- 6.6 **TENANT** covenants to undertake renovations or improvements in a reasonable and prudent manner with due regards for the safety of the public and with as little disruption as possible to the operation of Market Square and other tenants. **TENANT** further agrees to complete such renovation or improvements within a period of three (3) months after the date of final **CITY** approval to start construction of same, unless **CITY**, in its sole discretion, agrees otherwise.
- 6.7 **TENANT** is limited to the number of current electrical circuits installed per store stall ("Leased Premises"). No additional circuits may be installed on Leased Premises.

## 7. LIENS PROHIBITED

- 7.1 **TENANT** hereby agrees to promptly pay all persons supplying labor, services and materials in the performance of any and all authorized repairs or improvements of, and duly authorized modifications to, the Leased Premises, except such as are the responsibility of **CITY** hereunder, that may hereafter be made during the term hereof, or any extensions of said term. **TENANT** covenants and agrees to fully indemnify and hold harmless the **CITY** against any and all claims, liens, suits, or actions asserted by any person, persons, firm, or corporation on account of labor, material, or services furnished to **TENANT** during the performance of such authorized improvements and authorized modifications. **TENANT** agrees to get authorization in writing from **CITY** prior to the performance of any improvements or modifications to the Leased Premises referenced herein.

- 7.2 In the event any mechanic's materialman's, or other liens or orders for payment shall be filed against the Leased Premises or improvements thereon, or **CITY**-owned property located therein, during the term hereof, **TENANT** shall, within thirty (30) days after said date of filing, cause the same to be cancelled and discharged of record, by bond, payment directly (or into the registry of an appropriate Court), or otherwise in the manner chosen by **TENANT** and at the expense of **TENANT** and **TENANT** shall also defend on behalf of the **CITY**, at **TENANT** sole cost and expense, any action, suit or proceeding which may be brought thereon or for the enforcement of such lien or order.
- 7.3 Failure of **TENANT** to comply with any requirement of this Article shall be cause for immediate termination of this Lease Agreement by **CITY** in accordance with provisions set forth elsewhere herein.

### 8. MAINTENANCE AND SECURITY

- 8.1 **TENANT** agrees, at **TENANT'S** sole expense, to keep the interior of the Leased Premises, including interior walls, flooring, doors and other interior improvements in good order and repair, and in clean, safe and sanitary condition and to paint the interior when necessary to maintain the interior of the Leased Premises, or any part thereof, in a manner satisfactory to **CITY**, and to replace or repair **TENANT**-installed equipment and fixtures as necessary.
- 8.2 **CITY** agrees to keep and maintain the roof, foundation, plumbing fixtures, plumbing lines and plumbing connections, building lights, main beams and exterior walls including shutters, window frames and glass, and restroom facilities (during normal business hours) in good order and repair, **BUT CITY SHALL NOT BE LIABLE TO TENANT FOR ANY DAMAGE CAUSED BY THE SAME BEING OR BECOMING OUT OF REPAIR AND INCLUDING, BUT NOT LIMITED TO DAMAGE TO MERCHANDISE, TRADE FIXTURES, OR PERSONAL PROPERTY, UNLESS CAUSED BY CITY'S SOLE ACTIVE NEGLIGENCE.**
- 8.3 The building in which the Leased Premises is located will be locked and secured by one (1) hour after closing time, each evening. Closing shall be at 6 p.m. during all months except June, July and August, which shall be at 8 p.m. The building shall remain locked and secured until **TENANT'S** opening hours the next morning, except in special circumstances as agreed to between the Market Square Facilities Coordinator and **TENANT**.
- 8.4 **CITY'S RESERVATIONS: CITY** reserves the right from time to time, to install, maintain, repair, and replace utility lines, pipes, ducts and wires passing through the Leased Premises that serve other parts of the premises within the Farmers Market Plaza Building. Any such installation, maintenance, repair, or replacement shall be placed in locations, which shall not unreasonably interfere with **TENANT'S** use of the Leased Premises, and shall be carried out to the extent possible so as to minimize inconvenience or disruption of **TENANT'S** business.
- 8.5 To assist the **TENANT'S** exhibit "C", Tenant criteria and Exhibit "D", Farmer's Market Operations and maintenance Guidelines.

### 9. SIGNS

- 9.1 Tenants of the Farmers Market Plaza Building must purchase the standard wooden sign as approved by the **CITY**. Placement is located as shown in the design drawings and must be at the top of the arch or on the sign band. No other signs may be placed in the interior or exterior store windows, where applicable. Interior merchandise and pricing signs must be printed either with stencil, press, silk screen, or press type and must not exceed 8 1/2" x 11" or must be signs approved by both the City Director of Downtown Operations Department and the City Market Square Office. Handwritten signs are not acceptable. Use of small chrome or wooden sign

stanchions are not acceptable to hold and frame signs. All exterior signs must comply with City's Historic Design and Review Commission guidelines. Refer to Farmer's Market Plaza Operation & Maintenance Guidelines for signage information.

9.1.1 Temporary signage, such as that used for special events, must be approved in writing, five (5) days in advance, by the Market Square Facilities Coordinator, and removed immediately following the conclusion of the event.

## 10. COMMON AREA

- 10.1 "Common Area" shall mean all areas, space, equipment, facilities, and services provided from time to time by **CITY** for the common use and benefit of the tenants of the Farmers Market, their employees, customers and other invitees, including exits, entrances, sidewalks, landscaped space, washrooms, lounges and shelters, refuse area, pedestrian walkways or courts. "Common Area" shall not include the Sales Area set forth in Section 11.1.
- 10.2 **CITY** shall, subject to events beyond its reasonable control, operate and maintain the Common Area and keep the Common Area in good order and repair, including any City-installed landscape materials indoors and/or outdoors.

## 11. SALES AND DISPLAY AREA

- 11.1 **TENANT'S LEASED PREMISES** for stalls stores includes a Display Space Sales area located two (2') feet in front of **TENANT'S** store and does not exceed the lease line as shown in the floor plan diagram attached hereto and **TENANT** may display merchandise using acceptable display fixtures in this space in front of **TENANT'S** store. **TENANT** may not obstruct any entrance to the store stall with any type of displays, racks, merchandise, counters, etc. **TENANT** may not at anytime roll down overhead door during business hours of operation. Overhead door must remain completely open during business hours of operation. **CITY** has the right to order the removal of display merchandise and fixtures if **TENANT'S** display is not presentable, as determined by the Market Square Facilities Coordinator. **TENANT** must bring into the store any merchandise and display fixtures in said Display Sales Area and outside of **TENANT'S** store doors within one (1) hour after official closing each day. Any merchandise left in front of **TENANT'S** store sales area after official closing will be secured by **CITY** and donated to charity if **TENANT** fails to remove such merchandise after receiving twenty-four (24) hours notice from **CITY** to do so.
- 11.2 **ENCROACHMENT** on the Common Area beyond the authorized Display Space Sales area is not permitted, and violations of such will be fined at \$250.00 per day as per City Code 32-19 ©. More than two (2) repeat violations by **TENANT** in a twelve (12) month period shall be considered a condition of default and shall be grounds for Lease termination proceedings as provided in Article 18.

## 12. RULES AND REGULATIONS

- 12.1 **TENANT** covenants and agrees that **TENANT**, its employees, and invitees will comply with reasonable rules and regulations set by **CITY** from time to time for the efficient operation of the Farmers Market Plaza, including but not limited to the following:
- 12.1.1 To use The Leased Premises only for the purposes permitted in Article 2; and
- 12.1.2 To keep the Leased Premises in a condition acceptable to **CITY** and to not commit or permit any waste of said property; and

- 12.1.3 To not commit nor permit the maintenance or commission of any nuisance on the Leased Premises and to not commit or permit the use of the Leased Premises for any unlawful purpose; and
- 12.1.4 To not permit any person on the Leased Premises to willfully or wantonly destroy, deface, damage, impair or remove any part of the Leased Premises or appurtenance thereto. In particular, **TENANT**, shall not drive or permit to be driven any nails, hooks, tacks, screws, or stakes into the Leased Premises; and
- 12.1.5 To not use nor permit the use of any explosive, flammable, or otherwise dangerous materials, equipment, or goods; and
- 12.1.6 To properly and safely use and operate all electrical, gas, and plumbing fixtures, equipment, or appliances connected thereto, and to keep them clean and sanitary; and
- 12.1.7 To keep the Common Area immediately adjoining the Leased Premises, including sidewalk, free and clear at all times of any obstructions; and
- 12.1.8 To collect and dispose of all rubbish, garbage, litter or other waste in accordance with **CITY** policy (this clause shall not relieve **CITY** of its routine maintenance and clearing obligations); and
- 12.1.9 To observe and comply with all the laws of the United States, the State of Texas, and Ordinances of the City of San Antonio; and
- 12.1.10 To not place nor permit the placement or use of game or video coin-operated machines or coin-operated (pay) telephones, public telephones, vending machines, and/or associated equipment of any kind whatsoever on the Leased Premises, regardless of whether installed at **TENANT'S** expense or not; and
- 12.1.11 To not obstruct nor permit the blockage of any entrance, passageway, electrical panel rooms, **CITY** storage rooms, or exit; and to not at anytime roll down overhead door during business hours of operation.
- 12.1.12 To not use nor permit the use of loudspeakers, bull horns, strobe lights, or other bright, loud, or distracting devices, including radios; and
- 12.1.13 To not conduct nor permit the conduct of any auction, going out of business sale, or salvage sale on or about the Leased Premises; and
- 12.1.14 To not use the Leased Premises for the storage of materials, inventory or supplies, except in accordance with rules and regulations promulgated by the **CITY**; and
- 12.1.15 To not discriminate nor permit discrimination on the part of **TENANT'S** agents or employees on account of race, color, religion, national origin, sex, or handicap in the use of, or admission to the Leased Premises; and
- 12.1.16 To not use Common Area ceilings for storage without prior written permission of the Market Square Office; and
- 12.1.17 To not display, sell, give away, or otherwise distribute or keep live animals, including, but not limited to birds, snakes, chickens, fish, or turtles; and
- 12.1.18 To not display or promote any activity or method of operation on or about the Leased Premises which exposes patrons thereof to nudity or partial nudity. For purposes of this provision, the following definitions apply:

- 12.1.18.1 Nudity means total absence of clothing or covering for the human body; and
- 12.1.18.2 Partial nudity means exposure of the female breast or the exposure of the male or female pubic area or buttocks.
- 12.1.19 The Market Square Facilities Coordinator may make any other necessary rules and regulations in conjunction with the operation of Market Square, **TENANT** will be advised at least ten (10) days in advance in writing of any such proposed rules and regulations.
- 12.2 Should **CITY** provide handicapped accessible ingress and egress in specific locations, **TENANT** agrees to not block or otherwise cause the access way to be nonfunctional without providing an alternative means of access approved in writing by the Market Square Office of the City of San Antonio.
- 12.3 **TENANT** shall not place nor permit the display of any merchandise in the Common Area. Encroachment of the Common Area is subject to a fine, as noted in Section 11.2 above.
- 12.4 **TENANT** agrees to be bound by the provisions of the City Code Chapter 32. Article II. Market Square, as such may be amended or hereafter changed. Should such language conflict with this Lease Agreement, City Code language shall be controlling.
- 12.5 **TENANT** agrees to abide by Exhibit B, Farmers Market Criteria and Exhibit C, Farmers Market Operations and Maintenance Guidelines, which are attached.

### 13. INDEMNIFICATION

- 13.1 **TENANT** covenants and agrees to **FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to TENANT'S activities under this AGREEMENT, including any acts or omissions of TENANT, any agent, officer, director, representative, employee, consultant or subcontractor of TENANT, and their respective officers, agents, employees, directors and representatives while in the exercise of the rights or performance of the duties under this AGREEMENT, all without however, waiving any governmental immunity available to the CITY under Texas Law and without waiving any defenses of the parties under Texas Law. The provisions of this INDEMNIFICATION are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. TENANT shall promptly advise the CITY in writing of any claim or demand against the CITY or TENANT known to TENANT related to or arising out of TENANT'S activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at TENANT'S cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving TENANT of any of its obligations under this paragraph.**
- 13.2 It is the **EXPRESS INTENT** of the parties to this **AGREEMENT**, that the **INDEMNITY** provided for in this Article (**ARTICLE 13**), is an **INDEMNITY** extended by **TENANT** to **INDEMNIFY, PROTECT and HOLD HARMLESS, the CITY** from the consequences of the **CITY'S OWN NEGLIGENCE**, provided however, that the **INDEMNITY** provided for in this

section SHALL APPLY only when the NEGLIGENT ACT of the CITY is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the CITY is the sole cause of the resultant injury, death, or damage. TENANT further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such Injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

#### 14. INSURANCE REQUIREMENTS

- 14.1 Any and all employees, representatives, agents or volunteers of TENANT while engaged in the performance of any work required by the CITY or any work related to a lease of space or Concession Agreement with the CITY shall be considered employees, representatives, agents or volunteers of TENANT only and not of the CITY. Any and all claims that may result from any obligation for which TENANT may be held liable under any Workers' Compensation, Unemployment Compensation or Disability Benefits law or under any similar law on behalf of said employees, representatives, agents or volunteers shall be the sole obligation and responsibility of TENANT.
- 14.2 Prior to the commencement of any work under this Lease Agreement, TENANT shall furnish a completed Certificate(s) of Insurance, including endorsements, to the CITY'S Director, Downtown Operations Department, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The certificate(s), and endorsements, must have the agent's signature and phone number, and be mailed directly from the agent to the CITY. The CITY shall have no duty to pay or perform under this Lease Agreement until such certificate shall have been delivered to the CITY'S Director, Downtown Operations Department, and no officer or employee shall have authority to waive this requirement.
- 14.3 The CITY reserves the right to review the insurance requirements of this section during the effective period of the Lease Agreement and any extension or renewal hereof and to modify insurance coverage's and their limits when deemed necessary and prudent by the CITY'S Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding the Lease Agreement, but in no instance will the CITY allow modification whereupon the CITY may incur increased risk.
- 14.4 TENANT'S financial integrity is of interest to CITY, therefore, subject to TENANT'S right to maintain reasonable deductibles in such amounts as are approved by CITY, TENANT shall obtain and maintain in full force and effect for the duration of this Lease Agreement, and any extension hereof, at TENANT'S sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M. Best rating of no less than A-(VII), in the following types and for amounts not less than the amount listed below:

	TYPE	AMOUNT
1.	Workers' Compensation and Employers Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
2.	Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Contractual Liability d. Products/completed operations e. Personal Injury	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence \$2,000,000.00 Aggregate, or its equivalent in Umbrella or Excess Liability Coverage.
3.	Comprehensive Automobile Liability a. Owned/Leased Vehicles b. Non-owned Vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence or its equivalent
4.	Property Insurance: For physical damage to the property of <b>TENANT</b> , including improvements and betterment to the Leased Premises	Coverage for a minimum of eighty percent (80%) of the Replacement Cost of <b>TENANT'S</b> property

- 14.5 As they apply to the limits required by the City, the **CITY** shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto and may require the deletion, revision or modification of particular policy terms, conditions, limitations or exclusions, except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies. **TENANT** shall be required to comply with any such requests and shall submit a copy of the replacement Certificate of Insurance to City at an address provided by City within ten (10) days of the requested change. **TENANT** shall pay any costs incurred resulting from said changes.
- 14.6 **TENANT** agrees that with respect to the above required insurance; all insurance contracts and Certificate(s) of Insurance will contain the following required provisions.
- 14.6.1 Name the **CITY** and its officers, employees, volunteers and elected representatives as **Additional Insureds** as respects operations and activities of, or on behalf of, the named insured performed under contract with the **CITY**, with the exception of the workers' compensation and professional liability policies;
- 14.6.2 Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the **CITY** is an additional insured shown on the policy;
- 14.6.3 Workers' compensation, employers' liability, auto liability and general liability policies will provide a waiver of subrogation in favor of the **CITY**.
- 14.7 **TENANT** through his Agent shall notify the **CITY** in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices prior to the change if **TENANT** knows of said change in advance, or ten (10) days notice after change if the **TENANT**

did not know of the change in advance. Such notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the **CITY** at the following address:

**City of San Antonio  
Downtown Operations Department  
P.O. Box 839966  
San Antonio, Texas 78283-3966**

- 14.8 If **TENANT** fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the **CITY** may initiate **Lease Agreement** termination proceedings on the first event of default. The **CITY** may upon **TENANT'S** failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the **CITY** shall have the right to order **TENANT** to stop the use of the Premises hereunder until **TENANT** demonstrates compliance with the requirements hereof.
- 14.9 Nothing herein contained shall be construed as limiting in any way the extent to which **TENANT** may be held responsible for payments of damages to persons or property resulting from **TENANT'S** or its subcontractors' performance of the work covered under this Lease Agreement.
- 14.10 All personal property placed in the Leased Premises shall be at the sole risk of **TENANT**. **CITY** shall not be liable, and **TENANT** waives all claims for any damage either to the person or property of **TENANT** or to other persons due to the Leased Premises or any part of appurtenances thereof becoming out of repair or arising from bursting or leaking of water, gas, waste pipes, or defective wiring or excessive or deficient electrical current; or from any act or omission of employees, or other occupants of the Leased Premises, or any other persons; due to the happening of any accident in or about said Leased Premises. **TENANT** shall save and hold harmless **CITY** from any claims arising out of damage to **TENANT'S** property or damage to **TENANT'S** business, including subrogation claims by **TENANT'S** insurers.
- 14.11 Tenant understands and agrees that any violation of the above stated restrictions and failure to provide and maintain insurance would be a material breach of this Agreement and that just compensation for the harm suffered by **CITY** that would be caused by such violations cannot be accurately estimated and would be difficult to quantify, and that the following charges and procedures are a reasonable and good faith estimate by the parties of the extent of the damage which is reasonably certain to occur in the event of a violation.
- The first violation shall result in a written notice from **CITY**
  - For each of the next three violations **TENANT** shall pay **CITY** \$50.00
  - The fifth violation shall be deemed a material breach and default and cause for lease termination without opportunity to cure.

## **15. FIRE AND OTHER CASUALTY**

- 15.1 In the event that the Leased Premises, or the building of which the same is a part, shall be partially damaged by fire, the elements, civil disorder, or other casualty, the Leased Premises and, to the extent necessary for **TENANT** to continue its business on the Leased Premises, the building or portions thereof shall be repaired at the expense of the **CITY** without unreasonable delay unless the **CITY**, at its sole discretion, determines that the damage is so extensive that repair or rebuilding is not practical. In such event, at the option of the **CITY**, and upon notice to

**TENANT**, this Lease Agreement shall cease and come to an end and the rent shall be apportioned and paid up to the date of such damage.

- 15.2 The **CITY'S** obligations to rebuild or repair shall be limited to the extent of insurance proceeds available to the **CITY** for such rebuilding or repair.

## 16. HOLDING OVER

- 16.1 Should **TENANT** hold over the Leased Premises, or any part thereof, after the expiration or termination of the term of this Lease Agreement, unless otherwise agreed in writing, such holding over shall constitute and be construed as a tenancy from month-to-month only, at a rental equal to the rent paid for the last month of the term of this Lease Agreement, plus ten (10%) percent of such amount. The inclusion of the preceding sentence shall not be construed as **CITY'S** consent for the **TENANT** to hold over.

## 17. ASSIGNMENT AND SUBLETTING

- 17.1 Except as provided under "DEATH BENEFIT" and in accordance with City Code Section 32-73, **TENANT** shall not assign the Lease Agreement and business conducted on the Leased Premises or any interest therein.
- 17.2 **TENANT** shall not sublet the Leased Premises or any part thereof or interest therein. Any subletting shall be null and void and **CITY** shall have the right to terminate this Lease Agreement with ten (10) days written notice, unless **TENANT** complies with the provisions of Section 17.3 herein.
- 17.3 The receipt by the **CITY** of rent from an assignee, or occupant of the Leased Premises shall not be deemed a waiver of the covenant in this Lease Agreement against assignment and/or an acceptance of the assignee, or occupant as a **TENANT**, or a release of the **TENANT** from further observance or performance by the **TENANT** of the covenants contained in this Lease Agreement. No provision of this Lease Agreement shall be deemed to have been waived by the **CITY** unless such waiver is in writing and signed by the **CITY**.
- 17.4 In accordance with **CITY** policy, codified as Section 32-104 of the City Code, **TENANT** is expressly prohibited from entering into any independent contracts or independent contract relationships with anyone in relation to the business or operation thereof conducted on the Leased Premises, which amounts to any assignment or subletting of the Leased Premises as determined solely by the **CITY**.
- 17.5 In the event the **CITY** suspects that the business on the Leased Premises is being operated by a person other than the **TENANT**, the **CITY** has the right, but not the duty, to inspect all of the books and records, to include but not be limited to, employment contracts, monthly operating expenses and reports, and accounts payable ledgers, if **CITY** reasonably believes that an assignment or subletting of the premises has occurred without **CITY'S** written approval.
- 17.6 In the event that the **CITY** determines that another person other than the **TENANT** is operating the business on the Leased Premises, the **CITY**, at its option, may declare the Lease Agreement terminated upon ten (10) days written notice.
- 17.7 **CITY** shall have the right to transfer and assign, in whole or in part, any of its rights under this Lease Agreement, and in the building and property referred to herein; and **CITY** shall by virtue of such assignment be released from such obligations, which are assumed by the assignee.

## 18. DEFAULT AND REMEDIES

- 18.1 The following events shall be deemed to be events of default by **TENANT** under this Lease Agreement in addition to any other events set forth herein:
- 18.1.1 **TENANT** shall fail to pay any installment, additional fees, penalty or rent as provided for in this Lease Agreement and shall not cure such failure within ten (10) days after the due date of such rent.
  - 18.1.2 **TENANT** shall fail to operate or conduct business as prescribed by the **CITY** in Article 2, except on account of casualty, damage, remodeling or when the prior written consent of **CITY** is given.
  - 18.1.3 **TENANT** shall fail to comply with any term, provision or covenant of this Lease Agreement, other than the payment of rent, and shall not cure such failure within ten (10) days after written notice thereof to **TENANT**.
  - 18.1.4 **TENANT**, shall within ninety (90) days following the Commencement Date, fail to take possession of the Leased Premises, or having taken said possession, fail to open such Leased Premises for the conduct of business.
  - 18.1.5 **TENANT** deserts or vacates all or any part of the Leased Premises; **TENANT** will be deemed to have deserted or vacated the premises if, by any method or manner whatsoever, **TENANT** assigns, transfers, sells or sublets its interest or right to the Leased Premises without the prior written consent of the **CITY**.
  - 18.1.6 The taking by a court of competent jurisdiction of **TENANT** and its assets pursuant to proceedings under the provisions of any Federal or State reorganization code or act, insofar as the following enumerated remedies for default are provided for or permitted in such code or act.
- 18.2 Upon the occurrence of an Event of Default as heretofore provided, **CITY** may, at its option, declare this Lease Agreement, and all rights and interests created by it, terminated. Upon **CITY** electing to terminate, this Lease Agreement shall cease and come to an end as if that were the day originally fixed herein for the expiration of the term hereof. **CITY**, its agents or attorney may resume possession of the Leased Premises and relet the same for the remainder of the original term for the best rent **CITY**, its agents or attorney may obtain for the account of **TENANT**, who shall make good any deficiency.
- 18.3 Any termination of this Lease Agreement as herein provided shall not relieve **TENANT** from the payment of any sum or sums that shall then be due and payable or become due and payable to **CITY** hereunder, or any claim for damages then or theretofore accruing against **TENANT** hereunder, and any such sum or sums or claim for damages by any remedy provided for by law, or from recovering damages from **TENANT** for any default hereunder. All rights, options and remedies of **CITY** contained in this Lease Agreement shall be cumulative of the other, and **CITY** shall have the right to pursue any one or all of such remedies or any other remedy or relief available at law or in equity, whether or not stated in this Lease Agreement. No waiver by **CITY** of a breach of any of the covenants, conditions or restrictions of this Lease Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition or restriction herein contained.
- 18.4 Upon any such expiration or termination of this Lease Agreement, **TENANT** shall quit and peacefully surrender the Leased Premises to **CITY**, and **CITY**, upon or at any time after such expiration or termination, may without further notice, enter upon and re-enter the Leased Premises and possess and repossess itself thereof, by force, summary proceedings, ejectment or otherwise, and may dispossess **TENANT** and remove **TENANT** and all other persons and

property from the Leased Premises. Any property left on the premises shall be deemed abandoned and **CITY** may dispose of same by private or public sale or otherwise without further legal action by **CITY** or liability to **TENANT** therefore.

#### 19. SEPARABILITY

- 19.1 If any clause or provision of this Lease Agreement is illegal, invalid or unenforceable under present or future laws effective during the term hereof, then and in that event, it is the intention of the parties hereto that the remainder of this Lease Agreement shall not be affected thereby, and it is also the intention of the parties to this Lease Agreement that in lieu of each clause or provision of this Lease Agreement that is illegal, invalid or unenforceable, there be added as a part hereof, a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

#### 20. AMENDMENT

- 20.1 This Lease Agreement, together with the authorizing Ordinance, constitutes the entire agreement between the parties. No amendment, modification or alteration of the terms of this Lease Agreement shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

#### 21. TAXES AND LICENSES

- 21.1 **TENANT** shall pay, on or before their respective due dates, to the appropriate collecting authority, all Federal, State and local taxes and fees which are now or may hereafter be levied upon the Leased Premises, or upon **TENANT**, or upon the business conducted on the Leased Premises, or upon any of **TENANT'S** property used in connection therewith; and **TENANT** shall maintain in current status all Federal, State and local licenses and permits required for the operation of the business conducted by **TENANT**, subject to agreements entered into by **TENANT** and Federal, State or local government authorities.

#### 22. NOTICES

- 22.1 Notices to **CITY** required or appropriate under this Lease Agreement shall be deemed sufficient if in writing and mailed, Certified mail, Postage Prepaid, and addressed to:

City of San Antonio  
Downtown Operations Department  
P.O. Box 839966  
San Antonio, Texas 78283-3966

City of San Antonio  
City Clerk's Office  
City Hall-Second Floor  
P.O. Box 839966  
San Antonio, Texas 78283-3966

or to such other address as may have been designated in writing by the City Manager of the **CITY OF SAN ANTONIO** from time to time.

Notices to **TENANT** shall be deemed sufficient if in writing and mailed, Certified mail, Postage Prepaid, addressed to **TENANT** at the address shown below **TENANT'S** signature line, or hand-delivered to **TENANT**.

### **23. DEATH BENEFIT**

- 23.1 Where **TENANT** is a sole proprietorship and **TENANT** dies, the surviving spouse or **TENANT'S** heir or a testamentary beneficiary of **TENANT** or a representative of **TENANT'S** estate designated by a court of competent jurisdiction may operate the establishment until the end of the term of this Lease Agreement then in effect, as per City Code Section 32-73 (a), and subject to City Council approval.

### **24. CONSUMER PROTECTION**

- 24.1 **TENANT** specifically covenants and agrees that it will honor a purchaser's request for an exchange or refund of merchandise purchased from **TENANT'S** business on the Leased Premises, in accordance with standard accepted business practices of retailers generally in the San Antonio area, unless **TENANT** conspicuously posts at the check-out counter where payment is made a sign, legible and in bold letters, at least 5" by 7" in size, clearly giving fair notice to consumers that **TENANT'S** policy is that all sales are final and that no refunds and/or exchanges will be given.
- 24.2 **TENANT** understands that the covenant made in this Article is created for the benefit of consumers and therefore shall run in favor of the public generally.
- 24.3 If **TENANT** does in fact have a policy of allowing exchanges, then such exchanges of merchandise purchased from **TENANT** will be honored for merchandise of the same price paid to **TENANT** for the exchanged merchandise.

### **25. TEXAS LAW TO APPLY**

- 25.1 **THIS LEASE AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**

### **26. CONFLICT OF INTEREST**

- 26.1 **TENANT** acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a city officer or employee, as those terms are defined therein, from having a financial interest in any contract with the City or any City agency, such City-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or services, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee, or his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10%) percent or more of the voting stock or shares of the business entity, or ten (10%) percent or more of the fair market values of a business entity; a business entity in which any individual or entity above is listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.
- 26.2 **TENANT** warrants and certifies, and this Lease Agreement is made in reliance thereon, that he, his officers, employees and agents, are neither officers or employees of the City of San Antonio or any of its agencies such as City-owned utilities.

### **27. LIEN FOR RENT**

- 27.1 In consideration of the mutual benefits arising under this Agreement, **TENANT** does hereby mortgage, and grant a security interest under the Texas Business and Commerce Code into

**CITY** upon, all property of **TENANT** now or hereafter placed in or upon the Leased Premises (except for [1] inventory sold in the normal course of business or [2] equipment, trade fixtures, or other merchandise proven by written evidenced of **TENANT** to be subject to a prior lien and security interest as of the Commencement Date of this Lease Agreement only and at no other late date), and such property is hereby subjected to a lien and security interest in favor of **CITY** and shall be and remain subject to such a lien and security interest of **CITY** for payment of all rents and other sums agreed to be paid by **TENANT** herein. At **CITY'S** request, **TENANT** shall execute and deliver to **CITY** a financing statement appropriate for use under said code. Such lien and security interest shall be in addition to and cumulative of **CITY'S** liens provided by law.

#### **28. TENANT'S RIGHT TO QUIET ENJOYMENT**

- 28.1 The relationship created herein by this Lease Agreement is that of Landlord and **TENANT** and not an agency or partnership. In accordance therewith, and subject to the conditions listed in Article 1 and subject to **TENANT'S** performance of all covenants herein made by **TENANT**, the **CITY** agrees that **TENANT** shall and may peaceably and quietly have, hold, and enjoy the Leased Premises.

#### **29. GENDER**

- 29.1 Words of any gender used in this Lease Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

#### **30. CAPTIONS**

- 30.1 The captions contained in this Lease Agreement are for convenience of reference only and in no way limit or enlarge the terms and conditions of this Lease Agreement.

#### **31. AUTHORITY**

- 31.1 If the signatory of this Lease Agreement is an entity or other than an individual who is the **TENANT**, then the signer hereof for **TENANT** hereby represents and warrants that he or she has full authority to execute this Lease Agreement on behalf of **TENANT**.

WITNESS, the signature of the parties hereto in multiple originals, this the \_\_\_\_\_ day of \_\_\_\_\_, 2010.

CITY OF SAN ANTONIO,  
A Texas Municipal Corporation

TENANT:

dba Lorenza's

By: \_\_\_\_\_  
City Manager

Maria L Reyna  
Maria L Reyna

ATTEST:

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

Javier Roman  
Javier Roman

APPROVED AS TO FORM:

1614 Alamo  
Residence Address

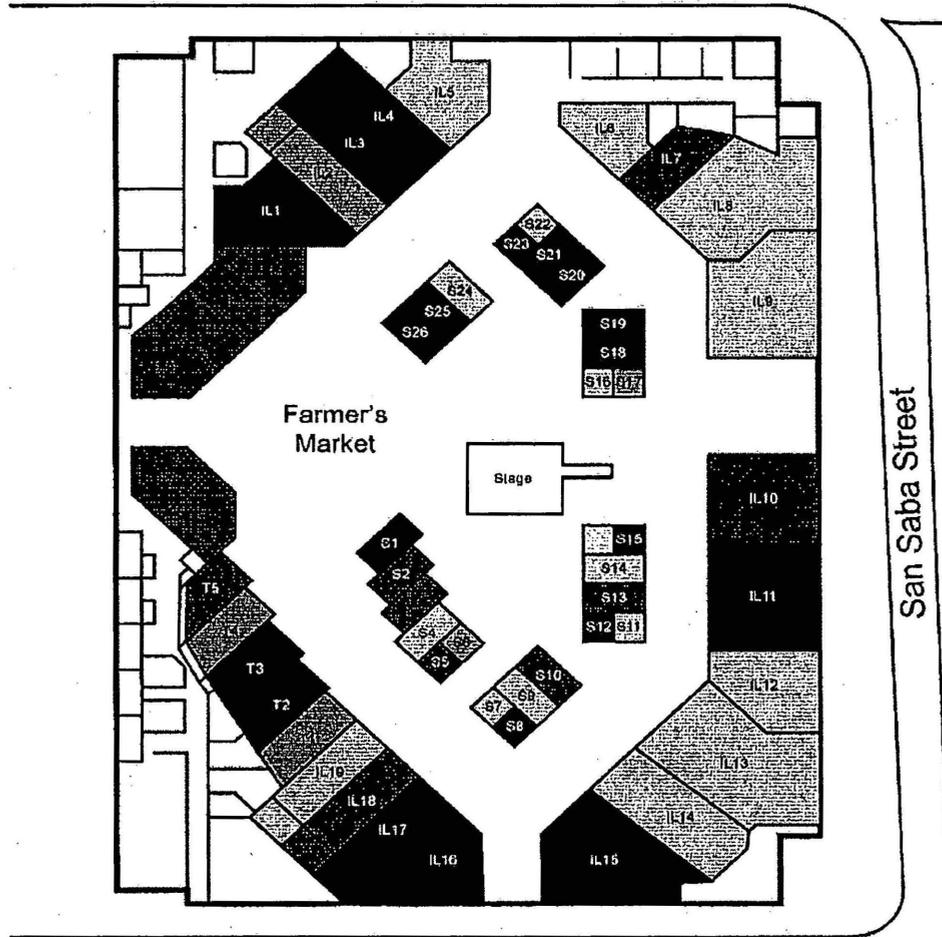
\_\_\_\_\_  
City Attorney

San Antonio, TX 78201  
City, State, and Zip Code

210. 707. 3772  
Area Code/Telephone Number

Roman@INSPIRAMERICANO.COM  
Email Address

# Exhibit A Floor Plan



## FARMERS MARKET TENANTS

Ranchero Grill	F1	A Touch of Mexico	IL15	Budweiser Souvenirs	S16
Angie's	F2	Magalis	IL16	Julia's Jewelry	S17
Teriyaki Kitchen	F3	Earth to Market	IL17	Truque Imports	S18
Sabores Jalisco	F4	Yesi's The Lit Dove	IL18	Nautical Gifts	S19
Boone's Café	F5	Siew Pang Int.	IL19	Tienda Paseo del Rio	S20
Vero's Café	F6	Lorenza's	S01	Inca Treasures	S21
Plaza Flowery	IL01	Maruka's	S02	Spanish Flair	S22
Jagtiani's	IL02	VACANT	S03	Boone's Fine Prints	S23
Foreign Affairs	IL03	S.A Gift Shop	S04	The Embroiderers	S24
Noah's Arts	IL04	Claus' Beautiful Gifts	S05	Del Sol	S25
Merchant's Fruit Co	IL05	Scentchips	S06	Santiago Mexican Im.	S26
Martin's	IL06	Fiesta Fun Co.	S07	The Candy Bin	T1
Tejanos	IL07	Olmecca	S08	Inspirational Art	T2
Market General Stores	IL08	La Palomita	S09	International Market	T3
Just Texas	IL09	Baptismal Boutlque	S10	Nanny's Nook Fashion	T5
S.A. Tee's	IL10	Lorenza's	S11/S12	Texan Accent General Store	TR-4
G's Imports	IL11	Needful Things & More	S13		
Little bit of Texas	IL12	Fiesta Cutouts	S14		
More Plants	IL13	Fresh Concepts	S15		
Texas Republic	IL14	VACANT (DRESSING ROOM)	S-15A		

CITY OF SAN ANTONIO  
FARMERS MARKET PLAZA LEASE AGREEMENT

Store Stalls

This Lease Agreement is made and entered into by and between the **CITY OF SAN ANTONIO**, a Texas Municipal Corporation, acting herein through its City Manager, or her designated representative (hereinafter referred to as "**CITY**"),

AND

**Delia Martinez, Walter Martinez and Rosemary Martinez, Sole Proprietor, d/b/a Chulerias** (hereinafter referred to as "**TENANT**"), acting by and through its duly authorized officers,

WITNESSETH:

**1. DEMISE OF PREMISES**

- 1.1 **CITY**, for and in consideration of the rents, covenants and promises herein contained to be kept, performed and observed by **TENANT**, does hereby Lease and demise to **TENANT**, and **TENANT** does hereby rent and accept from **CITY** 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 the Farmers Market Plaza at Market Square Plaza (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 **Stall S-3** in Exhibit A "Floor Plan" attached hereto and incorporated by reference herein for the purposes of this Lease Agreement, the same as if fully copied and set forth at length.
- 1.2 Condition to Use: The **CITY** reserves the right to enter the Leased Premises at reasonable hours and, if in the opinion of the **CITY**, an emergency exists requiring immediate action, at any time, to inspect, to make replacements, repairs or restorations, and to carry out any work or activities in connection with the protection of the public health, safety and welfare, or the preservation of the Leased Premises. **TENANT** acknowledges the above reservation by **CITY** and agrees to respect and be subordinate to same. Reasonable notice shall be construed as giving notice the day before the **CITY** proposes to enter the Leased Premises, except for an emergency, which will not require prior notice.

**2. USE AND CARE OF PREMISES**

- 2.1 The Leased Premises shall be used only for the sale of the following retail items.
- Ladies Apparel:
- Seasonal fashions
  - Denim fashions
  - Fashion knit tops (non-duplicative)
  - Coordinated blouses and skirts
  - Contemporary vests
  - Fashion jackets
  - Casual pant suits
  - Fashion accessories – belts, buckles
  - Hats-Ladies (fashionable, trendy, decorative and non-duplicative)
  - Tote bags colorful with designs
  - Bags (non-leather and non-duplicate)
  - Dresses

- Boots – women’s western- fashionable
- Hawaiian/tropical shirts (non-duplicative)
- Casual sandals (non-duplicative)
- Leggings (tights)
- Sarong wraps
- Scarves and shawls (non-duplicative)
- Costume jewelry (Not to exceed 10% of displayed merchandise – no silver/gold)

Tenant understands and agrees that any violation of the above stated restrictions would be a material breach of this Agreement and that just compensation for the harm suffered by CITY that would be caused by such violations cannot be accurately estimated and would be difficult to quantify, and that the following charges and procedures are a reasonable and good faith estimate by the parties of the extent of the damage which is reasonably certain to occur in the event of a violation.

- The first violation shall result in a written notice from CITY
- For each of the next three violations TENANT shall pay CITY \$50.00
- The fifth violation shall be deemed a material breach and default and cause for lease termination without opportunity to cure.

2.2 The merchandising concept for this project is to create a blend of merchandise that is representative of the local culture, as well as the artistic and ethnic influences indigenous to Texas, the Southwest United States, and Mexico. The project is intended to enhance the Mexican market theme of Market Square and will avoid duplication of the products sold by the existing Farmers Market and/or El Mercado **TENANTS** to the extent possible.

2.3 Any change in the foregoing use(s) and purpose(s) in the Leased Space must be approved in advance and in writing by the **CITY’S** Market Square Facilities Coordinator; however, any such change of more than twenty-five percent (25%) in the items identified in 2.1 must be approved by the Director, Downtown Operations Department, or her designee. Any new use must also be approved by said Director, Downtown Operations Department, or her designee.

2.3.1 Any use by **TENANT** of the Leased Premises for purposes not shown above, or otherwise changed in writing as provided herein, will be deemed a breach of this Lease Agreement and will be grounds, at **CITY’S** option, for termination of this Agreement upon ten (5) days written notice to **TENANT**.

2.4 In using the Leased Premises for the purpose(s) hereinbefore described, **TENANT** may, with the written permission of **CITY**, demonstrate, exhibit or practice a specific art or craft on the Leased Premises related to **TENANT’S** approved retail purpose.

2.5 The following minimum hours of operation are hereby specifically agreed to by the parties hereto:

2.5.1 During the months of January, February, March, April, May, September, October, November, and December, **TENANT** agrees to open each and every day by 10:00 a.m. and agrees to operate and conduct business from the time of opening until 6:00 p.m.

2.5.2 During the months of June, July, and August, **TENANT** agrees to open business each day by 10:00 a.m. and agrees to operate and conduct business from the time of opening until 8:00 p.m., seven days a week. **CITY** shall post business hours on all major entry and exit points.

2.5.2.1 With the exceptions of Sections 2.7 and 2.8 below, failure to comply with above stated minimum operating hours shall result in a written warning on the first offense; a \$25.00 fine for the second offense; a \$50.00 fine for the third offense;

and a \$500.00 fine for the fourth offense. The fifth offense shall be deemed as default and cause for lease termination as set forth in Article 18 "Defaults and Remedies".

2.5.2.2 **SPECIAL SITUATIONS:** CITY agrees that in special situations regarding weather conditions and/or extending hours of operation, CITY shall cooperate, to the best of its ability, with the Farmers Market Tenants based on their majority vote, as to temporary closings and/or extended hours of operation.

2.6 The preceding hours of operation shall not apply while the Farmers Market Plaza is closed for THANKSGIVING DAY, EASTER, CHRISTMAS DAY, and NEW YEAR'S DAY, or during such time as the Leased Premises become untenable because of casualty, repair or restoration.

2.7 **TENANT** may not close **TENANT'S** business under any circumstances, except where an emergency exists. **TENANT** must notify the Market Square Facilities Coordinator within 24 hours after closure to inform the Market Square Facilities Coordinator of the nature of the emergency.

2.7.1 Emergencies are defined as follows: A) Death in the **TENANT'S** or **TENANT'S** employee(s) family; B) Medical Emergency; C) Automobile Accident; and/or any other such occurrence, which may be deemed an Emergency by the Market Square Facilities Coordinator.

2.8 No **TENANT** may own, or operate as a "shop owner", more than two (2) stores in the Market Square Complex. The definition of "stores" includes, in-line stores, food court stalls, and store stalls. A **TENANT** may not have more than two of any combination of the above Farmers Market retail sites.

### 3. TERMS AND EXPIRATION DATE

3.1 Subject to earlier termination as hereinafter set forth, the term of this Lease is for a period beginning July 1, 2010 and ending on June 30, 2011. The right is expressly reserved to the CITY, acting through City Council, to terminate this Agreement for the following:

3.1.1 In the event this Lease Agreement is deemed to be inconsistent with the best public use of the property, or

3.1.2 In the event the use of the Leased Premises shall have been deemed a nuisance by a court of competent jurisdiction, or

3.1.3 In the event **TENANT** shall default in the performance of any covenants of agreements contained herein and shall fail following thirty (30) days written notice of such default, to remedy same, save and except a ten (10) days' notice period will apply in the case of default in the payment of rent.

3.2 In the event of termination by City Council in relation to 3.1.1 or 3.1.2 above, CITY shall give **TENANT** notice in writing at least thirty (30) days prior to the termination date.

3.3 **TENANT** may cancel this Lease Agreement by giving thirty (30) days written notice to the CITY.

3.4 In the event City plans to change the use of Farmers Market and/or chooses to not renew Lease at the end of the Lease term, City shall provide six (6) months advance written notice of same to **TENANT** or the remaining months of the terms, whichever is greater.

### 4. ACCEPTANCE AND CONDITION OF PREMISES

4.1 **TENANT** has had full opportunity to examine the Leased Premises and acknowledges that there is in and about them nothing dangerous to life, limb or health and hereby waives any claim for damages that may arise from defects of that character after occupancy. **TENANT'S**

taking possession of the Leased Premises shall be conclusive evidence of **TENANT'S** acceptance thereof in good order and satisfactory condition, and **TENANT** hereby accepts the Leased Premises in its present condition as suitable for the purpose for which it is leased. **CITY** specifically disclaims any warranty of suitability for **TENANT'S** intended commercial purposes.

- 4.2 **TENANT** agrees that no representations, respecting the condition of the Leased Premises, and no promises to decorate, alter, repair or improve the Leased Premises, either before or after the execution hereof, have been made by **CITY** or its agents to **TENANT** unless the same are contained herein or made a part hereof by specific reference herein.

### 5. RENTAL AND UTILITIES

**RENTAL:** In consideration of this Lease Agreement, **TENANT** agrees to pay to **CITY** at the office of the City Treasury, or at such other place as may be designated by the **CITY** in writing, monthly rental as follows:

Lease Year	Rental Rate Adjustment	Area (Sq. Ft.)	Total Monthly Rental Payment
7/1/2010 – 12/31/2010		228	\$650.00
1/1/2011 - 06/30/2011	Rental rate will be adjusted based on CPI Inflation Rate from March 2008 through December 2010 **	228	TBD

\*\* City will use the most current rate available in the consumer price index for the month of December 2010 when calculating the rental rate adjustments. The U.S. Department of Labor Bureau of Labor Statistics (All Urban Consumers) report consumer price index shall be utilized. If CPI is negative at the time of adjustment, the monthly rental payment will remain the same.

- 5.1 Said monthly rental is payable in monthly increments on the first (1<sup>st</sup>) day of each month, being due in advance, starting on the Commencement Date of July 1, 2010 of this Lease Agreement, and ending June 30, 2011 thereafter, unless otherwise extended. Such payments and amounts are subject to adjustments listed below.

5.1.1 In the event the **CITY** should determine that the Farmers Market Plaza Building would benefit from the opening of the arched windows on any street side of the building, the **CITY** has the right to calculate a higher rent for those shops having the benefit of direct access through these individual arched entrances. **TENANT** agrees to pay the higher rent or give **CITY** thirty (30) days notice that **TENANT** elects to, and will, vacate the Leased Premises prior to the rent increase.

- 5.2 **GARBAGE FEES:** In further consideration of this Lease Agreement, **TENANT** agrees to pay to the **CITY** at the office of the City Treasury or at such other place as may be designated by the **CITY** in writing, a monthly garbage collection fee in the amount equal to \$5.70 (\$0.025 per square foot X 228 square feet) due on the first day of each month, starting on Commencement Date of July 1, 2010 and ending June 30, 2011 thereafter.

- 5.3 **UTILITIES:** In addition to consideration of rent, **TENANT** hereby agrees to pay a pro-rata share, based on **square footage**, for electricity, lighting, air conditioning and gas service provided by the **CITY** to the Leased Premises per month based on fifty percent (50%) of the

total of the utility services. In cases where individual meters are installed, **TENANT** agrees to pay the entire cost of the utility services.

5.3.1 **TENANT'S** pro-rata share of utilities is based upon the square foot space that the **TENANT** leases from **CITY**. See example below:

Current City Public Service (CPS) bill for **\$21,280** divided by **60,800** square feet (total square footage for Farmers Market), equals **\$0.35** to cool or heat one square foot. Due to the amount of "Common Area" space within Farmers Market, **only 50%** of the CPS bill will be charged back to the **TENANT**.

Tenant Jones' shop contains 228 square feet; his portion of the above monthly CPS bill equals  $228 \times \$0.35 \times .50 = \$39.90$ .

5.4 Rental, garbage, and utility fees specified in this Article 5 are to be paid promptly on the first day of each month by check or money order. All checks and money orders must be payable to the **CITY OF SAN ANTONIO** and payments should be made at the City Treasury. If rental payments are not received on or before the 10<sup>th</sup> day of the applicable calendar month, said payment shall be considered past due and **TENANT** will be deemed delinquent and in default hereunder; a Twenty (\$20.00) Dollar late charge will be assessed on any payment received on the eleventh (11<sup>th</sup>) day of the applicable calendar month or any day thereafter. **TENANT** also agrees that any rental payment received after the thirtieth (30<sup>th</sup>) day of the respective month shall be due with interest charged at a rate of ten percent (10%) per annum. If **TENANT** accumulates three (3) past due notices in a twelve (12) month period, the **TENANT** will be in Default as specified in Article 18 and may be terminated without notification.

5.4.1 The ten (10) day period before the twenty (\$20.00) dollar late charge is applied should not be considered a "grace period"; nor shall the late charge provision be considered as an "option" for rental payments to be made late. All payments are considered late if not received in the City's Treasury office by the close of the business on the first (1<sup>st</sup>) day of each month.

5.4.2 At any time during the Lease term more than two (2) Insufficient Funds Checks are presented to the **CITY** in payment of rental or other considerations during a two (2) year calendar period, **TENANT** will be placed on a cash or money order basis for the following two (2) Lease years. No exceptions will be made. Since this type of action is the result of **TENANT'S** failure to comply with the terms of Article 5, a third (3<sup>rd</sup>) incident during the term of this Lease Agreement will be considered a default in the terms of the contract and termination action may be taken without notification.

5.4.3 At any such time should the **CITY'S** Department of Finance establish and issue uniform policies related to late payment of rent and/or Insufficient Funds Checks, which may be contrary to the terms stated in sections 5.5.1 – 5.5.2 above, the Department of Finance's policies shall prevail. **CITY** shall use its best efforts to formally notify **TENANT** of any such change(s) in advance.

5.5 **Notwithstanding anything to the contrary set forth in this Lease, if TENANT shall fail to make the timely payment of any rent or any additional charges due CITY from TENANT or the payment of any other money due CITY from TENANT under the terms of this Lease, and any such failure shall be repeated two (2) times in any period of twelve (12) consecutive months, then notwithstanding that such failure shall have been cured within the period after notice, as provided in this Lease, any further similar failure within said twelve (12) month period shall be deemed to be a Repeated Event of Default.**

- 5.5.1 In the event of a Repeated Event of Default, CITY, without giving TENANT any notice and without affording TENANT an opportunity to cure the default, may terminate this Lease forthwith without notice to TENANT.

## 6. IMPROVEMENTS

- 6.1 **TENANT** shall not make or allow to be made any interior or exterior structural or electrical construction, repairs, alterations, remodeling, renovations, reconstruction, or improvements in any portion of the Leased Premises, nor any alterations in the store-front of the exterior of the Leased Premises (collectively, or, as applicable, individually referred to as improvements) without first obtaining the written consent of **CITY**; which consent may in the sole and absolute discretion of **CITY** be denied, except in accordance with Paragraph 6.2 hereof.
- 6.1.1 Tenant shall not be allowed to cut, knock down, open or expand the walls of a large stall.
- 6.2 If, however, **CITY** gives such consent, then **TENANT** agrees that the improvements to be constructed by **TENANT** shall be in accordance with approved retail and tenant mix plans and design specifications (hereafter "plans"), which, in all instances, have received the prior written approval of the City Market Square Facilities Coordinator, and where applicable, the Historic Design and Review Commission and any other City of San Antonio Board, Commission, Department, or agency having authority and jurisdiction over the approval of said plans, and further **TENANT** agrees that all improvements will be constructed to meet all Federal, State and local building codes. **TENANT** agrees that no construction or preliminary work of any kind will be done in connection with the aforementioned renovations and improvements until all written approvals and, if applicable, oral approvals are secured.
- 6.3 Furthermore, **TENANT** covenants that it shall not bind, or attempt to bind, **CITY** for the payment of any money in connection with the construction, repair, alteration, addition, remodeling, renovation, or reconstruction (collectively or individually) in, on or about the Leased Premises. Article 8 shall apply in case such improvements are made.
- 6.4 All permanent construction, repairs, alterations, additions, remodeling, renovations, reconstruction, and improvements, and **TENANT'S** work provided herein, shall become, upon expiration or other termination of the term of the Lease Agreement, the property of **CITY** without compensation by **CITY** to **TENANT**. Personal property, including, but not limited to, trade fixtures and merchandise not removed within ten (10) days after the expiration and/or termination date of this Lease Agreement, shall become the property of **CITY** without compensation or liability by **CITY** to **TENANT** for any disposition thereafter at private or public sale or otherwise.
- 6.5 In the construction of improvements to the Leased Premises and at all times thereafter, **TENANT** shall conform to and comply with all Federal, State and local laws, ordinances, permits, rules and regulations applicable to the Leased Premises and the operation of **TENANT'S** business therein.
- 6.6 **TENANT** covenants to undertake renovations or improvements in a reasonable and prudent manner with due regards for the safety of the public and with as little disruption as possible to the operation of Market Square and other tenants. **TENANT** further agrees to complete such renovation or improvements within a period of three (3) months after the date of final **CITY** approval to start construction of same, unless **CITY**, in its sole discretion, agrees otherwise.
- 6.7 **TENANT** is limited to the number of current electrical circuits installed per store stall ("Leased Premises"). No additional circuits may be installed on Leased Premises.

## 7. LIENS PROHIBITED

- 7.1 **TENANT** hereby agrees to promptly pay all persons supplying labor, services and materials in the performance of any and all authorized repairs or improvements of, and duly authorized modifications to, the Leased Premises, except such as are the responsibility of **CITY** hereunder, that may hereafter be made during the term hereof, or any extensions of said term. **TENANT** covenants and agrees to fully indemnify and hold harmless the **CITY** against any and all claims, liens, suits, or actions asserted by any person, persons, firm, or corporation on account of labor, material, or services furnished to **TENANT** during the performance of such authorized improvements and authorized modifications. **TENANT** agrees to get authorization in writing from **CITY** prior to the performance of any improvements or modifications to the Leased Premises referenced herein.
- 7.2 In the event any mechanic's materialman's, or other liens or orders for payment shall be filed against the Leased Premises or improvements thereon, or **CITY**-owned property located therein, during the term hereof, **TENANT** shall, within thirty (30) days after said date of filing, cause the same to be cancelled and discharged of record, by bond, payment directly (or into the registry of an appropriate Court), or otherwise in the manner chosen by **TENANT** and at the expense of **TENANT** and **TENANT** shall also defend on behalf of the **CITY**, at **TENANT** sole cost and expense, any action, suit or proceeding which may be brought thereon or for the enforcement of such lien or order.
- 7.3 Failure of **TENANT** to comply with any requirement of this Article shall be cause for immediate termination of this Lease Agreement by **CITY** in accordance with provisions set forth elsewhere herein.

## 8. MAINTENANCE AND SECURITY

- 8.1 **TENANT** agrees, at **TENANT'S** sole expense, to keep the interior of the Leased Premises, including interior walls, flooring, doors and other interior improvements in good order and repair, and in clean, safe and sanitary condition and to paint the interior when necessary to maintain the interior of the Leased Premises, or any part thereof, in a manner satisfactory to **CITY**, and to replace or repair **TENANT**-installed equipment and fixtures as necessary.
- 8.2 **CITY** agrees to keep and maintain the roof, foundation, plumbing fixtures, plumbing lines and plumbing connections, building lights, main beams and exterior walls including shutters, window frames and glass, and restroom facilities (during normal business hours) in good order and repair, **BUT CITY SHALL NOT BE LIABLE TO TENANT FOR ANY DAMAGE CAUSED BY THE SAME BEING OR BECOMING OUT OF REPAIR AND INCLUDING, BUT NOT LIMITED TO DAMAGE TO MERCHANDISE, TRADE FIXTURES, OR PERSONAL PROPERTY, UNLESS CAUSED BY CITY'S SOLE ACTIVE NEGLIGENCE.**
- 8.3 The building in which the Leased Premises is located will be locked and secured by one (1) hour after closing time, each evening. Closing shall be at 6 p.m. during all months except June, July and August, which shall be at 8 p.m. The building shall remain locked and secured until **TENANT'S** opening hours the next morning, except in special circumstances as agreed to between the Market Square Facilities Coordinator and **TENANT**.
- 8.4 **CITY'S RESERVATIONS: CITY** reserves the right from time to time, to install, maintain, repair, and replace utility lines, pipes, ducts and wires passing through the Leased Premises that serve other parts of the premises within the Farmers Market Plaza Building. Any such installation, maintenance, repair, or replacement shall be placed in locations, which shall not unreasonably interfere with **TENANT'S** use of the Leased Premises, and shall be carried out to the extent possible so as to minimize inconvenience or disruption of **TENANT'S** business.

- 8.5 To assist the TENANT'S exhibit "C", Tenant criteria and Exhibit "D", Farmer's Market Operations and maintenance Guidelines.

## 9. SIGNS

- 9.1 Tenants of the Farmers Market Plaza Building must purchase the standard wooden sign as approved by the CITY. Placement is located as shown in the design drawings and must be at the top of the arch or on the sign band. No other signs may be placed in the interior or exterior store windows, where applicable. Interior merchandise and pricing signs must be printed either with stencil, press, silk screen, or press type and must not exceed 8 ½" x 11" or must be signs approved by both the City Director of Downtown Operations Department and the City Market Square Office. Handwritten signs are not acceptable. Use of small chrome or wooden sign stanchions are not acceptable to hold and frame signs. All exterior signs must comply with City's Historic Design and Review Commission guidelines. Refer to Farmer's Market Plaza Operation & Maintenance Guidelines for signage information.
- 9.1.1 Temporary signage, such as that used for special events, must be approved in writing, five (5) days in advance, by the Market Square Facilities Coordinator, and removed immediately following the conclusion of the event.

## 10. COMMON AREA

- 10.1 "Common Area" shall mean all areas, space, equipment, facilities, and services provided from time to time by CITY for the common use and benefit of the tenants of the Farmers Market, their employees, customers and other invitees, including exits, entrances, sidewalks, landscaped space, washrooms, lounges and shelters, refuse area, pedestrian walkways or courts. "Common Area" shall not include the Sales Area set forth in Section 11.1.
- 10.2 CITY shall, subject to events beyond its reasonable control, operate and maintain the Common Area and keep the Common Area in good order and repair, including any City-installed landscape materials indoors and/or outdoors.

## 11. SALES AND DISPLAY AREA

- 11.1 **TENANT'S LEASED PREMISES** for stalls stores includes a Display Space Sales area located two (2') feet in front of **TENANT'S** store and does not exceed the lease line as shown in the floor plan diagram attached hereto and **TENANT** may display merchandise using acceptable display fixtures in this space in front of **TENANT'S** store. **TENANT** may not obstruct any entrance to the store stall with any type of displays, racks, merchandise, counters, etc. **TENANT** may not at anytime roll down overhead door during business hours of operation. Overhead door must remain completely open during business hours of operation. CITY has the right to order the removal of display merchandise and fixtures if **TENANT'S** display is not presentable, as determined by the Market Square Facilities Coordinator. **TENANT** must bring into the store any merchandise and display fixtures in said Display Sales Area and outside of **TENANT'S** store doors within one (1) hour after official closing each day. Any merchandise left in front of **TENANT'S** store sales area after official closing will be secured by CITY and donated to charity if **TENANT** fails to remove such merchandise after receiving twenty-four (24) hours notice from CITY to do so.
- 11.2 **ENCROACHMENT** on the Common Area beyond the authorized Display Space Sales area is not permitted, and violations of such will be fined at \$250.00 per day as per City Code 32-19 ©. More than two (2) repeat violations by **TENANT** in a twelve (12) month period shall be

considered a condition of default and shall be grounds for Lease termination proceedings as provided in Article 18.

## 12. RULES AND REGULATIONS

- 12.1 **TENANT** covenants and agrees that **TENANT**, its employees, and invitees will comply with reasonable rules and regulations set by **CITY** from time to time for the efficient operation of the Farmers Market Plaza, including but not limited to the following:
- 12.1.1 To use The Leased Premises only for the purposes permitted in Article 2; and
  - 12.1.2 To keep the Leased Premises in a condition acceptable to **CITY** and to not commit or permit any waste of said property; and
  - 12.1.3 To not commit nor permit the maintenance or commission of any nuisance on the Leased Premises and to not commit or permit the use of the Leased Premises for any unlawful purpose; and
  - 12.1.4 To not permit any person on the Leased Premises to willfully or wantonly destroy, deface, damage, impair or remove any part of the Leased Premises or appurtenance thereto. In particular, **TENANT**, shall not drive or permit to be driven any nails, hooks, tacks, screws, or stakes into the Leased Premises; and
  - 12.1.5 To not use nor permit the use of any explosive, flammable, or otherwise dangerous materials, equipment, or goods; and
  - 12.1.6 To properly and safely use and operate all electrical, gas, and plumbing fixtures, equipment, or appliances connected thereto, and to keep them clean and sanitary; and
  - 12.1.7 To keep the Common Area immediately adjoining the Leased Premises, including sidewalk, free and clear at all times of any obstructions; and
  - 12.1.8 To collect and dispose of all rubbish, garbage, litter or other waste in accordance with **CITY** policy (this clause shall not relieve **CITY** of its routine maintenance and clearing obligations); and
  - 12.1.9 To observe and comply with all the laws of the United States, the State of Texas, and Ordinances of the City of San Antonio; and
  - 12.1.10 To not place nor permit the placement or use of game or video coin-operated machines or coin-operated (pay) telephones, public telephones, vending machines, and/or associated equipment of any kind whatsoever on the Leased Premises, regardless of whether installed at **TENANT'S** expense or not; and
  - 12.1.11 To not obstruct nor permit the blockage of any entrance, passageway, electrical panel rooms, **CITY** storage rooms, or exit; and to not at anytime roll down overhead door during business hours of operation.
  - 12.1.12 To not use nor permit the use of loudspeakers, bull horns, strobe lights, or other bright, loud, or distracting devices, including radios; and
  - 12.1.13 To not conduct nor permit the conduct of any auction, going out of business sale, or salvage sale on or about the Leased Premises; and
  - 12.1.14 To not use the Leased Premises for the storage of materials, inventory or supplies, except in accordance with rules and regulations promulgated by the **CITY**; and

- 12.1.15 To not discriminate nor permit discrimination on the part of **TENANT'S** agents or employees on account of race, color, religion, national origin, sex, or handicap in the use of, or admission to the Leased Premises; and
- 12.1.16 To not use Common Area ceilings for storage without prior written permission of the Market Square Office; and
- 12.1.17 To not display, sell, give away, or otherwise distribute or keep live animals, including, but not limited to birds, snakes, chickens, fish, or turtles; and
- 12.1.18 To not display or promote any activity or method of operation on or about the Leased Premises which exposes patrons thereof to nudity or partial nudity. For purposes of this provision, the following definitions apply:
  - 12.1.18.1 Nudity means total absence of clothing or covering for the human body; and
  - 12.1.18.2 Partial nudity means exposure of the female breast or the exposure of the male or female pubic area or buttocks.
- 12.1.19 The Market Square Facilities Coordinator may make any other necessary rules and regulations in conjunction with the operation of Market Square, **TENANT** will be advised at least ten (10) days in advance in writing of any such proposed rules and regulations.
- 12.2 Should **CITY** provide handicapped accessible ingress and egress in specific locations, **TENANT** agrees to not block or otherwise cause the access way to be nonfunctional without providing an alternative means of access approved in writing by the Market Square Office of the City of San Antonio.
- 12.3 **TENANT** shall not place nor permit the display of any merchandise in the Common Area. Encroachment of the Common Area is subject to a fine, as noted in Section 11.2 above.
- 12.4 **TENANT** agrees to be bound by the provisions of the City Code Chapter 32. Article II. Market Square, as such may be amended or hereafter changed. Should such language conflict with this Lease Agreement, City Code language shall be controlling.
- 12.5 **TENANT** agrees to abide by Exhibit B, Farmers Market Criteria and Exhibit C, Farmers Market Operations and Maintenance Guidelines, which are attached.

### 13. INDEMNIFICATION

- 13.1 **TENANT** covenants and agrees to **FULLY INDEMNIFY, DEFEND and HOLD HARMLESS**, the **CITY** and the elected officials, employees, officers, directors, volunteers and representatives of the **CITY**, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the **CITY** directly or indirectly arising out of, resulting from or related to **TENANT'S** activities under this **AGREEMENT**, including any acts or omissions of **TENANT**, any agent, officer, director, representative, employee, consultant or subcontractor of **TENANT**, and their respective officers, agents, employees, directors and representatives while in the exercise of the rights or performance of the duties under this **AGREEMENT**, all without however, waiving any governmental immunity available to the **CITY** under Texas Law and without waiving any defenses of the parties under Texas Law. The provisions of this **INDEMNIFICATION** are solely for the benefit of the parties hereto and not intended to

create or grant any rights, contractual or otherwise, to any other person or entity. TENANT shall promptly advise the CITY in writing of any claim or demand against the CITY or TENANT known to TENANT related to or arising out of TENANT'S activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at TENANT'S cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving TENANT of any of its obligations under this paragraph.

- 13.2 It is the EXPRESS INTENT of the parties to this AGREEMENT, that the INDEMNITY provided for in this Article (ARTICLE 13), is an INDEMNITY extended by TENANT to INDEMNIFY, PROTECT and HOLD HARMLESS, the CITY from the consequences of the CITY'S OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the CITY is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the CITY is the sole cause of the resultant injury, death, or damage. TENANT further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

#### 14. INSURANCE REQUIREMENTS

- 14.1 Any and all employees, representatives, agents or volunteers of TENANT while engaged in the performance of any work required by the CITY or any work related to a lease of space or Concession Agreement with the CITY shall be considered employees, representatives, agents or volunteers of TENANT only and not of the CITY. Any and all claims that may result from any obligation for which TENANT may be held liable under any Workers' Compensation, Unemployment Compensation or Disability Benefits law or under any similar law on behalf of said employees, representatives, agents or volunteers shall be the sole obligation and responsibility of TENANT.
- 14.2 Prior to the commencement of any work under this Lease Agreement, TENANT shall furnish a completed Certificate(s) of Insurance, including endorsements, to the CITY'S Director, Downtown Operations Department, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The certificate(s), and endorsements, must have the agent's signature and phone number, and be mailed directly from the agent to the CITY. The CITY shall have no duty to pay or perform under this Lease Agreement until such certificate shall have been delivered to the CITY'S Director, Downtown Operations Department, and no officer or employee shall have authority to waive this requirement.
- 14.3 The CITY reserves the right to review the insurance requirements of this section during the effective period of the Lease Agreement and any extension or renewal hereof and to modify insurance coverage's and their limits when deemed necessary and prudent by the CITY'S Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding the Lease Agreement, but in no instance will the CITY allow modification whereupon the CITY may incur increased risk.
- 14.4 TENANT'S financial integrity is of interest to CITY, therefore, subject to TENANT'S right to maintain reasonable deductibles in such amounts as are approved by CITY, TENANT shall

obtain and maintain in full force and effect for the duration of this **Lease Agreement**, and any extension hereof, at **TENANT'S** sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M. Best rating of no less than A-(VII), in the following types and for amounts not less than the amount listed below:

	TYPE	AMOUNT
1.	Workers' Compensation and Employers Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
2.	Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Contractual Liability d. Products/completed operations e. Personal Injury	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence \$2,000,000.00 Aggregate, or its equivalent in Umbrella or Excess Liability Coverage.
3.	Comprehensive Automobile Liability a. Owned/Leased Vehicles b. Non-owned Vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence or its equivalent
4.	Property Insurance: For physical damage to the property of <b>TENANT</b> , including improvements and betterment to the Leased Premises	Coverage for a minimum of eighty percent (80%) of the Replacement Cost of <b>TENANT'S</b> property

14.5 As they apply to the limits required by the City, the **CITY** shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto and may require the deletion, revision or modification of particular policy terms, conditions, limitations or exclusions, except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies. **TENANT** shall be required to comply with any such requests and shall submit a copy of the replacement Certificate of Insurance to City at an address provided by City within ten (10) days of the requested change. **TENANT** shall pay any costs incurred resulting from said changes.

14.6 **TENANT** agrees that with respect to the above required insurance; all insurance contracts and Certificate(s) of Insurance will contain the following required provisions.

14.6.1 Name the **CITY** and its officers, employees, volunteers and elected representatives as **Additional Insureds** as respects operations and activities of, or on behalf of, the named insured performed under contract with the **CITY**, with the exception of the workers' compensation and professional liability policies;

- 14.6.2 Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the **CITY** is an additional insured shown on the policy;
- 14.6.3 Workers' compensation, employers' liability, auto liability and general liability policies will provide a waiver of subrogation in favor of the **CITY**.
- 14.7 **TENANT** through his Agent shall notify the **CITY** in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices prior to the change if **TENANT** knows of said change in advance, or ten (10) days notice after change if the **TENANT** did not know of the change in advance. Such notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the **CITY** at the following address:

**City of San Antonio**  
**Downtown Operations Department**  
**P.O. Box 839966**  
**San Antonio, Texas 78283-3966**

- 14.8 If **TENANT** fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the **CITY** may initiate **Lease Agreement** termination proceedings on the first event of default. The **CITY** may upon **TENANT'S** failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the **CITY** shall have the right to order **TENANT** to stop the use of the Premises hereunder until **TENANT** demonstrates compliance with the requirements hereof.
- 14.9 Nothing herein contained shall be construed as limiting in any way the extent to which **TENANT** may be held responsible for payments of damages to persons or property resulting from **TENANT'S** or its subcontractors' performance of the work covered under this Lease Agreement.
- 14.10 All personal property placed in the Leased Premises shall be at the sole risk of **TENANT**. **CITY** shall not be liable, and **TENANT** waives all claims for any damage either to the person or property of **TENANT** or to other persons due to the Leased Premises or any part of appurtenances thereof becoming out of repair or arising from bursting or leaking of water, gas, waste pipes, or defective wiring or excessive or deficient electrical current; or from any act or omission of employees, or other occupants of the Leased Premises, or any other persons; due to the happening of any accident in or about said Leased Premises. **TENANT** shall save and hold harmless **CITY** from any claims arising out of damage to **TENANT'S** property or damage to **TENANT'S** business, including subrogation claims by **TENANT'S** insurers.
- 14.11 Tenant understands and agrees that any violation of the above stated restrictions and failure to provide and maintain insurance would be a material breach of this Agreement and that just compensation for the harm suffered by **CITY** that would be caused by such violations cannot be accurately estimated and would be difficult to quantify, and that the following charges and procedures are a reasonable and good faith estimate by the parties of the extent of the damage which is reasonably certain to occur in the event of a violation.
- The first violation shall result in a written notice from **CITY**
  - For each of the next three violations **TENANT** shall pay **CITY** \$50.00
  - The fifth violation shall be deemed a material breach and default and cause for lease termination without opportunity to cure.

## 15. FIRE AND OTHER CASUALTY

- 15.1 In the event that the Leased Premises, or the building of which the same is a part, shall be partially damaged by fire, the elements, civil disorder, or other casualty, the Leased Premises and, to the extent necessary for **TENANT** to continue its business on the Leased Premises, the building or portions thereof shall be repaired at the expense of the **CITY** without unreasonable delay unless the **CITY**, at its sole discretion, determines that the damage is so extensive that repair or rebuilding is not practical. In such event, at the option of the **CITY**, and upon notice to **TENANT**, this Lease Agreement shall cease and come to an end and the rent shall be apportioned and paid up to the date of such damage.
- 15.2 The **CITY'S** obligations to rebuild or repair shall be limited to the extent of insurance proceeds available to the **CITY** for such rebuilding or repair.

## 16. HOLDING OVER

- 16.1 Should **TENANT** hold over the Leased Premises, or any part thereof, after the expiration or termination of the term of this Lease Agreement, unless otherwise agreed in writing, such holding over shall constitute and be construed as a tenancy from month-to-month only, at a rental equal to the rent paid for the last month of the term of this Lease Agreement, plus ten (10%) percent of such amount. The inclusion of the preceding sentence shall not be construed as **CITY'S** consent for the **TENANT** to hold over.

## 17. ASSIGNMENT AND SUBLETTING

- 17.1 Except as provided under "DEATH BENEFIT" and in accordance with City Code Section 32-73, **TENANT** shall not assign the Lease Agreement and business conducted on the Leased Premises or any interest therein.
- 17.2 **TENANT** shall not sublet the Leased Premises or any part thereof or interest therein. Any subletting shall be null and void and **CITY** shall have the right to terminate this Lease Agreement with ten (10) days written notice, unless **TENANT** complies with the provisions of Section 17.3 herein.
- 17.3 The receipt by the **CITY** of rent from an assignee, or occupant of the Leased Premises shall not be deemed a waiver of the covenant in this Lease Agreement against assignment and/or an acceptance of the assignee, or occupant as a **TENANT**, or a release of the **TENANT** from further observance or performance by the **TENANT** of the covenants contained in this Lease Agreement. No provision of this Lease Agreement shall be deemed to have been waived by the **CITY** unless such waiver is in writing and signed by the **CITY**.
- 17.4 In accordance with **CITY** policy, codified as Section 32-104 of the City Code, **TENANT** is expressly prohibited from entering into any independent contracts or independent contract relationships with anyone in relation to the business or operation thereof conducted on the Leased Premises, which amounts to any assignment or subletting of the Leased Premises as determined solely by the **CITY**.
- 17.5 In the event the **CITY** suspects that the business on the Leased Premises is being operated by a person other than the **TENANT**, the **CITY** has the right, but not the duty, to inspect all of the books and records, to include but not be limited to, employment contracts, monthly operating expenses and reports, and accounts payable ledgers, if **CITY** reasonably believes that an assignment or subletting of the premises has occurred without **CITY'S** written approval.

- 17.6 In the event that the **CITY** determines that another person other than the **TENANT** is operating the business on the Leased Premises, the **CITY**, at its option, may declare the Lease Agreement terminated upon ten (10) days written notice.
- 17.7 **CITY** shall have the right to transfer and assign, in whole or in part, any of its rights under this Lease Agreement, and in the building and property referred to herein; and **CITY** shall by virtue of such assignment be released from such obligations, which are assumed by the assignee.

## 18. DEFAULT AND REMEDIES

- 18.1 The following events shall be deemed to be events of default by **TENANT** under this Lease Agreement in addition to any other events set forth herein:
- 18.1.1 **TENANT** shall fail to pay any installment, additional fees, penalty or rent as provided for in this Lease Agreement and shall not cure such failure within ten (10) days after the due date of such rent.
- 18.1.2 **TENANT** shall fail to operate or conduct business as prescribed by the **CITY** in Article 2, except on account of casualty, damage, remodeling or when the prior written consent of **CITY** is given.
- 18.1.3 **TENANT** shall fail to comply with any term, provision or covenant of this Lease Agreement, other than the payment of rent, and shall not cure such failure within ten (10) days after written notice thereof to **TENANT**.
- 18.1.4 **TENANT**, shall within ninety (90) days following the Commencement Date, fail to take possession of the Leased Premises, or having taken said possession, fail to open such Leased Premises for the conduct of business.
- 18.1.5 **TENANT** deserts or vacates all or any part of the Leased Premises; **TENANT** will be deemed to have deserted or vacated the premises if, by any method or manner whatsoever, **TENANT** assigns, transfers, sells or sublets its interest or right to the Leased Premises without the prior written consent of the **CITY**.
- 18.1.6 The taking by a court of competent jurisdiction of **TENANT** and its assets pursuant to proceedings under the provisions of any Federal or State reorganization code or act, insofar as the following enumerated remedies for default are provided for or permitted in such code or act.
- 18.2 Upon the occurrence of an Event of Default as heretofore provided, **CITY** may, at its option, declare this Lease Agreement, and all rights and interests created by it, terminated. Upon **CITY** electing to terminate, this Lease Agreement shall cease and come to an end as if that were the day originally fixed herein for the expiration of the term hereof. **CITY**, its agents or attorney may resume possession of the Leased Premises and relet the same for the remainder of the original term for the best rent **CITY**, its agents or attorney may obtain for the account of **TENANT**, who shall make good any deficiency.
- 18.3 Any termination of this Lease Agreement as herein provided shall not relieve **TENANT** from the payment of any sum or sums that shall then be due and payable or become due and payable to **CITY** hereunder, or any claim for damages then or theretofore accruing against **TENANT** hereunder, and any such sum or sums or claim for damages by any remedy provided for by law, or from recovering damages from **TENANT** for any default hereunder. All rights, options and remedies of **CITY** contained in this Lease Agreement shall be cumulative of the other, and **CITY** shall have the right to pursue any one or all of such remedies or any other remedy or relief available at law or in equity, whether or not stated in this Lease Agreement. No waiver by **CITY** of a breach of any of the covenants, conditions or restrictions of this Lease Agreement

shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition or restriction herein contained.

- 18.4 Upon any such expiration or termination of this Lease Agreement, **TENANT** shall quit and peacefully surrender the Leased Premises to **CITY**, and **CITY**, upon or at any time after such expiration or termination, may without further notice, enter upon and re-enter the Leased Premises and possess and repossess itself thereof, by force, summary proceedings, ejectment or otherwise, and may dispossess **TENANT** and remove **TENANT** and all other persons and property from the Leased Premises. Any property left on the premises shall be deemed abandoned and **CITY** may dispose of same by private or public sale or otherwise without further legal action by **CITY** or liability to **TENANT** therefore.

#### 19. SEPARABILITY

- 19.1 If any clause or provision of this Lease Agreement is illegal, invalid or unenforceable under present or future laws effective during the term hereof, then and in that event, it is the intention of the parties hereto that the remainder of this Lease Agreement shall not be affected thereby, and it is also the intention of the parties to this Lease Agreement that in lieu of each clause or provision of this Lease Agreement that is illegal, invalid or unenforceable, there be added as a part hereof, a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

#### 20. AMENDMENT

- 20.1 This Lease Agreement, together with the authorizing Ordinance, constitutes the entire agreement between the parties. No amendment, modification or alteration of the terms of this Lease Agreement shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

#### 21. TAXES AND LICENSES

- 21.1 **TENANT** shall pay, on or before their respective due dates, to the appropriate collecting authority, all Federal, State and local taxes and fees which are now or may hereafter be levied upon the Leased Premises, or upon **TENANT**, or upon the business conducted on the Leased Premises, or upon any of **TENANT'S** property used in connection therewith; and **TENANT** shall maintain in current status all Federal, State and local licenses and permits required for the operation of the business conducted by **TENANT**, subject to agreements entered into by **TENANT** and Federal, State or local government authorities.

#### 22. NOTICES

- 22.1 Notices to **CITY** required or appropriate under this Lease Agreement shall be deemed sufficient if in writing and mailed, Certified mail, Postage Prepaid, and addressed to:

City of San Antonio  
Downtown Operations Department  
P.O. Box 839966  
San Antonio, Texas 78283-3966

City of San Antonio  
City Clerk's Office  
City Hall-Second Floor  
P.O. Box 839966  
San Antonio, Texas 78283-3966

or to such other address as may have been designated in writing by the City Manager of the CITY OF SAN ANTONIO from time to time.

Notices to TENANT shall be deemed sufficient if in writing and mailed, Certified mail, Postage Prepaid, addressed to TENANT at the address shown below TENANT'S signature line, or hand-delivered to TENANT.

### **23. DEATH BENEFIT**

23.1 Where TENANT is a sole proprietorship and TENANT dies, the surviving spouse or TENANT'S heir or a testamentary beneficiary of TENANT or a representative of TENANT'S estate designated by a court of competent jurisdiction may operate the establishment until the end of the term of this Lease Agreement then in effect, as per City Code Section 32-73 (a), and subject to City Council approval.

### **24. CONSUMER PROTECTION**

24.1 TENANT specifically covenants and agrees that it will honor a purchaser's request for an exchange or refund of merchandise purchased from TENANT'S business on the Leased Premises, in accordance with standard accepted business practices of retailers generally in the San Antonio area, unless TENANT conspicuously posts at the check-out counter where payment is made a sign, legible and in bold letters, at least 5" by 7" in size, clearly giving fair notice to consumers that TENANT'S policy is that all sales are final and that no refunds and/or exchanges will be given.

24.2 TENANT understands that the covenant made in this Article is created for the benefit of consumers and therefore shall run in favor of the public generally.

24.3 If TENANT does in fact have a policy of allowing exchanges, then such exchanges of merchandise purchased from TENANT will be honored for merchandise of the same price paid to TENANT for the exchanged merchandise.

### **25. TEXAS LAW TO APPLY**

25.1 THIS LEASE AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

### **26. CONFLICT OF INTEREST**

26.1 TENANT acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a city officer or employee, as those terms are defined therein, from having a financial interest in any contract with the City or any City agency, such City-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or services, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee, or his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10%) percent or more of the voting stock or shares of the business entity, or ten (10%) percent or more of the fair market values of a business entity; a business entity in which any individual or entity above is listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

- 26.2 **TENANT** warrants and certifies, and this Lease Agreement is made in reliance thereon, that he, his officers, employees and agents, are neither officers or employees of the City of San Antonio or any of its agencies such as City-owned utilities.

#### 27. LIEN FOR RENT

- 27.1 In consideration of the mutual benefits arising under this Agreement, **TENANT** does hereby mortgage, and grant a security interest under the Texas Business and Commerce Code into **CITY** upon, all property of **TENANT** now or hereafter placed in or upon the Leased Premises (except for [1] inventory sold in the normal course of business or [2] equipment, trade fixtures, or other merchandise proven by written evidenced of **TENANT** to be subject to a prior lien and security interest as of the Commencement Date of this Lease Agreement only and at no other late date), and such property is hereby subjected to a lien and security interest in favor of **CITY** and shall be and remain subject to such a lien and security interest of **CITY** for payment of all rents and other sums agreed to be paid by **TENANT** herein. At **CITY'S** request, **TENANT** shall execute and deliver to **CITY** a financing statement appropriate for use under said code. Such lien and security interest shall be in addition to and cumulative of **CITY'S** liens provided by law.

#### 28. TENANT'S RIGHT TO QUIET ENJOYMENT

- 28.1 The relationship created herein by this Lease Agreement is that of Landlord and **TENANT** and not an agency or partnership. In accordance therewith, and subject to the conditions listed in Article 1 and subject to **TENANT'S** performance of all covenants herein made by **TENANT**, the **CITY** agrees that **TENANT** shall and may peaceably and quietly have, hold, and enjoy the Leased Premises.

#### 29. GENDER

- 29.1 Words of any gender used in this Lease Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

#### 30. CAPTIONS

- 30.1 The captions contained in this Lease Agreement are for convenience of reference only and in no way limit or enlarge the terms and conditions of this Lease Agreement.

#### 31. AUTHORITY

- 31.1 If the signatory of this Lease Agreement is an entity or other than an individual who is the **TENANT**, then the signer hereof for **TENANT** hereby represents and warrants that he or she has full authority to execute this Lease Agreement on behalf of **TENANT**.

WITNESS, the signature of the parties hereto in multiple originals, this the \_\_\_\_\_ day of \_\_\_\_\_, 2010.

CITY OF SAN ANTONIO,  
A Texas Municipal Corporation

TENANT:

dba Chulerias

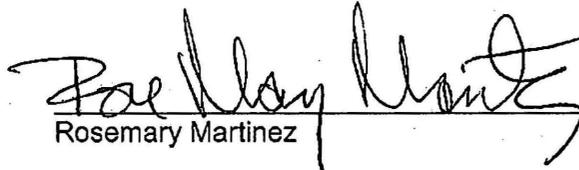
By: \_\_\_\_\_  
City Manager

  
\_\_\_\_\_  
Delia Martinez

ATTEST:  
\_\_\_\_\_  
City Clerk

  
\_\_\_\_\_  
Walter Martinez

APPROVED AS TO FORM:  
\_\_\_\_\_  
City Attorney

  
\_\_\_\_\_  
Rosemary Martinez

*3014 Whisper Fern*  
\_\_\_\_\_  
Residence Address

*San Antonio, Texas 78230*  
\_\_\_\_\_  
City, State, and Zip Code

*210 224-8340*  
\_\_\_\_\_  
Area Code/Telephone Number

~~www~~ *wwwmca@aol.com*  
\_\_\_\_\_  
Email Address

[View RFCA Detail](#) [Continue](#)



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

Agenda Item # 8  
Council Meeting Date: 5/20/2010  
RFCA Tracking No: R-6378

**DEPARTMENT:** Downtown Operations

**DEPARTMENT HEAD:** Paula Stallcup

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

**SUBJECT:**  
Farmers Market Lease Agreements for Stalls S-1 and S-3

**SUMMARY:**  
This ordinance authorizes Farmers Market lease agreements with A) Maria L. Reyna and Javier Roman d/b/a Lorenza's for Stall S-1 and B) Delia Martinez, Walter Martinez and Rosemary Martinez d/b/a Chulerias for Stall S-3.

**BACKGROUND INFORMATION:**  
On January 24, 2010, in accordance with the City's Procurement Policy and Procedures Manual, a Request for Proposals (RFP) was issued for Stalls S-1 and S-3 at Farmers Market, a pre-submittal conference was conducted February 3, 2010 and proposals were received February 24, 2010. Nine proposals were reviewed by an Evaluation Team composed of representatives from the following departments: Convention & Visitor's Bureau, Downtown Operations, Purchasing, Economic Development, Finance, and Parks & Recreation. The Evaluation Team rated the proposals from Lorenza's and Chulerias the highest; a scoring matrix is attached.

A) Lorenza's currently has a lease agreement with the City of San Antonio at the Farmer's Market Plaza Stall - 11 and Stall -12 and has stated an interest in relinquishing these two stalls to relocate to Stall S-1. The monthly rental will be \$650.00 for the new location. The new lease will begin July 1, 2010 and will expire on June 30, 2011.

B) Chulerias will occupy Stall S-3. The monthly rental rate for the new space will be \$650.00. The new lease will begin July 1, 2010 and will expire on June 30, 2011.

**ISSUE:**  
Execution of these lease agreements requires City Council approval. Approving these agreements is consistent with the City's policy of leasing public property in Farmers' Market Plaza for retail sales purposes under regulations established in Chapter 32, Article II of the San Antonio Municipal Code.

**ALTERNATIVES:**

City Council may elect not to approve the lease agreements, thereby not granting authority for Lorenza's and Chulerias to occupy currently vacant spaces within Farmers' Market.

**FISCAL IMPACT:**

Lorenza's monthly rental rate will be \$650.00.

Lease Year	Monthly Rate	FY 2010 Rental Payment
07/01/2010 - 09/30/2010	\$650.00	\$1,950.00

Chuleria's monthly rental rate will be \$650.00.

Lease Year	Monthly Rate	FY 2010 Rental Payment
07/01/2010 - 09/30/2010	\$650.00	\$1,950.00

The agreement expires on June 30, 2011. The rental charge from January 1, 2011 through June 30, 2011 will be adjusted based on CPI inflation rate as specified in the lease agreement. The revenues shall be deposited in General Fund.

**RECOMMENDATION:**

Staff recommends approval of the lease agreements.

**ATTACHMENT(S):**

File Description	File Name
<u>Lease Agreement - Lorenza's</u>	Lorenzas Signed Lease Agreement.pdf
<u>Discretionary Contract Disclosure Form</u>	Lorenza's Discretionary Contract Disclosure Form.pdf
<u>Lease Agreement - Chulerias</u>	Chulerias Signed Lease Agreement.pdf
<u>Discretionary Contract Disclosure Form</u>	Chulerias Discretionary Contract Disclosure Form.pdf
<u>Scoring Matrix</u>	Scoring Matrix Stall S-1 and S-3 FINAL.pdf

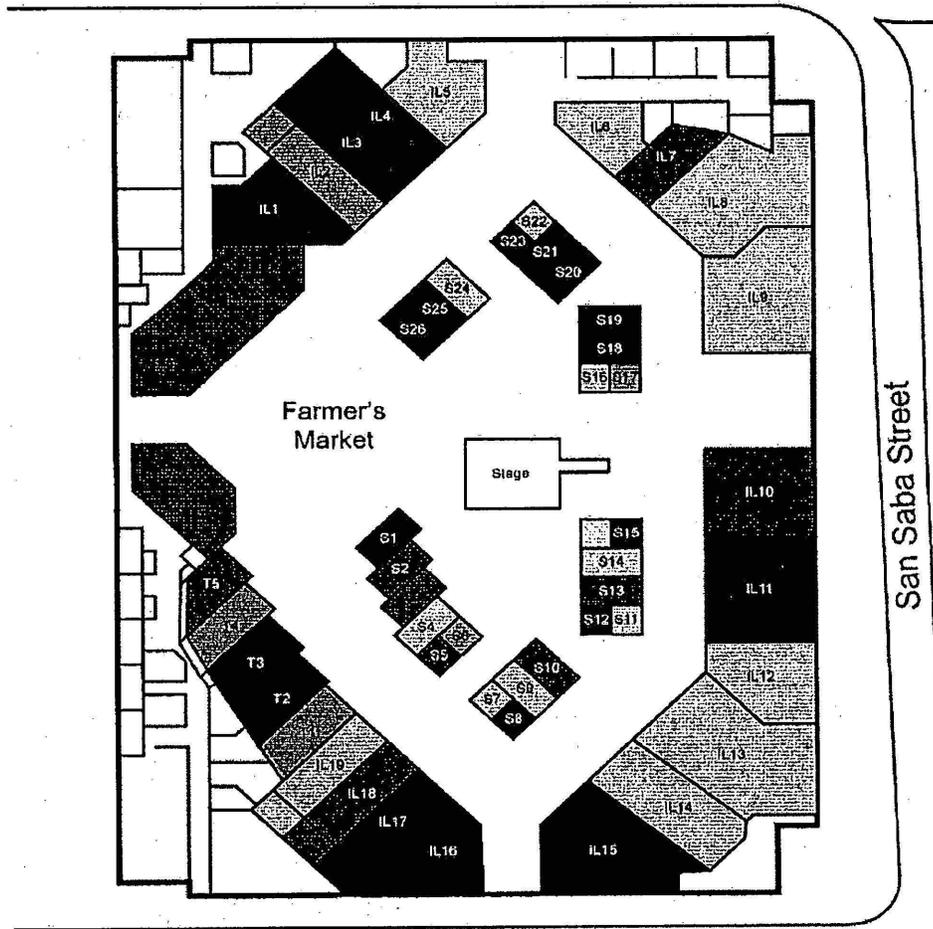
**DEPARTMENT HEAD AUTHORIZATIONS:**

Paula Stallcup Director Downtown Operations

**APPROVED FOR COUNCIL CONSIDERATION:**

Pat DiGiovanni Deputy City Manager

# Exhibit A Floor Plan



## FARMERS MARKET TENANTS

Ranchero Grill	F1	A Touch of Mexico	IL15	Budweiser Souvenirs	S16
Angie's	F2	Magalis	IL16	Julia's Jewelry	S17
Teriyaki Kitchen	F3	Earth to Market	IL17	Truque Imports	S18
Sabores Jalisco	F4	Yesi's The Lit Dove	IL18	Nautical Gifts	S19
Boone's Café	F5	Siew Pang Int.	IL19	Tienda Paseo del Rio	S20
Vero's Café	F6	Lorenza's	S01	Inca Treasures	S21
Plaza Flowery	IL01	Maruka's	S02	Spanish Flair	S22
Jagtlani's	IL02	VACANT	S03	Boone's Fine Prints	S23
Foreign Affairs	IL03	S.A Gift Shop	S04	The Embroiderers	S24
Noah's Arts	IL04	Claus' Beautiful Gifts	S05	Del Sol	S25
Merchant's Fruit Co	IL05	Scentchips	S06	Santiago Mexican Im.	S26
Martin's	IL06	Fiesta Fun Co.	S07	The Candy Bin	T1
Tejanos	IL07	Olmecca	S08	Inspirational Art	T2
Market General Stores	IL08	La Palomita	S09	International Market	T3
Just Texas	IL09	Baptismal Boutique	S10	Nanny's Nook Fashion	T5
S.A. Tee's	IL10	Lorenza's	S11/S12	Texan Accent General Store	TR-4
G's Imports	IL11	Needful Things & More	S13		
Little bit of Texas	IL12	Fiesta Cutouts	S14		
More Plants	IL13	Fresh Concepts	S15		
Texas Republic	IL14	VACANT (DRESSING ROOM)	S-15A		