SW/vv
04/02/15
Item #24

AN ORDINANCE 2015-04-02-0224

APPROVING A PATIO LICENSE AGREEMENT WITH MTC REAL ESTATE, LLC FOR 4,116 SQUARE FEET OF PATIO SPACE IN MARKET SQUARE THROUGH DECEMBER 31, 2024 FOR A TOTAL TEN YEAR RENTAL OF $600,236.28.

* * * * *

WHEREAS, the City of San Antonio owns and manages Market Square, a unique and historic public market place that plays a vital role in the life, culture and economy of San Antonio; and

WHEREAS, Market Square, with a retail history dating back to the nineteenth century, provides a unique and authentic Mexican Market experience, offering retail sales, holiday celebrations, and year round entertainment; and

WHEREAS, there are currently 56 businesses in the Farmers Market, 33 in El Mercado and 13 in Market Square Plaza, ranging from cafes to shops specializing in local, regional and Latin American products; and

WHEREAS, MTC Real Estate LLC (MTC) licenses 6,519 square feet of patio space for dining adjacent to Mi Tierra and La Margarita restaurants and leases 14,615 square feet of City property for the purpose of operating the Dolorosa Street Parking Lot; and

WHEREAS, for the use of these spaces, MTC pays the City $142,877.00 per year; and

WHEREAS, in an effort to activate more Market Square patio space, MTC is introducing four new businesses in previously vacant buildings; and

WHEREAS, Fruteria Cano is operating in 202 Produce Row, Viriana's Mexican Imports in 206 Produce Row and Fiesta Winery in 102 S. Concho; and

WHEREAS, in the near future, MTC will begin operating Viva Villa Taqueria at the corner of 111 S. Concho and 901 Dolorosa; and

WHEREAS, MTC and the City are now proposing to create a license agreement to utilize 4,116 square feet of patio space; and

WHEREAS, for 2015, MTC will pay $1.11 per square foot per month or $4,568 per month; and

WHEREAS, the rental rate will increase 2.5% annually; and

WHEREAS, by utilizing these patio spaces, MTC will activate the licensed premises as well as enhance the operations of multiple businesses; **NOW THEREFORE:**

SW/vv
04/02/15
Item #24

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 Department for Culture and Creative Development or his designee, is authorized to execute a Patio License Agreement with MTC Real Estate, LLC for 4,116 square feet of patio space in Market Square through December 31, 2024 for a total ten year rental of $600,236.28. A copy of the license agreement, in substantially final form, is attached hereto and incorporated herein for all purposes as **Attachment I**.

SECTION 2. Funds generated by this ordinance will be deposited into Fund 29604001, Internal Order 228000000148 and General Ledger 4407711.

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

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

PASSED AND APPROVED this 2nd day of April, 2015.

Ivy R. Taylor

M A Y O R
Ivy R. Taylor

ATTEST:

for Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

for Martha G. Sepeda, Acting City Attorney

Agenda Item:	**24 (in consent vote: 5, 6, 7, 8, 9, 11, 13, 14, 15, 16, 17, 18, 19, 20, 23, 24, 27, 28, 29, 30, 31, 33, 34, 35, 36, 37, 38, 41, 42, 43, 44)**
Date:	04/02/2015
Time:	11:33:45 AM
Vote Type:	Motion to Approve
Description:	An Ordinance approving a patio license agreement with MTC Real Estate, LLC for 4,116 square feet of patio space in Market Square through December 31, 2024 for a total ten year rental of $600,236.28. [Edward Belmares, Assistant City Manager; Felix Padron, Director, Culture and Creative Development]
Result:	Passed

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

Attachment I

PATIO LICENSE AGREEMENT

Market Square Plaza

This License 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 designee pursuant to Ordinance No. _____ passed and approved on the _____ day of _____, 2015, (hereinafter referred to as **"CITY"**), and **MTC Real Estate LLC** (hereinafter referred to as **"LICENSEE"**), acting by and through its duly authorized officers, WITNESSETH:

1. LICENSING OF PREMISES

CITY, for and in consideration of the rents, covenants and promises herein contained to be kept, performed and observed by **LICENSEE**, does License to **LICENSEE**, and **LICENSEE** does accept from **CITY** for the term hereinafter set out, the real properties owned by the **CITY** adjacent to **102 S. Concho, 105 S. Concho, 107 S. Concho, 109 S. Concho, 901 Dolorosa and 111 South Concho, 102 Produce Row, 106 Produce Row, 202 Produce Row and 206 Produce Row** San Antonio, Bexar County, Texas, 78207 within the area commonly known as Market Square as outlined on the drawings which are attached hereto as **Exhibit A** and incorporated by reference for the purposes of this License Agreement, the same as if fully copied and set forth at length. Said real property and improvements (hereinafter referred to as the **Licensed Premises**) are further described as follows: Licensed Premises adjacent to the front of the buildings listed above in Market Square, San Antonio, Bexar County, Texas 78207 identified in **Exhibit A** for a total area of **4,116** square feet.

2. USE OF PREMISES

2.1 **CITY** hereby agrees to permit **LICENSEE** use of above described **CITY**-owned **Licensed Premises** located adjacent to **properties listed above, in Market Square, San Antonio, Bexar County, Texas 78207.**

2.2 **Permitted Uses:**

2.2.1 May be used for the purpose of outdoor display or sales of goods and placement of kiosks, in accordance with applicable statutes, laws, ordinances, rules and regulations of the United States, the State of Texas and the City of San Antonio, Texas.

2.2.2 May be used for patio dining for the purpose of outdoor food service operations and the service of alcoholic and non-alcoholic beverages, in accordance with applicable statutes, laws, ordinances, rules and regulations of the United States, the State of Texas and the City of San Antonio, Texas.

2.2.3 Any use other than those activities described in section 2.2.1 and 2.2.2 must be approved by Director of the Department of Culture and Creative Development ("DIRECTOR") or his designee.

2.3 **Prohibited Uses:**

2.3.1 **LICENSEE** shall not be allowed to provide entertainment to its customers in any form to include live or recorded music. Exceptions for music may be approved by City of San Antonio Market Square Facilities Coordinator

2.3.2 The use of the area for the display of merchandise that has any reference or depicts any type of illegal drug or obscenity.

2.3.3 Any use prohibited by law including any Ordinances of the City of San Antonio.

2.3.4 **LICENSEE** may not use bull horns, microphones or any amplified system.

2.3.5 **LICENSEE** may not solicit business in the plaza.

2.4 **CITY'S** Reservation of Rights - In addition to the **CITY'S** Reservations set out in **Article 16** and other sections of the License Agreement, **CITY** reserves the right to a public right-of-way along the common sidewalk area to follow a path designated by the **CITY** for safe passage by pedestrians and further described by the diagram attached hereto and incorporated herein as **Exhibit A. LICENSEE** shall keep said right of way free of obstructions in the form of either fixed or movable objects and shall not allow patrons to queue, or wait for entrance into **LICENSEE'S** business establishment, in said public right of way.

2.5 LICENSEE understands and agrees that any violation of the above use of premises and 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 LICENSEE shall pay CITY $50.00.
- The fifth violation shall be deemed a material breach and default and cause for termination of License without opportunity to cure.

3. FIESTA AND THE TEJANO MUSIC ASSOCIATION EVENTS

3.1 The City of San Antonio reserves the right to grant the operators of the Market Square Fiesta event and the Tejano Music Association (TTMA) event use of the **Licensed Premises** and a concession to sell beverages, food and other items. Market Square Fiesta and the TTMA event operators will have superior rights to use **Licensed Premises**.

3.2 **LICENSEE**. and its lessees must vacate the **Licensed Premises** during Market Square Fiesta and the TTMA events, beginning at 8 am on Monday prior to first day of Fiesta and ending at 8 am on Thursday after last day of Fiesta for Market Square Fiesta event, and for TTMA event, beginning forty-eight (48) hours prior to start of event and ending at 3:00 pm the day after end of event.

3.3 Rent for **Licensed Premises** will be abated for the periods associated with the setup, operation and cleanup time periods for the annual Market Square Fiesta and TTMA.

4. TERM AND EXPIRATION DATE

4.1 The term of this License Agreement is for a period beginning April 1, 2015 and ending on December 31, 2024 unless sooner terminated as provided in this License.

4.2 **EITHER PARTY** may cancel this License by giving three hundred sixty-five (365) Calendar days written notice **to OTHER PARTY PER SECTION 21, NOTICES.**

5. RENTAL

5.1 **LICENSEE** shall pay rental in either one lump sum in advance for Annual Payment or in monthly installments **in advance, on, or before the first day of each month** in accordance with the following payment schedule. **Any payment of rent or other charges and fees received after the first (1st) day of the month will be considered late.**

5.2 Notwithstanding any other provision herein to the contrary, the monthly rental for the period beginning on Commencement Date through December 31, 2015 shall be **$1.11** per square foot per month. The rental calculation is **$1.11** per square foot times **4,116** square feet of the Licensed Premises. This equals to monthly installments in the amount of **$4,568.76** in advance on or before the first (1st) day of each month.

5.3 The total square footage is calculated as follows:

Licensed Premises Adjacent to:	Square Footage
102 S. Concho	384 sq. ft.
105 S. Concho	351 sq. ft.
107 S. Concho	225 sq. ft.
109 S. Concho	169 sq. ft.
111 S. Concho and 901 Dolorosa	1,619 sq. ft.
102 Produce Row	243 sq. ft.
106 Produce Row	449 sq. ft.
202 Produce Row	397 sq. ft.
206 Produce Row	279 sq. ft.
Total	**4,116 sq. ft.**

5.4 For the succeeding months during the term of this License Agreement, the monthly rental shall be adjusted by **2.5%** for each year as follows:

License Year	Square Footage	Monthly Rental Rate Per Sq. Ft.	Monthly Rental Rate
Apr 1, 2015 through Dec 31, 2015	4,116	$1.11	$4,568.76
Jan 1, 2016 through Dec 31, 2016	4,116	$1.14	$4,692.24
Jan 1, 2017 through Dec 31, 2017	4,116	$1.17	$4,815.72
Jan 1, 2018 through Dec 31, 2018	4,116	$1.19	$4,898.04
Jan 1, 2019 through Dec 31, 2019	4,116	$1.22	$5,021.52
Jan 1, 2020 through Dec 31, 2020	4,116	$1.25	$5,145.00
Jan 1, 2021 through Dec 31, 2021	4,116	$1.29	$5,309.64
Jan 1, 2022 through Dec 31, 2022	4,116	$1.32	$5,433.12
Jan 1, 2023 through Dec 31, 2023	4,116	$1.35	$5,556.60
Jan 1, 2024 through Dec 31, 2024	4,116	$1.39	$5,721.24

5.5 Payment shall be submitted by **LICENSEE** to:

City of San Antonio
Treasury Division
Central Billing Section
P.O. Box 839975
San Antonio, Texas 78283-3975

6. ACCEPTANCE AND CONDITION OF PREMISES

6.1 **LICENSEE** has had full opportunity to examine the Licensed 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. **LICENSEE'S** taking possession of the Licensed Premises shall be conclusive evidence of **LICENSEE'S** acceptance thereof in good order and satisfactory condition, and **LICENSEE** hereby accepts the Licensed Premises in its present **AS IS, WHERE IS, WITH ALL FAULTS CONDITION as suitable for the purpose for which licensed, LICENSEE accepts the Licensed Premises with the full knowledge, understanding and agreement that CITY disclaims any warranty of suitability for LICENSEE'S intended commercial purposes.**

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

7. UTILITIES

7.1 **LICENSEE** shall furnish and pay for all utilities, if any, that may be necessary for its operations as authorized herein on the **Licensed Premises**. **LICENSEE** further agrees to pay all monthly charges associated with effective maintenance of said operation. Should connection or reconnection of any utility become necessary, **LICENSEE** agrees to pay any expenses.

8. IMPROVEMENTS

8.1 **LICENSEE** shall not construct, or allow to be constructed, any new improvements or structures on the Licensed Premises nor shall **LICENSEE** make, or allow to be made, any alterations to the Licensed Premises without the prior written approval of the **CITY** through the DIRECTOR and any and all other necessary departments, boards or commissions of the CITY OF SAN ANTONIO, including, but not limited to, the Historic and Design Review Commission (HDRC).

LICENSEE 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 LICENSEE shall pay CITY $50.00.
- The fifth violation shall be deemed a material breach and default and cause for License termination without opportunity to cure.

8.2 **LICENSEE** 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 or reconstruction in, on or about the Licensed Premises. Further, **LICENSEE** agrees to remove, within thirty (30) calendar days after filing, by payment or provisions for bonding, any mechanic's or materialman's liens filed against the Licensed Premises and to indemnify **CITY** in connection with such liens to the extent of any damages, expenses, attorney's fees, or court costs incurred by **CITY**.

9. MAINTENANCE OF PROPERTY

9.1 **LICENSEE** shall, at all times, maintain the sidewalks adjacent to the Licensed Premises free from obstructions other than approved displays. **LICENSEE** shall keep the front of the business property neat and orderly, and if any tables or other fixed or movable property is placed in this area by **LICENSEE** it shall be organized so as not to create any tripping hazard or block the exit to the business in case of emergencies. **LICENSEE** shall not use any of said sidewalk area outside of the Licensed Premises in the exercise of privileges granted herein, except to pass to and from the Licensed Premises. **LICENSEE'S** use may at no time obstruct public access to the public right-of-way.

9.2 **LICENSEE** shall, at all times, keep or cause to be kept the **Licensed Premises** free of litter, trash, paper, boxes and other waste and shall place same in standard trash containers in the appropriate locations and shall conform with all applicable garbage, sanitary and health regulations of the **CITY**. LICENSEE shall not place trash, garbage, waste, or any refuse generated at, on, or by LICENSEE within City owned or City Licensed dumpsters and/or trash containers.

LICENSEE 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 LICENSEE shall pay CITY $50.00.
- The fifth violation shall be deemed a material breach and default and cause for License termination without opportunity to cure.

9.3 **LICENSEE** shall be responsible for the condition of the **Licensed Premises**. **LICENSEE** shall repair any damage to the Licensed Premises caused by **LICENSEE**, and shall maintain, or cause to be maintained, the Licensed Premises in a clean, neat, attractive and sanitary condition.

9.4 **LICENSEE** shall, at its sole expense, keep the Licensed Premises in good order, repair, and leasable condition at all times during the term hereof and shall promptly repair of all damages to the Licensed Premises or replace any broken fixtures or appurtenances within a reasonable period of time. All such repairs and replacements shall be subject to the approval of the **CITY** through the DIRECTOR and any and all other necessary departments, boards, or commissions of the CITY OF SAN ANTONIO, including, but not limited to, the Historic and Design Review Commission. If **LICENSEE** does not promptly make such arrangements, **CITY** may, but is not required to, make such repairs and replacements and the costs paid or incurred by **CITY** for such repairs and replacements shall be deemed additional rent due and payable forthwith.

9.5 **LICENSEE** will, at the termination of this License Agreement, return the Licensed Premises to **CITY** in as good condition as at the commencement of the term hereof, usual wear and tear, acts of God, or unavoidable accident only accepted.

9.6 **LICENSEE** agrees to hold **CITY** harmless for any theft, damages or destruction of signs, goods and/or other property of **LICENSEE** both during the term of this License Agreement and as so left on the Licensed Premises after **LICENSEE** vacates the Licensed Premises. If said signs, goods and any other property placed by **LICENSEE** upon the Licensed Premises are not removed by it after the close of business and the Licensed Premises is vacated, then the **CITY** may remove same without further notice or liability therefore.

10. TAXES AND LICENSES

10.1 **LICENSEE** 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 Licensed Premises, or upon **LICENSEE**, or upon the business conducted on the

Licensed Premises, or upon any of **LICENSEE'S** property used in connection therewith; and shall maintain in current status all Federal, State and local licenses and permits required for the operation of the business conducted by **LICENSEE.**

11. ASSIGNMENT AND SUBLICENSING

11.1 Except as to the parent, subsidiary or similarly affiliated company, **LICENSEE** shall not assign this Licensed Premises, or allow same to be assigned by operation of law or otherwise, any part thereof without the prior written consent of **CITY**, which may be given only by or pursuant to an Ordinance enacted by the City Council of San Antonio, Texas. Any assignment by **LICENSEE** without such permission shall constitute an Event of Default.

11.2 **LICENSEE**, may without consent of Landlord, sublet the Licensed Premises to a third Party for the use and operations consistent with the terms and conditions of this License Agreement. Such subletting shall be at market value and shall not relieve LICENSEE from any burdens, covenants, restrictions contained in this License Agreement

11.3 Without the prior written consent of **LICENSEE**, **CITY** shall have the right to transfer and assign, in whole or in part, any of its rights and obligations under this License Agreement; and, to the extent that such assignee assumes **CITY'S** obligations hereunder, **CITY** shall, by virtue of such assignment, be released from such obligation.

11.4 The receipt by the **CITY** of rent from an assignee, or occupant of the Licensed Premises shall not be deemed a waiver of the covenant in this License Agreement against assignment and/or an acceptance of the assignee, or occupant as a **LICENSEE**, or a release of the **LICENSEE** from further observance or performance by the **LICENSEE** of the covenants contained in this License Agreement. No provision of this License Agreement shall be deemed to have been waived by the **CITY** unless such waiver is in writing and signed by the **CITY**.

12. DISPLAY AREA

12.1 **LICENSEE'S** Licensed Premises are areas adjacent to building but do not include any areas outside of the licensed area as shown in **Exhibit A** attached hereto. **LICENSEE** may only use area adjacent to the building and **LICENSEE** may not obstruct any entrance to the building with any type of display, counters, etc. **CITY** has the right to request the removal of display merchandise and fixtures, if **LICENSEE'S** display is not presentable, as determined by the Market Square Facilities Coordinator. **LICENSEE** must bring into his building any merchandise, furniture and display fixtures on **Licensed Premises** after closing each day.

12.2 The Licensed Premises **will not** be used for display of alcohol-related merchandise **and alcohol-related products at non-restaurant locations**. All sales will be processed inside of **LICENSEE'S** store, provided it is open for business at the time. Licensee will agree to coordinate with Market Square Facilities Coordinator on any duplicate kiosk users. Licensed Premises will not be used for any political campaign materials or time share marketing.

12.3 LICENSEE 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 LICENSEE shall pay CITY $50.00.
- The fifth violation shall be deemed a material breach and default and cause for License termination without opportunity to cure.

12.4 **ENCROACHMENT** on the Common Area beyond the authorized Licensed Premises is not permitted, and violations of such will be fined at $250.00 per day. More than two (2) repeat violations by LICENSEE in a twelve (12) month period shall be considered a condition of default and shall be grounds for License termination.

13. TERMINATIONS, DEFAULTS AND REMEDIES

13.1 The right is expressly reserved to the **CITY**, to terminate this Agreement in the event this agreement is deemed to be inconsistent with the public use of the property.

13.2 The right is expressly reserved to the **CITY**, to terminate this Agreement in the event the use of the premises shall have been deemed a nuisance by a court of competent jurisdiction.

13.3 In the event of termination in relation to 13.1 or 13.2 above, the **CITY** shall give **LICENSEE** notice in writing at least thirty (30) calendar days prior to the termination date.

13.4 **RENT -** Any payment of rent received after the first (1st) day of the month will be considered late and will be considered an Event of Default by the following criteria:

13.4.1 Any rent not received by the tenth (10th) day of the month will be an Event of Default.

13.4.2 For the term of the agreement, **LICENSEE** may pay no more than two (2) payments of any type after the first (1st) day but no later than the tenth (10th) day of the month, with the addition of the late fee. The third (3rd) occurrence of any late payment will constitute an Event of Default.

13.4.3 Any payment after the first (1st) day is late; therefore, any payment received after the first (1st) day will be charged a late fee in the amount of $50.00 per occurrence.

13.5 **DEFAULT WITHOUT AN OPPORTUNITY TO CURE** The following events shall constitute Events of Default with no opportunity to cure:

13.5.1 Any rent not received by the tenth (10th) day of the month and not paid within five (5) business days following receipt of written notice of non-payment from CITY.

13.5.2 The third (3rd) occurrence of any late payment;

13.5.3 Failure to comply with any and all Taxes and Licenses requirements as outlined **Article 10 TAXES AND LICENSES;**

13.5.4 Any assignment as specified in **Article 11 ASSIGNMENT AND SUBLETTING** not approved in writing by the City of San Antonio;

13.5.5 Encroachment unto the Common area beyond the authorized **Licensed Premises**;

13.5.6 If **LICENSEE** fails to abide by the requirements of **Article 15 INSURANCE REQUIREMENTS** or allows the Insurance Certification to be cancelled without other approved Insurance replacement coverage. New or revised policy must overlap or immediately continue term of old policy. Expired policy must be replaced before expiration date of current policy. Use of the Licensed Premises before **Approval** and **Acknowledgement** by the **City** of any new, revised, renewed or reinstated Certification;

13.5.7 Live or recorded music and outdoor entertainment to customers or any prohibited use of premises except as approved in 2.3.1;

13.5.8 The fifth (5th) occurrence of any merchandise or display fixtures left in front **LICENSEE'S** store after closing;

13.5.9 The fifth (5th) occurrence of the use of premises for any display of Alcoholic Beverages, any goods and/or merchandise related to Alcoholic Beverages and any goods or merchandise with any reference or which depict any type of Illegal Drug or Obscenity;

13.5.10 The third (3rd) occurrence of any particular failure as outlined in section 13.6.1 below.

13.5.11 The fifth (5th) occurrence of any particular failure as outlined in section 9 to include trash, boxes, bottles, garbage

13.6 **DEFAULTS WITH AN OPPORTUNITY TO CURE:**

13.6.1 **LICENSEE** shall fail to comply with any term, provision or covenant of this License Agreement and shall fail cure any such failure within three (3) calendar days of **CITY** providing notice of such failure, provided, however, in the event **LICENSEE** repeats any such particular failure twice more during the term of the contract then any such third failure shall constitute an Event of Default and there shall be no opportunity to cure.

13.7 Upon the occurrence of either an Event of Default without an opportunity to cure or an event of default for which LICENSEE has not satisfactorily cured within the allotted time period, as heretofore provided, **CITY** may, at its option, declare this License Agreement, and all rights and interests created by it, terminated. Upon **CITY** electing to terminate, this License Agreement shall cease and come to an end as if that were the day originally fixed herein for the expiration of the term hereof; or **CITY**, its agents or attorney may, at its option, resume possession of the Licensed Premises and re-let the same for the remainder of the original term for the best rent **CITY**, its agents or attorney may obtain for the account of **LICENSEE** without relieving **LICENSEE** of any liability hereunder as to rent or any other charges still due and owing in this License Agreement, or any extension thereof, as applicable. **LICENSEE** shall make good any deficiency.

13.8 Any termination of this License Agreement as herein provided shall not relieve **LICENSEE** 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 **LICENSEE** hereunder, and any such sum or sums or claim for damages by any remedy provided for by law, or from recovering damages from **LICENSEE** for any default hereunder. All rights, options and remedies of **CITY** contained in this License 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 License Agreement. No waiver by **CITY** of a breach of any of the covenants, conditions or restrictions of this License 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.

13.9 Upon any such expiration or termination of this License Agreement, **LICENSEE** shall quit and peacefully surrender the Licensed 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 Licensed Premises and possess and repossess itself thereof, by force, summary proceedings, ejectment or otherwise, and may dispossess **LICENSEE** and remove **LICENSEE** and all other persons and property, including all signs, furniture, trade fixtures, and other personal property which may be disputed as to its status as fixtures, from the Licensed Premises, and such action by **CITY** shall not constitute **CITY'S** acceptance of abandonment and surrender of the Licensed Premises by **LICENSEE** nor prevent **CITY** from pursuing all legal remedies available to it.

14. INDEMNIFICATION

LICENSEE 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 and 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 LICENSEE'S activities under this Agreement, including any acts or omissions of LICENSEE, any agent, officer, director, representative, employee, consultant or subLICENSEE of LICENSEE, and their respective officers, agents employees, directors and representatives (collectively, the "Licensee Parties") while in the exercise of performance of the rights or duties under this Agreement. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL <u>NOT APPLY</u> TO ANY LIABILITY RESULTING FROM THE WILLFUL MISCONDUCT OR NEGLIGENCE OF THE CITY, OR ANY OF THE CITY'S ELECTED OFFICIALS,

OFFICERS, EMPLOYEES, DIRECTORS, VOLUNTEERS OR REPRESENTATIVES (COLLECTIVELY, THE "CITY PARTIES"), INCLUDING, WITHOUT LIMITATION, ANY INSTANCES WHERE SUCH WILLFUL MISCONDUCT OR NEGLIGENCE OF ANY OF THE CITY PARTIES CAUSES PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE. IF THE FINAL JUDGMENT OF A COURT OF COMPETENT JURISDICTION ESTABLISHES, UNDER PRINCIPLES OF COMPARATIVE NEGLIGENCE THEN IN EFFECT IN THE STATE OF TEXAS, THAT THE WILLFUL MISCONDUCT OR NEGLIGENCE OF ANY OF THE LICENSEE PARTIES OR ANY OF THE CITY PARTIES CAUSED A PERCENTAGE OF DAMAGES, THEN, AS TO SUCH PERCENTAGE ONLY, THE INDEMNITIES CONTAINED IN THIS PARAGRAPH SHALL NOT APPLY, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF ANY OF THE PARTIES UNDER TEXAS LAW.

The provisions of this INDEMNITY 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. LICENSEE shall advise the CITY in writing within 24 hours after Licensee receives actual notice, without any duty of independent inquiry or investigation, of any claim or demand against the CITY or LICENSEE related to or arising out of LICENSEE'S activities under this LICENSE AGREEMENT, and (ii) shall see to the investigation and defense of such claim or demand at LICENSEE'S cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving LICENSEE of any of its obligations under this paragraph.

15. INSURANCE REQUIREMENTS

15.1 Prior to the commencement of any work under this **License Agreement**, **LICENSEE** shall furnish copies of all required endorsements and a completed Certificate(s) of Insurance to the **CITY'S** Downtown Operations Department, which shall be clearly labeled "*License Agreement*" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The **CITY** will not accept Memorandum of Insurance or Binders as proof of insurance. The certificate(s) or form must have the agent's signature, including the signer's phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the **CITY**. The **CITY** shall have no duty to pay or perform under this **License**

Agreement until such certificate and endorsements have been received and approved by the **CITY'S** Downtown Operations Department. No officer or employee, other than the **CITY'S** Risk Manager, shall have authority to waive this requirement.

15.2 The **CITY** reserves the right to review the insurance requirements of this Article during the effective period of this **License Agreement** and any extension or renewal hereof and to modify insurance coverage and their limits when deemed necessary and prudent by **CITY'S** Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this **License Agreement**. In no instance will **CITY** allow modification whereupon **CITY** may incur increased risk.

15.3 **LICENSEE'S** financial integrity is of interest to the **CITY**; therefore, subject to **LICENSEE'S** right to maintain reasonable deductibles in such amounts as are approved by the **CITY**, **LICENSEE** shall obtain and maintain in full force and effect for the duration of this **License Agreement**, and any extension hereof, at **LICENSEE'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's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory $500,000/$500,000/$500,000
3. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Products/Completed Operations d. Personal Injury	For Bodily Injury and Property Damage of $1,000,000 per occurrence; $2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
Liquor Liability**	

	$1,000,000 per occurrence

** If applicable

15.4 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, declaration page 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). **LICENSEE** shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to **CITY** at the address provided below within 10 days of the requested change. **LICENSEE** shall pay any costs incurred resulting from said changes.

City of San Antonio
Attn: Department for Culture and Creative Development
P.O. Box 839966
San Antonio, Texas 78283-3966

15.5 **LICENSEE** agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

15.5.1 Name the **CITY**, its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, 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;

15.5.2 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;

15.5.3 Workers' compensation, employers' liability and general liability policies will provide a waiver of subrogation in favor of the **CITY**.

15.5.4 Provide advance written notice directly to **CITY** of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

15.6 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, **LICENSEE** shall provide a replacement Certificate of Insurance and applicable endorsements to **CITY**. **CITY** shall have the option to suspend **LICENSEE'S** performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this **License Agreement.**

15.7 If **LICENSEE** fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the **CITY** may initiate **License Agreement** termination proceedings on the first event of default. The **CITY** may upon **LICENSEE'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 **LICENSEE** to stop the use of the Premises hereunder until **LICENSEE** demonstrates compliance with the requirements hereof.

15.8 Nothing herein contained shall be construed as limiting in any way the extent to which **LICENSEE** may be held responsible for payments of damages to persons or property resulting from **LICENSEE'S** or its subcontractors' performance of the work covered under this **License Agreement**.

15.9 It is agreed that **LICENSEE'S** insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this **License Agreement**.

15.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this **License Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided**.

15.11 LICENSEE understands and agrees that any failure to 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 LICENSEE shall pay CITY $50.00.
- The fifth violation shall be deemed a material breach and default and cause for License termination without opportunity to cure.

16. RULES AND REGULATIONS

16.1 **LICENSEE** shall observe and comply with all laws and ordinances of the **CITY** affecting **LICENSEE'S** business.

16.1.1 This includes and is not limited to, the **CITY'S** noise ordinance and the provisions concerning operation of businesses in Market Square . **LICENSEE** shall not place speakers, amplified music or similar equipment on or near the Licensed Premises or in any other location outside the adjacent enclosed building on any side of the licensed premises. **LICENSEE** shall comply with **CITY'S** laws pertaining to noise. **LICENSEE** agrees to comply with any requests by the **CITY'S** Park Police, Department for Culture and Creative Development Staff, City Police Officers or noise abatement officers. Failure to comply with this section may constitute an Event of default.

16.1.2 No advertisements, signs, decorations and/or displays shall be placed in, on, or about the Licensed Premises without the prior written approval of the **CITY** through the DIRECTOR or his authorized representative and any and all other necessary departments, boards or commissions of the CITY OF SAN ANTONIO, including, but not limited to, the Historic and Design Review Commission. **LICENSEE** agrees to remove all signs from the Licensed Premises when **LICENSEE** vacates the Licensed Premises.

16.2 **LICENSEE** will be allowed to place only tables, racks and fixtures as approved by City on the demised premises. All merchandise will be removed from the Licensed Premises during non-business hours.

16.3 No activity or method of operation shall be allowed in, on, or about the Licensed Premises, which exposes patrons thereof to nudity or to partial nudity. For the purposes of this provision, the following definitions apply:

16.3.1 Nudity means total absence of clothing or covering for the human body.

16.3.2 Partial nudity means exposure of the female breast or the exposure of the male or female pubic area or buttocks.

16.4 Any Licensee sponsored or sanctioned nudity as specified above will constitute a violation of this Article and result in an Event of Default.

16.5 The operation of a massage business, tanning salon, or gambling of any nature shall not be allowed in, on, or about the Licensed Premises.

16.6 Discrimination on account of race, color, sex, age, handicap, or national origin, directly or indirectly, in employment, or in the use of or admission to the Licensed Premises is prohibited.

16.7 **LICENSEE** shall not, except as may otherwise be permitted by applicable laws and regulations, pay less than the minimum wage required by Federal and State statutes and **CITY** ordinances to persons employed in its operations hereunder.

16.8 No provision of this License Agreement shall operate in any manner to prevent **CITY** from permitting displays, tournaments, amusements, or parades for the benefit of the public.

16.9 **CITY** park police, police officers and other safety personnel shall have the right of entry on and into the Licensed Premises as needed to investigate any circumstances, conditions, or person(s) that may appear to be suspicious. **LICENSEE** shall cooperate with all reasonable requests by such personnel to facilitate public safety and orderly conduct by persons at Market Square. **LICENSEE** expressly understands and agrees that **CITY** has not agreed to act and does not act as an insurer of **LICENSEE'S** property and does not guarantee security against theft, vandalism, or injury of whatever nature and kind to persons or property.

16.10 Other specific uses of Licensed Premises are outlined in **Article 2.**

17. RESERVATIONS: CITY

17.1 **CITY** reserves the right to enter the Licensed Premises at all reasonable times for the purpose of examining, inspecting or making repairs as herein provided. **LICENSEE** shall not be entitled to an abatement or reduction of rent by reason of such entry, nor shall said entry be deemed to be an actual or constructive eviction of **LICENSEE** from the Licensed Premises. Should construction or other activity by **CITY** prevent **LICENSEE'S** use of the Licensed Premises for the purposes outlined herein for longer than ten (10) days, then this License Agreement shall be automatically extended for the same number of days **LICENSEE'S** use of Licensed Premises was denied or an abatement for the period **LICENSEE** was not able to use the premises may be considered but not both. The City will determine which resolution will be executed.

18. HOLDING OVER

18.1 Should **LICENSEE** hold over the Licensed Premises, or any part thereof, after the expiration or termination of the term of this License 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 **One Hundred Twenty-Five percent (125%)** the amount of the rent paid for the last month of the term of this License Agreement. The inclusion of the preceding sentence shall not be construed as **CITY'S** consent for the **LICENSEE** to hold over.

19. CONFLICT OF INTEREST

19.1 **LICENSEE** 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 financial interest in any contract with the City or any City Agency, such as 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 service, 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 value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

19.2 **LICENSEE** warrants and certifies, and this license is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City or any of its agencies such as city owned utilities

20. SEPARABILITY

20.1 If any clause or provision of this License Agreement is illegal, invalid or unenforceable under present or future laws effective during the term of this License Agreement, then and in that event it is the intention of the parties hereto that the remainder of this License Agreement shall not be affected thereby, and it is also the intention of the parties to this License Agreement that in lieu of each clause or provision of this License Agreement that is illegal, invalid or unenforceable, there be added as a part of this License Agreement 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.

21. NOTICES

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

City of San Antonio
Department for Culture and Creative Development
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 **LICENSEE** shall be deemed sufficient if in writing and mailed, Certified mail, Postage Prepaid, addressed to **LICENSEE** at:

MTC Real Estate LLC
800 Dolorosa, Ste. 204
San Antonio, Texas 78207

or to such other address on file with the City Clerk as **LICENSEE** may provide in writing to **CITY**.

22. PARTIES BOUND

22.1 If there shall be more than one party designated as **LICENSEE** in this License Agreement, they shall each be bound jointly and severally hereunder.

22.2 The covenants and agreements herein contained shall inure to the benefit of and be binding upon the parties hereto; their respective heirs, legal representatives, successors, and such assigns as have been approved by **CITY**.

23. TEXAS LAW TO APPLY

23.1 **THIS LICENSE 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.**

24. RELATIONSHIP OF PARTIES

24.1 Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of principal and agent, partners, joint ventures, or any other similar such relationships between the parties hereto other than that of **LICENSOR** and **LICENSEE**.

25. GENDER

25.1 Words of any gender used in this License 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.

26. CAPTIONS

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

27. ENTIRE AGREEMENT/AMENDMENT

27.1 This License Agreement, together with its attached exhibits and the authorizing ordinance, in writing, constitutes the entire agreement between the parties, any other written or parole agreement with **CITY** being expressly waived by **LICENSEE**.

27.2 No amendment, modification, or alteration of the terms of this License Agreement shall be binding unless the same is in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

27.3 It is understood that the Charter of the **CITY** requires that all contracts with the **CITY** be in writing and adopted by ordinance. All amendments also need approval evidenced by an ordinance.

28. ACKNOWLEDGEMENT OF READING

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

29. AUTHORITY

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

WITNESS, the signature of the parties hereto in multiple originals, this, the _____ day of _____, 2015 (Commencement Date).

CITY OF SAN ANTONIO,

A Texas Municipal Corporation

By: _____
City Manager

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

LICENSEE:

MTC Real Estate LLC

George Cortez
Printed Name

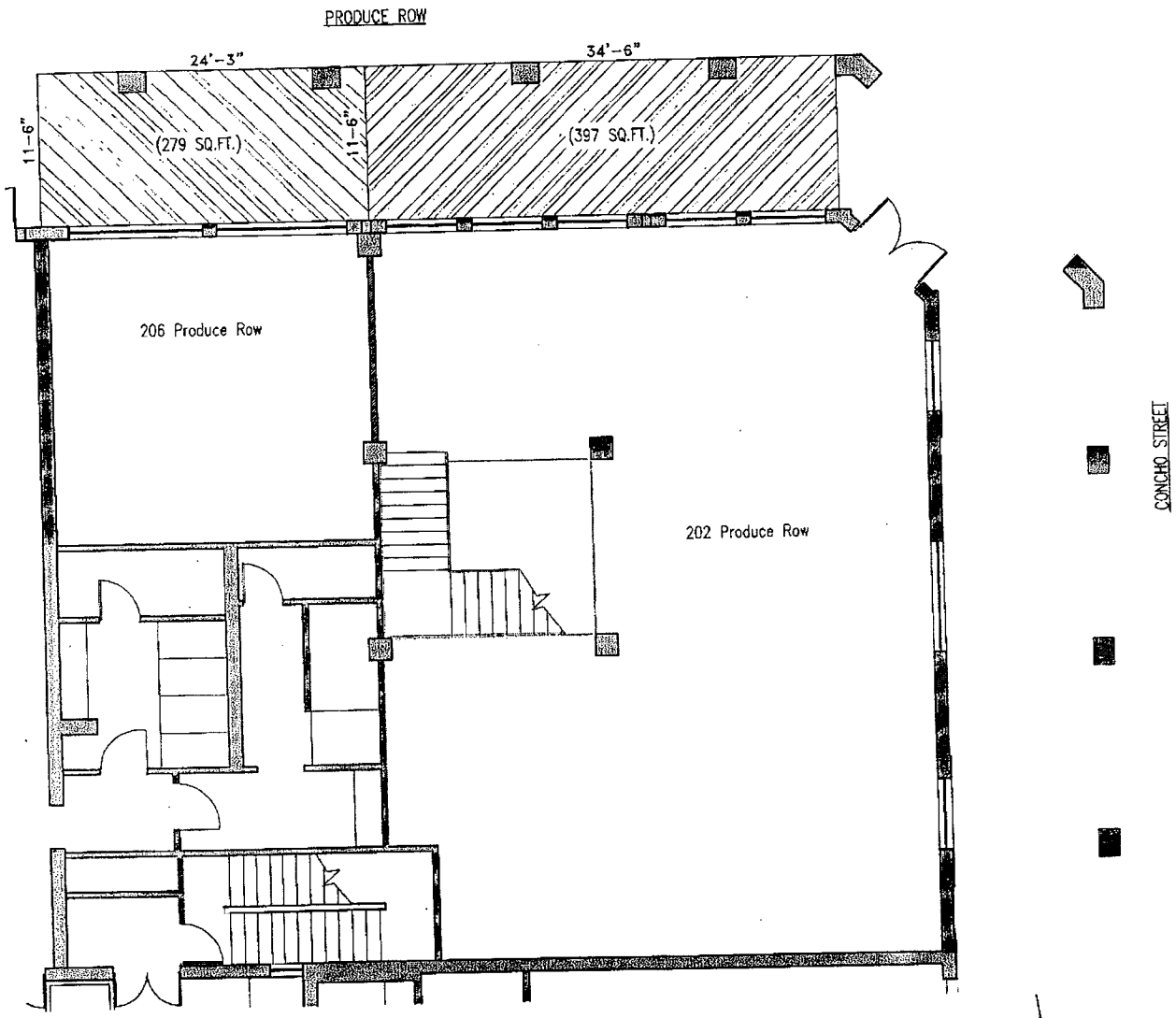
George Cortez
Signature

800 Dolorosa, Ste 204
Business Address

San Antonio, TX 78207
City, State, and Zip Code

(210) 225-3955
Area Code/Telephone Number of Business

EXHIBIT A

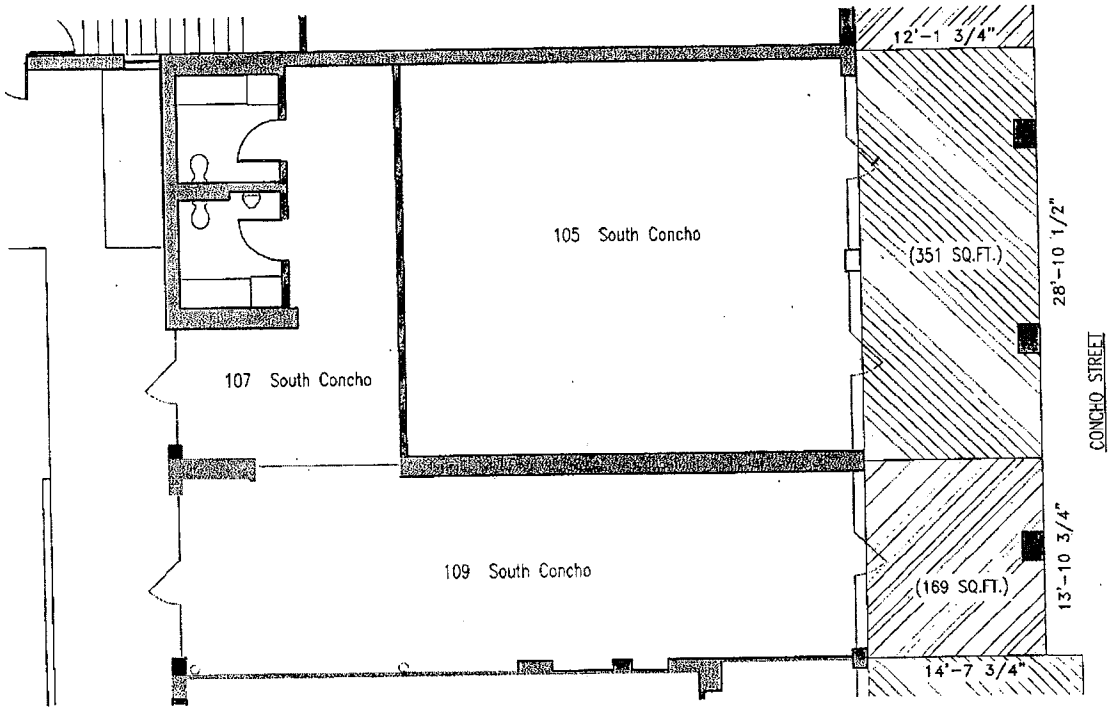


1 CITY of SAN ANTONIO EXHIBIT - 202 Produce Row

RETAIL SPACE -
SCALE: 1/8" = 1'-0"

Feb. 24, 2015

TRUE NORTH

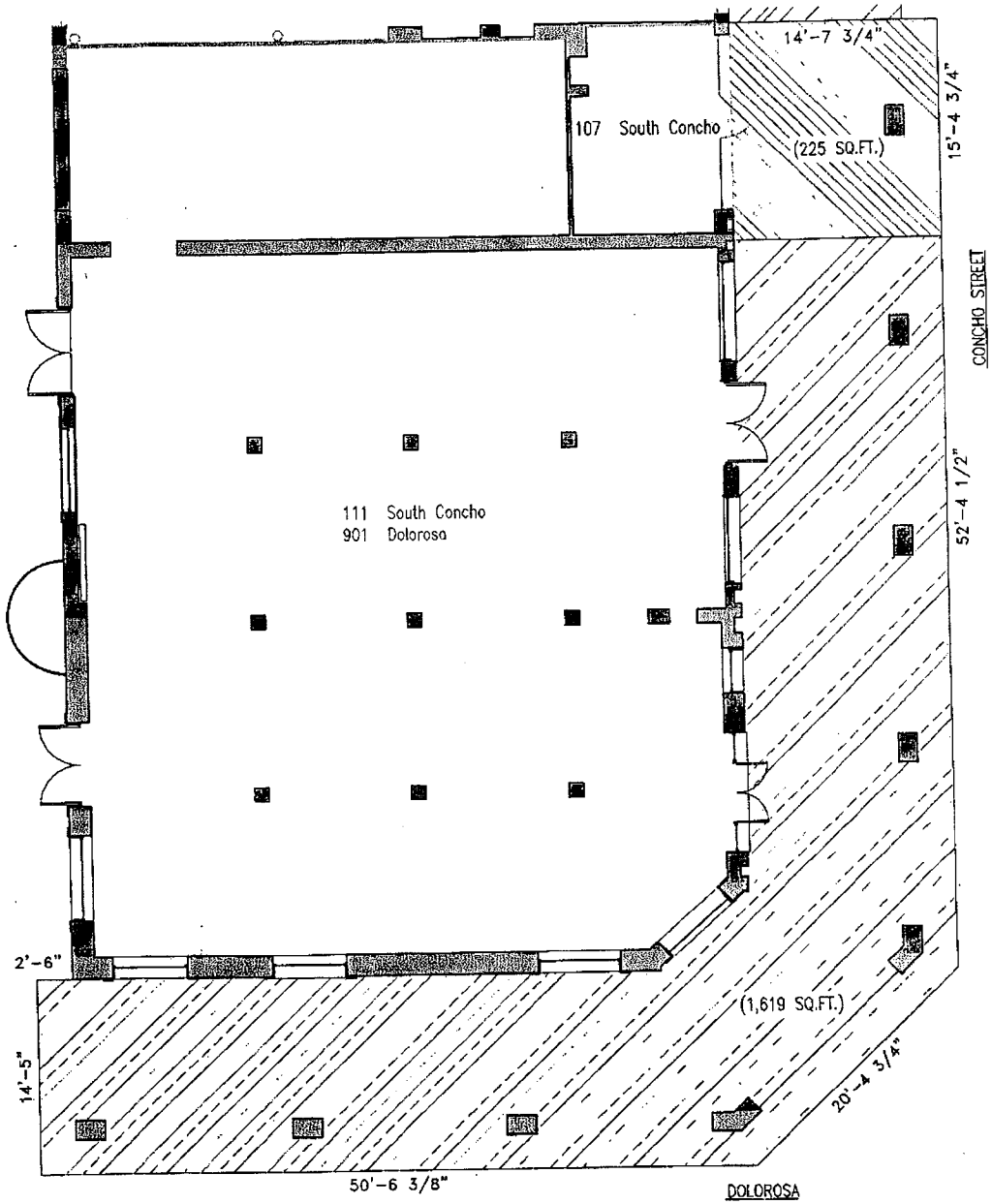


2 CITY of SAN ANTONIO EXHIBIT - 105, 107, and 109 South Concho

RETAIL SPACE -
SCALE: 1/8" = 1'-0"

July 7, 2014

TRUE NORTH



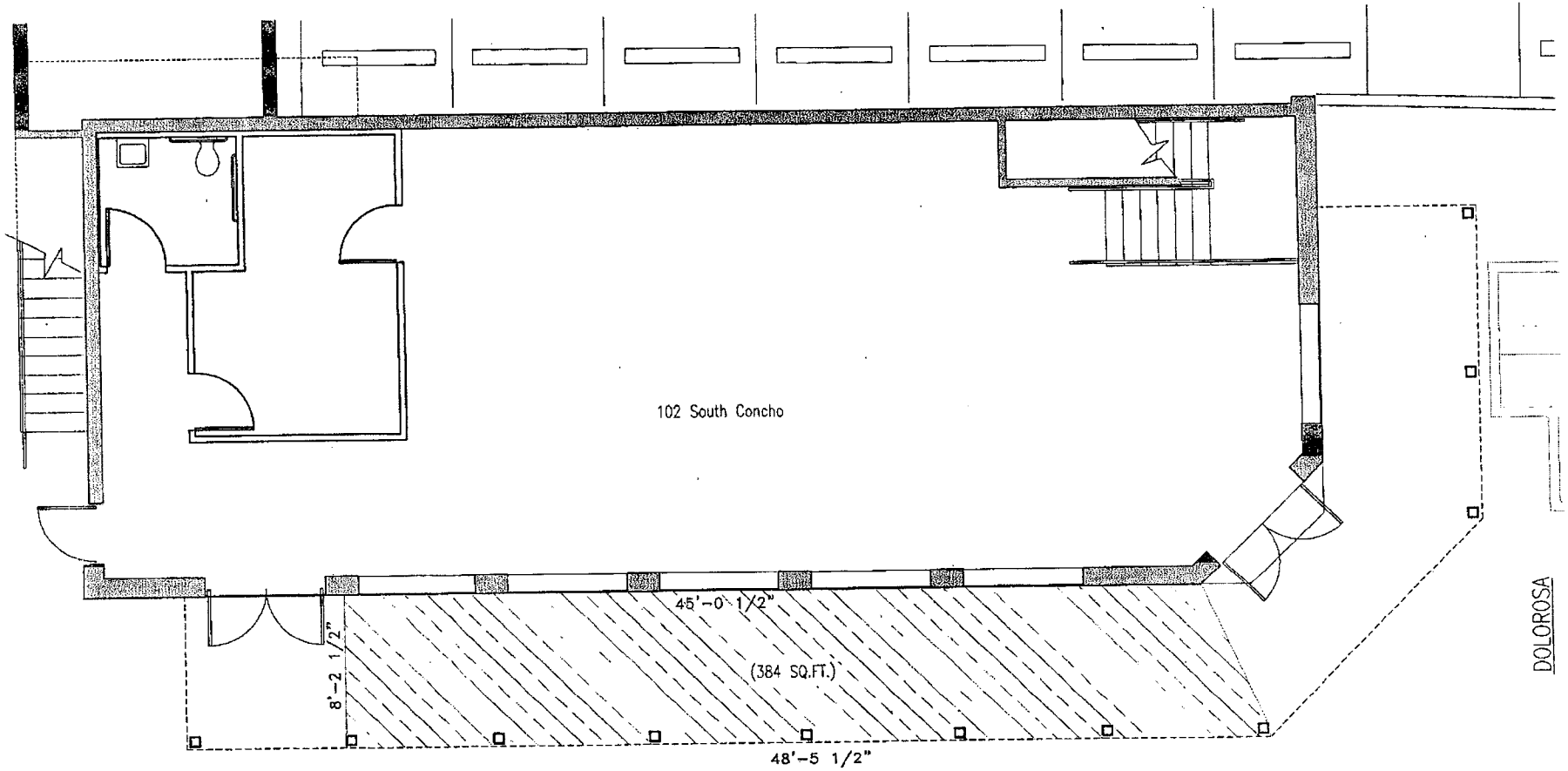
TRUE NORTH

CITY of SAN ANTONIO EXHIBIT
111 South Concho
901 Dolorosa

3

RETAIL SPACE -
SCALE: 1/8" = 1'-0"

July 7, 2014



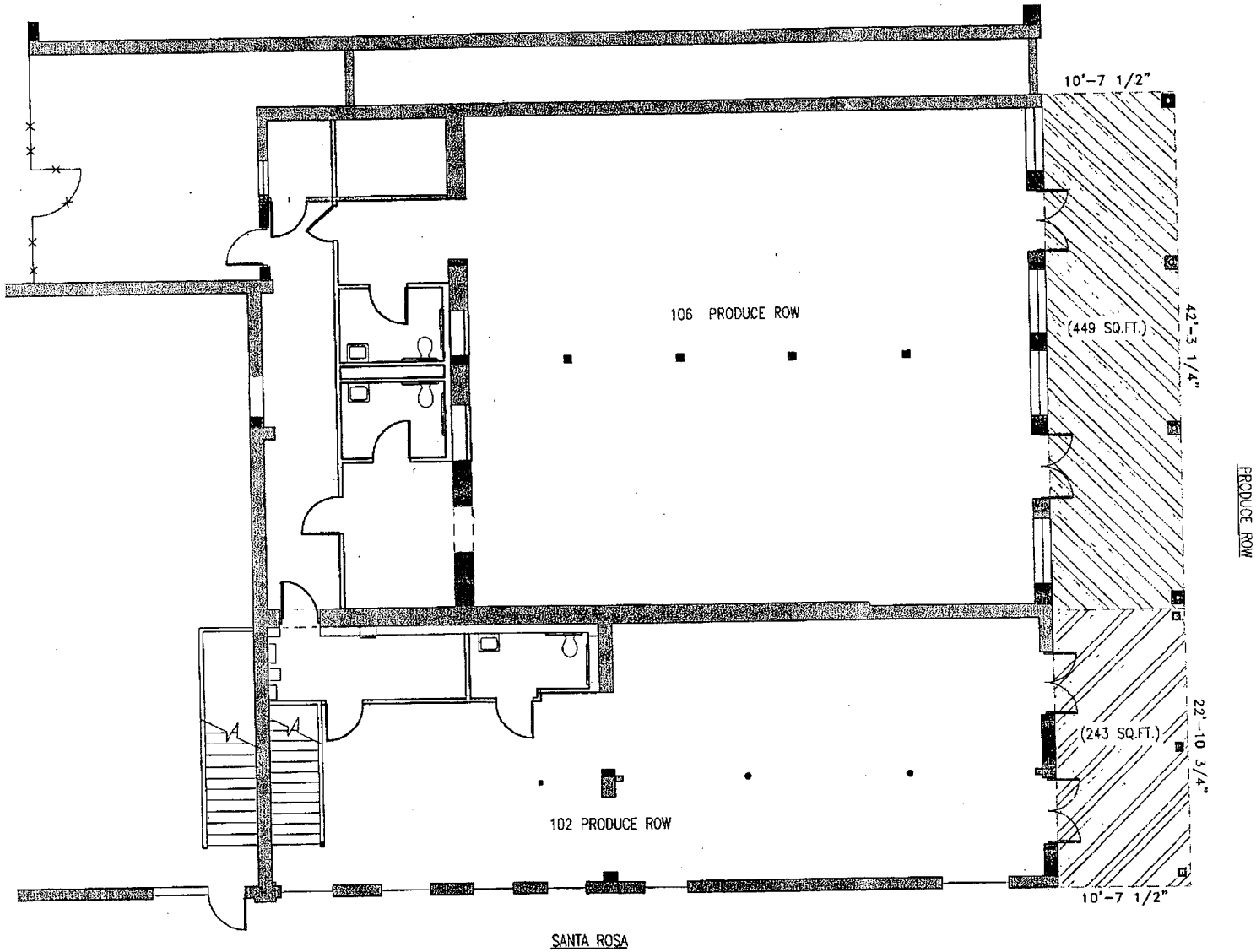
CONCHO STREET

4 CITY of SAN ANTONIO EXHIBIT - 102 South Concho

RETAIL SPACE -
SCALE: 3/16" = 1'-0"

Aug. 8, 2014

TRUE NORTH



5 CITY of SAN ANTONIO EXHIBIT - 102 and 106 Produce Row

RETAIL SPACE -
SCALE: 1/8" = 1'-0"

July 7, 2014

TRUE NORTH