

CONSENT AGENDA
ITEM NO. 15

**CITY OF SAN ANTONIO
INTERDEPARTMENTAL MEMORANDUM
PARKS AND RECREATION DEPARTMENT**

TO: Mayor and City Council

FROM: Malcolm Matthews, Director, Parks and Recreation Department

THROUGH: Terry M. Brechtel, City Manager

COPIES: Melissa B. Vossmer; Finance; Management and Budget; Legal; File

SUBJECT: Ordinance Approving Assignment of Lease Agreement at Market Square in City Council District 1

DATE: June 5, 2003

SUMMARY AND RECOMMENDATIONS

This ordinance approves the assignment and amendment of an eight year Lease Agreement from Ms. Odilia Castoreno d/b/a Odie's Imports to Mr. Antonio Amezcua d/b/a Lyriss Imports in the City of San Antonio's Farmer's Market at Market Square in City Council District 1.

Staff recommends approval of this ordinance.

BACKGROUND INFORMATION

On September 20, 2001, the City Council approved 32 license agreements for a one year term and 29 lease agreements with eight year terms in the City's Farmer's Market, located at 612 W. Commerce in the City's Market Square in City Council District 1. One agreement was with Ms. Odilia Castoreno, a sole proprietorship d/b/a Odie's Imports. This agreement was for lease of in-line store number nine (9) with approximately 1,327 square feet of space used for retail. Ms. Castoreno has requested the City to grant an assignment of her current lease to Mr. Antonio Amezcua, a sole proprietorship d/b/a Lyriss Imports.

Ms. Castoreno has maintained her lease account with the City in good standing and Mr. Antonio Amezcua has provided the Parks and Recreation Department with all required documents, which include financial information and personal data. Mr. Antonio Amezcua will take over the lease payments and use of the space after approval by City Council. Term will be from June 1, 2003 through August 31, 2009. He will be required to pay utility costs, abide by use clauses and minimum hours of operation, provide for all improvements and maintenance of the leased space and provide insurance levels specified by the City's Risk Manager, as set forth in the original agreement.

The lease agreement is amended to update lease language to include more current provisions regarding operation of the business, such as an "owner presence" requirement and limiting events of default by tenant.

POLICY ANALYSIS

It is the long-standing policy of the City of San Antonio to lease public property in Market Square for retail sales purposes, under regulations established in Chapter 32, Article II of the City Code of the City of San Antonio. The assignment of a lease agreement requires passage of a City ordinance.

FISCAL IMPACT

Mr. Antonio Amezcua will continue rental payments established in the original lease agreement. The rental rate is on an established eight-year schedule. The present 2003 rate is \$1.35 per square foot, which equals to \$1,791.45 per month or \$21,497.40 per year. This will increase gradually to a rental rate of \$1,924.15 per month or \$23,089.80 in the last year of the lease agreement (2009). This does not include the cost of utilities, which is pro-rated among all of the tenants.

Anticipated annual revenues, which start June 1, 2003 are:

Year 03/04 - \$21,497.40	Year 05/06 - \$22,293.60	Year 07/08 - \$22,612.08
Year 04/05 - \$21,975.12	Year 06/07 - \$22,452.84	Year 08/09 - \$23,089.80


The assignment application required an assignment application fee of \$1,000.00 that has been received and will be deposited into the City's General Fund.

COORDINATION

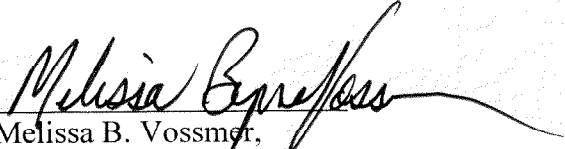
This assignment was coordinated with the City Attorney's Office and the Department of Asset Management.

SUPPLEMENTARY COMMENTS

Discretionary Contract Disclosure Forms are attached.

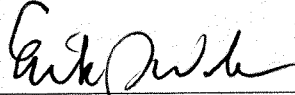


Malcolm Matthews,
Director of Parks and Recreation



Melissa B. Vossmer,
Assistant City Manager

Approved:



Terry M. Brechtel
City Manager

City of San Antonio
Discretionary Contracts Disclosure*

For use of this form, see City of San Antonio Ethics Code, Part D, Sections 1&2
Attach additional sheets if space provided is not sufficient.
State Not Applicable for questions that do not apply.

* This form is required to be supplemented in the event there is any change in the information under (1), (2), or (3) below, before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed.

Disclosure of Parties, Owners, and Closely Related Persons

For the purpose of assisting the city in the enforcement of provisions contained in the City Charter and the code of ethics, an individual or business entity seeking a discretionary contract from the city is required to disclose in connection with a proposal for a discretionary contract:

(1) the identity of any individual who would be a party to the discretionary contract;

ANTONIO AMEZCUA

(2) the identity of any business entity that would be a party to the discretionary contract:

LURIS IMPORTS

and the name of:

(A) any individual or business entity that would be a *subcontractor* on the discretionary contract;

NONE

(B) any individual or business entity that is known to be a *partner*, or a *parent* or *subsidiary business* entity, of any individual or business entity who would be a party to the discretionary contract;

NONE

(3) the identity of any lobbyist or *public relations firm* employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract.

NONE

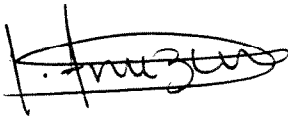
Political Contributions

Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any current or former member of City Council, any candidate for City Council, or to any political action committee that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under (1), (2) or (3) above. Indirect contributions by an individual include, but are not limited to, contributions made by the individual's spouse, whether statutory or common-law. Indirect contributions by an entity include, but are not limited to, contributions made through the officers, owners, attorneys, or registered lobbyists of the entity.

To Whom Made:	Amount:	Date of Contribution:
NONE		

Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question¹ as to whether any city official or employee would violate Section 1 of Part B, Improper Economic Benefit, by participating in official action relating to the discretionary contract.

Signature: 	Title: PRESIDENT Company: LYRIO IMPORTS	Date: 05/07/2003

¹ For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.

**ASSIGNMENT AND AMENDMENT OF LEASE AGREEMENT
(WITH LANDLORD'S CONSENT)**

WHEREAS, the City of San Antonio, a Texas Municipal Corporation, acting by and through its City Manager pursuant to Ordinance No. **94567**, passed and approved by the City Council on September 20, 2001, as LANDLORD ("CITY") whose mailing address is P.O. Box 839966, San Antonio, Texas 78283-3966, entered into that certain Lease effective **September 1, 2001** ("LEASE") with **Antonio Amezcua, a Sole Proprietorship d/b/a Lyris Imports**, ("ASSIGNEE"), whose mailing address is **612 W. Commerce, San Antonio, Texas 78207**, for the lease of the following described tract or parcel of real property situated in Market Square Plaza, Farmer's Market, San Antonio, Bexar County, Texas to-wit:

All the real property and improvements, which contain approximately 1,327 square feet of space, owned by City located at 612 W. Commerce, Market Square's, Farmer's Market, San Antonio, Bexar County, Texas, and identified as in-line store number nine (9), the Farmer's Market Plaza in Exhibit A, attached hereto and incorporated by reference herein for all purposes, and

WHEREAS, **Odilia Castoreno, a Sole Proprietorship d/b/a Odie's Imports**, desire, as ASSIGNOR, to convey and assign TENANT'S leasehold interest under the LEASE to **Antonio Amezcua, owner d/b/a Lyris Imports**, doing business as ASSIGNEE; and

WHEREAS, said assignment is authorized under **Article 17** of the LEASE (Exhibit B) with prior approval of CITY; and

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

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

WHEREAS, CITY desires to affirm lease language to include current provisions regarding the operation of the business in an "**owner presence**" capacity, and events of default by tenant and, ASSIGNEE AND ASSIGNOR, as consideration for CITY'S consent to the assignment agreement to be bound by such amendments to the original lease agreement; NOW THEREFORE, the parties mutually agree as follows:

AGREEMENTS AND ACT

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

ASSIGNEE hereby accepts the assignment of said ASSIGNOR'S rights, title and interest in and to the LEASE and; ASSIGNEE recognizes the superior fee title in and to the land and premises held by the CITY OF SAN ANTONIO, as Landlord, hereafter "CITY," and CITY'S right of reversion at the end of the LEASE term, whether occasioned by default or passage of time, as well as, the rights

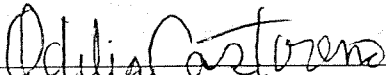
and benefits of every description whatsoever belonging to or accruing to the benefits of the CITY under the LEASE.

3. CONSENT. CITY hereby consents to the assignment by **Odilia Castoreno, a Sole Proprietorship d/b/a Odie's Imports**, as ASSIGNOR, and the assumption by **Antonio Amezcua, owner, d/b/a Lyris Imports**, as ASSIGNEE of said ASSIGNORS' liability and obligations as TENANT, in that certain Lease Agreement between the CITY and **Odilia Castoreno, a Sole Proprietorship d/b/a Odie's Imports**, originally approved by City Council pursuant to Ordinance No. **94567**, passed and approved on **September 20, 2001**.
4. USE OF PREMISES. ASSIGNEES agree that the Leased Premises shall be utilized for the sole purpose of approved goods as outlined in Exhibit B, Use Clause, 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.


[Remainder of this page intentionally left blank.]

EXECUTED this _____ day of _____, 2003. EFFECTIVE 1st Day of June 2003.

ASSIGNOR:
Odilia Castoreno, a Sole Proprietorship
d/b/a Odie's Imports


Odilia Castoreno

ASSIGNEES:
Antonio Amezcua, a Sole Proprietorship
d/b/a Lyris Imports


Antonio Amezcua

LANDLORD:
CITY OF SAN ANTONIO, a Texas
Municipal Corporation

ATTEST:

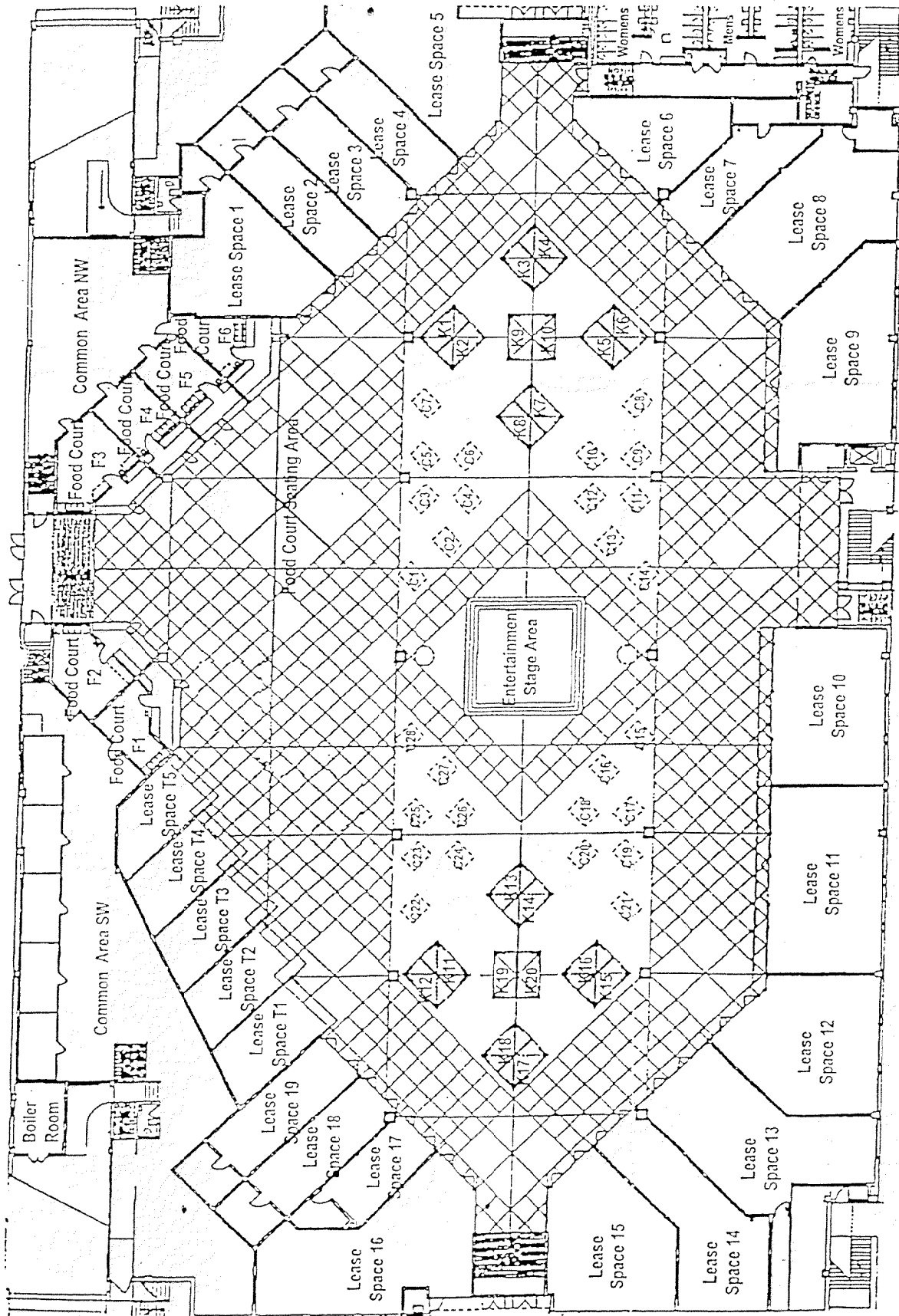
City Clerk

APPROVED AS TO FORM:

City Attorney

EXHIBIT "A"
FLOOR PLAN OF PREMISES

Tenant: ☐ Inline ☐ Kiosk ☐ Pushcart No: _____



Farmer's Market Plaza

EXHIBIT "B"

LEASE/LICENSE
MERCHANDISE USE CLAUSE


KIOSK No. _____ PUSH CART No. _____

IN-LINE No. 9 FOOD COURT No. _____

MERCHANDISE:

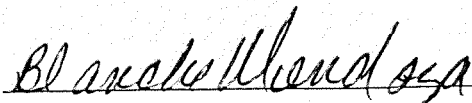
Same as existing use clause
(see attached)

SUBMITTED BY:



DATE: 05/14/2003

ACKNOWLEDGED BY:



DATE: 5/14/03

Odi es

EXHIBIT "B"

RICHARD AND ODILIA ARZOLA AND SHARON M. BECERRA
MERCHANDISE USE CLAUSE

APPAREL: 50%

South American, Central American, Mexican,
Indonesian Adult and Children's Clothing:
Skirts, Bouses, Shirts, Short Sets, Dresses,
Guayaberas; Printed Theme T-Shirts; Seasonal
Theme T-Shirts; Handcrafted Mexican Style
Blouses and Western Blouses; Vests-Denim and
Guatemalan, Ponchos, Serapes, Jackets and
Sweaters

FASHION ACCESSORIES: 15%

Hats, Purses from Guatemala and Mexico:
Leather and Textiles; Hair Accessories; Sashes,
Children's Purses, Handbags, Wallets, Wooden
Canes

JEWELRY: 3%

Costume and Handcrafted; Silver and Alpaca;
Jewelry Boxes

HOME FURNISHINGS: 20%

Blankets, Papaier Mache Products; Kitchenware;
Mandelas; Mexican Theme Posters; Decorative
Wall Hangings; Curios, Figurines, Tin Knights,
Ceramic and Plaster Statues; Collectibles
Gifts; Baskets; Wind Chimes; Garlic and Chili
Strands; Tin Ornaments and Tape Cassette Holders

OTHER: 12%

Seasonal: Christmas Trees, Nativity Sets,
Wooden Ornaments, Straw-Bells, Stars, Wreaths;
Toys-Mexican Imported and Some Guatemalan;
Dolls, Toy Musical Instruments; Whips; Bats;
Candy; Prepackaged Specialty Food (only non-
refrigerated) and Imported Fruit Drinks (non-
refrigerated only)

TOTAL 100%