

**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:** Dolorosa Street Parking Lot Lease Agreement in Market Square

**DATE:** June 5, 2003

**SUMMARY AND RECOMMENDATIONS**

This ordinance approves a Dolorosa Street Parking Lot Lease Agreement in Market Square with Market Square Parking, LLC for lease of approximately 14,615 square feet of parking lot space in City Council District 1 for a ten year term with one five year extension, in consideration of an annual lease amount of \$32,500.00 in Year 1 to \$42,500.00 in Year 5 with market analysis adjustments thereafter.

Staff recommends approval of this ordinance.

**BACKGROUND INFORMATION**

The City owned parking lot in Market Square off of Dolorosa Street in City Council District 1, adjacent to the La Margarita Restaurant, has been leased for private sector operation for several years.

The City leased to the Property Owners of Produce Row Association (POPRA) Dolorosa Street parking lot in Market Square as a public parking lot in 1985, with Mi Tierra Corporation (MTC, Inc.) being the primary operator in POPRA. In 1998, the City began negotiations with MTC for a new lease agreement. The negotiations were delayed due to uncertainty on use of and impacts to the property, as the City negotiated an agreement with Centro Alameda Inc. for development of the Plaza de Artes building into a Smithsonian affiliated museum. In addition, a Market Square Master Plan was undertaken in 2001-2002 that affected the ability of the City to negotiate the new parking lease for the same reasons.

The proposed lease agreement is with Market Square Parking LLC (MSP), a wholly owned subsidiary of MTC, Inc. The new agreement stipulates that MSP will install a new parking operations system within 90 days of approval of this agreement, will resurface and maintain the lot and will be responsible for all utilities. The leased premises are the same as in the previous agreement. Additional language has been incorporated to allow the City to audit financial records of MSP.

As part of the lease agreement, MSP will make improvements to adjacent properties and/or buildings owned by MTC Real Estate, Inc. The City wants to have the appearance of these areas improved. These include Galeria Ortiz, La Margarita Restaurant and office building and the Moguel Building. MSP/MTC will complete the City-approved repairs within two years of execution of the parking lot agreement.

MSP will make lease payments to the City in accordance with an established fee schedule outlined in the agreement. The lease rate in Year 1 will be \$32,500.00, which will increase to \$42,500.00 in Year 5. A market study analysis will be done in Year 6 to determine the new annual payment to the City and parking rates to be charged. Years 7 through 10 will increase 2% over the prior year's rate. (The current lease payment is \$20,000.00 per year.) The initial (first five years) parking rates to be charged will be the same amount that the Public Works Department charges in the Farmer's Market parking lot. MSP may increase parking rates during Fiesta week, subject to approval by the Director of Parks and Recreation.

### **POLICY ANALYSIS**

This ordinance is consistent with other long-standing enterprise based leases, with emphasis on improved compensation to the City and enhanced public property conditions.

### **FISCAL IMPACT**


The revenue from the Dolorosa Street Parking Lot Lease Agreement in Market Square is deposited into the General Fund in an amount of \$32,500.00 in Year 1 and increasing annually.

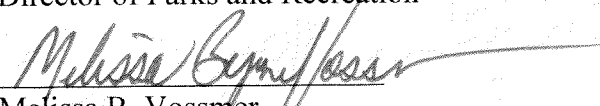
### **COORDINATION**

This item was coordinated with the City Attorney's Office and Asset Management Department. The contract was presented to the Quality of Life Committee on May 22, 2003 and it received favorable review.

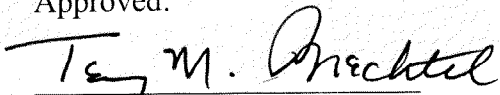
### **SUPPLEMENTARY COMMENTS**

A Discretionary Contracts Disclosure Form is 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, Section 1&2*

**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;

None

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

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

Market Square Parking, L.L.C.

(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;

David Cortez, George Cortez, Ruben Cortez, Rosalinda Cortez-Pouya and the Estate of Manuel Cortez

(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 member of 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 entity include, but are not limited to, contributions made through the officers, owners, or registered lobbyists of the entity.

**To Whom Made:**

See Attached

**Amount:**

**Date of Contribution:**

**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 question<sup>1</sup> as to whether any city official would violate Section 1 of Part B by participating in official action relating to the discretionary contract.

None

**Signature:**

**Date:**

5-23-03

<sup>1</sup> 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.

**Attachment to City of San Antonio  
Discretionary Contracts Disclosure**

<b>To Whom Made:</b>	<b>Amount:</b>	<b>Date of Contribution:</b>
Ed Garza Campaign (G. Cortez)	\$500.00	2/24/03
Ed Garza Campaign (G. Cortez)	\$200.00	5/22/01
Bobby Perez Campagin (G. Cortez)	\$1,000.00	4/06/01
Ed Garza Campaign (D. Cortez)	\$500.00	2/24/03
Ed Garza Campaign (D. Cortez)	\$1,000.00	5/05/02
Ed Garza Campaign (D. Cortez)	\$200.00	5/22/01
Kike Martin Campaign (D. Cortez)	\$200.00	10/03/01
John Sanders Campaign (D. Cortez)	\$750.00	6/24/01
Ed Garza Campaign (R. Cortez)	\$500.00	2/24/03
Ed Garza Campaign (R. Cortez)	\$1,000.00	5/06/02

## DOLOROSA ST. PARKING LOT LEASE AGREEMENT

This Parking Lot 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 pursuant to Ordinance No. \_\_\_\_\_ passed and approved on the \_\_\_\_\_ day of \_\_\_\_\_, 2003, (hereinafter referred to as "CITY"), and **MARKET SQUARE PARKING, LLC**, a Texas Limited Liability Company, (hereinafter referred to as "the 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 the TENANT, does hereby lease and demise to the TENANT, and the TENANT does hereby rent and accept from CITY for the term hereinafter set out, the real property owned by the CITY as outlined on the drawing which is attached hereto as Exhibit A and incorporated by reference herein for the purposes of this Parking Lot Lease, the same as if fully copied and set forth at length. Said real property and improvements (hereinafter referred to as the "Leased Premises") are further described as follows:

An area containing a total of approximately 14,615 square feet and more particularly described as the Dolorosa St. Parking Lot at Market Square. Such area is generally bounded by Concho Plaza and the Galeria Ortiz to the west, La Margarita restaurant to the north, the Moguel building to the east and Dolorosa St. to the south.

1.2 CITY agrees to have a survey of the Leased Premises prepared at CITY'S sole cost and expense within thirty (30) days after the approval of this agreement and this survey shall be incorporated as Exhibit A included hereinafter. CITY and TENANT shall mutually agree in writing, through the Director of Parks and Recreation and an authorized representative from TENANT, that provided survey correctly depicts the boundaries of the Leased Premises, this Lease Agreement shall be amended to incorporate the survey, and metes and bounds description shown on the survey.

1.3 CITY will work with TENANT and adjacent property owners to provide sufficient space for a comprehensive refuse collection site. CITY shall have the right to reserve and exclude a portion of city-owned property from the demised premises and develop the site for use by CITY within one (1) year of the initial term of this agreement. This area shall be identified in a survey adjustment to be completed and submitted as amended Exhibit A. CITY and TENANT agree that such space shall not exceed 400 square feet inclusive of the existing refuse collection structure adjacent to Galeria Ortiz and that the proposed refuse collection site will be positioned so as to minimize disruption to TENANT'S parking operations.

### 2. USE OF PREMISES

2.1 CITY hereby agrees to permit the TENANT use of above described Leased Premises for the sole purpose of operations and maintenance of a outdoor private parking facility as shown on Exhibit A, catering to the public and for no other purpose and in accordance with applicable statutes, laws, ordinances, rules and regulations of the United States, the State of Texas, County of Bexar and the City of San Antonio, Texas.

### 3. TERM AND TERMINATION

3.1 The term of this Lease Agreement is for a ten (10) year period ("Initial Term") beginning on June 1, 2003 and ending on May 31, 2013. So long as TENANT is not in default at the end of the initial term, TENANT may request renewal of the term of this LEASE and the LEASE may be renewed and extended for a period of five (5) years ("Extended Term"), subject to approval of the CITY as evidenced by passage of a subsequent ordinance by the City Council of San Antonio. The City Council shall evaluate any such requested renewal in light of all available facts.

3.2 The Extended Term shall continue on the same terms and conditions set forth herein; provided TENANT notifies CITY of its desire to renew said term no later than 180 days prior to the expiration of the initial term hereof and further provided that TENANT is not then in default hereunder.

3.3 The right is expressly reserved to the CITY, acting through the City Council, to terminate this Agreement for the following:

3.3.1 In the event this Lease Agreement is deemed to be inconsistent with the public use of the property by a court of competent jurisdiction; or

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

3.3.3 In the event the TENANT shall default in the performance of any covenants or agreements contained herein and shall fail, following thirty (30) days' written notice of such default, to remedy same, or such longer period as may be reasonably necessary to cure same provided the TENANT commences its curative efforts within said 30 day period and prosecutes same to completion with all reasonable diligence until completed, save and except a ten (10) days' notice period will apply in the case of default in the payment of Rental Fees.

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

#### 4. COMPENSATION TO CITY

4.1 As compensation to the CITY for the rights granted to TENANT herein, the TENANT agrees to pay to the CITY, in accordance with paragraph 4.2 hereof, throughout the term of the Agreement for each Agreement Year a rental in accordance with the schedule set forth in paragraph 4.2 hereof.

4.2 The TENANT shall pay rental in monthly installments equal to 1/12 of the specified Annual Rental in advance on the first day of each month in accordance with the following schedule:

4.2.1 Contract Year	Annual Rental
Year 1	\$32,500
Year 2	\$32,500
Year 3	\$37,500
Year 4	\$37,500
Year 5	\$42,500
Year 6	Established Market Rental Rate
Year 7	Year 6 Rent plus 2% increase
Year 8	Year 7 Rent plus 2% increase
Year 9	Year 8 Rent plus 2% increase
Year 10	Year 9 Rent plus 2% increase
Year 11 Extended Term (if applicable)	Established Market Rental Rate
Year 12	Year 11 Rent plus 2% increase
Year 13	Year 12 Rent plus 2% increase
Year 14	Year 13 Rent plus 2% increase
Year 15	Year 14 Rent plus 2% increase

4.2.2 Prior to the conclusion of year five (5) of this agreement, the Annual Rental for year six (6) shall be determined as follows: the Annual Rental shall be established by adjusting the rental rate, up or down, to the then current market rental rate for comparable parking lot properties of similar size and nature of use located in downtown San Antonio, Texas. Such then current market rental rate is referred to herein as the "Market Rental Rate." The parties agree that the Market Rental Rate, as determined below, shall be stated as a fixed rental amount, in the same manner as the Annual Rental amount for years one (1) through five (5) of this Lease Agreement. The Market Rental Rate shall be calculated as follows: at least 180 days prior to the expiration of the fifth (5<sup>th</sup>) year of this Lease Agreement a copy of a market rental study prepared by an MAI approved appraiser selected by CITY will be provided by CITY to TENANT. Within 30 days of receipt of said market study result, TENANT may give CITY written notice that TENANT has retained an appraiser to promptly conduct a market study, at TENANT'S own expense. TENANT'S appraiser shall provide a copy of the result thereof to CITY'S appraiser within 30 days after TENANT'S notice to CITY that TENANT has retained such appraiser. If the CITY'S appraiser and the TENANT'S

appraiser cannot reach consensus on a Market Rental Rate within 30 days after TENANT delivers its appraiser's results to CITY'S appraiser, the two appraisers will select a third appraiser (within ten (10) days after such prior 30 day period for reaching consensus), whose fee for service shall be paid equally by CITY and TENANT, to attempt to bridge the gap. If efforts fail to resolve the dispute within 20 days after the third appraiser is selected, the new rental rate shall be deemed to be that Market Rental Rate determined by averaging the third appraiser's Market Rental Rate with the Market Rental Rate determined by the CITY'S appraiser and the Market Rental Rate determined by TENANT'S appraiser. The Market Rental Rate thus determined shall be effective for year six (6) of this Lease Agreement. Said Market Rental Rate would then be increased by 2% per year, cumulative of the prior year, for the next four years of this Lease Agreement (such four years being years 7-10 of this Lease Agreement).

4.2.3. In the event TENANT elects to renew and extend this Lease Agreement, and CITY approves, for an additional five (5) year period, the Annual Rental for years 11-15 shall be determined in the same manner as the Annual Rental for years 6-10, with the Market Rental Rate being determined for year 11.

4.2.4 In the event that TENANT disagrees with the final Market Rental Rate as established in 4.2.2 for the Extended Term, TENANT may rescind the notice to renew as required in Section 3.2 and at that time, this agreement shall terminate sixty (60) days after said notice to rescind is delivered.

4.2.5 CITY and TENANT agree that the Market Rental Rate appraisal reports for year six (6) and eleven (11) (if applicable), shall include a "market parking rate fee" component. If the City's appraisal and the TENANT'S appraisal contain different market parking rate fees, the final market parking rate fee shall be determined by averaging the two together, unless a third appraisal was obtained in connection with determining the Market Rental Rate as set forth in Section 4.2.2 above, in which case the market parking rate fee shall be the average of the three market parking rate fees contained in the three Market Rental Rate appraisal reports. The market parking rate fee thus determined for the 6<sup>th</sup> and, if applicable 11<sup>th</sup> lease years, shall become, if greater than the parking rate fee then being charged at the Farmer's Market garage, the maximum parking rate fees that TENANT may charge the public for normal parking for the 6<sup>th</sup> and, if applicable 11<sup>th</sup> lease years. Said market parking rate fees, and correspondingly the maximum parking rate fees that TENANT may charge, may increase by 2% per year, cumulative of the prior year, for the next respective four years of the Lease Agreement, (i.e., years 7 through 10 and 12 through 15) with written approval from the DIRECTOR.

4.3 If any rental payment is not received by CITY by the second (2<sup>nd</sup>) day of the month in which it is due, TENANT shall pay a late charge equal to \$20.00 per day from the second (2<sup>nd</sup>) day of the month until the rental is received in full by CITY.

Payment shall be submitted to:

Treasury Supervisor  
City Hall Annex  
P.O. Box 839975  
San Antonio, Texas 78283-3975

4.4 As additional consideration for the Lease of the Leased Premises, TENANT shall also be charged with the following obligations:

- (i.) TENANT shall make the improvements to the Leased Premises required under this Lease; and
- (ii.) As a condition of this lease, the CITY will require the maintenance, renovation and/or revitalization of the exteriors of the improvements on that certain property adjoining the Leased Premises to the east and commonly known as the "Moguel Building", and certain property adjoining the Leased Premises to the west and commonly known as the "Galeria Ortiz", and certain property adjoining the Leased Premises to the North and commonly known as "La Margarita Restaurant" (all such adjoining properties being referred to herein as the "Adjoining Properties") and all owned by an entity ("MTC Real Estate") affiliated with TENANT. CITY acknowledges that TENANT is uniquely qualified to effectuate the improvements on such Adjoining Properties and that such improvements will provide a benefit to the CITY'S interest in the Market Square area. Therefore, TENANT agrees to

cause MTC Real Estate to maintain the adjacent Moguel Building in structurally sound condition with all exterior surfaces being clean and well maintained (including, without limitation, painted exterior trim, and repointed brick and limestone) and with all exterior doors and windows in good condition, including, without limitation, replacement of all currently boarded windows with glass. In that regard, TENANT agrees that within 90 days following the execution of this Lease Agreement, TENANT shall cause the hiring of design professionals and engineers necessary for such renovation and revitalization of the exterior of the Moguel Building, and TENANT shall cause such renovation and revitalization to be completed within 24 months following the execution of this Lease. MTC Real Estate shall obtain such approvals by the Historic and Design Review Commission of the CITY and/or other CITY departments as necessary. TENANT agrees that TENANT shall cause its affiliates to maintain the Galeria Ortiz property and the La Margarita Restaurant property in good order and repair and in such a manner as to bring credit to the overall appearance and attractiveness of the Market Square area

4.5 As security for the payment of rental and the performance of TENANT'S obligations under this Lease, Tenant shall obtain an irrevocable standby letter of credit (the "Letter of Credit") in favor of CITY in the amount of the annual rental for the then current year of the term of this Lease Agreement, in a form and issued by a financial institution reasonably acceptable to CITY. The Letter of Credit shall be for a term of one year, and shall be replaced by Tenant annually prior to the expiry date thereof. Tenant agrees that prior to the expiry date of the Letter of Credit or any Replacement Letter of Credit (as hereinafter defined), as the case may be, Tenant shall provide to Landlord another Letter of Credit (a "Replacement Letter of Credit") in the same form, for the same length of term and in the amount of the annual rental for the next succeeding year of the term of this Lease Agreement. Upon any event of default by Tenant following the expiration of any applicable grace or cure period, Landlord may elect as more specifically set forth in Section 12.5 below, to present the Letter of Credit or Replacement Letter of Credit, as the case may be, to the issuer thereof for payment to the extent of actual damages incurred by CITY.

## 5. PARKING OPERATIONS

5.1 TENANT agrees to operate the parking lot operations during the times set out for each working day, three hundred and sixty-five days a year, (unless El Mercado is not open on any given day in which event TENANT shall have no obligation to operate the parking lot on such day) every year of the term, without cessation except for the following reasons:

- 5.1.1 Inclement weather making such operation a hazard or reasonably impractical;
- 5.1.2 Reasonable and necessary maintenance directly related to the operations set forth herein or for public safety reason; or
- 5.1.3 Upon written request by TENANT with written approval from the Director;

5.2 Hours of operation. TENANT shall maintain, at a minimum, the same daily hours of operation as the daily hours of operation for Farmers Market and El Mercado.

5.3 Minimum parking equipment standards. TENANT agrees to install and maintain throughout the term of this agreement the following equipment for the operation, verification and security of the parking lot operations:

- 5.3.1 Two (2) parking gates. The parking gates will operate as automatic barriers for entering and exiting the parking lot. 12 foot Aluminum Gate Arm. Reference: Amano parking gates (AGP-1700) or comparable
- 5.3.2 Magnetic stripe ticket dispenser: For issuance of a computer readable sequentially numbered ticket to parking patrons. Reference: Amano (ETP-22SNY) or comparable
- 5.3.3 Ticket reader and validator: For reading of sequentially numbered magnetic striped parking tickets and to calculate the appropriate fee. Reference: Amano (AGP5210/A506) or comparable.
- 5.3.4 Fee Indicator: For the display of fee amount and change due to parking patrons, linked to the ticket reader and fee computer system. Reference: Amano (AGP 5910/A508)
- 5.3.5 Fee Computer and Cash Management System: For recording of journal information of daily transactions, and interface with system parking components. Reference: Amano (AGP5210/A506)



5.4 Timeline for Equipment Installation: TENANT shall order and use best efforts to install the approved parking operations equipment identified in Section 5.3 above within the following schedule:

5.4.1 1-90 days: TENANT orders parking equipment

5.4.2 90-180 days: TENANT installs and begins operation of parking equipment

5.5 Parking Rates. Except as set forth herein or unless otherwise agreed by the CITY, parking rates charged by TENANT for contract years one (1) through five (5) of the initial term must not exceed those charged by the CITY at the Farmer's Market garage located adjacent to Market Square. Parking rates for years six (6) through ten (10), and eleven (11) through fifteen (15), may be adjusted not to exceed the market parking fees as determined pursuant to Section 4.3 hereinbefore. In the event the CITY increases the rates it charges at the Farmer's Market garage during years one (1) through five (5) of the initial term of this Lease Agreement, TENANT may change its rates from time to time to conform its rates to those charged by the CITY at the Farmer's Market garage. If following any such rate increases, the CITY were to ever decrease the rates it charges at the Farmer's Market garage, TENANT would not be required to lower its rate to the new rate charged by the CITY, it being understood and agreed by the CITY that the TENANT, throughout the term of this Lease Agreement, shall always be entitled to charge a rate at least equal to the highest rate in effect by the CITY at the Farmer's Market garage at any time during the term of this Lease Agreement. Notwithstanding anything to the contrary herein, the TENANT may request temporary rate adjustments in excess of the Farmer's Market posted rates for the annual two week "Fiesta" period celebrated in San Antonio, Texas, which request shall be subject to the approval by the Director of the Department of Parks and Recreation for the City of San Antonio, which approval shall not be unreasonably withheld, conditioned or delayed.

5.6 Validation Program. CITY acknowledges that TENANT may, in TENANT'S discretion, implement a parking validation program that would be available to all Market Square property owners and tenants equally. As per Section 16.1, TENANT agrees that record keeping related to any validation program will be tracked through the fee computer and cash management system, and included in the annual financial statements. However, nothing contained herein shall preclude TENANT from offering a validation program under which property owners and/or tenants validation rates are based on validation volumes.

## 6. ACCEPTANCE AND CONDITION OF PREMISES

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

6.2 The 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 the TENANT unless the same are contained herein or made a part hereof by specific reference herein.

## 7. UTILITIES

7.1 The TENANT shall contract directly with service providers and pay for all gas, water, electricity, sewer, cable TV or other utilities, if any, that may be necessary for its operations as authorized herein on the Leased Premises. The TENANT further agrees to pay all monthly charges associated with effective maintenance of said operation. Should connection or reconnection of any utility become necessary, the TENANT agrees to pay any expenses therefore.

## 8. IMPROVEMENTS

8.1 Except for those required by this Lease, TENANT shall not construct, or allow to be constructed, any improvements or structures on the Leased Premises nor shall the TENANT make, or allow to be made, any material

alterations to the Leased Premises without the prior written approval of the CITY through the DIRECTOR, if required, and such approval will not be unreasonably withheld or delayed. In addition to the Director's approval, TENANT shall also obtain all building permits and other CITY approvals generally applicable to improvements of the type contemplated by TENANT.

8.1.1 TENANT agrees to install or construct and/or refurbish the existing cashier booth to adequately maintain secure and effective operation of the parking lot operations. This includes the secure placement and storage of the parking operations system stated in Article Five (5).

8.1.2 TENANT shall also resurface and subsequently maintain the entire premises to a condition consistent with the condition and operation of a CITY parking lot.

8.1.3 TENANT shall also perform the improvements required pursuant to Section 4.4 of this Lease Agreement.

8.2 The 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 or reconstruction in, on or about the Leased Premises. Further, the TENANT agrees to remove, within thirty (30) days after filing, by payment or provisions for bonding, any mechanic's or materialman's liens filed against the Leased 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.**

8.3 The parking operations shall be known as the "Market Square Parking Lot" and TENANT shall install signage designating same, subject to the normal CITY review and approval processes for such signage.

## 9. MAINTENANCE OF PROPERTY

9.1 The TENANT shall, at all times, keep or cause to be kept the Leased Premises generally free of litter, trash, paper and other waste and shall place same in standard trash containers in the street or in other appropriate locations and shall conform with all applicable garbage, sanitary and health regulations of the CITY.

9.2 Other than as provided herein, the TENANT shall be responsible for the condition of the Leased Premises including all equipment and facilities. The TENANT shall repair any damage to the Leased Premises caused by the TENANT, and shall maintain, or caused to be maintained, the Leased Premises in a clean, neat, attractive and sanitary condition.

9.3 CITY shall be responsible for sidewalk repairs other than those necessitated by the actions of the TENANT, as required to conform with high quality safety and aesthetic standards.

9.4 The TENANT will, at the termination of this Lease Agreement, return the Leased Premises to CITY in as good condition as at the commencement of the term hereof, ordinary wear and tear, acts of God, unavoidable accident and/or damage caused by the CITY, its employees, agents or contractors excepted.

9.5 **The TENANT agrees to hold CITY harmless for any theft, damages or destruction of signs, goods and/or other property of the TENANT both during the term of this Lease and after the expiration of the lease term to the extent any of such property is left on the Leased Premises after the TENANT vacates the Leased Premises.** If said signs, goods and any other property placed by the TENANT upon the Leased Premises are not removed by it within thirty (30) days after the Leased Premises are vacated, then the CITY may remove same without further notice or liability therefore.

## 10. TAXES AND LICENSES

10.1 The 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 the TENANT, or upon the business conducted on the Leased Premises, or upon any of the TENANT'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 the TENANT. Failure to comply with the foregoing provisions shall constitute grounds for termination of this Lease Agreement by the CITY.

## 11. ASSIGNMENT AND SUBLETTING

11.1 Without the prior written consent of the CITY, and except as to a parent, subsidiary or affiliate of TENANT, the TENANT shall not assign this Lease, or allow same to be assigned by operation of law or otherwise, or sublet the Leased Premises or any part thereof. A change in control of TENANT shall occur when members of the Cortez family collectively own or control less than fifty (50) percent of the TENANT, directly or indirectly, and any such change in control of TENANT shall be deemed to be an assignment of the Lease for purposes of this paragraph. Any assignment or subletting by the TENANT without such permission shall constitute grounds for termination of this Lease by the CITY.

11.2 Without the prior written consent of the TENANT, CITY shall have the right to transfer and assign, in whole or in part, any of its rights and obligations under this Lease and in the property referred to herein; provided such assignee assumes CITY'S obligations hereunder, and upon such assumption CITY shall, by virtue of such assignment, be released from all obligations arising under this Lease after the date of such transfer and assumption.

11.3 The receipt by the CITY of Rental Fees 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 the TENANT, or a release of the TENANT from further observance or performance by the TENANT of the covenants contained in this Lease. No provision of this Lease shall be deemed to have been waived by the CITY unless such waiver be in writing signed by the CITY.

## 12. DEFAULT AND REMEDIES

12.1 The following events shall be deemed to be events of default by the TENANT under this Lease Agreement:

12.1.1 The TENANT shall fail to pay any installment of Rental as provided for in this Lease and such failure shall continue for a period of ten (10) days following receipt of written notice of failure to pay any installment of Rental when due and owing.

12.1.2 The TENANT shall fail to comply with any term, provision or covenant of this Lease Agreement, other than the payment of Rental Fees, and shall not cure such failure within thirty (30) days after written notice thereof to the TENANT, or such longer period of time as may be reasonably necessary to cure such default provided TENANT commences such curative efforts within the 30 day period and continues same with all reasonable diligence until completed.

12.1.3 The taking by a court of competent jurisdiction of the 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.

12.2 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; in which case TENANT shall remain liable for all amounts accruing under this Lease as of the date of such termination and be liable to the CITY for the difference between the present value of the base rent to become due hereunder and the present value of the fair market value of the Leased Premises for the remainder of the Lease term, if any. In the alternative, CITY, its agents or attorney may, at its option, resume possession of the Leased Premises and re-let the same for the remainder of the original term for the best lease fee CITY, its agents may obtain for the account of the TENANT without relieving the TENANT of any liability hereunder as to Rental Fees still due and owing in this Lease Agreement, or any extension thereof, as applicable. The TENANT shall make good any deficiency.

12.3 Any termination of this Lease Agreement as herein provided, except under Article Three (3), Section 3.1.1 and 3.1.2, shall not relieve the TENANT from the payment of any sum or sums that shall then be due and payable to CITY hereunder, or any claim for damages then or theretofore accruing against the TENANT 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.

12.4 Upon any such expiration or termination of this Lease Agreement, the 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 the TENANT and remove the TENANT 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 Leased Premises, and such action by CITY shall not constitute CITY'S acceptance of abandonment and surrender of the Leased Premises by the TENANT nor prevent CITY from pursuing all legal remedies available to it.

12.5 Notwithstanding anything to the contrary in this Lease, upon a default by Tenant which remains uncured following the expiration of any applicable grace or cure period, CITY may elect to terminate this Lease Agreement and present the Letter of Credit or the Replacement Letter of Credit, as the case may be, to the issuer thereof for payment to the extent of actual damages incurred by CITY.

### 13. INDEMNIFICATION

13.1 The TENANT covenants and agrees to FULLY INDEMNIFY 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, including, but not limited to, mechanic's and materialman's liens created during the TENANT'S work or subsequent alterations, additions, renovations, remodeling, reconstruction or other improvements, if any, 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 the TENANT'S activities in, on or about the Leased Premises or in connection with the TENANT'S use of the Leased Premises, or from any condition of the Leased Premises caused by the TENANT, including any acts or omissions of the TENANT, any agent, officer, director, representative, employee, consultant or subcontractor of the TENANT, and their respective officers, agents, employees, directors and representatives or any other person or persons whom the TENANT controls or has the right to control, while in the exercise of performance of the rights or duties under this LEASE 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. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE ANY SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSE OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, AND REPRESENTATIVES OF CITY. 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. The TENANT shall promptly advise the CITY in writing of any claim or demand against the CITY or the TENANT known to the TENANT related to or arising out of the TENANT'S activities under this LEASE AGREEMENT and shall see to the investigation and defense of such claim or demand at the TENANT'S cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving the 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 Section 13, is an INDEMNITY extended by the 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. The 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 the 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 the TENANT only and not of the CITY. Any and all claims that may result from any obligation for which the 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 the TENANT.

14.2 Prior to the commencement of any work under this AGREEMENT, the TENANT shall furnish an original completed Certificate(s) of Insurance to the CITY'S Director, Parks and Recreation Department and City Clerk's Office, which shall be completed by an agent authorized to bind the named underwriter(s) and their TENANT to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The original certificate(s) must have the agent's original signature, including the signer's TENANT affiliation, title 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 AGREEMENT until such certificate shall have been delivered to the CITY'S Director, Parks and Recreation Department and the City Clerk's Office, and no officer or employee, except the City Risk Manager, shall have authority to waive this requirement.

14.3 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 require that the TENANT increase its insurance coverages and limits when deemed reasonably necessary and prudent by CITY'S Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding the Lease Agreement. However if such increased coverages or limits is/are considered to be excessive by the TENANT and the TENANT so advises CITY in writing, the appropriate coverages and limits will be determined through arbitration by three (3) arbitrators comprised of a commercial lines insurance agent selected by CITY, a commercial lines insurance agent selected by the TENANT, and a commercial lines insurance agent selected and agreed upon by the insurance agents selected by CITY and the TENANT. However, in no instance will CITY be required to allow modification of coverage and limits whereupon CITY may incur increased risk.

14.4 The TENANT'S financial integrity is of interest to CITY, therefore, subject to the TENANT'S right to maintain reasonable coverages and deductibles in such amounts as are approved by CITY, the TENANT shall obtain and maintain in full force and effect for the duration of the Lease Agreement, and any extension hereof, at the TENANT'S sole expense, insurance coverage written, on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A-or better by A.M. Best TENANT and/or otherwise acceptable to the CITY, in the following types and amounts:

TYPE		AMOUNT
1.	Workers' Compensation and Employers Liability	Statutory \$500,000/\$500,000/\$500,000
2.	Commercial General (Public) Liability Insurance to include coverage for the following:	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence or its equivalent
	a. Premises/Operations	
	b. Independent Contractors	
	c. Broad Form Contractual Liability	
	d. Products/completed operations	
	e. Broad form property damage, to include fire legal liability	
	f. Personal Injury	
	g. Explosion, collapse, underground	
3.	Comprehensive Automobile Liability	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence or its equivalent
	a. Owned/Leased Vehicles	
	b. Non-owned Vehicles	

- c. Hired Vehicles
- |    |   |   |
|----|---|---|
| 4. | Garage keeper's Liability   | \$1,000,000   |
| 5. | Property Insurance: For physical damage to the property of the TENANT, including improvements and betterment to the Leased Premises | Coverage for a minimum of eighty percent (80%) of the replacement cost of the TENANT'S property |

14.5 The CITY shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the CITY, and may make a reasonable request for 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). Upon such request by the CITY, the TENANT shall exercise reasonable efforts to accomplish such changes in policy coverages, and shall pay the cost thereof provided, TENANT shall have no obligation to accomplish such change if it deems the cost thereof to be prohibitive.

14.6 The 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 and employers' liability policy will provide a waiver of subrogation in favor of the CITY.

14.7 The TENANT shall notify the CITY in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, or ten (10) days notice for cancellation due to non-payment of premiums, which 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  
Department of Parks and Recreation  
Contract Services Division  
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

14.8 If the TENANT fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the CITY may obtain such insurance, and the TENANT shall reimburse the CITY for the amount of the premiums for such insurance within thirty (30) days after receipt of an invoice from the CITY for the same.

14.9 Nothing herein contained shall be construed as limiting in any way the extent to which the TENANT may be held responsible for payments of damages to persons or property resulting from the 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 the TENANT. Except to the extent caused by CITY, its agents, employees or contractors, or the negligence of any of them, CITY shall not be liable, and the TENANT waives all claims for any damage either to the person or property of the 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. Except to the extent caused by CITY, its agents, employees or contractors, or the negligence of any of them, **the TENANT shall save and hold harmless CITY**

from any claims arising out of damage to the TENANT'S property or damage to the TENANT'S business, including subrogation claims by the TENANT'S insurers.

## 15. DESIGNATED PARTIES

15.1 The Director, or his designee, shall be the CITY'S principal agent for monitoring the TENANT'S compliance with this Lease Agreement and shall be the CITY'S representative responsibility for the CITY'S administration of this agreement.

15.2 Unless written notification by the TENANT to the contrary is received and approved by CITY, the TENANT'S corporate president shall be the TENANT'S designated representative responsible for the management of all matters pertaining to the Lease Agreement

## 16. RECORDS

16.1 All applicable records and accounts relating to TENANT'S business at the Leased Premises and any assignees, sublessees, sub-tenants or subcontractors, together with all supporting documentation generated directly or indirectly because of this Agreement, shall be preserved in Bexar County, Texas by the TENANT for five (5) years after the period to which they relate. In no event shall the TENANT be required to maintain such records beyond the five (5) year period set out above unless there is as of the end of that date an ongoing investigation of dispute relating to the periods addressed by those records; however, TENANT shall submit a written request to CITY to dispose of any eligible records and CITY shall have a period of sixty (60) days following the date of TENANT'S notice within which to notify the TENANT that the CITY approves of such disposal or requires the TENANT to deliver such records to the CITY.

16.2 The TENANT agrees to submit to the CITY an annual financial statement related to TENANT'S business at the Leased Premises, which statement shall be prepared by a certified public accountant in accordance with generally accepted accounting principles or accounting principles used for federal income tax purposes. The CITY, at its sole cost and expense, shall have the right to conduct an audit and examine all records and accounts related to the Leased Premises, provided such audit shall take place at the location of TENANT'S offices where such records and accounts are maintained, during TENANT'S normal business hours for such office.

## 17. RULES AND REGULATIONS

17.1 As it relates to TENANT'S business at the Leased Premises, the TENANT shall observe and comply with all laws and ordinances of the CITY generally affecting businesses of the same type as the TENANT'S business, including but not limited to, the CITY'S noise ordinance and the provisions concerning operation of businesses in the Downtown Central Business District.

17.2 No advertisements, signs, decorations or displays shall be placed in, on or about the Leased Premises without the prior written approval of the CITY through the Director of Parks and Recreation 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. The TENANT agrees to remove all signs from the Leased Premises when the TENANT vacates the Leased Premises.

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

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

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

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

17.5 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 Leased Premises is prohibited.

17.6 The TENANT 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 to persons employed in its operations hereunder.

17.7 The TENANT shall comply with CITY'S laws pertaining to noise. The TENANT agrees to comply with any requests by the CITY'S park rangers, police officers or noise abatement officers. Failure to comply with this section may, at CITY'S option, constitute a default under this Lease Agreement.

## **18. RESERVATIONS: CITY**

18.1 CITY reserves the right to enter the Leased Premises at all reasonable times for the purpose of examining, inspecting or making repairs as herein provided. To the extent that any such repairs materially interfere with the TENANT'S business on the Leased Premises, or to the extent any action is taken by the CITY that has the effect of denying access to the Leased Premises by the TENANT for the purposes contemplated hereby, the TENANT shall be entitled to an equitable abatement or reduction of rent by reason of such interference provided, that any such request for abatement or reduction of rent must be submitted within thirty (30) days of completions of repairs or restoration of public access. Said entry and repairs shall not be deemed to be an actual or constructive eviction of the TENANT from the Leased Premises. TENANT shall be notified of any such repairs or interruption of public access not less than ten (10) days in advance of the initiation of the repairs or denial of access, unless the circumstances prohibit such advance notice.

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

## **19. HOLDING OVER**

19.1 Should the 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 Fees equal to 125% of the amount of the Rental Fees paid for the last month of the term of this Lease Agreement. The inclusion of the preceding sentence shall not be construed as CITY'S consent for the TENANT to hold over.

## **20. QUIET ENJOYMENT**

20.1 CITY covenants and agrees, subject to the provisions of this Lease Agreement, that the TENANT, on paying the Rental Fees and all other charges in this Lease Agreement provided for and observing and performing the covenants, agreements and conditions of this Lease Agreement on its part to be observed and performed, shall lawfully and quietly hold, occupy and enjoy the Leased Premises during the term without hindrance or molestation of any kind whatsoever.

## **21. CONFLICT OF INTEREST**

21.1 The TENANT acknowledges that it is informed that Texas law prohibits contracts between the CITY and any local public official, such as a CITY officer or employee, and that the prohibition extends to an officer and employee of CITY agencies, such as CITY-owned utilities and certain CITY boards and commissions, and to contracts involving a business entity in which the official has a substantial interest, as defined by Texas law, if it is reasonably foreseeable that an action on the matter would confer an economic benefit on the business entity. The TENANT certifies (and this Lease Agreement is made in reliance thereon) that neither it, its individual officers, employees or agents, nor any person having a substantial interest in this Lease Agreement, is an officer or employee of the CITY or any of its agencies. Further, the TENANT agrees to comply with the CITY'S Ethics Ordinance and to provide Disclosure Statements to CITY.



## 22. SEPARABILITY

22.1 If any clause or provision of this Lease Agreement is illegal, invalid or unenforceable under present or future laws effective during the term of this Lease Agreement, 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 of this Lease 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.

## 23. NOTICES

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

Director of Parks and Recreation  
City of San Antonio  
115 Plaza de Armas, Suite 260  
P.O. Box 839966  
San Antonio, Texas 78283-3966

City Clerk  
City of San Antonio  
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 the TENANT shall be deemed sufficient if in writing and mailed, Registered or Certified mail, Postage Prepaid, addressed to the TENANT at:

**Market Square Parking, LLC**  
**800 Dolorosa, Suite 204**  
**San Antonio, Texas 78204**

or to such other address on file with the City Clerk as the TENANT may provide from time to time in writing to CITY.

## 24. PARTIES BOUND

24.1 If there shall be more than one party designated as the TENANT in this Lease, they shall each be bound jointly and severally hereunder.

24.2 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.

## 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. LIEN FOR RENTAL

26.1 In consideration of the mutual benefits arising under this Lease Agreement, the TENANT does hereby mortgage, and grant a security interest under the Texas Business and Commerce Code unto CITY, upon all property of the TENANT now or hereafter placed in or upon the Leased Premises (except such part of any property or merchandise as may be exchanged, replaced or sold from time to time in the ordinary course of operations or trade), 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 Rental Fees and other sums agreed to be paid by the TENANT herein. At CITY'S request, the 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.

## **27. RELATIONSHIPS OF PARTIES**

27.1 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 venturers, or any other similar such relationships between the parties hereto other than that of LESSOR and the TENANT.

## **28. GENDER**

28.1 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.

## **29. CAPTIONS**

29.1 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.

## **30. ENTIRE AGREEMENT/AMENDMENT**

30.1 This Lease 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 the TENANT.

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

30.3 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.

### 31. AUTHORITY

31.1 The signers of this Lease Agreement for the TENANT and the CITY hereby represents and warrants that he or she has full authority to execute this Lease Agreement on behalf of the TENANT or the CITY (as is applicable).

### 32. FORCE MAJEURE

32.1. In the event CITY or TENANT shall be delayed, hindered or prevented from the performance of any act required under this Lease Agreement by reason of acts of God; acts of common enemies; fire, storm, flood, explosion or other casualty; strikes, lockouts; labor disputes; labor troubles; inability to procure materials; failure of power; restrictive governmental laws or regulations; riots, insurrection; war; settlement of losses with insurance carriers; injunction; order of any court or governmental authority; or other cause not within the reasonable control of CITY or TENANT, as the case may be, then the performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

IN WITNESS WHEREOF, we have affirmed our signatures this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

#### LESSOR:

CITY OF SAN ANTONIO, a Texas  
Municipal Corporation

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

ATTEST:

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

#### TENANT

MARKET SQUARE PARKING, LLC

By: *David Gentry*  
Title: \_\_\_\_\_

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