

**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: Christopher J. Brady; Finance; Management and Budget; Legal; File

SUBJECT: Ordinance Approving New Lease Agreements for Two Farmer's Market Tenants Whose Original Agreements have been Terminated

DATE: March 4, 2004

SUMMARY AND RECOMMENDATIONS

This ordinance approves the execution of one-year lease agreements negotiated with two tenants whose original space agreements have been terminated in the Farmer's Market in the City of San Antonio's Market Square in City Council District 1.

Staff recommends approval of this ordinance.

BACKGROUND INFORMATION

On September 20, 2001, City Council approved twenty-nine (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. Two tenants have not met the contracted payment schedules and have been assessed fines for violations of terms included in their leases. These are Angie's (Food Court 2) and Martin's (In-Line Store 6). Letters were sent to these tenants advising them of agreement requirements to pay rent and other fees due on or before the first day of each month so they could remain in good standing. Further review resulted in additional letters of warning being sent when they continued to be delinquent. Due to late payment of rent and/or excessive penalty fees and lack of response after the warning letters were mailed, staff terminated the two agreements in December 2003.

The tenants have requested to be given a new opportunity to lease the spaces. City Councilman Flores submitted a six signature memo on January 16, 2004 to direct staff to negotiate a new agreement with them, which was reviewed by the Governance Committee on February 4, 2004. City staff has negotiated a new one-year agreement with reduced terms and more stringent default conditions. The agreement establishes the new lease term from January 1, 2004 though December 31, 2004, adds a waiver of legal rights if the agreement is terminated for one late rent payment on the first event of default, and provides no guarantee for renewal after the completion of the initial one-year term. These terms are the same as other reinstated tenant agreements approved in June 2002.

If the tenants are successful in complying with the terms of the first year, they will receive a second agreement for a two-year period with the same restrictions. Upon successful completion of the second term of two years, then the City will offer each tenant who meets all of the requirements a third agreement. This will match the end term of the original terminated agreement and be without any restricted terms and conditions.

As set forth in the original agreement, tenants will be required to pay utility costs, garbage fees, 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.

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.

FISCAL IMPACT

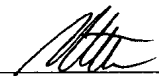
As part of the new agreement request process, all of the tenants have paid all past due amounts owed and are current on the rent invoiced for March 2004. The rental rates have not changed from the original agreements.

COORDINATION

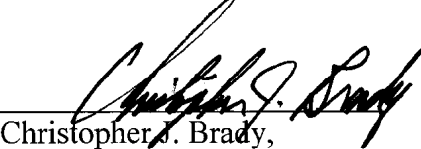
The one-year agreement was coordinated with the City Attorney's Office, the Department of Asset Management and City Council District 1 office.

SUPPLEMENTARY COMMENTS

A Discretionary Contracts Disclosure Form is attached for Angie's and Martin's.



Malcolm Matthews,
Director of Parks and Recreation



Christopher J. Brady,
Assistant City Manager

Approved:



Terry M. Brechtel
City Manager

CITY OF SAN ANTONIO
OFFICE OF THE CITY COUNCIL
INTERDEPARTMENTAL CORRESPONDENCE SHEET

TO: Mayor and Councilmembers

FROM: Councilman Roger O. Flores, District 1

COPIES TO: City Manager; Interim City Clerk; City Attorney; Director of Parks & Recreation; Assistant to City Council and Mayor; File

SUBJECT: Farmers Market Plaza Tenant Lease/License Agreement

DATE: January 16, 2004

I am requesting City Council concurrence in directing Staff to negotiate a new agreement with two tenants, 1) Angie Moore of Angie's and 2) Martin Douglas of Martin's. Both of these tenants have been delinquent on rent and have requested additional consideration for reinstating their agreements. City Staff has developed a one-year lease and license agreement with reduced terms and more stringent default conditions. These two (2) tenants will be offered the following terms:

- One (1) year agreement
- If Tenant successfully completes this initial term (Term 1), City will recommend a two (2) year renewal (Term 2) under the same terms and conditions as this lease Agreement
- If Tenant satisfactorily completes, at City's sole determination, both terms, one (1) and two (2), City will recommend a renewal term to match the termination date of August 31, 2009, and with lease terms and conditions of the terminate lease.

Your favorable consideration of this matter is requested.



ROGER O. FLORES, DISTRICT 1

EDWARD D. GARZA, MAYOR



JOEL WILLIAMS, DISTRICT 2

ENRIQUE BARRERA, DISTRICT 6



JULIAN CASTRO, DISTRICT 7

RON H. SEGOVIA, DISTRICT 3



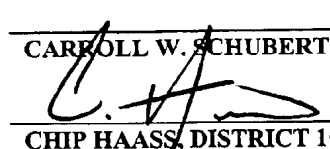
RICHARD PEREZ, DISTRICT 4

ART A. HALL, DISTRICT 8

CARROLL W. SCHUBERT, DISTRICT 9



PATTI RADLE, DISTRICT 5



CHIP HAASS, DISTRICT 10

2004 JAN 21 PM 12:07

RECEIVED
CITY OF SAN ANTONIO
CITY CLERK

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;

N/A

(2) the identity of any business entity¹ 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;

N/A

(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;

N/A

(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.

N/A

¹ A *business entity* means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law.

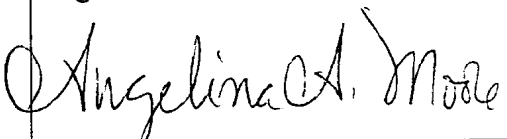
Political Contributions

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:
N/A		

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 question² 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: <i>owner</i> Company: <i>Angie's</i>	Date: <i>2/19/04</i>

² 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.

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.*

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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;

NA

- (2) the identity of any business entity¹ 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;

NA

- (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;

NA

- (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.

NA

¹ A *business entity* means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law.

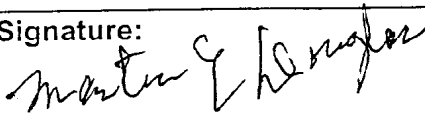
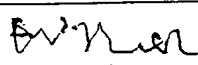
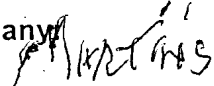
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Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (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:

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 question² 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:  Company: 	Date: 7/23/04

² 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.

**CITY OF SAN ANTONIO
FARMERS MARKET PLAZA LEASE AGREEMENT
Food Court Tenants**

This Lease Agreement is made by and between the **CITY** of San Antonio, a home rule municipal corporation located in Bexar County, Texas (hereinafter called "**CITY**"), acting by and through its **CITY** Manager or his designated representative,

AND

Name Angie Moore doing business as Angie's, hereinafter called "**TENANT**,"

WITNESSETH:

1. DEMISE OF PREMISES

- 1.1 **CITY**, for and consideration of the rents, covenants, and promises herein contained to be kept, performed and observed by **TENANT**, does hereby lease and demise to **TENANT** and **TENANT** does hereby rent and accept from **CITY** a portion of the real property and improvements owned by **CITY** located at 612 W. Commerce Street, San Antonio, Bexar County, Texas, within the area commonly known as the Farmers Market Plaza at Market Square (said real property and improvements hereinafter referred to as the **LEASED PREMISES**). Said **LEASED PREMISES** contain approximately 448 square feet and is identified as Farmers Market Plaza area number Food Court 2 in Exhibit "A" "Floor Plan of Premises" attached hereto and incorporated by reference herein for the purposes of this Lease Agreement, the same as if fully copied and set forth at length.
- 1.2 Condition to Use: The **CITY** reserves the right to enter the **LEASED PREMISES** at reasonable hours and, if, in the opinion of the **CITY**, an emergency exists requiring immediate action, at any time, to inspect, to make replacements, repairs or restorations, and to carry out any work or activities in connection with the protection of the public health, safety and welfare, or the preservation of the **LEASED PREMISES**. **TENANT** acknowledges the above reservation by **CITY** and agrees to respect and be subordinate to same. Reasonable notice shall be construed as giving notice the day before the **CITY** proposes to enter the **LEASED PREMISES**, except for an emergency, which will not require prior notice.

2. USE AND CARE OF PREMISES

- 2.1 The **LEASED PREMISES** shall be used for the following food and beverage purposes only, specifically the sale of:

SEE USE CLAUSE – EXHIBIT "B"

as shown on the attached Exhibit "B" "Merchandise Use Clause" and for no other purposes, unless previously approved by **CITY**, pursuant to Section 2.3 below.

- 2.2 Any use by **TENANT** of the **LEASED PREMISES** for purposes not shown above, or otherwise changed in writing as provided herein, will be deemed a breach of this Lease Agreement and will be grounds, at **CITY'S** option, for termination of this Agreement upon ten (10) days' written notice to **TENANT**.
- 2.2.1 **FOOD COURT ESTABLISHMENTS** that serve alcoholic beverages must provide **CITY** with a copy of their current Texas Alcoholic Beverage Commission (TABC) certificate prior to execution of **LEASE**.

- 2.2.2 **FOOD COURT TENANTS** who serve alcoholic beverages may not request a change in their TABC license without first obtaining written approval for the change from the Director, or his designee, of the Parks and Recreation Department. Failure to obtain Parks and Recreation Department approval shall constitute default and **CITY** remedies may include lease termination as set forth in Article 18, "Defaults and Remedies".
- 2.2.3 **FOOD COURT TENANTS** who receive two (2) or more TABC citations within any twelve (12) month period shall constitute default with regard to compliance with Article 12 "Rules and Regulations", Subsection 12.1.10, and **CITY** remedies may include lease termination as set forth in Article 18, "Defaults and Remedies".
- 2.3 **FOOD COURT TENANTS** are responsible for ensuring that all kitchen equipment is in compliance with all San Antonio Metropolitan Health District codes, rules and regulations, and the Uniform Plumbing Code, which may include upgrades to existing equipment and/or fixtures at **FOOD COURT TENANT'S** sole cost and expense. These may include grease traps, vent hoods, and other items and equipment necessary to conduct **TENANT'S** food and/or beverage operation in a safe and sanitary manner.
- 2.4 The following minimum hours of operation are hereby specifically agreed to by the parties hereto:
- 2.4.1 During the months of January, February, March, April, May, September, October, November and December, **TENANT** agrees to open each and every day by 10:00 a.m. and agrees to operate and conduct business from the time of opening until 6:00 p.m.
- 2.4.2 During the months of June, July and August, **TENANT** agrees to open business each day by 10:00 a.m. and agrees to operate and conduct business from the time of opening until 8:00 p.m., seven days a week. **CITY** shall post business hours on all major entry and exit points.
- 2.4.2.1 With the exceptions of Sections 2.5 and 2.6 below, failure to comply with above stated minimum operating hours shall result in a written warning on the first offense; a \$25.00 fine for the second offense; a \$50.00 fine for the third offense; and a \$500.00 fine for the fourth offense. The fifth offense shall be deemed as default and cause for lease termination as set forth in Article 18, "Defaults and Remedies."
- 2.4.2.2 **SPECIAL SITUATIONS:** **CITY** agrees that in special situations regarding weather conditions and/or extended hours of operation, **CITY** shall cooperate, to the best of its ability, with the Farmers Market Tenants based on their majority vote, as to temporary closings and/or extended hours of operation.
- 2.5 The preceding hours of operation shall not apply while the Farmers Market Plaza is closed for THANKSGIVING DAY, EASTER, CHRISTMAS DAY and NEW YEAR'S DAY, or during such time as the **LEASED PREMISES** become untenable because of casualty, repair or restoration.
- 2.6 **TENANT** may not close **TENANT'S** business under any circumstances, except where an emergency exists. **TENANT** must notify the Market Square Facilities Coordinator within 24 hours after closure to inform the Market Square Facilities Coordinator of the nature of the emergency.
- 2.6.1 Emergencies are defined by three (3) categories: A) Death in the **TENANT'S** or **TENANT'S** employee(s) family; B) Medical emergency; and/or, C) Automobile accident.
- 2.7 No **TENANT** may own, or operate as a "shop owner," more than two (2) stores in the Farmers Market Plaza Building. The definition of "stores" includes pushcarts, kiosks, in-line stores, food court stalls, and specialty trucks. A **TENANT** may not have more than two of any combination of the above Farmers Market retail sites.
- 2.7.1 Kiosks in their entirety constitute two (2) individual retail stores.

3. TERMS AND EXPIRATION DATE

- 3.1 Subject to the earlier termination as hereinafter set forth, the term of this Lease is for a period of one (1) year, beginning on January 1, 2004 and ending on December 31, 2004. The right is expressly reserved to the **CITY**, acting through **CITY** Council, to terminate this Agreement for the following:

- 3.1.1 In the event this Lease Agreement is deemed to be inconsistent with the best public use of the property, or
 - 3.1.2 In the event the use of the Leased Premised shall have been deemed a nuisance by a court of competent jurisdiction, or
 - 3.1.3 In the event **TENANT** shall default in the performance of any covenants of agreements contained herein and shall fail following thirty (30) days written notice of such default, to remedy same, save and except a ten (10) days' notice period will apply in the case of default in the payment of rent.
- 3.2 In the event of termination by **CITY** Council in relation to 3.1.1 or 3.1.2 above, **CITY** shall give **TENANT** notice in writing at least thirty (30) days prior to the termination date.
 - 3.3 **TENANT** may cancel this Lease by giving thirty (30) days' written notice to the **CITY**.
 - 3.4 In the event **CITY** plans to change the use of Farmers Market and/or chooses to not renew Lease at the end of the Lease term, **CITY** shall provide six (6) months advance written notice of same to **TENANT** or the remaining months of the term, whichever is greater.

4. ACCEPTANCE AND CONDITION OF PREMISES

- 4.1 **TENANT** has had full opportunity to examine the **LEASED PREMISES** and acknowledges that there is in and about them nothing dangerous to life limb or health and **TENANT** hereby waives any claim for damages that may arise from defects of that character after occupancy. **TENANT'S** taking possession of the **LEASED PREMISES** and issuance of a certificate of occupancy or a temporary certificate of occupancy shall be conclusive evidence of **TENANT'S** acceptance thereof and **TENANT** hereby accepts said premises as being in good and satisfactory order in its present condition as suitable for the purposes of which it is leased. **CITY** specifically disclaims any warranty of suitability for **TENANT'S** intended commercial purposes.
- 4.2 **TENANT** agrees that no representations respecting the condition of the **LEASED PREMISES** and no promises to decorate, alter, repair or improve the **LEASED PREMISES**, either before or after the execution hereof, have been made by **CITY**, or its agents, or its employees, to **TENANT**, unless the same are contained herein or made a part hereof by specific reference herein.

5. RENTAL AND UTILITIES

- 5.1 **RENTAL:** In consideration of this Lease Agreement, **TENANT** agrees to pay to **CITY** at the Office of the **CITY** Treasury monthly rental for the one (1) year period as follows:

<u>Begin Jan. 1</u>	<u>Rate/Month (s.f.)</u>	<u>Square Ft.</u>	<u>Total Square Footage Rental</u>
2004	\$1.53	448	\$685.44
<u>Begin Sep. 1</u>	<u>Rate/Month (s.f.)</u>	<u>Square Ft.</u>	<u>Total Square Footage Rental</u>
2004	\$1.56	448	\$698.88

- 5.2 Said monthly rental is payable in monthly increments on the first day of each month, being due in advance, starting on the Commencement Date of this lease Agreement, and ending one (1) year thereafter, unless otherwise extended herein. Such payments and amounts are subject to adjustments listed below.

- 5.2.1 In the event the **CITY** should determine that the Farmers Market Plaza Building would benefit from the opening of the arched windows on any street side of the building, the **CITY** has the right to calculate a higher rent for those shops having the benefit of direct access through these individual arched entrances. **TENANT** agrees to pay the higher rent or give **CITY** thirty (30) days notice that **TENANT** elects to, and will, vacate the leased premises prior to the rent increase.
- 5.3 **GARBAGE FEES:** In further consideration of this Lease Agreement, **TENANT** agrees to pay to **CITY** at the Office of the **CITY** Treasury or at such other place as may be designated by the **CITY** in writing, a monthly garbage collection fee, in the amount of \$0.025 per square foot on the first day of each month, starting on January 1, 2004 and ending one (1) year thereafter.
- 5.4 **UTILITIES:** In addition to consideration and rent, **TENANT** hereby agrees to pay for electricity, lighting, air conditioning and gas service provided by the **CITY** to the **LEASED PREMISES** each month.
- 5.5 Rental, garbage and utility fees specified in this Article 5 are to be paid promptly on the first day of each month by check or money order. All checks and money orders must be payable to the **CITY OF SAN ANTONIO** and payments should be made at the **CITY** Treasury. If rental payments are not received on or before the 10th day of the applicable calendar month, said payment shall be considered past due and **TENANT** will be deemed delinquent and in default hereunder; a Twenty (\$20.00) Dollar late charge will be assessed on any payment received on the eleventh (11th) day of the applicable calendar month or any day thereafter. **TENANT** also agrees that any rental payment received on or after the thirtieth (30th) day of the respective month shall be due with interest charged at a rate of ten (10%) percent per annum.
- 5.5.1 The ten (10) day period before the twenty (\$20.00) dollar late charge is applied should not be considered a "grace period;" nor shall the late charge provision be considered as an "option" for rental payments to be made late. All payments are considered late if not received in the **CITY**'s Treasury office by the close of business on the first day of each month.
- 5.5.2 At any time during the Lease term more than two (2) Insufficient Funds checks are presented to **CITY** in payment of rental and other considerations, **TENANT** will be placed on a cash or money order basis for the remainder of the Lease term. No exceptions will be made.
- 5.5.3 At any such time, should **CITY**'s Department of Finance establish and issue uniform policies related to late payment of rent and/or Insufficient Funds checks, which may be contrary to the terms stated in subsections 5.5.1-5.5.2 above, the Department of Finance's policies shall prevail. **CITY** shall use its best efforts to formally notify **TENANT** of any such change(s) in advance.
- 5.6 Notwithstanding anything to the contrary set forth in this Lease, if **TENANT** shall fail to make the timely payment of any rent or any additional charges due **CITY** from **TENANT** or the payment of any other money due **CITY** from **TENANT** under the terms of this Lease, and on any such single failure in any period of twelve (12) consecutive months, then, notwithstanding that such failure shall have been cured within the period after notice, as provided in this Lease, it shall be deemed an Event of Default.
- 5.6.1 In the event of an Event of Default, **CITY**, without giving **TENANT** any notice and without affording **TENANT** an opportunity to cure the default, may terminate this Lease forthwith without notice to **TENANT**. **TENANT** agrees to waive defense under contract law and equity if they fail to pay rent in the lease term.
- 5.6.2 **TENANT** agrees that if they are late in any rent payment, they will be evicted immediately and without notice as may be included herein this lease.
- 5.7 If **TENANT** successfully completes this initial term (Term 1), **CITY** will recommend a two (2) year renewal (Term 2) under the same terms and conditions as this Lease Agreement.

- 5.7.1 If **TENANT** satisfactorily completes, at **CITY**'s sole determination, both terms, one (1) and two (2), **CITY** will recommend a renewal term to match the original termination date of August 31, 2009, and with lease terms and conditions of the terminated lease.

6. IMPROVEMENTS

- 6.1 **TENANT** shall not make or allow to be made any interior or exterior structural or electrical construction, repairs, alterations, additions, remodeling, renovations, reconstruction or improvements in any portion of the **LEASED PREMISES**, nor any alterations in the store-front of the exterior of the **LEASED PREMISES**, (collectively, or, as applicable, individually referred to, as improvements) without first obtaining the written consent of the **CITY**, which consent may in the sole and absolute discretion of **CITY** be denied, except in accordance with Section 6.2 hereof.
- 6.2 If, however, **CITY** gives such consent, then **TENANT** agrees that the improvements to be constructed by **TENANT** shall be in accordance with approved retail and tenant mix plans and design specifications; and in addition, with architectural renderings, drawings, detailed plans and specifications (hereafter "plans"), which, in all instances, have received the prior written approval of the **CITY** Market Square Facilities Coordinator, and where applicable, the Market Square Commission, the Historic Design and Review Commission and any other **CITY** of San Antonio Board, Commission, Department, or agency having authority and jurisdiction over the approval of said plans and further **TENANT** agrees that all improvements will be constructed to meet all Federal, State and/or local building codes. **TENANT** agrees that no construction or preliminary work of any kind will be done in connection with the aforementioned renovations and improvements until all written approvals and, if applicable, oral approvals are secured.
- 6.3 Furthermore, **TENANT** covenants that he shall not bind or attempt to bind **CITY** for payment of any money in connection with any construction, repair, alteration, addition, remodeling, renovations, or reconstruction (collectively or individually) on or about, the **LEASED PREMISES**. Article 8 shall apply in case such improvements are made.
- 6.4 All permanent construction, repairs, alterations, additions, remodeling, renovations, reconstruction, and improvements, and **TENANT'S** work provided herein, shall become, upon expiration or other termination of the term of the Lease Agreement, the property of **CITY** without compensation by **CITY** to **TENANT**. Personal property, including, but not limited to, trade fixtures and merchandise not removed within ten (10) days after the termination date of this Lease Agreement, shall become the property of **CITY** without compensation or liability by **CITY** to **TENANT** for any disposition thereafter at private or public sale or otherwise.
- 6.5 In the construction of improvements on the **LEASED PREMISES** and at all times thereafter, **TENANT** shall conform to and comply with all Federal, State and local laws, ordinances, permits, rules and regulations applicable to the **LEASED PREMISES** and the operation of **TENANT'S** business therein.
- 6.6 **TENANT** covenants to undertake renovations or improvements in a reasonable and prudent manner with due regard to the safety of the public and with as little disruption as possible to the operation of the Market Square and other tenants. **TENANT** further agrees to complete such renovations or improvements within a period of six (6) months after the date of final **CITY** approval to start construction of same, unless **CITY**, in its sole discretion, agrees otherwise.
- 6.7 **TENANT** is limited to the number of spare electrical circuits per store ("**LEASED PREMISES**") shown hereafter. If **TENANT** requires more circuits than the limit per **TENANT'S LEASED PREMISES**, then all costs associated with the installation to provide those circuits must be done solely at the **TENANT'S** expense.

The following circuits provided for **TENANT** use are based on a square foot ratio per each **TENANT'S** leased premises:

<u>IN-LINE STORE #*</u>	<u>NO. OF CIRCUITS</u>	<u>TRUCK AREA</u>	<u>NO. OF CIRCUITS</u>
1	2	T-1	1
2	1	T-2	1
3	1	T-3	1
4	1	T-4	1
5	2	T-5	1
6	1		
7	1		
8	3		
9	3		
10	2		
11	3		
12	2		
13	3		
14	2		
15	2		
16	3		
17	1		
18	1		
19	1		

*Existing and New Tenants

7. LIENS PROHIBITED

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

8. MAINTENANCE AND SECURITY

- 8.1 **TENANT** agrees, at **TENANT'S** sole expense, to keep the interior of the **LEASED PREMISES**, including interior walls, flooring, doors and other interior improvements, in good order and repair, and in clean, safe and sanitary condition and to paint the interior when necessary to maintain the interior of the **LEASED PREMISES**, or any part thereof, in a manner satisfactory to **CITY**, and to replace or repair **TENANT**-installed equipment and fixtures as necessary.

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

9. SIGNS

- 9.1 Tenants of the Farmers Market Plaza Building must purchase the standard wooden sign as approved by the **CITY**. Placement is located as shown in the design drawings and must be at the top of the arch or on the sign band. No other signs may be placed in the interior or exterior store windows, where applicable. Interior merchandise and pricing signs must be printed either with stencil, press, silk screen, or press type and must not exceed 8 1/2" x 11" or must be signs approved by both the **CITY** Director of Parks and Recreation and the **CITY** Market Square Office. Handwritten signs are not acceptable. Use of small chrome or wooden sign stanchions are acceptable to hold and frame signs. All exterior signs must comply with **CITY's** Historic Design and Review Commission guidelines.
- 9.1.1 Temporary signage, such as that used for special events, must be approved in writing, five (5) days in advance, by the Market Square Facilities Coordinator, and removed immediately following the conclusion of the event.

10. COMMON AREA

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

11. SALES AND DISPLAY AREA

- 11.1 **TENANT'S LEASED PREMISES** for in-line stores includes a display space sales area located three (3') feet in front of **TENANT'S** store and does not exceed the lease line as shown in the floor plan diagram attached hereto and **TENANT** may display merchandise using acceptable display fixtures in this space in front of **TENANT'S** store. A **FOOD COURT TENANT** may not display in front of said **TENANT'S** counter. **CITY** has the right to remove display merchandise and fixtures if **TENANT'S** display is not presentable, as determined by the Market Square Facilities Coordinator. **TENANT** must bring into the store any merchandise and display fixtures in said display space Sales Area and outside of **TENANT'S** store doors without one (1) hour after official closing each day. Any merchandise left in front of

TENANT'S store sales area after official closing will be confiscated by **CITY** and donated to charity, if **TENANT** fails to remove such merchandise after receiving twenty-four (24) hours' notice from **CITY** to do so.

- 11.2 Encroachment on the Common Area beyond the authorized display space sales area is not permitted, and violations of such will be fined at \$250.00 per day as per **CITY** Code 32-19 (c). More than two (2) repeat violations by **TENANT** in a twelve (12) month period shall be considered a condition of default and shall be grounds for **LEASE** Termination proceedings as provided in Article 18.

12. RULES AND REGULATIONS

- 12.1 **TENANT** covenants and agrees that **TENANT**, its employees, and invitees, will comply with reasonable rules and regulations set by **CITY** from time to time for the efficient operation of the Farmers Market Plaza, including but not limited to, the rules and regulations enumerated below:

- 12.1.1 To use the **LEASED PREMISES** only for the purposes permitted in Article 2; and
- 12.1.2 To keep the **LEASED PREMISES** in good condition (usual wear and tear excepted) and not to commit or permit any waste of said property; and
- 12.1.3 To not commit nor permit the maintenance or commission of any nuisance on the **LEASED PREMISES** and not to commit or permit the use of the **LEASED PREMISES** for any unlawful purpose; and
- 12.1.4 To not permit any person on the **LEASED PREMISES** to willfully or wantonly destroy, deface, damage, impair or remove any part of the **LEASED PREMISES** or appurtenance thereto. In particular, **TENANT**, shall not drive or permit to be driven any nails, hooks, tacks, screws or stakes into the **LEASED PREMISES**; and
- 12.1.5 To not use nor permit the use of any explosive, flammable or otherwise dangerous materials, equipment, or goods; and
- 12.1.6 To properly and safely use and operate all electrical, gas and plumbing fixtures, equipment, or appliances connected thereto, and to keep them clean and sanitary; and
- 12.1.7 **FOOD COURT TENANTS** must install grease traps and/or vent hoods (where applicable) in accordance with San Antonio Metropolitan Health District code, subject to **CITY** inspection; and
- 12.1.8 To keep the Common Area immediately adjoining the **LEASED PREMISES**, including sidewalk, free and clear at all times of any obstructions; and
- 12.1.9 To collect and dispose of all rubbish, garbage, litter or other waste in accordance with **CITY** policy (this clause shall not relive **CITY** of its routine maintenance and clearing obligations); and
- 12.1.10 To observe and comply with all the laws of the United States, the State of Texas and Ordinances of the **CITY** of San Antonio; and
- 12.1.11 To not place nor permit the placement or use of game or video coin-operated machines or coin operated (pay) telephones, public telephones, vending machines and/or associated equipment of any kind whatsoever on the **LEASED PREMISES**, regardless of whether installed at **TENANT'S** expense or not; and
- 12.1.12 To not obstruct nor permit the blockage of any entrance, passageway, electrical panel rooms, **CITY** storage rooms, or exit; and
- 12.1.13 To not use nor permit the use of loudspeakers, bull horns, strobe lights or other bright, loud or distracting devices, including radios; and

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

13. INDEMNIFICATION

- 13.1 **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, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the **CITY** directly or indirectly arising out of, resulting from or related to **TENANT'S** activities under this **AGREEMENT**, including any acts or omissions of **TENANT**, any agent, officer, director, representative, employee, consultant or subcontractor of **TENANT**, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this **AGREEMENT**, all without however, waiving any governmental immunity available to the **CITY** under Texas Law and without waiving any defenses of the parties under Texas Law. The provisions of this **INDEMNIFICATION** are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. **TENANT** shall promptly advise the **CITY** in writing of any claim or demand against the **CITY** or **TENANT** known to **TENANT** related to or

arising out of **TENANT'S** activities under this **AGREEMENT** in accordance with notice provisions as set out in Section 23, and shall see to the investigation and defense of such claim or demand at **TENANT'S** cost. The **CITY** shall have the right, at its option and at its own expense, to participate in such defense without relieving **TENANT** of any of its obligations under this paragraph.

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

14. **INSURANCE REQUIREMENTS**

- 14.1 Any and all employees, representatives, agents or volunteers of **TENANT** while engaged in the performance of any work required by the **CITY** or any work related to a lease of space or Concession Agreement with the **CITY** shall be considered employees, representatives, agents or volunteers of **TENANT** only and not of the **CITY**. Any and all claims that may result from any obligation for which **TENANT** may be held liable under any Workers' Compensation, Unemployment Compensation or Disability Benefits law or under any similar law on behalf of said employees, representatives, agents or volunteers shall be the sole obligation and responsibility of **TENANT**.
- 14.2 Prior to the commencement of any work under this **AGREEMENT**, **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 company 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 company affiliation, title and telephone 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 shall have authority to waive this requirement.
- 14.3 The **CITY** reserves the right to review the insurance requirements of this section during the effective period of the Lease Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by the **CITY'S** Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding the Lease Agreement, but in no instance will the **CITY** allow modification whereupon the **CITY** may incur increased risk.
- 14.4 A **TENANT'S** financial integrity is of interest to **CITY**, therefore, subject to **TENANTS** right to maintain reasonable deductibles in such amounts as are approved by **CITY**, **TENANT** shall obtain and maintain in full force and effect for the duration of the Lease Agreement, and any extension hereof, at **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 Company 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: 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	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence or its equivalent; \$2,000,000 aggregate.
3. Comprehensive Automobile Liability a. Owned/Leased Vehicles b. Non-owned Vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence or its equivalent
4. Motor truck cargo insurance including loading and unloading coverage; written on an inland marine form and an all risk basis	\$1,000,000
5. Property Insurance: For physical damage to the property of TENANT , including improvements and betterment to the Leased Premises	Coverage for a minimum of eighty percent (80%) of the replacement cost of TENANT'S property
6. Liquor Liability	\$1,000,000 per occurrence, aggregate of \$2,000,000

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.

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

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

14.6.2 Provide for an endorsement that the "other insurance" clause shall not apply to the **CITY** of San Antonio where the **CITY** is an additional insured shown on the policy;

14.6.3 Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of the **CITY**.

14.7 **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 **TENANT** fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the **CITY** may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the Lease Agreement. Procuring of said insurance by the **CITY**, however, is not the exclusive remedy for failure of **TENANT** to maintain said insurance or secure said endorsements. In addition to any other remedies the **CITY** may have upon **TENANT'S** failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the **CITY** shall have the right to order **TENANT** to stop work, business and/or operations hereunder, and/or withhold any payments(s) which become due to **TENANT** hereunder until **TENANT** demonstrates compliance with the requirements hereof.
- 14.9 Nothing herein contained shall be construed as limiting in any way the extent to which **TENANT** may be held responsible for payments of damages to persons or property resulting from **TENANT'S** or its subcontractors' performance of the work covered under this Lease Agreement.
- 14.10 All personal property placed in the Leased Premises shall be at the sole risk of **TENANT**. **CITY** shall not be liable, and **TENANT** waives all claims for any damage either to the person or property of **TENANT** or to other persons due to the Leased Premises or any part of appurtenances thereof becoming out of repair or arising from bursting or leaking of water, gas, waste pipes, or defective wiring or excessive or deficient electrical current; or from any act or omission of employees, or other occupants of the Leased Premises, or any other persons; due to the happening of any accident in or about said Leased Premises. **TENANT** shall save and hold harmless **CITY** from any claims arising out of damage to **TENANT'S** property or damage to **TENANT'S** business, including subrogation claims by **TENANT'S** insurers.

15. FIRE AND OTHER CASUALTY

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

16. HOLDING OVER

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

17. ASSIGNMENT AND SUBLETTING

- 17.1 Except as provided under "DEATH BENEFIT" and in accordance with **CITY** Code Section 32-73, **TENANT** shall not assign the Lease Agreement and business conducted on the **LEASED PREMISES** or any interest therein without first obtaining the written consent of **CITY**, which consent shall not be unreasonably withheld, and which consent will be evidenced by passage of a CITY OF SAN ANTONIO

Ordinance, based upon recommendation by **CITY** Staff, giving due consideration to the tenant mix and product mix as affected by such assignment.

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

18. DEFAULT AND REMEDIES

- 18.1 The following events shall be deemed to be events of default by **TENANT** under this Lease Agreement in addition to any other events set forth herein:
 - 18.1.1 **TENANT** shall fail to pay any installment, additional fees, penalty or rent as provided for in this Lease Agreement and shall not cure such failure within ten (10) days after the due date of such rent.
 - 18.1.2 **TENANT** shall fail to operate or conduct business as prescribed by the **CITY** in Article 2, except on account of casualty, damage, remodeling or when the prior written consent of **CITY** is given.
 - 18.1.3 **TENANT** shall fail to first obtain Parks and Recreation Department approval prior to a request to **TABC** for a change in the establishment's alcohol license.
 - 18.1.4 **TENANT** shall fail to comply with any term, provision or covenant of this Lease Agreement, other than the payment of rent, and shall not cure such failure within ten (10) days after written notice thereof to **TENANT**.
 - 18.1.5 **TENANT**, shall within three (3) months following the Commencement Date, fail to take possession of the **LEASED PREMISES**, or having taken said possession, fail to open such **LEASED PREMISES** for the conduct of business.
 - 18.1.6 **TENANT** deserts or vacates all or any part of the **LEASED PREMISES**; **TENANT** will be deemed to have deserted or vacated the premises if, by any method or manner whatever, **TENANT** assigns, transfers, sells or sublets its interest or right to the **LEASED PREMISES** without the prior written consent of the **CITY**.

18.1.7 The taking by a court of competent jurisdiction of **TENANT** and its assets pursuant to proceedings under the provisions of any Federal or State reorganization code or act, insofar as the following enumerated remedies for default are provided for or permitted in such code or act.

- 18.2 Upon the occurrence of an event of default as theretofore provided, **CITY** may at its option declare this Lease Agreement and all rights and interests created by it to be terminated. Upon **CITY** electing to terminate, this Lease Agreement shall cease and come to an end as if that were the day originally fixed herein for the expiration of the term hereof. **CITY**, its agents or attorney, may resume possession of the **LEASED PREMISES** and relet the same for the remainder of the original term at the best rent **CITY**, its agents or attorney, may obtain for the account of **TENANT**, who shall make good any deficiency.
- 18.3 Any termination of this Lease Agreement as herein provided shall not relieve **TENANT** from the payment of any sum or sums that shall then be due and payable or become due and payable to **CITY** hereunder, or from any claim or claims for damages then or theretofore accruing against **TENANT** hereunder, or any such sum or sums or claim for damages pursuant to any remedy provided for any law or in equity, or from recovering damages from **TENANT** for any default thereunder. 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 anyone 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 of any other covenant, condition, or restriction herein contained.
- 18.4 Upon any such expiration or termination of this Lease Agreement, **TENANT** shall quit and peacefully surrender the **LEASED PREMISES** to **CITY**, and **CITY**, upon, or at any time after, such termination or expiration may, without further notice, enter upon and re-enter the **LEASED PREMISES** and possess and repossess itself thereof, by force, summary proceedings, ejection or otherwise, and may dispossess **TENANT** and remove **TENANT** and all other persons and property from the **LEASED PREMISES**. Any property left on the premises shall be deemed abandoned and **CITY** may dispose of same by private or public sale or otherwise without further legal action by **CITY** or liability to **TENANT** therefore.

19. SEPARABILITY

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

20. AMENDMENT

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

21. TAXES AND LICENSES

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

22. NO SUBSTANTIAL INTEREST

- 22.1 **TENANT** acknowledges that it is informed that Texas law prohibits contracts between the **CITY** and any local public official ("OFFICIAL"), such as a **CITY** officer or employees, 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. **TENANT** certifies (and this Lease Agreement is made in reliance thereon) that neither **TENANT**, nor **TENANT'S** 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.

23. NOTICES

- 23.1 Notices to **CITY** required to appropriate under this contract shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, addressed to **CITY** Clerk, P. O. Box 839966, San Antonio, Texas 78283-3966 and to the Market Square Office, 514 W. Commerce, San Antonio, Texas 78207. Notices sent to **TENANT** shall be deemed sufficient if in writing and mailed, Registered or Certified Mail, postage prepaid, addressed to **TENANT** at the address shown below **TENANT'S** signature line.

24. DEATH BENEFIT

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

25. CONSUMER PROTECTION

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

26. TEXAS LAW TO APPLY

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

27. CONFLICT OF INTEREST

- 27.1 **TENANT** acknowledges that he is informed that the Charter of the **CITY** of San Antonio and its Ethics Code prohibit a **CITY** officer or employee, as those terms are defined therein, from having a financial interest in any contract with the **CITY** or any **CITY** agency, such 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 services, if any of the following individual(s) or entities is a party to the contract or sale: a **CITY** officer or employee, or his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten percent (10%) or more of the voting stock or shares of the business entity, or ten percent (10%) or more of the fair market values of a 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.
- 27.2 **TENANT** warrants and certifies, and this Lease Agreement is made in reliance thereon, that he, his officers, employees and agents are neither officers nor employees of the **CITY** or any of its agencies such as **CITY**-owned utilities.

28. LIEN FOR RENT

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

29. TENANT'S RIGHT TO QUIET ENJOYMENT

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

30. GENDER

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

31. CAPTIONS

- 31.1 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.

32. AUTHORITY

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

WITNESS, the signature of the parties hereto in multiple originals, this the _____ day of _____ 2004,

TO BE EFFECTIVE AS OF _____ ("Commencement Date").

CITY OF SAN ANTONIO,
A Texas Municipal Corporation

By: _____
CITY Manager

ATTEST:

CITY Clerk

APPROVED AS TO FORM:

CITY Attorney

TENANT:

Angelina A. Moore
Name

Angie's
D/B/A

Angelina A. Moore
Printed Name

owner
Title

3122 CATO Blvd.
Residence Address

SAN Antonio, Texas 78223
CITY, State, and Zip Code

(210) 222-1423
Area Code/Telephone Number

EXHIBIT "A"
FLOOR PLAN OF PREMISES

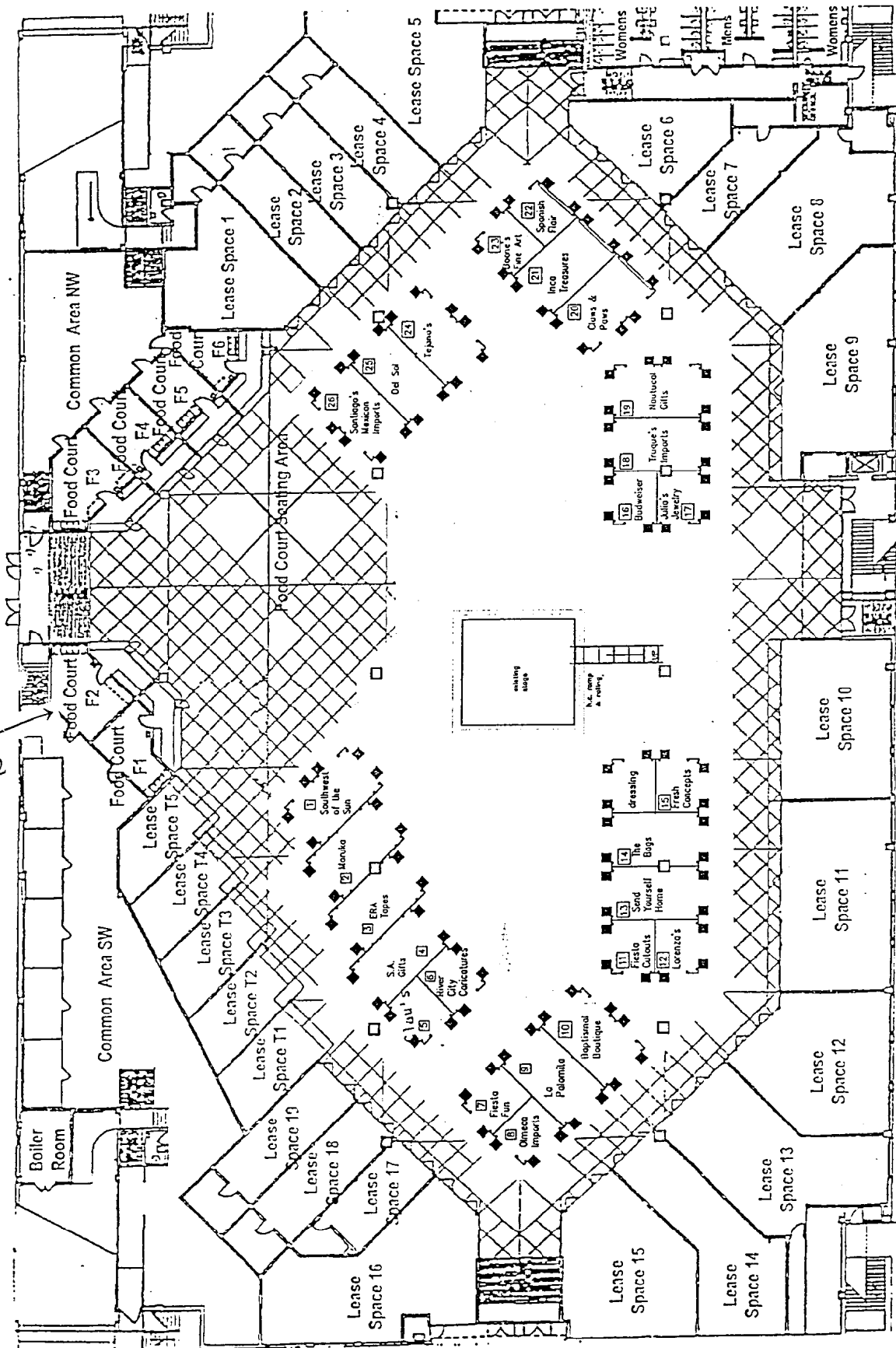
Tenant: ANGIE'S

☒ Inline

☐ Kiosk

☐ Pushcart No. FC - 2

Angie's
Food Court F2



Farmer's Market Plaza

San Saba St.

Dolorosa St.

EXHIBIT "B"

MERCHANDISE USE CLAUSE - FOOD COURT (Restaurant)

FC-2, Angie's

The **LEASED PREMISES** shall be used for the following food and beverage purposes only, specifically the sale of:

Liquidados, Fresh Fruit Drinks, Fruit Shakes (Alcoholic and Non-Alcoholic);

Flavored Bottled Waters;

Fresh Orange Juice, Lemonade and Limeade; Fruit Cups and Fruit Salads; Fruit baskets (Gifts);

Herbal Iced Tea and Hot Herbal Teas; Health Drinks;

Soda and Beer;

Coffee: Limit of Three (3) - Hazelnut Crème, French Vanilla and one Regular Coffee; Fruit Candies and Fruit Condiments;

Corn on the Cob;

Raspas.