

CONSENT AGENDA
ITEM NO. 24

**CITY OF SAN ANTONIO
PARKS AND RECREATION DEPARTMENT
CITY COUNCIL AGENDA MEMORANDUM**

TO: Mayor and City Council

FROM: Malcolm Matthews, Director, Parks and Recreation Department

SUBJECT: Patio Display License Agreements at Market Square

DATE: March 31, 2005

SUMMARY AND RECOMMENDATIONS

This ordinance authorizes the execution of six (6) Patio Display License Agreements located in the outdoor patio at Market Square in City Council District 1, which will commence on April 1, 2005 and will expire on March 31, 2010 with rental rates of \$1.08 per square foot per month which will be adjusted each year by the Consumer Price Index.

Staff recommends approval of this ordinance.

BACKGROUND INFORMATION

The City of San Antonio permits use of public outdoor patio space adjacent to the businesses in Market Square, located in City Council District 1. The space is utilized for display of retail items. Use agreements were approved beginning in April 1992 and the rate has changed from \$.40 per square foot up to \$.55 per square foot per month. The new agreements will establish market-based rental rates of \$1.08 per square foot per month for display businesses and will specify appropriate use of the space. The City has delayed issuing new license agreements in order to complete a Market Square Master Plan and Design Standards and a Fair Market Rate Study. Those items have now been completed.

The license use areas are immediately in front of each tenant's indoor businesses and extend outward as specified in each agreement. Tenants and their proposed license areas are noted below:

Business	Square Feet	Purpose
Los Arcos	337.12	Display
Los Pueblitos	456.82	Display
El Mercadito	196.88	Display
El Mercadito II	196.88	Display
Viriana's Jewelry and Crafts	213.75	Display
Texas Republic	396.00	Display

The agreements contain the following conditions: the tenants may not construct any improvements in these areas without approval of the City; the areas must be kept free of obstructions; display fixtures may not be permanent and must be taken inside after the business

closes each day; actual sales must be conducted inside the store premises only, not in the outdoor license area; and there will be no sale of alcoholic beverages or food in the license areas. Additionally, the agreements specify incidents of default and remedies to cure.

POLICY ANALYSIS

It is a long-standing policy of the City of San Antonio to license public right-of-way in Market Square for retail purposes.

FISCAL IMPACT


The initial 2005 rental rate recommended by City staff is based on a Fair Market Rental Estimate completed by Dugger, Canaday, Grafe, Inc., which has calculated a rate of \$1.08 per square foot per month for display space. Exhibit A shows the revenue calculated for each tenant. Anticipated annual revenue in the first year is \$23,295.00. In the second through the fifth years, a Consumer Price Index (CPI) adjustment will be utilized prior to the start of the new term.

COORDINATION

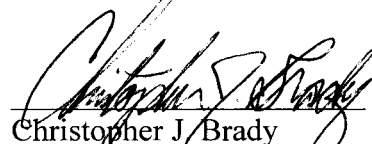
These license agreements were coordinated with the City Attorney's Office, the Department of Asset Management and Risk Management.

SUPPLEMENTARY COMMENTS

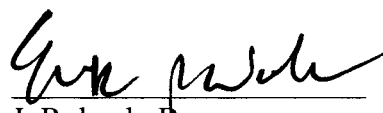
A Discretionary Contracts Disclosure Form is attached for each licensee.



Malcolm Matthews
Director of Parks and Recreation



Christopher J. Brady
Assistant City Manager



J. Rolando Bono
Interim City Manager

+

EXHIBIT A

First Year's Anticipated Revenue:

Business	Square Feet	Purpose*	Monthly	Annual Year 1
Los Arcos	337.12	Display	\$364.09	\$ 4,369.08
Los Pueblitos	456.82	Display	\$493.37	\$ 5,920.44
El Mercadito	196.88	Display	\$212.63	\$ 2,551.56
El Mercadito II	196.88	Display	\$212.63	\$ 2,551.56
Viriana's Jewelry and Crafts	213.75	Display	\$230.85	\$ 2,770.20
Texas Republic	396.00	Display	\$427.68	\$ 5,132.16
Total				\$23,295.00

* Patio Displays - \$1.08 per square foot per month.

City of San Antonio
Discretionary Contracts Disclosure

For use of this form, see Section 2-59 through 2-61 of the City Code (Ethics Code)
Attach additional sheets if space provided is not sufficient.
State "Not Applicable" for questions that do not apply.

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:

SANORA ERIKA DIAZ

and /or

(2) the identity of any **business entity**¹ that would be a party to the discretionary contract:

LOS ARCOS Gift

and the name of:

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

N/A

and the name of:

(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

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.

(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

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 individual or an entity include, but are not limited to, contributions made by the officers, owners, attorneys, or registered lobbyists of the individual or the entity.

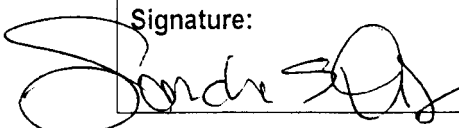
By Whom Made:	To Whom Made:	Amount:	Date of Contribution:
N/A			

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 2-43 of the City Code (Ethics Code), by participating in official action relating to the discretionary contract.

N/A

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, whichever occurs first.

Signature: 	Title: D.B.A. Company: COSAKOS	Date: 3/24/25
---	--------------------------------------	------------------

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 Section 2-59 through 2-61 of the City Code (Ethics Code)
Attach additional sheets if space provided is not sufficient.
State "Not Applicable" for questions that do not apply.

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:

Edali Hernandez

and /or

(2) the identity of any **business entity**¹ that would be a party to the discretionary contract:

Las Pueblitos

and the name of:

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

N / A

and the name of:

(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

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.

(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

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 individual or an entity include, but are not limited to, contributions made by the officers, owners, attorneys, or registered lobbyists of the individual or the entity.

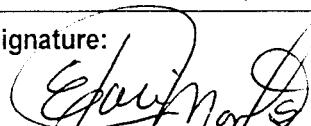
By Whom Made:	To Whom Made:	Amount:	Date of Contribution:
N / A			

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 2-43 of the City Code (Ethics Code), by participating in official action relating to the discretionary contract.

N / A

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, whichever occurs first.

Signature: 	Title: President d & a	Date: 3-23-05
Company: Los Pueblitos		

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 Section 2-59 through 2-61 of the City Code (Ethics Code)
Attach additional sheets if space provided is not sufficient.
State "Not Applicable" for questions that do not apply.

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:

MIGUEL A. GARCIA C.

and /or

(2) the identity of any **business entity**¹ that would be a party to the discretionary contract:

E. MERCADITO

and the name of:

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

NO

and the name of:

(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;

NO

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.

(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.

NO

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 individual or an entity include, but are not limited to, contributions made by the officers, owners, attorneys, or registered lobbyists of the individual or the entity.


By Whom Made:	To Whom Made:	Amount:	Date of Contribution:
NO			

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 2-43 of the City Code (Ethics Code), by participating in official action relating to the discretionary contract.

NO

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, whichever occurs first.

Signature: 	Title: OWNER d/b/a Company: EL MARIANO	Date: 032305
--	--	--------------

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 Section 2-59 through 2-61 of the City Code (Ethics Code)

Attach additional sheets if space provided is not sufficient.

State "Not Applicable" for questions that do not apply.

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:

MIGUEL A. GARDINO C.

and /or

(2) the identity of any **business entity**¹ that would be a party to the discretionary contract:

EL MERCADITO

and the name of:

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

NO

and the name of:

(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;

NO

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.

(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.

NO

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 individual or an entity include, but are not limited to, contributions made by the officers, owners, attorneys, or registered lobbyists of the individual or the entity.

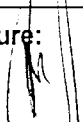
By Whom Made:	To Whom Made:	Amount:	Date of Contribution:
NO			

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 2-43 of the City Code (Ethics Code), by participating in official action relating to the discretionary contract.

NO

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, whichever occurs first.

Signature: 	Title: OWNER D/B/A. Company: LA MERENDITO II	Date: 032305
--	--	--------------

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 Section 2-59 through 2-61 of the City Code (Ethics Code)

Attach additional sheets if space provided is not sufficient.

State "Not Applicable" for questions that do not apply.

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:

Jesus Valenzuela

and /or

(2) the identity of any business entity¹ that would be a party to the discretionary contract:

Viriana Jewelry & Crafts

and the name of:

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

NO

and the name of:

(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;

NO

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.

(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.

NO

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 individual or an entity include, but are not limited to, contributions made by the officers, owners, attorneys, or registered lobbyists of the individual or the entity.

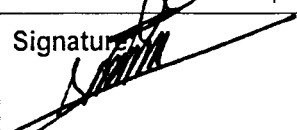
By Whom Made:	To Whom Made:	Amount:	Date of Contribution:
NO			

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 2-43 of the City Code (Ethics Code), by participating in official action relating to the discretionary contract.

NO

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, whichever occurs first.

Signature: 	Title: Owner	Date:
	Company: D/B/A	March 23 05

Viriana Jewelry & Crafts

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 Section 2-59 through 2-61 of the City Code (Ethics Code)
Attach additional sheets if space provided is not sufficient.
State "Not Applicable" for questions that do not apply.

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:

Robert Ramirez

and /or

(2) the identity of any **business entity**¹ that would be a party to the discretionary contract:

Texas Republic

and the name of:

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

N/A

and the name of:

(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

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.

(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/s

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 individual or an entity include, but are not limited to, contributions made by the officers, owners, attorneys, or registered lobbyists of the individual or the entity.

By Whom Made:	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 2-43 of the City Code (Ethics Code), by participating in official action relating to the discretionary contract.

n/a

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, whichever occurs first.

Signature: <i>Rabat Rami</i>	Title: <i>OWNER</i> <i>DBA</i> Company: <i>TEXAS</i> <i>REPUBLIC</i>	Date: <i>3-23-05</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.

PATIO DISPLAY LICENSE AGREEMENT

Market Square Plaza

This License Agreement is made and entered into by and between the **CITY OF SAN ANTONIO**, a Texas Municipal Corporation, acting herein through its City Manager pursuant to Ordinance No. _____ passed and approved on the _____ day of _____, 2005, (hereinafter referred to as "**CITY**"), and **Mr. Jesus Valenzuela**, Sole Proprietor, d/b/a **Viriana's Jewelry and Crafts** (hereinafter referred to as "**LICENSEE**"), 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 LICENSEE, does hereby License and demise to LICENSEE, and LICENSEE does hereby rent and accept from CITY for the term hereinafter set out, the real property owned by the CITY at **112 C Produce Row**, in Market Square in the San Antonio, Texas 78207 as outlined on the drawing which is attached hereto as **Exhibit A** and incorporated by reference herein for the purposes of this License Agreement, the same as if fully copied and set forth at length. Said real property and improvements (hereinafter referred to as the Licensed Premises) are further described as follows: Patio Display License area which is adjacent to the front of the building at **112 C Produce Row in Market Square, San Antonio, Texas 78207** is 19.0 by 11.25 feet, which totals 213.75 square feet.

2. USE OF PREMISES

- 2.1 CITY hereby agrees to permit LICENSEE use of above described CITY-owned property located at **112 C Produce Row, at Market Square Plaza in San Antonio, Bexar County, Texas 78207**.
- 2.2 **Permitted Uses:**

2.2.1 May be used for the sole purpose of outdoor display of goods sold in the store by **Mr. Jesus Valenzuela d/b/a Viriana's Jewelry and Crafts**, in accordance with applicable statutes, laws, ordinances, rules and regulations of the United States, the State of Texas and the City of San Antonio, Texas.

2.3 Prohibited Uses:

2.3.1 The use of this area for any **SALES**.

2.3.2 The use of the area for the display of any Alcoholic Goods and/or merchandise which has any reference or depicts any type of Illegal Drug or obscenity.

2.3.3 The service of food and/or alcoholic beverages in the Patio Lease Area.

2.3.4 Any use prohibited by law including any ordinances of the City of San Antonio.

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

3. TERM

3.1 The term of this License is for a five (5) year period beginning on April 1, 2005 and ending on March 31, 2010.

3.2 LICENSEE may cancel this License by giving thirty (30) days' written notice to the CITY.

4. RENTAL

- 4.1 LICENSEE shall pay rental in either one lump sum in advance for Annual Payment or in monthly installments **in advance on or before the first day of each month** in accordance with the following payment schedule. **Any payment of rent or other charges and fees received after the first (1st) day of the month will be considered late.**
- 4.2 For the First 12 months of the term hereof beginning on the Commencement date established pursuant to Section 3.1 above, LICENSEE shall pay rental equal to comparable properties within the City of San Antonio, as shown in the City's rental marketing survey of other such properties (Fair Market Rental Estimates) as were being conducted prior to the execution of this License Agreement and approval by the City Council of San Antonio. Notwithstanding any other provision herein to the contrary, the monthly rental for the first year following the Commencement Date shall be \$1.08 per square foot per month. The rental calculation is \$1.08 per square foot times the total square footage of the Licensed Patio Display Premise or 213.75 Square Feet, which is equals to \$2,770.20, payable in one lump sum in advance for **Annual Payment** or in **Monthly** installments in the amount of \$230.85 in advance **on or before the first day of each month.**
- 4.3 Thereafter for the Second through Fifth succeeding twelve (12) month period during the term of this License Agreement, the monthly rental shall be calculated by means of the Consumer Price Index formula (CPI) as follow: **ADJUSTED RENTAL = BASE RENTAL X (CPI - 2 / CPI - 1)**
- 4.4 In applying the above formula for rental adjustment, the following definitions shall prevail:
- (a) "Base rental" means the monthly rental for the first twelve (12) month period following the Commencement Date. Thereafter, the adjusted base rental will become the base rental.
 - (b) "bureau" means the U. S. Department of Labor, Bureau of Labor Statistics or any successor agency that shall issue the indexes or data referred to in Section 4.2.
 - (c) "CPI-1" means the CPI for the Calendar Month two (2) months prior to the Commencement date of the current License year.

(d) "CPI-2 means the CPI for the Calendar Month two (2) months prior the new term for which the adjusted rental is to be calculated.

4.4 If at the time of any such computation the U.S. Department of Labor should no longer compile and publish such price indexes, the index for "all items" compiled and published by any other branch or department of the Federal Government shall be used for the purpose of this Section; and if no such index is compiled and published by any branch or department of the Federal Government, the statistics reflected in the cost of living increases as compiled by any institutional organization or individual recognized as an authority by financial and insurance institutions shall be used as a basis for such adjustments.

4.6 Payment shall be submitted by LICENSEE to:

City of San Antonio
Revenue Division
P.O. Box 839975
San Antonio, Texas 78283-3975

5. ACCEPTANCE AND CONDITION OF PREMISES

5.1 LICENSEE has had full opportunity to examine the Licensed Premises and acknowledges that there is in and about them nothing dangerous to life, limb or health and hereby waives any claim for damages that may arise from defects of that character after occupancy. LICENSEE'S taking possession of the Licensed Premises shall be conclusive evidence of LICENSEE'S acceptance thereof in good order and satisfactory condition, and LICENSEE hereby accepts the Licensed Premises in its present **AS IS, WHERE IS, WITH ALL FAULTS CONDITION** as suitable for the purpose for which licensed, **LICENSEE accepts the Licensed Premises with the full knowledge, understanding and agreement that CITY disclaims any warranty of suitability for LICENSEE'S intended commercial purposes.**

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

6. UTILITIES

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

7. IMPROVEMENTS

- 7.1 LICENSEE shall not construct, or allow to be constructed, any improvements or structures on the Licensed Premises nor shall LICENSEE make, or allow to be made, any alterations to the Licensed Premises without the prior written approval of the CITY through the DIRECTOR and any and all other necessary departments, boards or commissions of the CITY OF SAN ANTONIO, including, but not limited to, the Historic and Design Review Commission (HDRC).
- 7.2 LICENSEE covenants that it shall not bind, or attempt to bind, CITY for the payment of any money in connection with the construction, repair, alteration, addition or reconstruction in, on or about the Licensed Premises. Further, LICENSEE agrees to remove, within thirty (30) days after filing, by payment or provisions for bonding, any mechanic's or materialman's liens filed against the Licensed Premises and to indemnify CITY in connection with such liens to the extent of any damages, expenses, attorney's fees, or court costs incurred by CITY.

8. MAINTENANCE OF PROPERTY

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

- 8.2 LICENSEE shall, at all times, keep or cause to be kept the Licensed Patio Display area free of litter, trash, paper and other waste and shall place same in standard trash containers in the appropriate locations and shall conform with all applicable garbage, sanitary and health regulations of the CITY.
- 8.3 Other than as provided herein, LICENSEE shall be responsible for the condition of the Licensed Patio Display area. LICENSEE shall repair any damage to the Licensed Premises caused by LICENSEE, and shall maintain, or caused to be maintained, the Licensed Premises in a clean, neat, attractive and sanitary condition.
- 8.4 CITY shall be responsible for sidewalk repairs other than those necessitated by the actions of LICENSEE, as required to conform with safety and aesthetic standards.
- 8.5 LICENSEE will, at the termination of this License Agreement, return the Licensed Premises to CITY in as good condition as at the commencement of the term hereof, usual wear and tear, acts of God, or unavoidable accident only excepted.
- 8.6 LICENSEE agrees to hold CITY harmless for any theft, damages or destruction of signs, goods and/or other property of LICENSEE both during the term of this License and as so left on the Licensed Premises after LICENSEE vacates the Patio Display Licensed Premises. If said signs, goods and any other property placed by LICENSEE upon the Licensed Premises are not removed by it after the close of business and the Licensed Patio Display area is vacated, then the CITY may remove same without further notice or liability therefore.

9. TAXES AND LICENSES

- 9.1 LICENSEE shall pay, on or before their respective due dates, to the appropriate collecting authority, all Federal, State and local taxes and fees which are now or may hereafter be levied upon the Licensed Patio Display Premises, or upon LICENSEE, or upon the business conducted on the Licensed Premises, or upon any of LICENSEE'S property used in connection therewith; and shall maintain in current status all Federal, State and local licenses and permits required for the operation of the business conducted by LICENSEE.

10. ASSIGNMENT AND SUBLETTING

- 10.1 Except as to the parent, subsidiary or affiliated company, LICENSEE shall not assign this Patio Display License area, or allow same to be assigned by operation of law or otherwise, any part thereof without the prior written consent of CITY, which may be given only by or pursuant to an Ordinance enacted by the City Council of San Antonio, Texas. Any assignment by LICENSEE without such permission shall constitute an Event of Default. Subletting of any part of the Patio Display area is not authorized as part of this Patio Display License Agreement.
- 10.2 Without the prior written consent of LICENSEE, CITY shall have the right to transfer and assign, in whole or in part, any of its rights and obligations under this Patio Display License Agreement; and, to the extent that such assignee assumes CITY'S obligations hereunder, CITY shall, by virtue of such assignment, be released from such obligation.
- 10.3 The receipt by the CITY of rent from an assignee, or occupant of the Patio Display Licensed Premises shall not be deemed a waiver of the covenant in this License Agreement against assignment and or an acceptance of the assignee, or occupant as a LICENSEE, or a release of the LICENSEE from further observance or performance by the LICENSEE of the covenants contained in this Patio Display License Agreement. No provision of this License Agreement shall be deemed to have been waived by the CITY unless such waiver be in writing and signed by the CITY.

11. DISPLAY AREA

- 11.1 LICENSEE'S Patio Display Licensed Premises is area adjacent to business but does not include any area outside of the licensed area as shown in **Exhibit A** hereto. LICENSEE may only use area adjacent to the store to display merchandise using acceptable display fixtures in this space. LICENSEE may not obstruct any entrance to the store with any type of display, counters, etc. City has the right to request the removal of display merchandise and fixtures, if LICENSEE'S display is not presentable, as determined by the Market Square Facilities Coordinator. LICENSEE must bring into his store any merchandise and display fixtures in said display space outside of store doors after closing each day. LICENSEE is not authorized to leave any

merchandise or display fixtures in front of the LICENSEE'S store after closing.

11.2 The Display area will not be used for SALES. All sales will be processed inside of LICENSEE'S store.

11.3 Encroachment on the Common Area beyond the authorized Licensed Display area is not permitted.

12. TERMINATIONS, DEFAULTS AND REMEDIES

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

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

12.3 In the event of termination in relation to 12.1 or 12.2 above, the City shall give LICENSEE notice in writing at least thirty (30) days prior to the termination date.

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

12.4.1. Any payment not received after the eleventh (11th) day of the month on the first occurrence will be an Event of Default.

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

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

12.3 **DEFAULT WITHOUT AN OPPORTUNITY TO CURE.** The following events shall constitute Events of Default:

12.3.1. The third (3rd) occurrence of any late payment.

12.3.2. Failure to comply with any and all Taxes and Licenses requirements as outlined in

Article 9 TAXES AND LICENSES.

12.3.3. Any assignment as specified in Article 10 ASSIGNMENT AND SUBLETTING not approved in writing by Ordinance by the City of San Antonio.

12.3.4. The subletting of any part of the Patio Display area.

12.3.5. The Encroachment on the Common area beyond the authorized Licensed Patio Display area.

12.3.6. If LESSEE fails to abide by the requirements of **Article 14 INSURANCE**

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

12.3.7. The service of any food or beverages, in the Patio License area.

12.3.8. The third (3rd) occurrence of any merchandise or display fixtures left in front LICENSEE'S store after closing.

12.3.9. The third (3rd) occurrence the use of premises for any display of any Alcoholic Beverages, any goods and/or merchandise related to Alcoholic Beverages and any goods or merchandise with any reference or which depict any type of Illegal Drug or Obscenity.

12.3.10 The third (3rd) occurrence of the use of the premises for any type of Sale.

12.3.11 The third occurrence of any particular failure as outlined in section 12.4.1 below.

12.4. DEFAULTS WITH AN OPPORTUNITY TO CURE.

12.4.1. LICENSEE shall fail to comply with any term, provision or covenant of this License Agreement and shall fail cure any such failure within ten (10) days of CITY providing notice of such failure, provided, however, in the event LICENSEE repeats any such particular failure

twice more during the term of the contract then any such third failure shall constitute any Event of Default and there shall be no opportunity to cure.

- 12.5 Upon the occurrence of an **Event of Default** as heretofore provided, CITY may, at its option, declare this License Agreement, and all rights and interests created by it, terminated. Upon CITY electing to terminate, this License Agreement shall cease and come to an end as if that were the day originally fixed herein for the expiration of the term hereof; or CITY, its agents or attorney may, at its option, resume possession of the Leased Premises and re-let the same for the remainder of the original term for the best rent CITY, its agents or attorney may obtain for the account of LICENSEE without relieving LICENSEE of any liability hereunder as to rent or any other charges still due and owing in this License Agreement, or any extension thereof, as applicable. LICENSEE shall make good any deficiency.
- 12.6 Any termination of this License Agreement as herein provided shall not relieve LICENSEE from the payment of any sum or sums that shall then be due and payable or become due and payable to CITY hereunder, or any claim for damages then or theretofore accruing against LICENSEE hereunder, and any such sum or sums or claim for damages by any remedy provided for by law, or from recovering damages from LICENSEE for any default hereunder. All rights, options and remedies of CITY contained in this License Agreement shall be cumulative of the other, and CITY shall have the right to pursue any one or all of such remedies or any other remedy or relief available at law or in equity, whether or not stated in this License Agreement. No waiver by CITY of a breach of any of the covenants, conditions or restrictions of this License Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition or restriction herein contained.
- 12.7 The taking by a court of competent jurisdiction of LICENSEE 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.
- 12.8 Upon any such expiration or termination of this Lease Agreement, LICENSEE shall quit and peacefully surrender the Licensed Premises to CITY, and CITY, upon or at any time after such expiration or termination, may, without further notice, enter upon and re-enter the Licensed Premises and possess and repossess itself thereof, by force, summary proceedings, ejectment or

otherwise, and may dispossess LICENSEE and remove LICENSEE and all other persons and property, including all signs, furniture, trade fixtures, and other personal property which may be disputed as to its status as fixtures, from the Licensed Premises, and such action by CITY shall not constitute CITY'S acceptance of abandonment and surrender of the Licensed Premises by LICENSEE nor prevent CITY from pursuing all legal remedies available to it.

13. INDEMNIFICATION

- 13.1 LICENSEE 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 LICENSEE'S activities under this AGREEMENT, including any acts or omissions of LICENSEE, any agent, officer, director, representative, employee, consultant or subcontractor of LICENSEE, 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. LICENSEE shall promptly advise the CITY in writing of any claim or demand against the CITY or LICENSEE known to LICENSEE related to or arising out of LICENSEE'S activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at LICENSEE'S cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving LICENSEE of any of its obligations under this paragraph.**
- 13.2 It is the EXPRESS INTENT of the parties to this AGREEMENT, that the INDEMNITY provided for in this Article (ARTICLE 13), is an INDEMNITY extended by LICENSEE 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 NEGLIGENCE 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. LICENSEE 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 LICENSEE while engaged in the performance of any work required by the CITY or any work related to a license of space or Concession Agreement with the CITY shall be considered employees, representatives, agents or volunteers of LICENSEE only and not of the CITY. Any and all claims that may result from any obligation for which LICENSEE 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 LICENSEE.
- 14.2 **Prior to the commencement of any work under this LICENSE AGREEMENT, LICENSEE shall furnish an original completed Certificate(s) of Insurance (In the ACCORD format attached at Exhibit B) to the CITY'S Director, Parks and Recreation Department and City Clerk's Office, which shall be completed only 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 phone number, and be mailed directly from the agent to the CITY. The CITY shall have no duty to pay or perform under this LICENSE 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 When the Certification expires, changes or is cancelled for any reason and other approved Insurance Certification has not already been approved by the City, the LICENSEE will not be authorized to have any activity in the LICENSED PREMISES, LICENSEE will not entered or utilized the Licensed Premises and all authorized uses of the Licensed Premises will cease until the City Acknowledges that an **Approved** Insurance Certification has been received directly from the Authorized Agent.
- 14.4 The CITY reserves the right to review the insurance requirements of this section during the effective period of the License 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 License Agreement, but in no instance will the CITY allow modification whereupon the CITY may incur increased risk.
- 14.5 A LICENSEE'S financial integrity is of interest to CITY, therefore, subject to LICENSEE'S right to maintain reasonable deductibles in such amounts as are approved by CITY, LICENSEE shall obtain and maintain in full force and effect for the duration of the License Agreement, and any extension hereof, at LICENSEE'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:

NOTHING TO FOLLOW ON THIS PAGE.

	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.	Property Insurance: For physical damage to the property of LICENSEE, including improvements and betterment to the Licensed Premises	Coverage for a minimum of eighty percent (80%) of the actual cash value of LICENSEE'S property

** If Applicable.

14.6 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 LICENSEE shall exercise reasonable efforts to accomplish such changes in policy coverages and shall pay the cost thereof.

14.7 LICENSEE agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions.

14.7.1 Name the CITY and its officers, employees, volunteers and elected

representative 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;

14.7.2 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;

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

14.8 **LICENSEE** through his Agent shall notify the CITY in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices 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**

14.9 If LICENSEE fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the CITY may initiate license termination proceedings on the first event of default. The CITY may upon LICENSEE'S failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the CITY shall have the right to order LICENSEE to stop the use of the Licensed Patio Display area hereunder until LICENSEE demonstrates compliance with the requirements.

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

- 14.11 All personal property placed in the Licensed Display Premises shall be at the sole risk of LICENSEE. CITY shall not be liable, and LICENSEE waives all claims for any damage either to the person or property of LICENSEE or to other persons due to the Licensed 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 Licensed Premises, or any other persons; due to the happening of any accident in or about said Licensed Premises. LICENSEE shall save and hold harmless CITY from any claims arising out of damage to LICENSEE'S property or damage to LICENSEE'S business, including subrogation claims by LICENSEE'S insurers.

15 RULES AND REGULATIONS

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

15.1.1 This including and is not limited to, the CITY'S noise ordinance and the provisions concerning operation of businesses in the Market Square Plaza of the City of San Antonio. LICENSEE shall not place speakers or amplified music on or near the Patio Display Licensed Premises or in any other location outside the adjacent enclosed building on any side of the licensed premises. LICENSEE shall comply with CITY'S laws pertaining to noise. LICENSEE agrees to comply with any requests by the CITY'S Park Police, Parks Department Staff, City Police Officers or noise abatement officers. Failure to comply with this section may constitute an Event of default.

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

- 15.2 LICENSEE will be allowed to place only tables, racks and fixtures as approved by City on the demised premises. All furnishing will be removed from the Patio Display area during non-business hours.

- 15.3 No activity or method of operation shall be allowed in, on or about the Licensed Premises, which exposes patrons thereof to nudity or to partial nudity. For the purposes of this provision, the following definitions apply:
- 15.3.1 Nudity means total absence of clothing or covering for the human body.
- 15.3.2 Partial nudity means exposure of the female breast or the exposure of the male or female pubic area or buttocks.
- 15.4 Any nudity as specified above will constitute a violation of this Article and result in an Event of Default.
- 15.5 The operation of a massage business, tanning salon, or gambling of any nature shall not be allowed in, on, or about the Patio Display Licensed Premises.
- 15.6 Discrimination on account of race, color, sex, age, handicap or national origin, directly or indirectly, in employment or in the use of or admission to the Licensed Patio Display Premises is prohibited.
- 15.7 LICENSEE shall not, except as may otherwise be permitted by applicable laws and regulations, pay less than the minimum wage required by Federal and State statutes and CITY ordinances to persons employed in its operations hereunder.
- 15.8 No provision of this License Agreement shall operate in any manner to prevent CITY from permitting displays, tournaments, amusements, or parades for the benefit of the public.
- 15.9 CITY park police, police officers and other safety personnel shall have the right of entry on and into the Licensed Premises as needed to investigate any circumstances, conditions, or person that may appear to be suspicious. LICENSEE shall cooperate with all reasonable requests by such personnel to facilitate public safety and orderly conduct by persons at Market Square in San Antonio. LICENSEE expressly understands and agrees that CITY has not agreed to act and does not act as an insurer of LICENSEE'S property and does not guarantee security against theft, vandalism, or injury of whatever nature and kind to persons or property.
- 15.10 Other specific uses of License Patio Display area are outlined in **Article 2. USE OF PREMISES.**

16 RESERVATIONS: CITY

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

17 HOLDING OVER

- 17.1 Should LICENSEE hold over the Licensed Premises, or any part thereof, after the expiration or termination of the term of this License Agreement, unless otherwise agreed in writing, such holding over shall constitute and be construed as a tenancy from month to month only, at a rental equal to **125 percent** the amount of the rent paid for the last month of the term of this Patio Display License Agreement. The inclusion of the preceding sentence shall not be construed as CITY'S consent for the LICENSEE to hold over.

18 CONFLICT OF INTEREST

- 18.1 LICENSEE acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined therein, from having financial interest in any contract with the City or any City Agency such as City owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale. A City officer or employee; his parent, child, or spouse; a business entity in which the officers or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more

of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

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

19 SEPARABILITY

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

20 NOTICES

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

Director of Parks and Recreation
City of San Antonio
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 LICENSEE shall be deemed sufficient if in writing and mailed, Certified mail, Postage Prepaid, addressed to LICENSEE at:

Mr. Jesus Valenzuela

d/b/a Viriana's Jewelry and Crafts

112 C Produce Row

San Antonio, Texas 78207

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

21 PARTIES BOUND

- 21.1 If there shall be more than one party designated as LICENSEE in this License, they shall each be bound jointly and severally hereunder.
- 21.2 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.

22 TEXAS LAW TO APPLY

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

23 RELATIONSHIPS OF PARTIES

- 23.1 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 LICENSOR and LICENSEE.

24 GENDER

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

25 CAPTIONS

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

26 ENTIRE AGREEMENT/AMENDMENT

- 26.1 This License Agreement, together with its attached exhibits and the authorizing ordinance, in writing, constitutes the entire agreement between the parties, any other written or parole agreement with CITY being expressly waived by LICENSEE.
- 26.2 No amendment, modification or alteration of the terms of this License Agreement shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.
- 26.3 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.

27. ACKNOWLEDGEMENT OF READING

- 27.1 The parties hereto acknowledge that they have thoroughly read this Agreement, including any exhibits or attachments hereto, and have sought and received whatsoever competent advice and

counsel which was necessary for them to form a full and complete understanding of their rights and obligations herein, and having done so, do hereby execute this Agreement.

NOTHING TO FOLLOW ON THIS PAGE.

28. AUTHORITY

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

WITNESS, the signature of the parties hereto in multiple originals, this the 21 day of March 2005.

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

CITY OF SAN ANTONIO,

A Texas Municipal Corporation

By: _____

TENANT(s):

Mr. Jesus L. Valenzuela

d/b/a Viriana's Jewelry & Craft

112 C Produce Row

San Antonio, Texas 78207

ATTEST:

APPROVED AS TO FORM:

Telephone No:

(210) 229-9014

Home Address:

111 Green Meadow

San Antonio TX 78213

Exhibit "A"

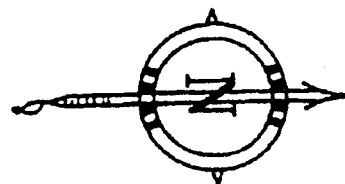
CONCHO STREET Right-of-Way

La Margarita Restaurant

VIRIANA JEWELRY & CRAFTS
112 C Produce Row - 213.75 SQUARE FEET

11.25

To San Saba Street



Produce Row
Right of Way

Santa Rosa Street

Exhibit "B"

ACORD CERTIFICATE OF LIABILITY INSURANCE

DATE

PRODUCER

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

INSURED

INSURER A:

INSURER B:

INSURER C:

INSURER D:

INSURER E:

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR. LTR.	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
	GENERAL LIABILITY		/ /	/ /	EACH OCCURRENCE \$
	<input type="checkbox"/> COMMERCIAL GENERAL LIABILITY				FIRE DAMAGE (Any one fire) \$
	<input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR		/ /	/ /	MED EXP (Any one person) \$
			/ /	/ /	PERSONAL & ADV INJURY \$
	GEN'L AGGREGATE LIMIT APPLIES PER:		/ /	/ /	GENERAL AGGREGATE \$
	<input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC		/ /	/ /	PRODUCTS - COMP/OP AGG \$
	AUTOMOBILE LIABILITY		/ /	/ /	COMBINED SINGLE LIMIT (Ea accident) \$
	<input type="checkbox"/> ANY AUTO		/ /	/ /	UNIDENTIFIED INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS		/ /	/ /	BODILY INJURY (Per accident) \$
	<input type="checkbox"/> SCHEDULED AUTOS		/ /	/ /	PROPERTY DAMAGE (Per accident) \$
	<input type="checkbox"/> HIRED AUTOS		/ /	/ /	
	<input type="checkbox"/> NON-OWNED AUTOS		/ /	/ /	
	GARAGE LIABILITY		/ /	/ /	AUTO ONLY - EA ACCIDENT \$
	<input type="checkbox"/> ANY AUTO		/ /	/ /	OTHER THAN EA ACC \$
					AUTO ONLY AGG \$
	EXCESS LIABILITY		/ /	/ /	EACH OCCURRENCE \$
	<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE		/ /	/ /	AGGREGATE \$
	<input type="checkbox"/> DEDUCTIBLE		/ /	/ /	\$
	<input type="checkbox"/> RETENTION \$		/ /	/ /	\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY		/ /	/ /	WC STATUTORY LIMITS <input type="checkbox"/> OTHER <input type="checkbox"/>
			/ /	/ /	EL EACH ACCIDENT \$
			/ /	/ /	EL DISEASE - EA EMPLOYEE \$
			/ /	/ /	EL DISEASE - POLICY LIMIT \$
	OTHER		/ /	/ /	

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

CERTIFICATE HOLDER

ADDITIONAL INSURED; INSURER LETTER:

CANCELLATION

() - () -

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL _____ DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

ACORD 25-S (7/87)

INS025S 0010.02

ELECTRONIC LASER FORMS, INC. (800) 977-0646

© ACORD CORPORATION 1988

Page 1 of 2