

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

CONSENT AGENDA
ITEM NO. 15

TO: Mayor and City Council

FROM: Malcolm Matthews, Director, Parks and Recreation Department

SUBJECT: Assignment and Amendment of Marie's Creations Market Square Lease Agreement

DATE: May 26, 2005

SUMMARY AND RECOMMENDATIONS

This ordinance approves the assignment of a Probationary Lease Agreement from Joe and Joanne Gonzales dba Marie's Creations to Trinidad Traylor dba Little Bit of Texas in the City of San Antonio's Farmers Market at Market Square in City Council District 1. In addition, the agreement is amended to reflect current lease terms and conditions.

Staff recommends approval of this ordinance.

BACKGROUND INFORMATION

On July 22, 2004, the City Council approved Ordinance No. 99477, which authorized a new amended lease agreement with delinquent tenants. Tenants were offered a one time, three-year amended agreement with stricter requirements. The agreement included stronger contract delinquency and default procedures.

One of the new probationary agreements was initiated with Mr. and Mrs. Gonzales dba Marie's Creations for lease of in-line store IL-12 with 1,185 square feet. Mr. and Mrs. Gonzales were terminated on April 14, 2004 for an Event of Default of their lease agreement for repeated non payment of rent. They were offered a three (3) year probationary lease agreement, which they accepted. This probationary lease was terminated on December 6, 2004 due to the failure to maintain the required insurance certification. The Gonzales family filed suit. In settlement of the litigation it was agreed to allow them to submit a request for an assignment of the remaining term of the probationary lease to a qualified buyer.

Ms. Trinidad Traylor, dba Little Bit of Texas has applied to take over the probationary lease payments and use of the space after approval by City Council. As with all assignments of leases in Farmers Market, Ms. Traylor was required to provide financial information that proved that she is financially able to undertake the obligations of the prior tenant under the Probationary Lease. The term of the lease, as amended, is for a two (2) year, two (2) month period from June 1, 2005 to July 31, 2007, which is the period remaining on the probationary lease. Ms. Traylor agrees to abide by the stricter requirements outlined in the probationary agreement. If all requirements are met, then the Director of Parks and Recreation shall have authority to issue a

new standard form lease agreement with a term to end on August 31, 2009, which is the date all other Farmers Market contracts expire.

Ms. Traylor will be required to pay utility costs and garbage collection 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 as set forth in the original agreement.

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

POLICY ANALYSIS

It is the long-standing policy of the City of San Antonio to lease public property in the Farmers Market for retail sales purposes, under regulations established in Chapter 32, Article II of the City Code of the City of San Antonio. The assignment of a lease agreement requires passage of a City ordinance. The City Code specifies that a prepaid application fee of \$1,000.00 must be paid and that the new tenant must continue utilizing the same merchandise use clause. Staff reviews background and financial information for the new tenant.

In addition, this action meets requirements of the litigation settlement agreement.

FISCAL IMPACT

Ms. Traylor will continue payments established in the original lease agreement. The present 2005 rate is \$1.38 per square foot per month or \$1,635.30 per month. This will increase to a rental rate of \$1.40 per square foot or \$1,659.00 per month in the second year of the lease agreement and \$1.41 per square foot or \$1,670.85 in the last year of the lease agreement (2007). Anticipated fiscal year revenues are:

FY 04/05 (4 mos.)	\$ 6,565.00
FY 05/06	\$19,920.00
FY 06/07 (10 mos.)	\$16,709.00


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

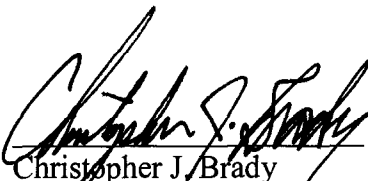
COORDINATION

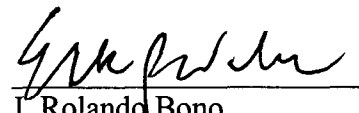
This item was coordinated with the City Attorney's Office.

SUPPLEMENTARY COMMENTS

A Discretionary Contracts Disclosure Form is attached. Attachment A is a checklist of financial information required of individuals who are seeking an assignment of a lease.



Malcolm Matthews
Director of Parks and Recreation

Christopher J. Brady
Assistant City Manager

J. Rolando Bono
Interim City Manager

**PARKS AND RECREATION DEPARTMENT
CONTRACT ASSIGNMENTS/AMENDMENTS POLICIES & PROCEDURES**

- Tenant required to submit a notarized "intent-to-sell" statement disclosing the "purchase" price;
- Tenant must be in good standing with the City – current on rent payments, not in violation of use-clause(s), no encroachment issues, approved insurance on file, etc.;
- Petitioner (proposed new tenant) required to provide City with two (2) written personal references;
- Petitioner required to provide City with two (2) written, verifiable financial references;
- Petitioner required to submit notarized statement that discloses all other business interests in Market Square; City Code allows for only two (2) businesses per tenant.
- Petitioner's business/credit history report is furnished to City by Dun & Bradstreet (D&B) [\$75.00/report];
- If Petitioner has no business/credit history with D&B, petitioner must provide City with a copy of a personal credit report from one of the three (3) major reporting agencies at his/her sole cost and expense.
 - Contract Services utilizes the scoring and analytical methods that Experian® assesses for consumers who are requesting credit as this is the agency the State of Texas refers to when granting loans and/or leases.
 - If Petitioner lacks personal credit or his/her personal credit report rated poorly by Experian®, the Petitioner may be asked to provide the City with a letter of credit or a surety bond equal to one year's rent of the facility;
 - If Petitioner/Tenant is approved for assignment based on a letter of credit/surety bond submission, and maintains timely rental payment for two (2) years, the letter of credit/surety bond requirement may be cancelled.
- If Petitioner is recommended by staff to receive the lease assignment, he/she must agree to materially observe the current use clause of the assigning tenant (Petitioner has just "purchased" the business).
- Petitioner must also agree to an *amendment* of the lease being assigned to reflect updated lease language such as, such as, the operation of the business in an owner presence capacity and events of default by tenant, or any other updated provision requested by City.
- Petitioner or Tenant must submit the \$1,000.00 assignment fee to City before the item will be placed on Council agenda.
- If Petitioner is denied recommendation, the out-going tenant is notified and tenant either remains in place or asks for an additional assignment to a different individual. Staff will begin preparation of an RFP packet to offer the property to new businesses through a public process if tenant decides to vacate.

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.*

(1) Identify any individual or business entity¹ that is a **party** to the discretionary contract:

Trinidad Traylor

(2) Identify any individual or business entity which is a **partner, parent** or **subsidiary** business entity, of any individual or business entity identified above in Box (1):

☒ No partner, parent or subsidiary; or

List partner, parent or subsidiary of each party to the contract and identify the corresponding party:

(3) Identify any individual or business entity that would be a **subcontractor** on the discretionary contract.

☒ No subcontractor(s); or

List subcontractors:

(4) Identify any **lobbyist** or **public relations firm** employed by any party to the discretionary contract for purposes related to seeking the discretionary contract.

☒ No lobbyist or public relations firm employed; or

List lobbyists or public relations firms:

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. A sole proprietor should list the name of the individual and the d/b/a, if any.

(5) Political Contributions

List all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made 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 Box (1), (2), (3) or (4) above, or by the officers, owners of any business entity listed in Box (1), (2) or (3):



No contributions made; If contributions made, list below:

By Whom Made:	To Whom Made:	Amount:	Date of Contribution:

(6) Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city must 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), ("conflicts of interest") by participating in official action relating to the discretionary contract.



Party not aware of facts which would raise a "conflicts-of-interest" issue under Section 2-43 of the City Code; or

Party aware of the following facts:

This form is required to be supplemented in the event there is any change in the information 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

Company or D/B/A:

LITTLE B.T. OF TEXAS

Date: 4/25/05

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.*

(1) Identify any individual or business entity¹ that is a **party** to the discretionary contract:

Joe Gonzales
Joanne Gonzales
Mary Gonzales

(2) Identify any individual or business entity which is a **partner**, **parent** or **subsidiary** business entity, of any individual or business entity identified above in Box (1):

☒ No partner, parent or subsidiary; or

List partner, parent or subsidiary of each party to the contract and identify the corresponding party:

(3) Identify any individual or business entity that would be a **subcontractor** on the discretionary contract.

☒ No subcontractor(s); or

List subcontractors:

(4) Identify any **lobbyist** or **public relations firm** employed by any party to the discretionary contract for purposes related to seeking the discretionary contract.

☒ No lobbyist or public relations firm employed; or

List lobbyists or public relations firms:

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. A sole proprietor should list the name of the individual and the d/b/a, if any.

(5) Political Contributions

List all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made 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 Box (1), (2), (3) or (4) above, or by the officers, owners of any business entity listed in Box (1), (2) or (3):



No contributions made; If contributions made, list below:

By Whom Made:	To Whom Made:	Amount:	Date of Contribution:

(6) Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city must 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), ("conflicts of interest") by participating in official action relating to the discretionary contract.



Party not aware of facts which would raise a "conflicts-of-interest" issue under Section 2-43 of the City Code; or

Party aware of the following facts:

This form is required to be supplemented in the event there is any change in the information 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: April 25, 2005

Company or D/B/A:

Marie's Creations

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.

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

WHEREAS, the City of San Antonio, a Texas Municipal Corporation, acting by and through its City Manager pursuant to Ordinance No. 94567, passed and approved by the City Council on September 20, 2001, as LANDLORD ("CITY") whose mailing address is P.O. Box 839966, San Antonio, Texas 78283-3966, entered into that certain Lease effective **September 20, 2001** ("LEASE") with **Joe, Mary and Joanne Gonzales, a Sole Proprietorship, Doing Business As Marie's Creations** ("ASSIGNOR"), whose mailing address is **430 W. Wildwood, San Antonio, Texas 78212**, for the lease of the following described tract or parcel of real property situated in the Market Square Plaza, Farmers Market, San Antonio, Bexar County, Texas to-wit:

All the real property and improvements, which contain approximately **1,185** square feet of space, owned by City located at 612 W. Commerce, Market Square Plaza, Farmers Market, San Antonio, Bexar County, Texas, and identified as **IL-12** in Exhibit A, attached hereto and incorporated by reference herein for all purposes, and

WHEREAS Mr. Joe and Mrs. Joanne and Mary Gonzales, a Sole Proprietorship Doing Business as "Marie's Creations" were terminated for an Event of Default of their lease agreement on April 14, 2004 but were offered a three (3) year probationary lease with more strict requirements as approved by Ordinance No. 99477, which was approved by City Council on July 22, 2004. This Probationary lease was terminated on December 6, 2004 due to the failure of LEASEE to maintain the required Insurance Certification. A request for assignment of the business had been received but had been returned without action since the termination action had already been processed. Through litigation the suit initiated by the Gonzales Family was settled by allowing the family to submit a request for assignment of the remaining term of the probationary lease to a qualified buyer.

WHEREAS Joe, Mary and Joanne Gonzales, a Sole Proprietorship Doing Business As "Marie's Creations", desire, as ASSIGNOR, to convey and assign TENANT'S leasehold interest under the PROBATIONARY LEASE to **Trinidad Traylor, a Sole Proprietorship Doing Business As "Little Bit of Texas"**, doing business as ASSIGNEE; and

WHEREAS, said assignment is authorized with prior approval of CITY; and

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

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

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

1. CONVEYANCE AND ASSIGNMENT. ASSIGNOR does hereby grant, bargain, sell, convey, assign, transfer, set over and deliver to ASSIGNEE, all of ASSIGNOR'S rights, title and interest in and to the PROBATIONARY LEASE, including and also without limitation, all of the rights, duties,

obligations, and liabilities of ASSIGNOR in, to, and under the LEASE to pay rent and to observe and perform all other covenants and duties of TENANT thereunder.

2. ASSUMPTION. By its execution hereof, ASSIGNEE hereby assumes and agrees to perform all of the terms, covenants, and conditions of the PROBATIONARY LEASE on the part of the TENANT therein required to be performed arising from and after the date hereof, and ASSIGNEE releases ASSIGNOR from all liability for such obligations.

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

3. CONSENT. CITY hereby consents to the assignment by **Joe, Mary and Joanne Gonzales, a Sole Proprietorship Doing Business As "Marie's Creations"**, as ASSIGNOR, and the assumption by **Trinidad Traylor, a Sole Proprietorship Doing Business As "Little Bit Of Texas"**, as ASSIGNEE of said ASSIGNORS' liability and obligations as TENANT, in that certain Lease Agreement between the CITY and **Joe, Mary and Joanne Gonzales, a Sole Proprietorship Doing Business As "Marie's Creations"**, originally approved by City Council pursuant to Ordinance No. **94567**, passed and approved on **September 20, 2001**.

4. REPRESENTATION AND WARRANTIES. Assignor and Assignee represent and warrant that the following statements are true.

Trinidad Traylor, as the assignee, will be the exclusive owner of the business, formerly owned by Joe, Mary and Joanne Gonzales and operating under the DBA Marie's Creations. Ms. Traylor will take full control of the business immediately upon City Council approval and will operate as Little Bit of Texas.

Joe, Mary and Joanne Gonzales will not have any ownership or serve as employees, or agents in the new enterprise operating from the premises. These individuals will have no authority, financial or otherwise, in the new enterprise operating from the premises.

In the event that any such representations and warranties are found by City not to be true then City shall have authority to revoke its consent to this assignment and automatically terminate the contract without allowing Assignor or Assignee an opportunity to cure.

5. USE OF PREMISES. ASSIGNEES agree that the Leased Premises shall be utilized for the sole purpose of retail sales of products reflecting an open market with a Mexican Market theme and excluding alcoholic goods and beverages in accordance with applicable statutes, laws, ordinances, rules and regulations of the United States, the State of Texas and the City of San Antonio, Texas.
6. AMENDING USE AND CARE OF PREMISES. Section 2.12 of the above reference agreement is amended to include the following provisions:

2.12.1 Further TENANT covenants and agrees, in keeping with the intent and spirit of Farmers Market and Market Square, to operate the business conducted on the Leased Premises in an "**owner presence**" capacity, physically participating in the day-to-day operations of TENANT'S business, as opposed to employing a non-owner manager of said premises, hence an "absentee owner" posture, unless such management is first approved by the Director, Parks and Recreation Department or his designee. Failure to operate the business on the Leased Premises in such a

manner will constitute an act of default hereunder and will be grounds, at CITY'S Option, to terminate this Probationary Lease Agreement without notice or if the original lease has been reinstated upon ten (10) days written notice to TENANT.

7. AMENDING THE TERM: Article III of the above referenced agreement is amended to include the following provisions:

3.1 The term of this lease, as amended, is for a two (2) year, two (2) month period beginning June 1, 2005 ("Commencement Date") and terminating July 31, 2007, for the Probationary Lease and if all requirements are met then the Director of Parks and Recreation shall have authority to issue a new standard form lease agreement with a term to end on August 31, 2009. TENANT acknowledges that no promise to extend or renew this agreement beyond this original term is made or implied.

8. RENTAL RATES: Article V of the above referenced agreement outlines the monthly rental rates. The monthly rental rates for the TERM of the lease are as follows:

	<u>Begin September 1</u>	<u>Monthly Square Foot Rate</u>	<u>Leased Square Feet</u>	<u>Total Monthly Square Footage Rental Payment</u>
1.	2004	\$1.38	1185	\$1635.30
2.	2005	\$1.40	1185	\$1659.00
3.	2006	\$1.41	1185	\$1670.85

[Remainder of this page intentionally left blank.]

EXECUTED this _____ day of _____, 2005. EFFECTIVE 1st Day of ^{June} ~~May~~ 2005.


ASSIGNOR:

Joe, Mary and Joanne Gonzales,
a Sole Proprietorship d/b/a
Marie's Creations

ASSIGNEE:


Trinidad Traylor, a Sole Proprietorship
d/b/a Little Bit of Texas


Mr. Joe Gonzales


Ms. Trinidad Traylor


Mrs. Joanne Gonzales

P. O. Box 141
Residence Address


Mrs. Mary Gonzales

Moore, Texas 78057

City, State, and Zip Code

(830) 477-1517
Telephone Number Business

(830) 663-3818
Telephone Number Cell

LANDLORD:
CITY OF SAN ANTONIO, a Texas
Municipal Corporation

ATTEST:

Assistant City Manager

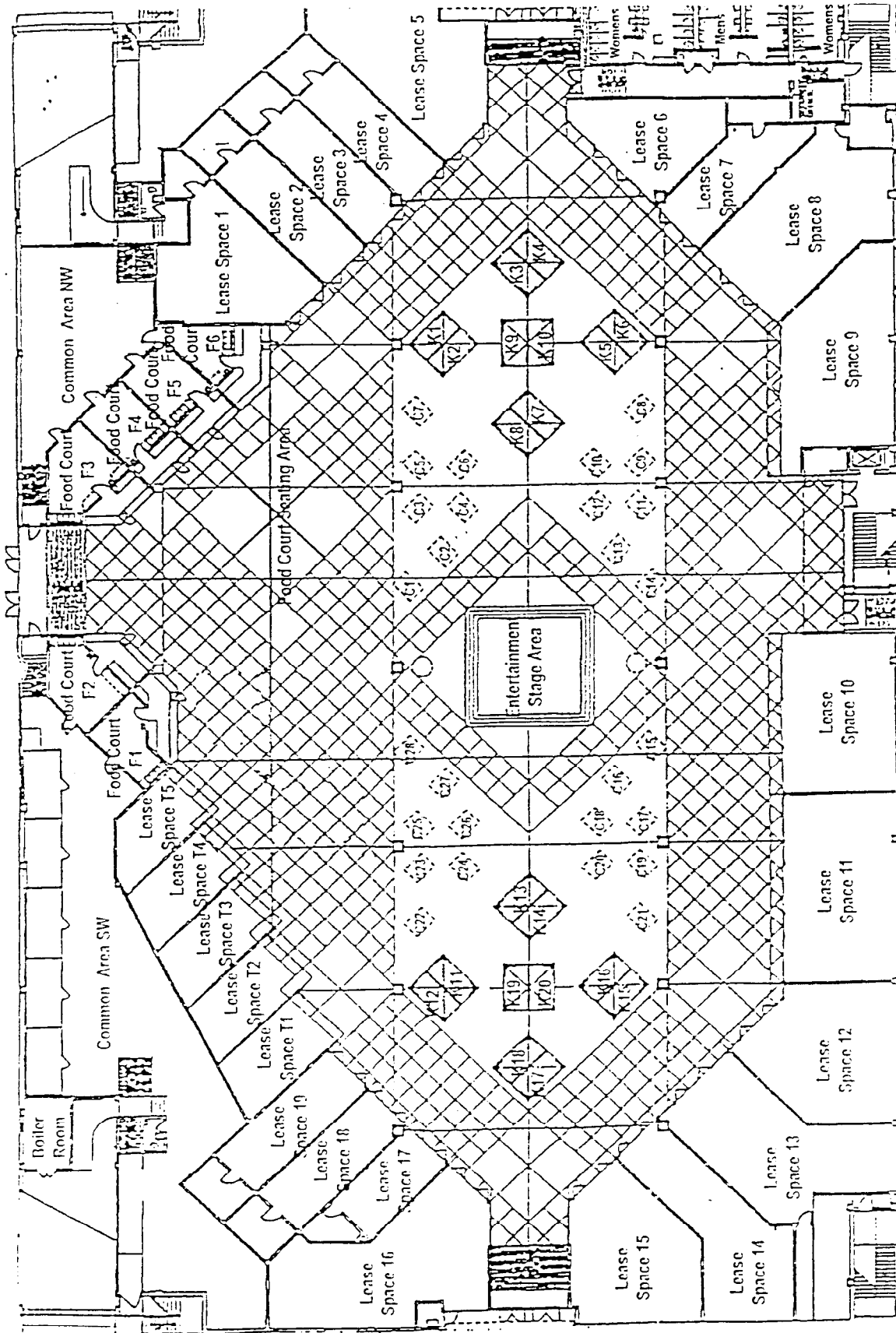
City Clerk

APPROVED AS TO FORM:

City Attorney

EXHIBIT "A"
FLOOR PLAN OF PREMISES

Tenant: Little Bit of Texas ☒ Inline ☐ Kiosk ☐ Pushcart No: 12



Farmer's Market Plaza

Little Bit of Texas

EXHIBIT "B"

MERCHANDISE USE CLAUSE

EXHIBIT "B"

JOE AND JOANNE GONZALES
MERCHANDISE USE CLAUSE

APPAREL:

50%

Jackets, bajas, sweaters, ponchos, mens shirts, children's clothing, vests, Mexican dresses, pants, shirts, blouses, T-Shirts-Fiesta and Texas Theme; short sets, Guayaberas, Serapes

FASHION ACCESSORIES:

10%

Hats, Handbags, Straw Hats, Caps, Belts, Wallets, Purses, Hair Accessories, Hair Bows and Fiesta Bows, Headbands, Halos and Sandals

JEWELRY:

20%

Fashion and Costume; Semi-Precious and Birthstones; Gold and Silver (Mexican and Domestic), Coins, Handcrafted Jewelry and Jewelry Boxes

HOME FURNISHINGS:

10%

Blankets, Tin Knights, Pottery, Mirrors, Churches, Papier Mache-Fruits, Clowns; Porcelain, Ceramic Collectibles; Kitchenware, Curios; Garlic and Chili Strands; Wicker Baskets, Plaster and Clay Animals, Paper Flowers

OTHER:

10%

Texas Souvenirs, Wooden Toys, Stuffed Animals, Dolls-Ceramic and Straw; Leather Whips; Seasonal-Christmas Lights, Wreaths, Bells, Trees; Packaged Goods, Mexican Candy (Hard Candy); Spices and Herbs; Pickles (sealed), Hot Sauces; Pinatas Religious Charms, Potions, and Religious Candles Peacock Feathers and Masks *M.A.*

TOTAL

100%

EXHIBIT "B" MERCHANDISE USE CLAUSE