

**CITY OF SAN ANTONIO  
PUBLIC WORKS DEPARTMENT  
CITY COUNCIL AGENDA MEMORANDUM**

**CONSENT AGENDA**  
**ITEM NO. 30**

**TO:** Mayor and City Council

**FROM:** Thomas G. Wendorf, P.E., Director of Public Works

**SUBJECT:** Consent of Assignment of a Lease Agreement at the Riverbend Parking Garage with David T. Mason, DBA Dante's Pizza.

**DATE:** November 3, 2005

**SUMMARY AND RECOMMENDATIONS**

This ordinance authorizes the execution of a Consent of Assignment of a Lease Agreement between the City of San Antonio and David T. Mason, DBA Dante's Pizza, as "Tenant", to Vipoolkumar Patel and Suraj Kuran Bhalla, DBA BHATELO, for the use of 1,965 square feet of retail/office space at the Riverbend Parking Garage, located in Council District 1 at the intersection of East Commerce Street and South Presa Street under the same terms and conditions of the current Lease Agreement.

Staff recommends approval of this ordinance.

**BACKGROUND INFORMATION**

Dante's Pizza opened for business at the Riverbend Parking Garage on March 1, 2003, under a Lease Agreement for 1,965 square feet, which was approved by Council on April 17, 2003 through Ordinance No. 97473. On April 21, 2005, Ordinance 100738 approved the first of two (2) additional 3-year renewal options. Due to an unforeseen illness, Mr. Mason has decided to retire and has elected to exercise his option to assign his Lease Agreement to a third party under the provisions of this agreement. City consent is required prior to any assignment.

This ordinance authorizes the assignment of Mr. Mason's Lease Agreement for the retail/office space at the Riverbend Parking Garage to Vipooljumar Patel and Suraj Kuran Bhalla, DBA BHATELO. Mr. Patel and Mr. Bhalla are established business owners, each operating a food establishment in the Rivercenter Mall. As partners they own two ice cream parlors, one of which is located on Alamo Plaza and the other is on the north side of the City. The Assignee will be bound by the same terms and conditions as stated in the original Lease Agreement with Mr. Mason. The recent renewal included a rate adjustment of 4.67% for the first year. The second and third years have similar rate adjustments.

## **POLICY ANALYSIS**

The Parking Fund was established as a self-sustaining enterprise fund. This ordinance is consistent with the City's policy to generate revenue through the leasing of City owned properties.

## **FISCAL IMPACT**

There is no Fiscal Impact from this Assignment since the new tenant will continue to pay the same rental fees as collected from the current tenant.

As a good faith measure the Assignee has agreed to pay \$18,510.30, which includes a Security Deposit of \$3,085.05, an Assignment Fee of \$1,000.00, and four (4) months of advance rental payments.

## **COORDINATION**

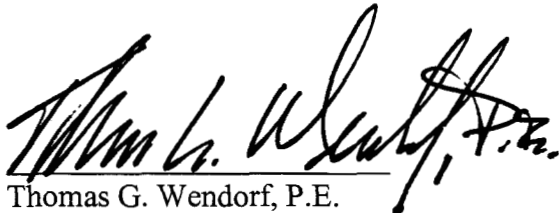
This request for ordinance has been coordinated with the City Attorney's Office, the Finance Department, the Office of Management and Budget, and the Asset Management Department.

## **SUPPLEMENTARY COMMENTS**

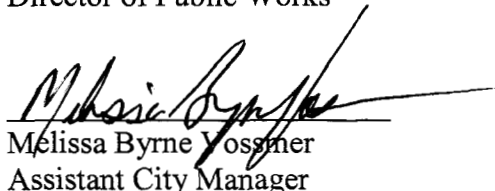
The Discretionary Contracts Disclosure Form required by the Ethics Ordinance is attached.

## **ATTACHMENTS**

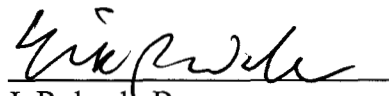
1. Consent to Assignment
2. Original Lease Agreement
3. Renewal Lease Agreement
4. Discretionary Disclosure Form



Thomas G. Wendorf, P.E.  
Director of Public Works



Melissa Byrne Yossner  
Assistant City Manager



J. Rolando Bono  
City Manager

## **Consent to Assignment and Modification of Lease Agreement (Dante's Pizza)**

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This Consent to Assignment and Modification of Lease Agreement is entered into among the City of San Antonio, a Texas Municipal Corporation, acting by and through its City Manager (Landlord), pursuant to the Ordinance Authorizing Renewal and Extension, and the Assignee and Assignor designated below.

### **Predicate Facts**

Assignor is the tenant under the below described Lease and Landlord is the landlord.

Assignor wishes to assign the leasehold to Assignee, and Landlord will consent to the Assignment on the terms and conditions of this instrument.

### **Rights and Obligations**

Now Therefore, in consideration of the premises, the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

#### **1. Identifying Information.**

<b>Lease:</b>	Lease Agreement relating to Riverbend Parking Garage retail space between the City of San Antonio as Landlord and David T. Mason d/b/a/ Dante's Pizza as Tenant commencing January 1, 2003 and ending December 31, 2004, renewed to extend through February 29, 2008
<b>Assignor:</b>	David T. Mason d/b/a Dante's Pizza
<b>Assignor's Address:</b>	102 W. Crockett, # 708, San Antonio, Texas 78205
<b>Assignee:</b>	Vipoolkumar Patel and Suraj Kuran Bhalla, jointly and severally, d/b/a BHATELO
<b>Assignee's Address</b>	410 E. Commerce St., San Antonio, Texas 78205
<b>Lease Assignment Fee:</b>	\$1,000.00
<b>Ordinance Authorizing Original Lease (No. &amp; Date):</b>	Ordinance No. 97473 passed and approved April 17, 2003
<b>Ordinance Authorizing Renewal of Original Lease (No. &amp; Date):</b>	Ordinance No. 100738 passed and approved April 21, 2005

**Ordinance Authorizing  
Assignment (No. & Date):**

**Commencement Date:** November 1, 2005

**2. Defined Terms.**

All terms defined in the Lease and not otherwise defined in this Consent to Assignment, when used in this instrument, have the meanings ascribed to them in the Lease.

**3. No Default.**

As a part of the inducement to Landlord to execute and deliver this consent, Assignor represents to Landlord and Assignee that:

- a. The Lease is in full force and effect according to its terms.
- b. Landlord is not in default under the Lease.
- c. Assignor has no offset or claim against Landlord that would reduce or impair its obligations to Landlord under the Lease.

**4. Assumption of Lease.**

(a) Assignee assumes all liabilities of the tenant under the Lease, whether relating to the period before assignment or after. Landlord may hereafter deal with Assignee as if it were the original tenant under the Lease, and Assignee will have no rights or defenses not available to the Assignor as to matters relating to the period before the assignment. Landlord releases Assignor of all liabilities relating to the period after the assignment.

(b) This instrument is effective as of the Commencement Date even if City Council approval comes later, but it never becomes effective if City Council does not approve.

**5. Prepaid Rent, Security Deposit, and Assignment Fee.**

(a) Upon execution and delivery hereof, Assignee must deliver to Landlord the sum of \$18,510.30.

(b) Of that amount, \$3,085.05 is a security deposit and will be held, disbursed, and refunded according to the Lease. Any amounts remaining from Assignor's security deposit will be returned to Assignor less any allowable deductions by Landlord.

(c) \$1,000 is the Lease Transfer Fee required by § 29-22 (e) of the City Code of San Antonio, Texas.

(d) The balance is prepaid rent and will be applied to the first months of the remaining term of the Lease, as presently renewed and extended. The prepaid rent is non-refundable unless Landlord wrongfully terminates the Lease, and then is refundable only to the extent not applied to Assignee's occupancy before the termination. When the prepaid rent runs out, Assignee must pay the difference at the time, place, and manner prescribed in the Lease.

## **6. Scope of Agreement.**

This instrument defines the rights and obligations of Landlord as against Assignor and Assignee. As between themselves, Assignor and Assignee may define the rights and obligations between themselves differently, except that Landlord is a third party beneficiary of any retention by Assignor, in any agreement with Assignee, of liabilities arising out of or relating to this Lease.

## **7. Same Terms and Conditions.**

This Consent to Assignment is a fully integrated statement of the modifications to the Lease. Except as expressly modified by this renewal and extension, the Lease remains a comprehensive statement of the rights and obligations of Landlord and the tenant under the Lease. Landlord and Tenant reaffirm the Lease.

**Landlord**

**Assignor**

**City of San Antonio**, a Texas municipal corporation

By: \_\_\_\_\_

\_\_\_\_\_  
David T. Mason

Printed

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Assignee**

\_\_\_\_\_  
Vipoolkumar Patel

\_\_\_\_\_  
Suraj Kuran Bhalla

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Attest:**

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

**Approved:**

\_\_\_\_\_  
City Attorney

**Address:**

City of San Antonio  
Attn: City Clerk  
City Hall, 2<sup>nd</sup> Floor  
P.O. Box 839966  
San Antonio, Texas 78283-3966