

AN ORDINANCE 2006-03-16-0342

APPROVING THE RENEWAL OF TWO FARMER'S MARKET PLAZA LEASE AGREEMENTS WITH MR. DAVID KIRBY D/B/A "FRESH CONCEPTS" FOR STALL S-15 AND MS. LISA RODRIGUEZ D/B/A "BAPTISMAL BOUTIQUE" FOR STALL S-10, IN DISTRICT 1.

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WHEREAS, following renovations to the Farmer's Market Plaza Stall Store lease areas, on March 4, 2004, City Council passed Ordinance No. 98919 authorizing Lease Agreements with twenty-three (23) tenants with terms of five years and six months (5 ½ years); and

WHEREAS, through this same ordinance, lease agreements were also authorized with "Fresh Concepts" and "Baptismal Boutique" who were subject to probationary provisions as a result of previous delinquencies; and

WHEREAS, these probationary leases had terms of one year and three months and they expired on May 31, 2005; and

WHEREAS, "Fresh Concepts" and "Baptismal Boutique" are now current on rent payments to the City; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

Section 1. The renewal of two Farmer's Market Plaza Lease Agreements with David Kirby d/b/a "Fresh Concepts" (for stall S-15 in the Farmer's Market) and Lisa Rodriguez d/b/a "Baptismal Boutique" (for stall S-10 in the Farmer's Market) in substantially the same form as the lease agreements attached hereto as Attachments I and II, respectively, are hereby approved. The City Manager or her designee is hereby authorized to execute said lease agreements.

Section 2. The proceeds of this Lease will be deposited into Fund 11001000 entitled the "General Fund," Internal Order 226000000016, entitled "Market Square-Farmer's Market," and General Ledger Accounts 4407720, entitled "Lease-Land & Building," 4407719 entitled "Service Charge-Waste Collection," and 4407718 entitled "Service Charge-Tenant Utilities.

Section 3. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager, or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

Section 4. This ordinance becomes effective March 26, 2006, unless it receives the eight votes requisite to immediate effectiveness under City Code of San Antonio § 1-15, in which case it shall be effective immediately.

PASSED AND APPROVED this 16th day of March 2006.



M A Y O R

PHIL HARDBERGER

Attest: 
City Clerk

Approved As To Form: 
for City Attorney

ATTACHMENT I

CITY OF SAN ANTONIO FARMERS MARKET PLAZA LEASE AGREEMENT Store Stalls

This Lease Agreement is made and entered into by and between the **CITY OF SAN ANTONIO**, a Texas Municipal Corporation, acting herein through its City Manager, or her designated representative (hereinafter referred to as "**CITY**"),

AND

Mr. J. David Kirby Sole Proprietor, **d/b/a Fresh Concepts** (hereinafter referred to as "**TENANT**"), acting by and through its duly authorized officers,

WITNESSETH:

1. DEMISE OF PREMISES

- 1.1 **CITY**, for and in consideration of the rents, covenants and promises herein contained to be kept, performed and observed by **TENANT**, does hereby Lease and demise to **TENANT**, and **TENANT** does hereby rent and accept from **CITY** a portion of the real property and improvements owned by **CITY** located at 612 W. Commerce Street, San Antonio Bexar County, Texas, within the area commonly known as the Farmers Market Plaza at Market Square Plaza (said real property and improvements hereinafter referred to as the Leased Premises). Said Leased Premises contain approximately 114 square feet and is identified as Farmers Market Plaza area number S-15 in Exhibit A "Floor Plan" attached hereto and incorporated by reference herein for the purposes of this Lease Agreement, the same as if fully copied and set forth at length.
- 1.2 Condition to Use: The **CITY** reserves the right to enter the Leased Premises at reasonable hours and, if in the opinion of the **CITY**, an emergency exists requiring immediate action, at any time, to inspect, to make replacements, repairs or restorations; and to carry out any work or activities in connection with the protection of the public health, safety and welfare, or the preservation of the Leased Premises. **TENANT** acknowledges the above reservation by **CITY** and agrees to respect and be subordinate to same. Reasonable notice shall be construed as giving notice the day before the **CITY** proposes to enter the Leased Premises, except for an emergency, which will not require prior notice.

2. USE AND CARE OF PREMISES

- 2.1 The Leased Premises shall be used only for the sale of retail items specifically listed on Exhibit "B". This includes any "theme-based" use-clause in said Leased Premises shown on the attached Exhibit "B" and must be for no other purposes, unless previously approved by **CITY**, pursuant to Section 2.3 below.
- 2.2 The merchandising concept for this project is to create a blend of merchandise that is representative of the local culture, as well as the artistic and ethnic influences indigenous to Texas, the Southwest United States, Mexico, and Central and South America. The project is intended to enhance the Mexican market theme of Market Square and will avoid duplication of the products sold by the existing Farmers Market and/or El Mercado **TENANTS**, to the extent possible.
- 2.3 Any change in the foregoing use(s) and purpose(s) in the items shown on said Exhibit "B" must be approved in advance and in writing by the **CITY'S** Market Square Facilities Coordinator; however, any such change of more than twenty-five percent (25%) in the items shown on said

Exhibit "B" must be approved by the Director, Parks and Recreation Department, or his designee. Any new use not shown on Exhibit "B" must also be approved by said Director, Parks and Recreation Department, or his designee.

- 2.4 Any use by **TENANT** of the Leased Premises for purposes not shown above, or otherwise changed in writing as provided herein, will be deemed a breach of this Lease Agreement and will be grounds, at **CITY'S** option, for termination of this Agreement upon ten (10) days written notice to **TENANT**.
- 2.5 In using the Leased Premises for the purpose(s) hereinbefore described, **TENANT** may, with the written permission of **CITY**, demonstrate, exhibit or practice a specific art or craft on the Leased Premises related to **TENANT'S** approved retail purpose.
- 2.6 The following minimum hours of operation are hereby specifically agreed to by the parties hereto:
- 2.6.1 During the months of January, February, March, April, May, September, October, November, and December, **TENANT** agrees to open each and every day by 10:00 a.m. and agrees to operate and conduct business from the time of opening until 6:00 p.m.
- 2.6.2 During the months of June, July, and August, **TENANT** agrees to open business each day by 10:00 a.m. and agrees to operate and conduct business from the time of opening until 8:00 p.m., seven days a week. **CITY** shall post business hours on all major entry and exit points.
- 2.6.2.1 With the exceptions of Sections 2.7 and 2.8 below, failure to comply with above stated minimum operating hours shall result in a written warning on the first offense; a \$25.00 fine for the second offense; a \$50.00 fine for the third offense; and a \$500.00 fine for the fourth offense. The fifth offense shall be deemed as default and cause for lease termination as set forth in Article 18 "Defaults and Remedies".
- 2.6.2.2 **SPECIAL SITUATIONS:** **CITY** agrees that in special situations regarding weather conditions and/or extending hours of operation, **CITY** shall cooperate, to the best of its ability, with the Farmers Market Tenants based on their majority vote, as to temporary closings and/or extended hours of operation.
- 2.7 The preceding hours of operation shall not apply while the Farmers Market Plaza is closed for **THANKSGIVING DAY, EASTER, CHRISTMAS DAY, and NEW YEAR'S DAY**, or during such time as the Leased Premises become untenable because of casualty, repair or restoration.
- 2.8 **TENANT** may not close **TENANT'S** business under any circumstances, except where an emergency exists. **TENANT** must notify the Market Square Facilities Coordinator within 24 hours after closure to inform the Market Square Facilities Coordinator of the nature of the emergency.
- 2.8.1 Emergencies are defined by three (3) categories: A) Death in the **TENANT'S** or **TENANT'S** employee(s) family; B) Medical Emergency; and/or C) Automobile Accident.
- 2.9 No **TENANT** may own, or operate as a "shop owner", more than two (2) stores in the Market Square Complex. The definition of "stores" includes, in-line stores, food court stalls, and store stalls. A **TENANT** may not have more than two of any combination of the above Farmers Market retail sites.

3. TERMS AND EXPIRATION DATE

- 3.1 Subject to earlier termination as hereinafter set forth, the term of this Lease is for a period of Three (3) years and five (5) months beginning on April 1, 2006 and ending on August 31, 2009.

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

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

4. ACCEPTANCE AND CONDITION OF PREMISES

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

5. RENTAL AND UTILITIES

RENTAL: In consideration of this Lease Agreement, **TENANT** agrees to pay to **CITY** at the office of the City Treasury, or at such other place as may be designated by the **CITY** in writing, monthly rental for a Three (3) year and Five (5) month period as follows

<u>Lease Yr</u>	<u>Rate/Month</u>	<u>Size</u>	<u>Location</u>
April 1, 2006 – February 28, 2007	\$375.00	Half	S-15
March 1, 2007 – February 29, 2008	\$400.00	Half	S-15
March 1, 2008 – August 31, 2009*	\$425.00	Half	S-15

* Contract period of 18 months, expires August 31, 2009.

- 5.1 Said monthly rental is payable in monthly increments on the first (1st) day of each month, being due in advance, starting on the Commencement Date of this Lease Agreement, and ending Three (3) years and Six (6) months thereafter, unless otherwise extended herein. Such payments and amounts are subject to adjustments listed below.
- 5.1.1 In the event the **CITY** should determine that the Farmers Market Plaza Building would benefit from the opening of the arched windows on any street side of the building, the **CITY** has the right to calculate a higher rent for those shops having the benefit of direct access through these individual arched entrances. **TENANT** agrees to pay the higher rent or give **CITY** thirty (30) days notice that **TENANT** elects to, and will, vacate the Leased Premises prior to the rent increase.
- 5.2 **GARBAGE FEES:** In further consideration of this Lease Agreement, **TENANT** agrees to pay to the **CITY** at the office of the City Treasury or at such other place as may be designated by the **CITY** in writing, a monthly garbage collection fee in the amount equal to \$.025 **per square foot**, or a total of **\$2.85** due on the first day of each month, starting on April 1, 2006 and ending Three (3) years and Six (6) months thereafter.
- 5.3 **UTILITIES:** In addition to consideration of rent, **TENANT** hereby agrees to pay a pro-rata share, based on **square footage**, for electricity, lighting, air conditioning and gas service provided by the **CITY** to the Leased Premises per month based on fifty percent (50%) of the total of the utility services. In cases where individual meters are installed, **TENANT** agrees to pay the entire cost of the utility services.
- 5.3.1 **TENANT'S** pro rata share of utilities is based upon the square foot space that the **TENANT** leases from the **CITY**. See example below:
- Current City Public Service (CPS) bill for **\$8,233.48** divided by **23,268** square feet (total square footage for Farmers Market) equals **\$0.35** to cool or heat one square foot. Due to the large amount of "Common Area" space within the Farmers Market, only 50% of the CPS bill will be charged back to the **TENANT**.
- TENANT** Jones' shop contains 900 square feet; his portion of the above monthly CPS bill equals $900 \times \$0.35 \times .50 = \157.50 .
- 5.4 Rental, garbage, and utility fees specified in this Article 5 are to be paid promptly on the first day of each month by check or money order. All checks and money orders must be payable to the **CITY OF SAN ANTONIO** and payments should be made at the City Treasury. If rental payments are not received on or before the 10th day of the applicable calendar month, said payment shall be considered past due and **TENANT** will be deemed delinquent and in default hereunder; a Twenty (\$20.00) Dollar late charge will be assessed on any payment received on the eleventh (11th) day of the applicable calendar month or any day thereafter. **TENANT** also agrees that any rental payment received after the thirtieth (30th) day of the respective month shall be due with interest charged at a rate of ten percent (10%) per annum. If **TENANT** accumulates three (3) past due notices in a twelve (12) month period the **TENANT** will be in Default as specified in Article 18 and may be terminated without notification.
- 5.4.1 The ten (10) day period before the twenty (\$20.00) dollar late charge is applied should not be considered a "grace period"; nor shall the late charge provision be considered as an "option" for rental payments to be made late. All payments are considered late if not received in the City's Treasury office by the close of the business on the first (1st) day of each month.
- 5.4.2 At any time during the Lease term more than two (2) Insufficient Funds Checks are presented to the **CITY** in payment of rental or other considerations during a two (2) year calendar period, **TENANT** will be placed on a cash or money order basis for the

following two (2) Lease years. No exceptions will be made. Since this type of action is the result of **TENANT'S** failure to comply with the terms of Article 5, a third (3rd) incident during the term of this Lease Agreement will be considered a default in the terms of the contract and termination action may be taken without notification.

5.4.3 At any such time should the **CITY'S** Department of Finance establish and issue uniform policies related to late payment of rent and/or Insufficient Funds Checks, which may be contrary to the terms stated in sections 5.5.1 – 5.5.2 above, the Department of Finance's policies shall prevail. **CITY** shall use its best efforts to formally notify **TENANT** of any such change(s) in advance.

5.5 **Notwithstanding anything to the contrary set forth in this Lease, if TENANT shall fail to make the timely payment of any rent or any additional charges due CITY from TENANT or the payment of any other money due CITY from TENANT under the terms of this Lease, and any such failure shall be repeated two (2) times in any period of twelve (12) consecutive months, then notwithstanding that such failure shall have been cured within the period after notice, as provided in this Lease, any further similar failure within said twelve (12) month period shall be deemed to be a Repeated Event of Default.**

5.5.1 **In the event of a Repeated Event of Default, CITY, without giving TENANT any notice and without affording TENANT an opportunity to cure the default, may terminate this Lease forthwith without notice to TENANT.**

6. IMPROVEMENTS

- 6.1 **TENANT** shall not make or allow to be made any interior or exterior structural or electrical construction, repairs, alterations, remodeling, renovations, reconstruction, or improvements in any portion of the Leased Premises, nor any alterations in the store-front of the exterior of the Leased Premises (collectively, or, as applicable, individually referred to as improvements) without first obtaining the written consent of **CITY**; which consent may in the sole and absolute discretion of **CITY** be denied, except in accordance with Paragraph 6.2 hereof.
- 6.2 If, however, **CITY** gives such consent, then **TENANT** agrees that the improvements to be constructed by **TENANT** shall be in accordance with approved retail and tenant mix plans and design specifications (hereafter "plans"), which, in all instances, have received the prior written approval of the City Market Square Facilities Coordinator, and where applicable, the Market Square Commission, the Historic Design and Review Commission and any other City of San Antonio Board, Commission, Department, or agency having authority and jurisdiction over the approval of said plans, and further **TENANT** agrees that all improvements will be constructed to meet all Federal, State and local building codes. **TENANT** agrees that no construction or preliminary work of any kind will be done in connection with the aforementioned renovations and improvements until all written approvals and, if applicable, oral approvals are secured.
- 6.3 Furthermore, **TENANT** covenants that it shall not bind, or attempt to bind, **CITY** for the payment of any money in connection with the construction, repair, alteration, addition, remodeling, renovation, or reconstruction (collectively or individually) in, on or about the Leased Premises. Article 8 shall apply in case such improvements are made.
- 6.4 All permanent construction, repairs, alterations, additions, remodeling, renovations, reconstruction, and improvements, and **TENANT'S** work provided herein, shall become, upon expiration or other termination of the term of the Lease Agreement, the property of **CITY** without compensation by **CITY** to **TENANT**. Personal property, including, but not limited to, trade fixtures and merchandise not removed within ten (10) days after the expiration and/or

termination date of this Lease Agreement, shall become the property of **CITY** without compensation or liability by **CITY** to **TENANT** for any disposition thereafter at private or public sale or otherwise.

- 6.5 In the construction of improvements to the Leased Premises and at all times thereafter, **TENANT** shall conform to and comply with all Federal, State and local laws, ordinances, permits, rules and regulations applicable to the Leased Premises and the operation of **TENANT'S** business therein.
- 6.6 **TENANT** covenants to undertake renovations or improvements in a reasonable and prudent manner with due regards for the safety of the public and with as little disruption as possible to the operation of Market Square and other tenants. **TENANT** further agrees to complete such renovation or improvements within a period of six (6) months after the date of final **CITY** approval to start construction of same, unless **CITY**, in its sole discretion, agrees otherwise.
- 6.7 **TENANT** is limited to the number of current electrical circuits installed per store stall ("Leased Premises"). No additional circuits may be installed on Leased Premises.

7. LIENS PROHIBITED

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

8. MAINTENANCE AND SECURITY

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

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

9. SIGNS

- 9.1 Tenants of the Farmers Market Plaza Building must purchase the standard wooden sign as approved by the **CITY**. Placement is located as shown in the design drawings and must be at the top of the arch or on the sign band. No other signs may be placed in the interior or exterior store windows, where applicable. Interior merchandise and pricing signs must be printed either with stencil, press, silk screen, or press type and must not exceed 8 ½" x 11" or must be signs approved by both the City Director of Parks and Recreation and the City Market Square Office. Handwritten signs are not acceptable. Use of small chrome or wooden sign stanchions are not acceptable to hold and frame signs. All exterior signs must comply with City's Historic Design and Review Commission guidelines. See Exhibit "D" for specific dimensions for outside signage.
- 9.1.1 Temporary signage, such as that used for special events, must be approved in writing, five (5) days in advance, by the Market Square Facilities Coordinator, and removed immediately following the conclusion of the event.

10. COMMON AREA

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

11. SALES AND DISPLAY AREA

- 11.1 **TENANT'S LEASED PREMISES** for in-line stores includes a Display Space Sales area located two (2') feet in front of **TENANT'S** store and does not exceed the lease line as shown in the floor plan diagram attached hereto and **TENANT** may display merchandise using acceptable display fixtures in this space in front of **TENANT'S** store. **TENANT** may not obstruct any entrance to the store stall with any type of displays, counters, etc. **CITY** has the right to order the removal of display merchandise and fixtures if **TENANT'S** display is not presentable, as determined by the Market Square Facilities Coordinator. **TENANT** must bring into the store any merchandise and display fixtures in said Display Sales Area and outside of **TENANT'S** store doors within one (1) hour after official closing each day. Any merchandise left in front of **TENANT'S** store sales area after official closing will be secured by **CITY** and donated to charity if **TENANT** fails to remove such merchandise after receiving twenty-four (24) hours notice from **CITY** to do so.
- 11.2 **ENCROACHMENT** on the Common Area beyond the authorized Display Space Sales area is not permitted, and violations of such will be fined at \$250.00 per day as per City Code 32-19 ©. More than two (2) repeat violations by **TENANT** in a twelve (12) month period shall be considered a condition of default and shall be grounds for Lease termination proceedings as provided in Article 18.

12. RULES AND REGULATIONS

- 12.1 **TENANT** covenants and agrees that **TENANT**, its employees, and invitees will comply with reasonable rules and regulations set by **CITY** from time to time for the efficient operation of the Farmers Market Plaza, including but not limited to the following:
- 12.1.1 To use The Leased Premises only for the purposes permitted in Article 2; and
 - 12.1.2 To keep the Leased Premises in a condition acceptable to **CITY** and to not commit or permit any waste of said property; and
 - 12.1.3 To not commit nor permit the maintenance or commission of any nuisance on the Leased Premises and to not commit or permit the use of the Leased Premises for any unlawful purpose; and
 - 12.1.4 To not permit any person on the Leased Premises to willfully or wantonly destroy, deface, damage, impair or remove any part of the Leased Premises or appurtenance thereto. In particular, **TENANT**, shall not drive or permit to be driven any nails, hooks, tacks, screws, or stakes into the Leased Premises; and
 - 12.1.5 To not use nor permit the use of any explosive, flammable, or otherwise dangerous materials, equipment, or goods; and
 - 12.1.6 To properly and safely use and operate all electrical, gas, and plumbing fixtures, equipment, or appliances connected thereto, and to keep them clean and sanitary; and
 - 12.1.7 To keep the Common Area immediately adjoining the Leased Premises, including sidewalk, free and clear at all times of any obstructions; and

- 12.1.8 To collect and dispose of all rubbish, garbage, litter or other waste in accordance with **CITY** policy (this clause shall not relieve **CITY** of its routine maintenance and clearing obligations); and
- 12.1.9 To observe and comply with all the laws of the United States, the State of Texas, and Ordinances of the City of San Antonio; and
- 12.1.10 To not place nor permit the placement or use of game or video coin-operated machines or coin-operated (pay) telephones, public telephones, vending machines, and/or associated equipment of any kind whatsoever on the Leased Premises, regardless of whether installed at **TENANT'S** expense or not; and
- 12.1.11 To not obstruct nor permit the blockage of any entrance, passageway, electrical panel rooms, **CITY** storage rooms, or exit; and
- 12.1.12 To not use nor permit the use of loudspeakers, bull horns, strobe lights, or other bright, loud, or distracting devices, including radios; and
- 12.1.13 To not conduct nor permit the conduct of any auction, going out of business sale, or salvage sale on or about the Leased Premises; and
- 12.1.14 To not use the Leased Premises for the storage of materials, inventory or supplies, except in accordance with rules and regulations promulgated by the **CITY**; and
- 12.1.15 To not discriminate nor permit discrimination on the part of **TENANT'S** agents or employees on account of race, color, religion, national origin, sex, or handicap in the use of, or admission to the Leased Premises; and
- 12.1.16 To not use Common Area ceilings for storage without prior written permission of the Market Square Office; and
- 12.1.17 To not display, sell, give away, or otherwise distribute or keep live animals, including, but not limited to birds, snakes, chickens, fish, or turtles; and
- 12.1.18 To not display or promote any activity or method of operation on or about the Leased Premises which exposes patrons thereof to nudity or partial nudity. For purposes of this provision, the following definitions apply:
 - 12.1.18.1 Nudity means total absence of clothing or covering for the human body; and
 - 12.1.18.2 Partial nudity means exposure of the female breast or the exposure of the male or female pubic area or buttocks.
- 12.1.19 The Market Square Facilities Coordinator may make any other necessary rules and regulations in conjunction with the operation of Market Square, **TENANT** will be advised at least ten (10) days in advance in writing of any such proposed rules and regulations.
- 12.2 Should **CITY** provide handicapped accessible ingress and egress in specific locations, **TENANT** agrees to not block or otherwise cause the access way to be nonfunctional without providing an alternative means of access approved in writing by the Market Square Office of the City of San Antonio.
- 12.3 **TENANT** shall not place nor permit the display of any merchandise in the Common Area. Encroachment of the Common Area is subject to a fine, as noted in Section 11.2 above.
- 12.4 **TENANT** agrees to be bound by the provisions of the City Code Chapter 32. Article II. Market Square, as such may be amended or hereafter changed. Should such language conflict with this Lease Agreement, City Code language shall be controlling.

- 12.5 **TENANT** agrees to abide by Exhibit "C", Farmers Market Criteria and Exhibit "D", Farmers Market Operations and Maintenance Guidelines, which are attached.

13. INDEMNIFICATION

- 13.1 **TENANT** covenants and agrees to **FULLY INDEMNIFY** and **HOLD HARMLESS**, the **CITY** and the elected officials, employees, officers, directors, volunteers and representatives of the **CITY**, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the **CITY** directly or indirectly arising out of, resulting from or related to **TENANT'S** activities under this **AGREEMENT**, including any acts or omissions of **TENANT**, any agent, officer, director, representative, employee, consultant or subcontractor of **TENANT**, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this **AGREEMENT**, all without however, waiving any governmental immunity available to the **CITY** under Texas Law and without waiving any defenses of the parties under Texas Law. The provisions of this **INDEMNIFICATION** are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. **TENANT** shall promptly advise the **CITY** in writing of any claim or demand against the **CITY** or **TENANT** known to **TENANT** related to or arising out of **TENANT'S** activities under this **AGREEMENT** and shall see to the investigation and defense of such claim or demand at **TENANT'S** cost. The **CITY** shall have the right, at its option and at its own expense, to participate in such defense without relieving **TENANT** of any of its obligations under this paragraph.
- 13.2 It is the **EXPRESS INTENT** of the parties to this **AGREEMENT**, that the **INDEMNITY** provided for in this Article (**ARTICLE 13**), is an **INDEMNITY** extended by **TENANT** to **INDEMNIFY**, **PROTECT** and **HOLD HARMLESS**, the **CITY** from the consequences of the **CITY'S OWN NEGLIGENCE**, provided however, that the **INDEMNITY** provided for in this section **SHALL APPLY** only when the **NEGLIGENT ACT** of the **CITY** is a **CONTRIBUTORY CAUSE** of the resultant injury, death, or damage, and shall have no application when the negligent act of the **CITY** is the sole cause of the resultant injury, death, or damage. **TENANT** further **AGREES TO DEFEND, AT ITS OWN EXPENSE** and **ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY**, any claim or litigation brought against the **CITY** and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this **INDEMNITY** shall apply, as set forth above.

14. INSURANCE REQUIREMENTS

- 14.1 Any and all employees, representatives, agents or volunteers of **TENANT** while engaged in the performance of any work required by the **CITY** or any work related to a license of space or Concession Agreement with the **CITY** shall be considered employees, representatives, agents or volunteers of **TENANT** only and not of the **CITY**. Any and all claims that may result from any obligation for which **TENANT** may be held liable under any Workers' Compensation, Unemployment Compensation or Disability Benefits law or under any similar law on behalf of

said employees, representatives, agents or volunteers shall be the sole obligation and responsibility of **TENANT**.

- 14.2 Prior to the commencement of any work under this Lease Agreement, **TENANT** shall furnish an original completed Certificate(s) of Insurance to the **CITY'S** Director, Parks and Recreation Department and City Clerk's Office, which shall be completed by an Agent Authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The Original Certificate(s) must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the **CITY**. The **CITY** shall have no duty to pay or perform under this Lease Agreement until such certificate shall have been delivered to the **CITY'S** Director, Parks and Recreation Department and the City Clerk's Office, and no officer or employee shall have authority to waive this requirement.
- 14.3 The **CITY** reserves the right to review the insurance requirements of this section during the effective period of the Lease Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by the **CITY'S** Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding the Lease Agreement, but in no instance will the **CITY** allow modification whereupon the **CITY** may incur increased risk.
- 14.4 A **TENANT'S** financial integrity is of interest to **CITY**, therefore, subject to **TENANT'S** right to maintain reasonable deductibles in such amounts as are approved by **CITY**, **TENANT** shall obtain and maintain in full force and effect for the duration of the Lease Agreement, and any extension hereof, at **TENANT'S** sole expense, insurance coverage written, on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to the **CITY**, in the following types and amounts:

	TYPE	AMOUNT
1.	Workers' Compensation and Employers Liability	Statutory \$500,000/\$500,000/\$500,000
2.	Commercial General (Public) Liability Insurance to include coverage for the following:	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence or its equivalent. \$2,000,000.00 Aggregate.
	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.	Motor Truck cargo insurance including loading and unloading coverage; written on an Inland Marine form and an all risk basis.	\$1,000,000
5.	Property Insurance: For physical damage to the property of TENANT , including improvements and betterment to the Leased Premises	Coverage for a minimum of eighty percent (80%) of the actual cash value of TENANT'S property
6.	Liquor Liability (if applicable)	\$1,000,000 per occurrence, aggregate of \$2,000,000

14.5 The **CITY** shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the **CITY**, and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Upon such request by the **CITY**, the **TENANT** shall exercise reasonable efforts to accomplish such changes in policy coverage and shall pay the cost thereof.

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

14.6.1 Name the **CITY** and its officers, employees, volunteers and elected representatives as **Additional Insureds** as respects operations and activities of, or on behalf of, the named

insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;

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

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

14.7 **TENANT** 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

14.8 If **TENANT** fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the **CITY** may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the Lease Agreement. Procuring of said insurance by the **CITY**, however, is not the exclusive remedy for failure of **TENANT** to maintain said insurance or secure said endorsements. In addition to any other remedies the **CITY** may have upon **TENANT'S** failure to provide and maintain any insurance or policy endorsement to the extent and within the time herein required, the **CITY** shall have the right to order **TENANT** to stop work hereunder, and/or withhold any payment(s) which become due to **TENANT** hereunder until **TENANT** demonstrates compliance with the requirements hereof.

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

14.10 All personal property placed in the Leased Premises shall be at the sole risk of **TENANT**. **CITY** shall not be liable, and **TENANT** waives all claims for any damage either to the person or property of **TENANT** or to other persons due to the Leased Premises or any part of appurtenances thereof becoming out of repair or arising from bursting or leaking of water, gas, waste pipes, or defective wiring or excessive or deficient electrical current; or from any act or omission of employees, or other occupants of the Leased Premises, or any other persons; due to the happening of any accident in or about said Leased Premises. **TENANT** shall save and hold harmless **CITY** from any claims arising out of damage to **TENANT'S** property or damage to **TENANT'S** business, including subrogation claims by **TENANT'S** insurers.

15. FIRE AND OTHER CASUALTY

15.1 In the event that the Leased Premises, or the building of which the same is a part, shall be partially damaged by fire, the elements, civil disorder, or other casualty, the Leased Premises and, to the extent necessary for **TENANT** to continue its business on the Leased Premises, the

building or portions thereof shall be repaired at the expense of the **CITY** without unreasonable delay unless the **CITY**, at its sole discretion, determines that the damage is so extensive that repair or rebuilding is not practical. In such event, at the option of the **CITY**, and upon notice to **TENANT**, this Lease Agreement shall cease and come to an end and the rent shall be apportioned and paid up to the date of such damage.

- 15.2 The **CITY'S** obligations to rebuild or repair shall be limited to the extent of insurance proceeds available to the **CITY** for such rebuilding or repair.

16. HOLDING OVER

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

17. ASSIGNMENT AND SUBLETTING

- 17.1 Except as provided under "DEATH BENEFIT" and in accordance with City Code Section 32-73, **TENANT** shall not assign the Lease Agreement and business conducted on the Leased Premises or any interest therein.
- 17.2 **TENANT** shall not sublet the Leased Premises or any part thereof or interest therein. Any subletting shall be null and void and **CITY** shall have the right to terminate this Lease Agreement with ten (10) days written notice, unless **TENANT** complies with the provisions of Section 17.3 herein.
- 17.3 The receipt by the **CITY** of rent from an assignee, or occupant of the Leased Premises shall not be deemed a waiver of the covenant in this Lease Agreement against assignment and/or an acceptance of the assignee, or occupant as a **TENANT**, or a release of the **TENANT** from further observance or performance by the **TENANT** of the covenants contained in this Lease Agreement. No provision of this Lease Agreement shall be deemed to have been waived by the **CITY** unless such waiver is in writing and signed by the **CITY**.
- 17.4 In accordance with **CITY** policy, codified as Section 32-104 of the City Code, **TENANT** is expressly prohibited from entering into any independent contracts or independent contract relationships with anyone in relation to the business or operation thereof conducted on the Leased Premises, which amounts to any assignment or subletting of the Leased Premises as determined solely by the **CITY**.
- 17.5 In the event the **CITY** suspects that the business on the Leased Premises is being operated by a person other than the **TENANT**, the **CITY** has the right, but not the duty, to inspect all of the books and records, to include but not be limited to, employment contracts, monthly operating expenses and reports, and accounts payable ledgers, if **CITY** reasonably believes that an assignment or subletting of the premises has occurred without **CITY'S** written approval.
- 17.6 In the event that the **CITY** determines that another person other than the **TENANT** is operating the business on the Leased Premises, the **CITY**, at its option, may declare the Lease Agreement terminated upon ten (10) days written notice.

- 17.7 **CITY** shall have the right to transfer and assign, in whole or in part, any of its rights under this Lease Agreement, and in the building and property referred to herein; and **CITY** shall by virtue of such assignment be released from such obligations, which are assumed by the assignee.

18. DEFAULT AND REMEDIES

- 18.1 The following events shall be deemed to be events of default by **TENANT** under this Lease Agreement in addition to any other events set forth herein:
- 18.1.1 **TENANT** shall fail to pay any installment, additional fees, penalty or rent as provided for in this Lease Agreement and shall not cure such failure within ten (10) days after the due date of such rent.
 - 18.1.2 **TENANT** shall fail to operate or conduct business as prescribed by the **CITY** in Article 2, except on account of casualty, damage, remodeling or when the prior written consent of **CITY** is given.
 - 18.1.3 **TENANT** shall fail to comply with any term, provision or covenant of this Lease Agreement, other than the payment of rent, and shall not cure such failure within ten (10) days after written notice thereof to **TENANT**.
 - 18.1.4 **TENANT**, shall within ninety (90) days following the Commencement Date, fail to take possession of the Leased Premises, or having taken said possession, fail to open such Leased Premises for the conduct of business.
 - 18.1.5 **TENANT** deserts or vacates all or any part of the Leased Premises; **TENANT** will be deemed to have deserted or vacated the premises if, by any method or manner whatsoever, **TENANT** assigns, transfers, sells or sublets its interest or right to the Leased Premises without the prior written consent of the **CITY**.
 - 18.1.6 The taking by a court of competent jurisdiction of **TENANT** and its assets pursuant to proceedings under the provisions of any Federal or State reorganization code or act, insofar as the following enumerated remedies for default are provided for or permitted in such code or act.
- 18.2 Upon the occurrence of an Event of Default as heretofore provided, **CITY** may, at its option, declare this Lease Agreement, and all rights and interests created by it, terminated. Upon **CITY** electing to terminate, this Lease Agreement shall cease and come to an end as if that were the day originally fixed herein for the expiration of the term hereof. **CITY**, its agents or attorney may resume possession of the Leased Premises and relet the same for the remainder of the original term for the best rent **CITY**, its agents or attorney may obtain for the account of **TENANT**, who shall make good any deficiency.
- 18.3 Any termination of this Lease Agreement as herein provided shall not relieve **TENANT** from the payment of any sum or sums that shall then be due and payable or become due and payable to **CITY** hereunder, or any claim for damages then or theretofore accruing against **TENANT** hereunder, and any such sum or sums or claim for damages by any remedy provided for by law, or from recovering damages from **TENANT** for any default hereunder. All rights, options and remedies of **CITY** contained in this Lease Agreement shall be cumulative of the other, and **CITY** shall have the right to pursue any one or all of such remedies or any other remedy or relief available at law or in equity, whether or not stated in this Lease Agreement. No waiver by **CITY** of a breach of any of the covenants, conditions or restrictions of this Lease Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition or restriction herein contained.

18.4 Upon any such expiration or termination of this Lease Agreement, **TENANT** shall quit and peacefully surrender the Leased Premises to **CITY**, and **CITY**, upon or at any time after such expiration or termination, may without further notice, enter upon and re-enter the Leased Premises and possess and repossess itself thereof, by force, summary proceedings, ejectment or otherwise, and may dispossess **TENANT** and remove **TENANT** and all other persons and property from the Leased Premises. Any property left on the premises shall be deemed abandoned and **CITY** may dispose of same by private or public sale or otherwise without further legal action by **CITY** or liability to **TENANT** therefore.

19. SEPARABILITY

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

20. AMENDMENT

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

21. TAXES AND LICENSES

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

22. NOTICES

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

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

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 **TENANT** shall be deemed sufficient if in writing and mailed, Certified mail, Postage Prepaid, addressed to **TENANT** at the address shown below **TENANT'S** signature line, or hand-delivered to **TENANT**.

23. DEATH BENEFIT

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

24. CONSUMER PROTECTION

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

25. TEXAS LAW TO APPLY

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

26. CONFLICT OF INTEREST

- 26.1 **TENANT** 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 a financial interest in any contract with the City or any City agency, such City-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or services, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee, or his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10%) percent or more of the voting stock or shares of the business entity, or ten (10%) percent or more of the fair market values of a business entity; a business entity in which any

individual or entity above is listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

- 26.2 **TENANT** warrants and certifies, and this Lease Agreement is made in reliance thereon, that he, his officers, employees and agents, are neither officers or employees of the City of San Antonio or any of its agencies such as City-owned utilities.

27. LIEN FOR RENT

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

28. TENANT'S RIGHT TO QUIET ENJOYMENT

- 28.1 The relationship created herein by this Lease Agreement is that of Landlord and **TENANT** and not an agency or partnership. In accordance therewith, and subject to the conditions listed in Article 1 and subject to **TENANT'S** performance of all covenants herein made by **TENANT**, the **CITY** agrees that **TENANT** shall and may peaceably and quietly have, hold, and enjoy the Leased Premises.

29. GENDER

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

30. CAPTIONS

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

31. AUTHORITY

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

WITNESS, the signature of the parties hereto in multiple originals, this the _____ day of _____, 2006, TO BE EFFECTIVE AS OF ("Commencement Date") April 1, 2006.

CITY OF SAN ANTONIO,
A Texas Municipal Corporation

TENANT:

Mr. J. David Kirby d/b/a Fresh Concepts

By: _____
City Manager

J. David Kirby

Signature
Owner

ATTEST:

City Clerk

Title
601 N. Santa Rosa # E-11

Residence Address
San Antonio Tx 78207

City, State, and Zip Code

APPROVED AS TO FORM:

City Attorney

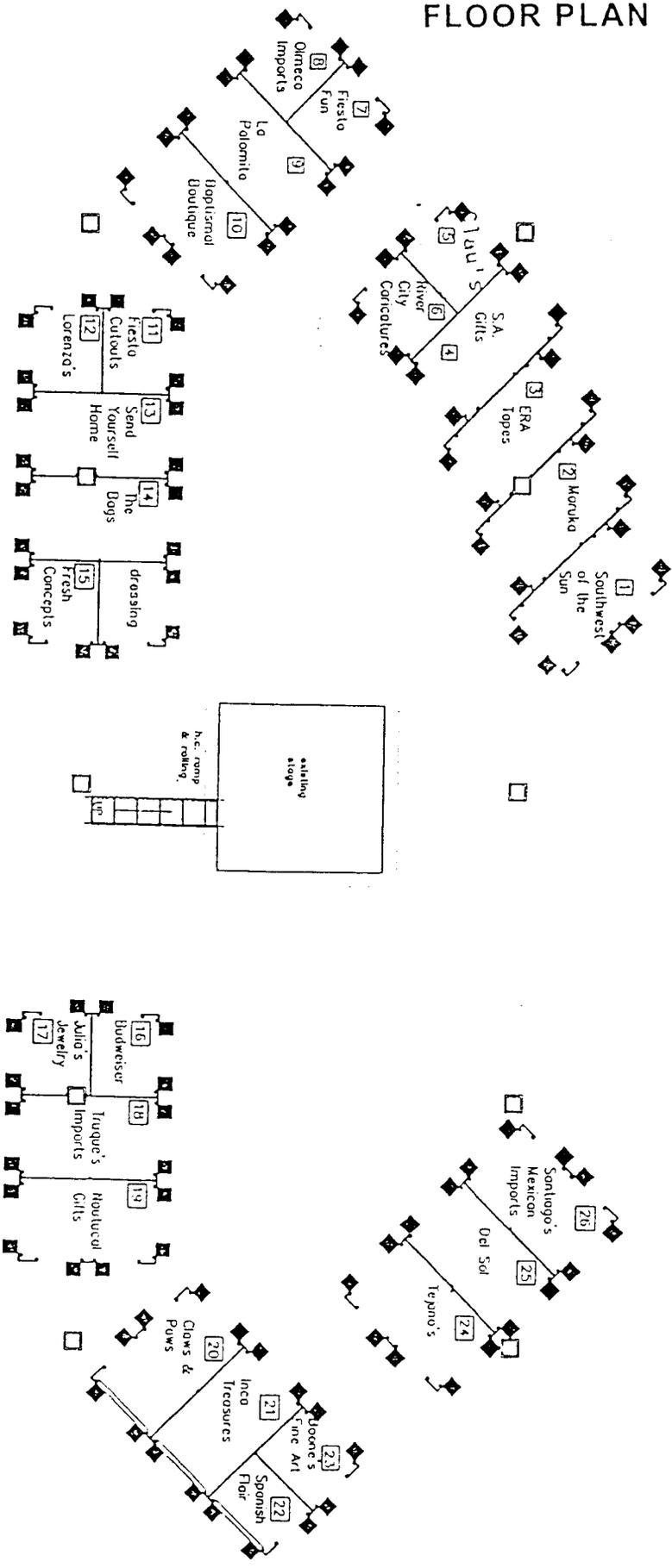
(210) 271-7061

Area Code/Telephone Number Residence

Area Code/Telephone Number Business

EXHIBIT "A"

FLOOR PLAN



0 1 0

EXHIBIT "B"

FRESH CONCEPTS

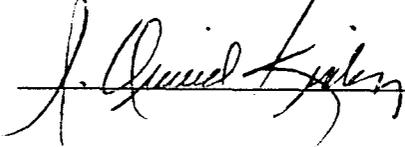
**LEASE / STORE STALL
MERCHANDISE USE CLAUSE**

STORE STALL NUMBER S-15

Merchandise:

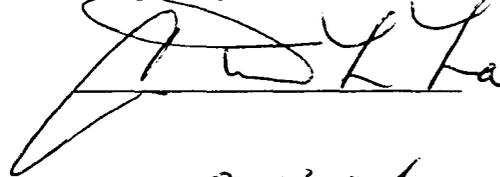
HAND MADE SOUTHWEST POTTERY AND OTHER SOUTHWEST
RELATED MERCHANDISE.

SUBMITTED BY:



DATE: 2/5/04

ACKNOWLEDGED BY:



DATE: 2-5-04



September 28, 2004

Mr. David Kirby
Fresh Concepts
14652 W. Loop 1604 S
Von Ormy, TX 78239

Dear Mr. Kirby,

We have received a letter from you dated September 16, 2004 requesting an expansion of your use clause to include: *colonial, Mediterranean pottery and related items*. In regards to the term "related items" this is to broad of a statement and in order to approve this we must receive a list of specific items for review. Therefore, at this time we are making an administrative decision to allow the following items: *colonial, Mediterranean pottery*. Please keep in mind that these items must be less than 25% of your current product line. Section 2.3 of your lease agreement with the City of San Antonio, allows the Market Square Facilities Coordinator to approve changes to your use clause. If the requested change is more than 25% of your current use the Director or his designee must approve.

Please be advised that no further additions are to be made to your current product line without prior written approval from this office or the Director of Parks and Recreation and that any requested additions should be within your current theme of products.

If you have any questions, please do not hesitate to give me a call.

Sincerely,

Sonia Gaeta
Facilities Operations Coordinator

SG:kk

cc: Mike Gonzaba, Assistant Director
Jim Goble, SPC, Contract Services Division
Council Aide, District 1
File



MERCHANDISING OUTSIDE OF YOUR LEASE:

- * At each 10'-wide door opening select one option:
 - A) Two - 2' X 2' X 6' high areas; or, B) One - 2' X 5' X 4' high merchandising area.
- * At each 6'-wide door openings select one option:
 - A) One - 2' X 2' X 6' high areas; or, B) One - 2' X 3' X 4' high merchandising area.
- * Merchandise cannot extend more than 2 feet outside of lease line; No chairs outside of lease.
- * Display fixtures in the "outside merchandising zone" may remain outside of your lease after business hours. However, it is the responsibility of the tenant to secure the display and contents.
- * All exterior merchandising fixtures shall be anchored to floor with concealed fasteners.
- * No merchandising in front of or on the exterior walls of the lease.
- * No merchandising on columns OUTSIDE of your lease space.

MERCHANDISING INSIDE OF YOUR LEASE:

- * Do not attach merchandisers of new walls to the thin metal wall lease divider panels with either nails, screws, or adhesives.
- * Merchandising is to be displayed on either free-standing wall cabinets, or by building a wall that attaches to the top beam structure metal angle and floor, and braced at the horizontal steel tube that runs approximately 5 feet above the ground (See details)
- * Floor and wall finishes are to be submitted to City Management for approval prior to installation or construction
- * Columns inside the lease space may be merchandised with approval of Management - tenant must submit drawings and specifications of any construction improvements to columns.
- * Items may be suspended from the overhead wire grid, however, the items suspended must not cause the overhead grid to sag more than 1/2 inch at the center of the space.
- * Keep floor clear for 3 feet deep inside door openings - see plan drawing.

SIGNAGE

EXISTING SIGNAGE:

- * The Tenants may reuse their existing exterior signs only if they have been inspected and approved by City Management.
- * The Tenants may purchase new exterior signs to match the Existing Sign Criteria.

NEW SIGNAGE:

- * The Tenants may purchase new signs for the exterior of their lease if they meet the following criteria:
 - A) Sign size is a maximum of 18 inches high X 6 inches deep X 6 feet wide in size.
 - B) Signs may be illuminated.
 - C) Signs shall be professionally constructed with no exposed wiring and with hidden fasteners and attachment.
 - D) Signs shall be centered above the door opening
 - E) One sign may be located at each exterior side, centered above the door opening. Where there are two door openings on one side, the Tenant may select which opening to position the sign above.
 - F) The power for the signs must fall below the maximum amperage of the electrical circuiting.
- NOTE:
Design drawings and specifications for both existing and new signs must be submitted to City Management for review and approval prior to sign fabrication and installation.

SUBMITTAL REQUIREMENTS:

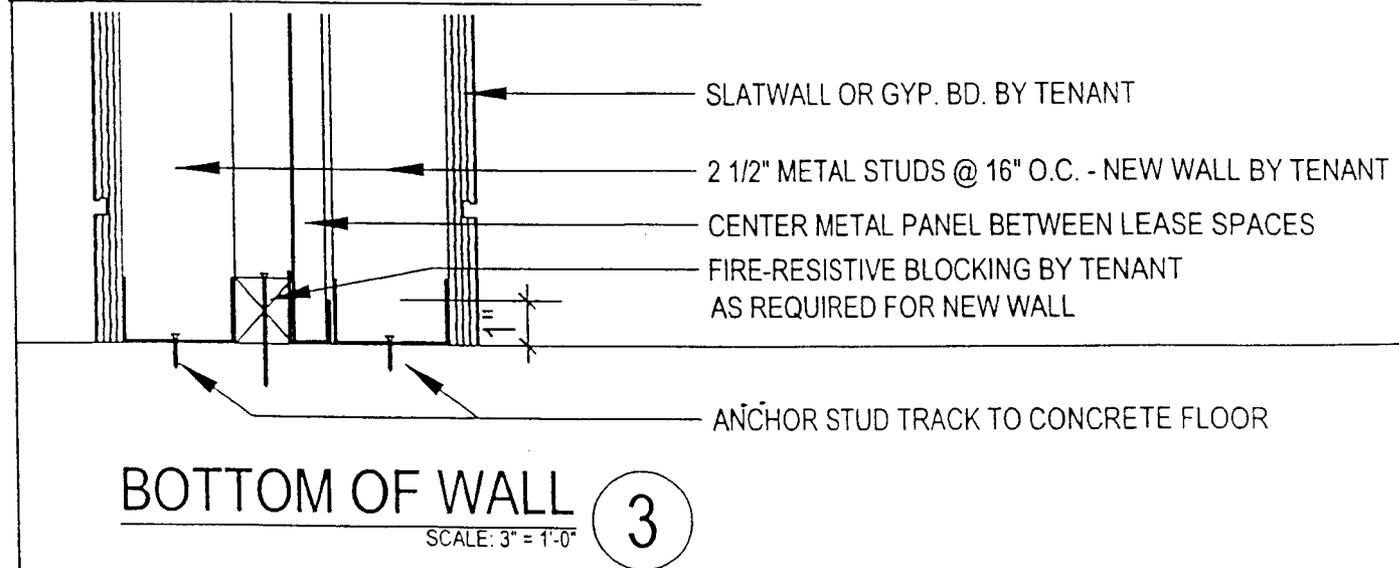
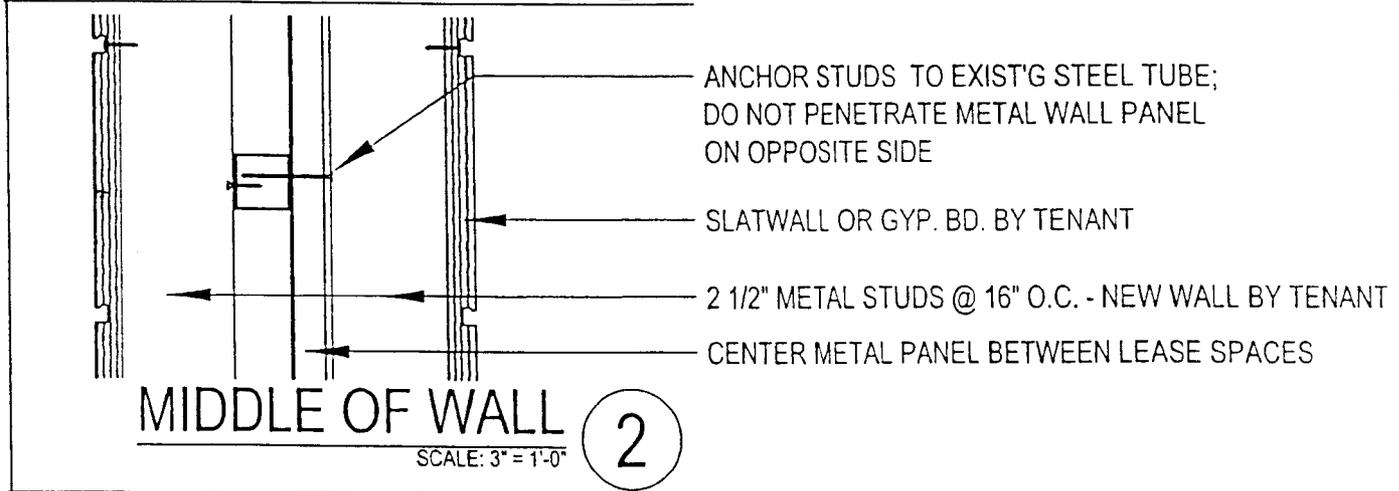
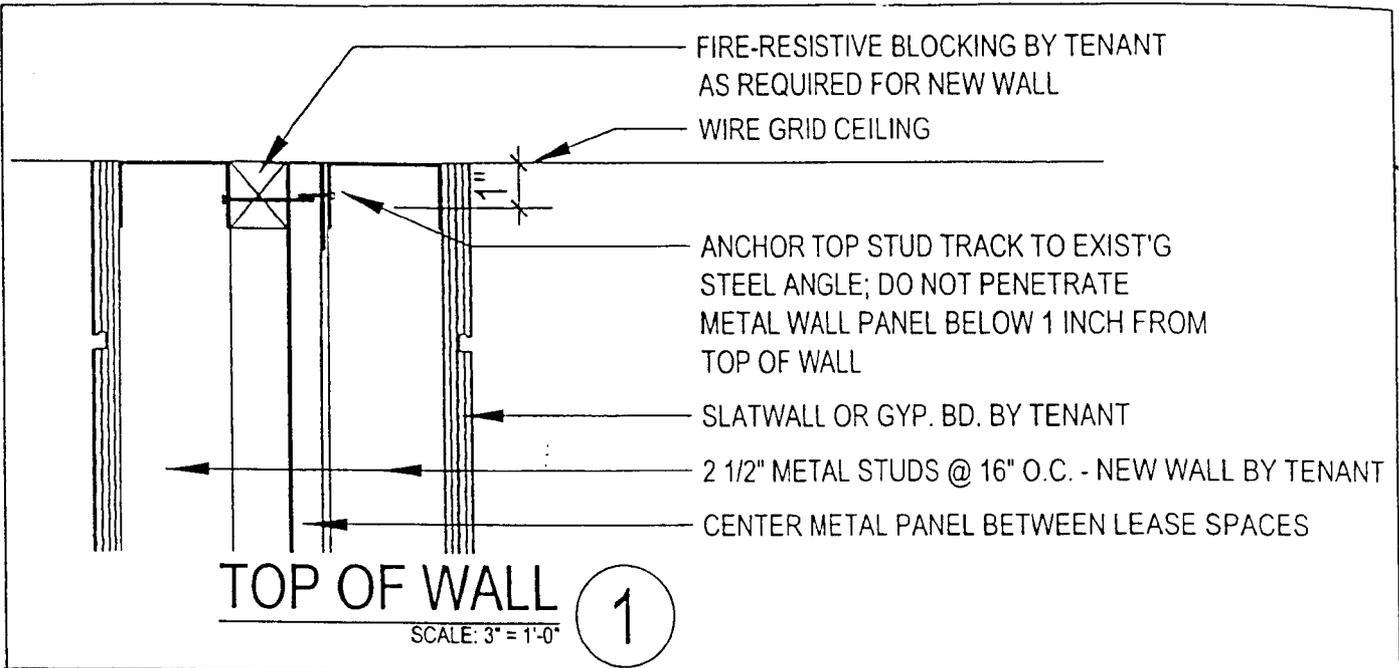
Tenants shall submit the following drawings and specifications to City Management for review and written approval in order to start construction:

- 1) FLOOR PLAN AT 1/4" SCALE SHOWING GENERAL LAYOUT OF DISPLAYS AND 3-FOOT CLEAR SETBACK AT DOOR OPENINGS.
 - 2) WALL ATTACHMENT DETAILS FOR ALL NEW WALLS.
 - 3) INTERIOR PAINT SPECIFICATIONS AND COLOR SAMPLE(S)
 - 4) FLOOR FINISHES SPECIFICATIONS AND MATERIAL SAMPLE(S)
 - 5) EXISTING SIGNS: SUBMIT PHOTOS OF THE SIGN AND DETAILS OF HOW IT WILL BE ATTACHED.
 - 6) NEW SIGNS: SUBMIT DESIGN DRAWINGS SHOWING THE SIGN FACE, CROSS-SECTION DETAIL SHOWING MATERIALS USED, AND DETAILS OF HOW IT WILL BE ATTACHED. INCLUDE POWER REQUIREMENTS; INCLUDE LIGHT SOURCE SPECIFICATIONS IF IT IS TO BE ILLUMINATED.
- GENERAL NOTES:
* TENANT TO FIELD VERIFY ALL DIMENSIONS OF LEASE SPACE PRIOR TO CONSTRUCTION.

Exhibit C

City of San Antonio
Farmers Market Plaza
Tenant Criteria

2-3-04



Farmers Market Operations and Maintenance Guidelines

(11/23/93 updated 1/28/04)

PURPOSE:

The main purpose of this manual is for the tenants of the Farmers Market Plaza building and the Market Square Management to have a guide in the operations and maintenance of individual store spaces and the common area.

OPERATING HOURS:

The retail operations of this building will commence from 10:00 a.m. through 6:00 p.m., during the months of January, February, March, April, May, September, October, November, December and 10:00 a.m. – 8:00 p.m. during the months of June, July, and August, Monday – Sunday. The building will officially open one hour prior to retail hours and close one hour after. At that time all persons must leave the building.

Tenants are required to open and close their stores during the stated retail operating hours seven days per week. The building will be closed New Year's Day, Easter, Thanksgiving Day, and Christmas Day. The Market Square Facilities Operations Coordinator will post any other holiday requiring the closing of the building.

STORE SECURITY:

Tenants should be knowledgeable in designing a store floor plan that is low in profile enabling employees to keep watch over customer activities. In hard to see areas the use of mirrors may improve visibility. Tenants should instruct all employees that in the case of robbery where the person is armed or the employees are threatened with any physical danger to cooperate with the robber. Once the robber has left the store the employee must notify the San Antonio Police immediately.

DELIVERIES:

Merchandise deliveries are permitted through the side storage area entrances one located on West Commerce and the other on Market Street. The Food Court tenants have been provided with rear entrances and must use the same entrance doors for their deliveries. Any tenant who rents back room storage space must received their deliveries through these entrances the same as Food Court tenants. It is important that each tenant delivery should take place in an efficient, swift and safe manner.

MAINTENANCE:

The overall cleanliness of the entire building including all tenants spaces is important to the presentation and image of the building to the public. Every tenant and all employees should take pride in keeping the facility spotless.

Common areas, restrooms, food court dining area and building exterior are the responsibility of the Market Square Maintenance Crew assigned to the building. Their responsibilities include cleaning food court tables, emptying common area trash receptacles and general cleaning and maintenance of the common area. Tenants are responsible to notify Market Square Facilities Operations Coordinator in the event that an area is not being kept properly clean and maintained.

Tenants are responsible for keeping their store floors clean, shelves, merchandise, display fixtures and for those tenants with glass windows the interior of those windows. Market Square Facilities Operations Coordinator has the right to inspect tenant stores for upkeep. If the tenant is not keeping the space clean to the standards of the Market Square Facilities Operations Coordinator, the Facilities Operations Coordinator has the right to notify the tenant in writing as to the items needing attention and that they be completed in 24 hours. In the event the tenant does not correct the items on the list in the 24-hour period the Facilities Operations Coordinator has the right to send in a maintenance crew to correct those items and bill the tenant for the labor and supplies used.

Restrooms take the most abuse. It is the responsibility of all tenants and employees to notify the Building Maintenance Crew or Market Square Facilities Operations Coordinator if it needs immediate attention.

Maintenance crews cannot be everywhere at all times. We would encourage tenants and employees that if they see paper or cigarette butts in the common area to stop, pick it up and dispose of it in the nearest trash receptacle. The cleanliness of the building makes an impression on the customers; help them to enjoy this facility and an enjoyable longer shopping visit.

LIGHTING & ELECTRICAL:

Each store has been provided with light units. It is the responsibility of each tenant to maintain the light bulbs in their stores. Any additional light fixtures added to the store must be approved by the Market Square Facilities Operations Coordinator. TENANT is limited to the number of current electrical circuits installed per store stall ("LEASED PREMISES"). No additional circuits may be installed on Leased Premises. The same is in accordance with the addition of any electrical equipment that will put an unsafe load on the circuit. Any lighting or electrical additions done without permission from the Market Square Facilities Operations Coordinator and causes damage to the building will be the responsibility of the tenant. The Market Square Facilities Operations Coordinator has the right to enter the premises and repair the damage and bill the expense to the tenant. Non-payment of this bill will be regarded as default in a rental payment, with termination of the lease and eviction as forthcoming.

STORE SIGNAGE:

Exterior sign standard size is 18" x 6' x 6". Signs may be illuminated. Signs shall be professionally constructed with no exposed wiring and with hidden fasteners and attachment. Signs shall be centered above the door opening. One sign may be located at each exterior side, centered above the door opening; where there are two door opening son one side, the Tenant may select which opening to position the sign above. The power for the signs must fall below the maximum amperage of the electrical circuiting. No other signs may be used on the exterior, which faces the common area. **Design drawings and specifications for both existing and new signs must be submitted to City for review and approval prior to sign fabrication and installation.**

Interior and exterior store windows. Those stores who have windows facing the common area and glass archway window may not hang or tape any signage on the glass. Tenants are limited to signs not larger than 8 ½" x 11" or standard poster size 22" x 28" and may only be displayed in an approved sign holder (stanchion).

Merchandising signs are recommended to use a printed, press on type or a professional lettering treatment rather than handwritten signs.

Exterior store signs are not permitted on the outside of the building.

STORE FIXTURES:

Retail In-line and Store Stalls are limited to store fixtures composed of wooden and chrome waterfalls, antique furniture, natural wood furniture, shelving, glass and wood cases, and any other fixture that is acceptable to Market Square Management. Prohibited is the use of cinder blocks, make shift display tables and plywood shelving.

Seating of customers and employee spaces in the sales area of the store are limited to either solid wood (unpainted, stained or natural finish) chairs or canvas and wood director chairs.

Special Truck areas are restricted to natural wood shelves, or white wire mesh systems, natural wood boxes, PVC piping for display fixtures. Only canvas and wood director's chairs may be used for seating. They may be tall or short, color is restricted to red, yellow or blue.

STORE LEASE LINES:

In-line retail stores are permitted a sales display space. That display space is measured between the stores middle of the left demising wall and the middle of the right demising wall and not to project in excess of three feet (3.0') from their storefront. Merchandise displayed in the display area outside the store must not exceed 40" (inches) in overall height from floor to top of merchandise. Tenants may use the iron gates to their store for display purposes. This space is included in the total square footage of each store. All tenants are responsible for removing that merchandise each night to allow maintenance workers to clean the floor area in front of each store. Any merchandise not removed from the specified area will be confiscated and donated to charity.

Store Stalls: At each 10' wide door opening select one option: (a) Two - 2' x 2' x 6' high areas; or (b) One - 2' x 5' x 4' high merchandising area. At each 6' wide door openings select one option: (a) One - 2' x 2' x 6' high areas; or (b) One - 2' x 3' x 4' high merchandise area. Merchandise cannot extend more than 2 feet outside lease line; No chairs outside of lease area. Display fixtures in the "outside merchandising zone" may remain outside of your lease area after business hours; however, it is the responsibility of the tenant to secure the display and contents. All exterior merchandising fixtures shall be anchored to floor with concealed fasteners. No merchandising in front of or on the exterior walls of the lease space.

Food Court tenants may not extend past their counter lines

Specialty trucks may not extend past their lease line. From middle of left demising wall to middle of right demising wall and not extend or project more than three feet (3.0') from their storefront or lease line

NOISE:

Stores are restricted from playing music loudly that it becomes annoying to customers and adjoining stores. Television sets permitted only for the purpose of selling merchandise demonstration arts & craft being made, or for promotional purposes. The use of any manufacturing equipment that is abusively noisy is strictly prohibited. The Market Square Manager will determine the acceptability of the noise level.

FOOD COURT TENANTS:

All restaurants must adhere to regular inspections of their premises by the Market Square Facilities Operations Coordinator. It is imperative that all restaurants keep their space up to the health code standards and if questionable the Market Square Facilities Operations Coordinator may order a health code inspection.

The Market Square Management will provide bus crews to maintain and clean the Food Court seating area. It is the responsibility of each tenant to notify the Facilities Operations Coordinator if this area is not being properly cleaned and maintained by the crew.

SPECIAL EVENTS STAGE:

The Farmers Market Plaza has a fully equipped special events stage. All staged special events are approved and coordinated through the Market Square Facilities Operations Coordinator office. The Market Square Facilities Operations Coordinator office will maintain a calendar of events, schedule, promote and approve any activities whatsoever that takes place on the stage. No tenant may use the stage without written permission from the Market Square Facilities Operations Coordinator office.

ALTERATIONS:

No alterations may be made to store exterior. The store interior space may not be altered without submitting a plan for approval by the Market Square Facilities Operations Coordinator which includes, paint, wallpaper, lighting and construction of any permanent display fixtures, or attachment to the walls, ceilings or floors, etc.

ATTACHMENT II

CITY OF SAN ANTONIO FARMERS MARKET PLAZA LEASE AGREEMENT

Store Stalls

This Lease Agreement is made and entered into by and between the **CITY OF SAN ANTONIO**, a Texas Municipal Corporation, acting herein through its City Manager, or her designated representative (hereinafter referred to as "**CITY**"),

AND

Ms. Lisa Rodriguez Sole Proprietor, **d/b/a Baptismal Boutique** (hereinafter referred to as "**TENANT**"), acting by and through its duly authorized officers,

WITNESSETH:

1. DEMISE OF PREMISES

- 1.1 **CITY**, for and in consideration of the rents, covenants and promises herein contained to be kept, performed and observed by **TENANT**, does hereby Lease and demise to **TENANT**, and **TENANT** does hereby rent and accept from **CITY** a portion of the real property and improvements owned by **CITY** located at 612 W. Commerce Street, San Antonio Bexar County, Texas, within the area commonly known as the Farmers Market Plaza at Market Square Plaza (said real property and improvements hereinafter referred to as the Leased Premises). Said Leased Premises contain approximately 228 square feet and is identified as Farmers Market Plaza area number S-10 in Exhibit A "Floor Plan" attached hereto and incorporated by reference herein for the purposes of this Lease Agreement, the same as if fully copied and set forth at length.
- 1.2 Condition to Use: The **CITY** reserves the right to enter the Leased Premises at reasonable hours and, if in the opinion of the **CITY**, an emergency exists requiring immediate action, at any time, to inspect, to make replacements, repairs or restorations, and to carry out any work or activities in connection with the protection of the public health, safety and welfare, or the preservation of the Leased Premises. **TENANT** acknowledges the above reservation by **CITY** and agrees to respect and be subordinate to same. Reasonable notice shall be construed as giving notice the day before the **CITY** proposes to enter the Leased Premises, except for an emergency, which will not require prior notice.

2. USE AND CARE OF PREMISES

- 2.1 The Leased Premises shall be used only for the sale of retail items specifically listed on Exhibit "B". This includes any "theme-based" use-clause in said Leased Premises shown on the attached Exhibit "B" and must be for no other purposes, unless previously approved by **CITY**, pursuant to Section 2.3 below.
- 2.2 The merchandising concept for this project is to create a blend of merchandise that is representative of the local culture, as well as the artistic and ethnic influences indigenous to Texas, the Southwest United States, Mexico, and Central and South America. The project is intended to enhance the Mexican market theme of Market Square and will avoid duplication of the products sold by the existing Farmers Market and/or El Mercado **TENANTS**, to the extent possible.
- 2.3 Any change in the foregoing use(s) and purpose(s) in the items shown on said Exhibit "B" must be approved in advance and in writing by the **CITY'S** Market Square Facilities Coordinator;

however, any such change of more than twenty-five percent (25%) in the items shown on said Exhibit "B" must be approved by the Director, Parks and Recreation Department, or his designee. Any new use not shown on Exhibit "B" must also be approved by said Director, Parks and Recreation Department, or his designee.

- 2.4 Any use by **TENANT** of the Leased Premises for purposes not shown above, or otherwise changed in writing as provided herein, will be deemed a breach of this Lease Agreement and will be grounds, at **CITY'S** option, for termination of this Agreement upon ten (10) days written notice to **TENANT**.
- 2.5 In using the Leased Premises for the purpose(s) hereinbefore described, **TENANT** may, with the written permission of **CITY**, demonstrate, exhibit or practice a specific art or craft on the Leased Premises related to **TENANT'S** approved retail purpose.
- 2.6 The following minimum hours of operation are hereby specifically agreed to by the parties hereto:
 - 2.6.1 During the months of January, February, March, April, May, September, October, November, and December, **TENANT** agrees to open each and every day by 10:00 a.m. and agrees to operate and conduct business from the time of opening until 6:00 p.m.
 - 2.6.2 During the months of June, July, and August, **TENANT** agrees to open business each day by 10:00 a.m. and agrees to operate and conduct business from the time of opening until 8:00 p.m., seven days a week. **CITY** shall post business hours on all major entry and exit points.
 - 2.6.2.1 With the exceptions of Sections 2.7 and 2.8 below, failure to comply with above stated minimum operating hours shall result in a written warning on the first offense; a \$25.00 fine for the second offense; a \$50.00 fine for the third offense; and a \$500.00 fine for the fourth offense. The fifth offense shall be deemed as default and cause for lease termination as set forth in Article 18 "Defaults and Remedies".
 - 2.6.2.2 **SPECIAL SITUATIONS:** **CITY** agrees that in special situations regarding weather conditions and/or extending hours of operation, **CITY** shall cooperate, to the best of its ability, with the Farmers Market Tenants based on their majority vote, as to temporary closings and/or extended hours of operation.
- 2.7 The preceding hours of operation shall not apply while the Farmers Market Plaza is closed for **THANKSGIVING DAY, EASTER, CHRISTMAS DAY, and NEW YEAR'S DAY**, or during such time as the Leased Premises become untenable because of casualty, repair or restoration.
- 2.8 **TENANT** may not close **TENANT'S** business under any circumstances, except where an emergency exists. **TENANT** must notify the Market Square Facilities Coordinator within 24 hours after closure to inform the Market Square Facilities Coordinator of the nature of the emergency.
 - 2.8.1 Emergencies are defined by three (3) categories: A) Death in the **TENANT'S** or **TENANT'S** employee(s) family; B) Medical Emergency; and/or C) Automobile Accident.
- 2.9 No **TENANT** may own, or operate as a "shop owner", more than two (2) stores in the Market Square Complex. The definition of "stores" includes, in-line stores, food court stalls, and store stalls. A **TENANT** may not have more than two of any combination of the above Farmers Market retail sites.

3. TERMS AND EXPIRATION DATE

- 3.1 Subject to earlier termination as hereinafter set forth, the term of this Lease is for a period of Three (3) years and five (5) months beginning on April 1, 2006 and ending on August 31, 2009. The right is expressly reserved to the **CITY**, acting through City Council, to terminate this Agreement for the following:
- 3.1.1 In the event this Lease Agreement is deemed to be inconsistent with the best public use of the property, or
- 3.1.2 In the event the use of the Leased Premises shall have been deemed a nuisance by a court of competent jurisdiction, or
- 3.1.3 In the event **TENANT** shall default in the performance of any covenants of agreements contained herein and shall fail following thirty (30) days written notice of such default, to remedy same, save and except a ten (10) days' notice period will apply in the case of default in the payment of rent.
- 3.2 In the event of termination by City Council in relation to 3.1.1 or 3.1.2 above, **CITY** shall give **TENANT** notice in writing at least thirty (30) days prior to the termination date.
- 3.3 **TENANT** may cancel this Lease Agreement by giving thirty (30) days written notice to the **CITY**.
- 3.4 In the event **CITY** plans to change the use of Farmers Market and/or chooses to not renew Lease at the end of the Lease term, **CITY** shall provide six (6) months advance written notice of same to **TENANT** or the remaining months of the term, whichever is greater.

4. ACCEPTANCE AND CONDITION OF PREMISES

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

5. RENTAL AND UTILITIES

RENTAL: In consideration of this Lease Agreement, **TENANT** agrees to pay to **CITY** at the office of the City Treasury, or at such other place as may be designated by the **CITY** in writing, monthly rental for a Three (3) year and Five (5) month period as follows

<u>Lease Yr</u>	<u>Rate/Month</u>	<u>Size</u>	<u>Location</u>
April 1, 2006 – February 28, 2007	\$500.00	Full	S-10
March 1, 2007 – February 29, 2008	\$625.00	Full	S-10
March 1, 2008 – August 31, 2009*	\$650.00	Full	S-10

* Contract period of 18 months, expires August 31, 2009.

- 5.1 Said monthly rental is payable in monthly increments on the first (1st) day of each month, being due in advance, starting on the Commencement Date of this Lease Agreement, and ending Three (3) years and Six (6) months thereafter, unless otherwise extended herein. Such payments and amounts are subject to adjustments listed below.
- 5.1.1 In the event the CITY should determine that the Farmers Market Plaza Building would benefit from the opening of the arched windows on any street side of the building, the CITY has the right to calculate a higher rent for those shops having the benefit of direct access through these individual arched entrances. TENANT agrees to pay the higher rent or give CITY thirty (30) days notice that TENANT elects to, and will, vacate the Leased Premises prior to the rent increase.
- 5.2 **GARBAGE FEES:** In further consideration of this Lease Agreement, TENANT agrees to pay to the CITY at the office of the City Treasury or at such other place as may be designated by the CITY in writing, a monthly garbage collection fee in the amount equal to \$.025 per square foot, or a total of \$5.70 due on the first day of each month, starting on April 1, 2006 and ending Three (3) years and Six (6) months thereafter.
- 5.3 **UTILITIES:** In addition to consideration of rent, TENANT hereby agrees to pay a pro-rata share, based on square footage, for electricity, lighting, air conditioning and gas service provided by the CITY to the Leased Premises per month based on fifty percent (50%) of the total of the utility services. In cases where individual meters are installed, TENANT agrees to pay the entire cost of the utility services.
- 5.3.1 TENANT'S pro rata share of utilities is based upon the square foot space that the TENANT leases from the CITY. See example below:
- Current City Public Service (CPS) bill for \$8,233.48 divided by 23,268 square feet (total square footage for Farmers Market) equals \$0.35 to cool or heat one square foot. Due to the large amount of "Common Area" space within the Farmers Market, only 50% of the CPS bill will be charged back to the TENANT.
- TENANT Jones' shop contains 900 square feet; his portion of the above monthly CPS bill equals $900 \times \$0.35 \times .50 = \157.50 .
- 5.4 Rental, garbage, and utility fees specified in this Article 5 are to be paid promptly on the first day of each month by check or money order. All checks and money orders must be payable to the CITY OF SAN ANTONIO and payments should be made at the City Treasury. If rental payments are not received on or before the 10th day of the applicable calendar month, said payment shall be considered past due and TENANT will be deemed delinquent and in default hereunder; a Twenty (\$20.00) Dollar late charge will be assessed on any payment received on the eleventh (11th) day of the applicable calendar month or any day thereafter. TENANT also agrees that any rental payment received after the thirtieth (30th) day of the respective month shall be due with interest charged at a rate of ten percent (10%) per annum. If TENANT accumulates three (3) past due notices in a twelve (12) month period, the TENANT will be in Default as specified in Article 18 and may be terminated without notification.
- 5.4.1 The ten (10) day period before the twenty (\$20.00) dollar late charge is applied should not be considered a "grace period"; nor shall the late charge provision be considered as an "option" for rental payments to be made late. All payments are considered late if not received in the City's Treasury office by the close of the business on the first (1st) day of each month.
- 5.4.2 At any time during the Lease term more than two (2) Insufficient Funds Checks are presented to the CITY in payment of rental or other considerations during a two (2) year calendar period, TENANT will be placed on a cash or money order basis for the

following two (2) Lease years. No exceptions will be made. Since this type of action is the result of **TENANT'S** failure to comply with the terms of Article 5, a third (3rd) incident during the term of this Lease Agreement will be considered a default in the terms of the contract and termination action may be taken without notification.

5.4.3 At any such time should the **CITY'S** Department of Finance establish and issue uniform policies related to late payment of rent and/or Insufficient Funds Checks, which may be contrary to the terms stated in sections 5.5.1 – 5.5.2 above, the Department of Finance's policies shall prevail. **CITY** shall use its best efforts to formally notify **TENANT** of any such change(s) in advance.

5.5 **Notwithstanding anything to the contrary set forth in this Lease, if TENANT shall fail to make the timely payment of any rent or any additional charges due CITY from TENANT or the payment of any other money due CITY from TENANT under the terms of this Lease, and any such failure shall be repeated two (2) times in any period of twelve (12) consecutive months, then notwithstanding that such failure shall have been cured within the period after notice, as provided in this Lease, any further similar failure within said twelve (12) month period shall be deemed to be a Repeated Event of Default.**

5.5.1 **In the event of a Repeated Event of Default, CITY, without giving TENANT any notice and without affording TENANT an opportunity to cure the default, may terminate this Lease forthwith without notice to TENANT.**

6. IMPROVEMENTS

- 6.1 **TENANT** shall not make or allow to be made any interior or exterior structural or electrical construction, repairs, alterations, remodeling, renovations, reconstruction, or improvements in any portion of the Leased Premises, nor any alterations in the store-front of the exterior of the Leased Premises (collectively, or, as applicable, individually referred to as improvements) without first obtaining the written consent of **CITY**; which consent may in the sole and absolute discretion of **CITY** be denied, except in accordance with Paragraph 6.2 hereof.
- 6.2 If, however, **CITY** gives such consent, then **TENANT** agrees that the improvements to be constructed by **TENANT** shall be in accordance with approved retail and tenant mix plans and design specifications (hereafter "plans"), which, in all instances, have received the prior written approval of the City Market Square Facilities Coordinator, and where applicable, the Market Square Commission, the Historic Design and Review Commission and any other City of San Antonio Board, Commission, Department, or agency having authority and jurisdiction over the approval of said plans, and further **TENANT** agrees that all improvements will be constructed to meet all Federal, State and local building codes. **TENANT** agrees that no construction or preliminary work of any kind will be done in connection with the aforementioned renovations and improvements until all written approvals and, if applicable, oral approvals are secured.
- 6.3 Furthermore, **TENANT** covenants that it shall not bind, or attempt to bind, **CITY** for the payment of any money in connection with the construction, repair, alteration, addition, remodeling, renovation, or reconstruction (collectively or individually) in, on or about the Leased Premises. Article 8 shall apply in case such improvements are made.
- 6.4 All permanent construction, repairs, alterations, additions, remodeling, renovations, reconstruction, and improvements, and **TENANT'S** work provided herein, shall become, upon expiration or other termination of the term of the Lease Agreement, the property of **CITY** without compensation by **CITY** to **TENANT**. Personal property, including, but not limited to, trade fixtures and merchandise not removed within ten (10) days after the expiration and/or

termination date of this Lease Agreement, shall become the property of **CITY** without compensation or liability by **CITY** to **TENANT** for any disposition thereafter at private or public sale or otherwise.

- 6.5 In the construction of improvements to the Leased Premises and at all times thereafter, **TENANT** shall conform to and comply with all Federal, State and local laws, ordinances, permits, rules and regulations applicable to the Leased Premises and the operation of **TENANT'S** business therein.
- 6.6 **TENANT** covenants to undertake renovations or improvements in a reasonable and prudent manner with due regards for the safety of the public and with as little disruption as possible to the operation of Market Square and other tenants. **TENANT** further agrees to complete such renovation or improvements within a period of six (6) months after the date of final **CITY** approval to start construction of same, unless **CITY**, in its sole discretion, agrees otherwise.
- 6.7 **TENANT** is limited to the number of current electrical circuits installed per store stall ("Leased Premises"). No additional circuits may be installed on Leased Premises.

7. LIENS PROHIBITED

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

8. MAINTENANCE AND SECURITY

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

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

9. SIGNS

- 9.1 Tenants of the Farmers Market Plaza Building must purchase the standard wooden sign as approved by the **CITY.** Placement is located as shown in the design drawings and must be at the top of the arch or on the sign band. No other signs may be placed in the interior or exterior store windows, where applicable. Interior merchandise and pricing signs must be printed either with stencil, press, silk screen, or press type and must not exceed 8 ½" x 11" or must be signs approved by both the City Director of Parks and Recreation and the City Market Square Office. Handwritten signs are not acceptable. Use of small chrome or wooden sign stanchions are not acceptable to hold and frame signs. All exterior signs must comply with City's Historic Design and Review Commission guidelines. See Exhibit "D" for specific dimensions for outside signage.
- 9.1.1 Temporary signage, such as that used for special events, must be approved in writing, five (5) days in advance, by the Market Square Facilities Coordinator, and removed immediately following the conclusion of the event.

10. COMMON AREA

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

11. SALES AND DISPLAY AREA

- 11.1 **TENANT'S LEASED PREMISES** for in-line stores includes a Display Space Sales area located two (2') feet in front of **TENANT'S** store and does not exceed the lease line as shown in the floor plan diagram attached hereto and **TENANT** may display merchandise using acceptable display fixtures in this space in front of **TENANT'S** store. **TENANT** may not obstruct any entrance to the store stall with any type of displays, counters, etc. **CITY** has the right to order the removal of display merchandise and fixtures if **TENANT'S** display is not presentable, as determined by the Market Square Facilities Coordinator. **TENANT** must bring into the store any merchandise and display fixtures in said Display Sales Area and outside of **TENANT'S** store doors within one (1) hour after official closing each day. Any merchandise left in front of **TENANT'S** store sales area after official closing will be secured by **CITY** and donated to charity if **TENANT** fails to remove such merchandise after receiving twenty-four (24) hours notice from **CITY** to do so.
- 11.2 **ENCROACHMENT** on the Common Area beyond the authorized Display Space Sales area is not permitted, and violations of such will be fined at \$250.00 per day as per City Code 32-19 ©. More than two (2) repeat violations by **TENANT** in a twelve (12) month period shall be considered a condition of default and shall be grounds for Lease termination proceedings as provided in Article 18.

12. RULES AND REGULATIONS

- 12.1 **TENANT** covenants and agrees that **TENANT**, its employees, and invitees will comply with reasonable rules and regulations set by **CITY** from time to time for the efficient operation of the Farmers Market Plaza, including but not limited to the following:
- 12.1.1 To use The Leased Premises only for the purposes permitted in Article 2; and
 - 12.1.2 To keep the Leased Premises in a condition acceptable to **CITY** and to not commit or permit any waste of said property; and
 - 12.1.3 To not commit nor permit the maintenance or commission of any nuisance on the Leased Premises and to not commit or permit the use of the Leased Premises for any unlawful purpose; and
 - 12.1.4 To not permit any person on the Leased Premises to willfully or wantonly destroy, deface, damage, impair or remove any part of the Leased Premises or appurtenance thereto. In particular, **TENANT**, shall not drive or permit to be driven any nails, hooks, tacks, screws, or stakes into the Leased Premises; and
 - 12.1.5 To not use nor permit the use of any explosive, flammable, or otherwise dangerous materials, equipment, or goods; and
 - 12.1.6 To properly and safely use and operate all electrical, gas, and plumbing fixtures, equipment, or appliances connected thereto, and to keep them clean and sanitary; and
 - 12.1.7 To keep the Common Area immediately adjoining the Leased Premises, including sidewalk, free and clear at all times of any obstructions; and

- 12.1.8 To collect and dispose of all rubbish, garbage, litter or other waste in accordance with **CITY** policy (this clause shall not relieve **CITY** of its routine maintenance and clearing obligations); and
- 12.1.9 To observe and comply with all the laws of the United States, the State of Texas, and Ordinances of the City of San Antonio; and
- 12.1.10 To not place nor permit the placement or use of game or video coin-operated machines or coin-operated (pay) telephones, public telephones, vending machines, and/or associated equipment of any kind whatsoever on the Leased Premises, regardless of whether installed at **TENANT'S** expense or not; and
- 12.1.11 To not obstruct nor permit the blockage of any entrance, passageway, electrical panel rooms, **CITY** storage rooms, or exit; and
- 12.1.12 To not use nor permit the use of loudspeakers, bull horns, strobe lights, or other bright, loud, or distracting devices, including radios; and
- 12.1.13 To not conduct nor permit the conduct of any auction, going out of business sale, or salvage sale on or about the Leased Premises; and
- 12.1.14 To not use the Leased Premises for the storage of materials, inventory or supplies, except in accordance with rules and regulations promulgated by the **CITY**; and
- 12.1.15 To not discriminate nor permit discrimination on the part of **TENANT'S** agents or employees on account of race, color, religion, national origin, sex, or handicap in the use of, or admission to the Leased Premises; and
- 12.1.16 To not use Common Area ceilings for storage without prior written permission of the Market Square Office; and
- 12.1.17 To not display, sell, give away, or otherwise distribute or keep live animals, including, but not limited to birds, snakes, chickens, fish, or turtles; and
- 12.1.18 To not display or promote any activity or method of operation on or about the Leased Premises which exposes patrons thereof to nudity or partial nudity. For purposes of this provision, the following definitions apply:
 - 12.1.18.1 Nudity means total absence of clothing or covering for the human body; and
 - 12.1.18.2 Partial nudity means exposure of the female breast or the exposure of the male or female pubic area or buttocks.
- 12.1.19 The Market Square Facilities Coordinator may make any other necessary rules and regulations in conjunction with the operation of Market Square, **TENANT** will be advised at least ten (10) days in advance in writing of any such proposed rules and regulations.
- 12.2 Should **CITY** provide handicapped accessible ingress and egress in specific locations, **TENANT** agrees to not block or otherwise cause the access way to be nonfunctional without providing an alternative means of access approved in writing by the Market Square Office of the City of San Antonio.
- 12.3 **TENANT** shall not place nor permit the display of any merchandise in the Common Area. Encroachment of the Common Area is subject to a fine, as noted in Section 11.2 above.
- 12.4 **TENANT** agrees to be bound by the provisions of the City Code Chapter 32. Article II. Market Square, as such may be amended or hereafter changed. Should such language conflict with this Lease Agreement, City Code language shall be controlling.

- 12.5 **TENANT** agrees to abide by Exhibit "C", Farmers Market Criteria and Exhibit "D", Farmers Market Operations and Maintenance Guidelines, which are attached.

13. INDEMNIFICATION

- 13.1 **TENANT** covenants and agrees to **FULLY INDEMNIFY** and **HOLD HARMLESS**, the **CITY** and the elected officials, employees, officers, directors, volunteers and representatives of the **CITY**, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the **CITY** directly or indirectly arising out of, resulting from or related to **TENANT'S** activities under this **AGREEMENT**, including any acts or omissions of **TENANT**, any agent, officer, director, representative, employee, consultant or subcontractor of **TENANT**, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this **AGREEMENT**, all without however, waiving any governmental immunity available to the **CITY** under Texas Law and without waiving any defenses of the parties under Texas Law. The provisions of this **INDEMNIFICATION** are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. **TENANT** shall promptly advise the **CITY** in writing of any claim or demand against the **CITY** or **TENANT** known to **TENANT** related to or arising out of **TENANT'S** activities under this **AGREEMENT** and shall see to the investigation and defense of such claim or demand at **TENANT'S** cost. The **CITY** shall have the right, at its option and at its own expense, to participate in such defense without relieving **TENANT** of any of its obligations under this paragraph.
- 13.2 It is the **EXPRESS INTENT** of the parties to this **AGREEMENT**, that the **INDEMNITY** provided for in this Article (**ARTICLE 13**), is an **INDEMNITY** extended by **TENANT** to **INDEMNIFY**, **PROTECT** and **HOLD HARMLESS**, the **CITY** from the consequences of the **CITY'S OWN NEGLIGENCE**, provided however, that the **INDEMNITY** provided for in this section **SHALL APPLY** only when the **NEGLIGENT ACT** of the **CITY** is a **CONTRIBUTORY CAUSE** of the resultant injury, death, or damage, and shall have no application when the negligent act of the **CITY** is the sole cause of the resultant injury, death, or damage. **TENANT** further **AGREES TO DEFEND**, **AT ITS OWN EXPENSE** and **ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY**, any claim or litigation brought against the **CITY** and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this **INDEMNITY** shall apply, as set forth above.

14. INSURANCE REQUIREMENTS

- 14.1 Any and all employees, representatives, agents or volunteers of **TENANT** while engaged in the performance of any work required by the **CITY** or any work related to a license of space or Concession Agreement with the **CITY** shall be considered employees, representatives, agents or volunteers of **TENANT** only and not of the **CITY**. Any and all claims that may result from any obligation for which **TENANT** may be held liable under any Workers' Compensation, Unemployment Compensation or Disability Benefits law or under any similar law on behalf of

said employees, representatives, agents or volunteers shall be the sole obligation and responsibility of **TENANT**.

- 14.2 Prior to the commencement of any work under this Lease Agreement, **TENANT** shall furnish an original completed Certificate(s) of Insurance to the **CITY'S** Director, Parks and Recreation Department and City Clerk's Office, which shall be completed by an Agent Authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The Original Certificate(s) must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the **CITY**. The **CITY** shall have no duty to pay or perform under this Lease Agreement until such certificate shall have been delivered to the **CITY'S** Director, Parks and Recreation Department and the City Clerk's Office, and no officer or employee shall have authority to waive this requirement.
- 14.3 The **CITY** reserves the right to review the insurance requirements of this section during the effective period of the Lease Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by the **CITY'S** Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding the Lease Agreement, but in no instance will the **CITY** allow modification whereupon the **CITY** may incur increased risk.
- 14.4 A **TENANT'S** financial integrity is of interest to **CITY**, therefore, subject to **TENANT'S** right to maintain reasonable deductibles in such amounts as are approved by **CITY**, **TENANT** shall obtain and maintain in full force and effect for the duration of the Lease Agreement, and any extension hereof, at **TENANT'S** sole expense, insurance coverage written, on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to the **CITY**, in the following types and amounts:

	TYPE	AMOUNT
1.	Workers' Compensation and Employers Liability	Statutory \$500,000/\$500,000/\$500,000
2.	Commercial General (Public) Liability Insurance to include coverage for the following:	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence or its equivalent. \$2,000,000.00 Aggregate.
	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.	Motor Truck cargo insurance including loading and unloading coverage; written on an Inland Marine form and an all risk basis.	\$1,000,000
5.	Property Insurance: For physical damage to the property of TENANT , including improvements and betterment to the Leased Premises	Coverage for a minimum of eighty percent (80%) of the actual cash value of TENANT'S property
6.	Liquor Liability (if applicable)	\$1,000,000 per occurrence, aggregate of \$2,000,000

14.5 The **CITY** shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the **CITY**, and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Upon such request by the **CITY**, the **TENANT** shall exercise reasonable efforts to accomplish such changes in policy coverage and shall pay the cost thereof.

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

14.6.1 Name the **CITY** and its officers, employees, volunteers and elected representatives as **Additional Insureds** as respects operations and activities of, or on behalf of, the named

insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;

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

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

14.7 **TENANT** 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

14.8 If **TENANT** fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the **CITY** may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the Lease Agreement. Procuring of said insurance by the **CITY**, however, is not the exclusive remedy for failure of **TENANT** to maintain said insurance or secure said endorsements. In addition to any other remedies the **CITY** may have upon **TENANT'S** failure to provide and maintain any insurance or policy endorsement to the extent and within the time herein required, the **CITY** shall have the right to order **TENANT** to stop work hereunder, and/or withhold any payment(s) which become due to **TENANT** hereunder until **TENANT** demonstrates compliance with the requirements hereof.

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

14.10 All personal property placed in the Leased Premises shall be at the sole risk of **TENANT**. **CITY** shall not be liable, and **TENANT** waives all claims for any damage either to the person or property of **TENANT** or to other persons due to the Leased Premises or any part of appurtenances thereof becoming out of repair or arising from bursting or leaking of water, gas, waste pipes, or defective wiring or excessive or deficient electrical current; or from any act or omission of employees, or other occupants of the Leased Premises, or any other persons; due to the happening of any accident in or about said Leased Premises. **TENANT** shall save and hold harmless **CITY** from any claims arising out of damage to **TENANT'S** property or damage to **TENANT'S** business, including subrogation claims by **TENANT'S** insurers.

15. FIRE AND OTHER CASUALTY

15.1 In the event that the Leased Premises, or the building of which the same is a part, shall be partially damaged by fire, the elements, civil disorder, or other casualty, the Leased Premises and, to the extent necessary for **TENANT** to continue its business on the Leased Premises, the

building or portions thereof shall be repaired at the expense of the **CITY** without unreasonable delay unless the **CITY**, at its sole discretion, determines that the damage is so extensive that repair or rebuilding is not practical. In such event, at the option of the **CITY**, and upon notice to **TENANT**, this Lease Agreement shall cease and come to an end and the rent shall be apportioned and paid up to the date of such damage.

- 15.2 The **CITY'S** obligations to rebuild or repair shall be limited to the extent of insurance proceeds available to the **CITY** for such rebuilding or repair.

16. HOLDING OVER

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

17. ASSIGNMENT AND SUBLETTING

- 17.1 Except as provided under "DEATH BENEFIT" and in accordance with City Code Section 32-73, **TENANT** shall not assign the Lease Agreement and business conducted on the Leased Premises or any interest therein.
- 17.2 **TENANT** shall not sublet the Leased Premises or any part thereof or interest therein. Any subletting shall be null and void and **CITY** shall have the right to terminate this Lease Agreement with ten (10) days written notice, unless **TENANT** complies with the provisions of Section 17.3 herein.
- 17.3 The receipt by the **CITY** of rent from an assignee, or occupant of the Leased Premises shall not be deemed a waiver of the covenant in this Lease Agreement against assignment and/or an acceptance of the assignee, or occupant as a **TENANT**, or a release of the **TENANT** from further observance or performance by the **TENANT** of the covenants contained in this Lease Agreement. No provision of this Lease Agreement shall be deemed to have been waived by the **CITY** unless such waiver is in writing and signed by the **CITY**.
- 17.4 In accordance with **CITY** policy, codified as Section 32-104 of the City Code, **TENANT** is expressly prohibited from entering into any independent contracts or independent contract relationships with anyone in relation to the business or operation thereof conducted on the Leased Premises, which amounts to any assignment or subletting of the Leased Premises as determined solely by the **CITY**.
- 17.5 In the event the **CITY** suspects that the business on the Leased Premises is being operated by a person other than the **TENANT**, the **CITY** has the right, but not the duty, to inspect all of the books and records, to include but not be limited to, employment contracts, monthly operating expenses and reports, and accounts payable ledgers, if **CITY** reasonably believes that an assignment or subletting of the premises has occurred without **CITY'S** written approval.
- 17.6 In the event that the **CITY** determines that another person other than the **TENANT** is operating the business on the Leased Premises, the **CITY**, at its option, may declare the Lease Agreement terminated upon ten (10) days written notice.

17.7 **CITY** shall have the right to transfer and assign, in whole or in part, any of its rights under this Lease Agreement, and in the building and property referred to herein; and **CITY** shall by virtue of such assignment be released from such obligations, which are assumed by the assignee.

18. DEFAULT AND REMEDIES

- 18.1 The following events shall be deemed to be events of default by **TENANT** under this Lease Agreement in addition to any other events set forth herein:
- 18.1.1 **TENANT** shall fail to pay any installment, additional fees, penalty or rent as provided for in this Lease Agreement and shall not cure such failure within ten (10) days after the due date of such rent.
 - 18.1.2 **TENANT** shall fail to operate or conduct business as prescribed by the **CITY** in Article 2, except on account of casualty, damage, remodeling or when the prior written consent of **CITY** is given.
 - 18.1.3 **TENANT** shall fail to comply with any term, provision or covenant of this Lease Agreement, other than the payment of rent, and shall not cure such failure within ten (10) days after written notice thereof to **TENANT**.
 - 18.1.4 **TENANT**, shall within ninety (90) days following the Commencement Date, fail to take possession of the Leased Premises, or having taken said possession, fail to open such Leased Premises for the conduct of business.
 - 18.1.5 **TENANT** deserts or vacates all or any part of the Leased Premises; **TENANT** will be deemed to have deserted or vacated the premises if, by any method or manner whatsoever, **TENANT** assigns, transfers, sells or sublets its interest or right to the Leased Premises without the prior written consent of the **CITY**.
 - 18.1.6 The taking by a court of competent jurisdiction of **TENANT** and its assets pursuant to proceedings under the provisions of any Federal or State reorganization code or act, insofar as the following enumerated remedies for default are provided for or permitted in such code or act.
- 18.2 Upon the occurrence of an Event of Default as heretofore provided, **CITY** may, at its option, declare this Lease Agreement, and all rights and interests created by it, terminated. Upon **CITY** electing to terminate, this Lease Agreement shall cease and come to an end as if that were the day originally fixed herein for the expiration of the term hereof. **CITY**, its agents or attorney may resume possession of the Leased Premises and relet the same for the remainder of the original term for the best rent **CITY**, its agents or attorney may obtain for the account of **TENANT**, who shall make good any deficiency.
- 18.3 Any termination of this Lease Agreement as herein provided shall not relieve **TENANT** from the payment of any sum or sums that shall then be due and payable or become due and payable to **CITY** hereunder, or any claim for damages then or theretofore accruing against **TENANT** hereunder, and any such sum or sums or claim for damages by any remedy provided for by law, or from recovering damages from **TENANT** for any default hereunder. All rights, options and remedies of **CITY** contained in this Lease Agreement shall be cumulative of the other, and **CITY** shall have the right to pursue any one or all of such remedies or any other remedy or relief available at law or in equity, whether or not stated in this Lease Agreement. No waiver by **CITY** of a breach of any of the covenants, conditions or restrictions of this Lease Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition or restriction herein contained.

18.4 Upon any such expiration or termination of this Lease Agreement, **TENANT** shall quit and peacefully surrender the Leased Premises to **CITY**, and **CITY**, upon or at any time after such expiration or termination, may without further notice, enter upon and re-enter the Leased Premises and possess and repossess itself thereof, by force, summary proceedings, ejectment or otherwise, and may dispossess **TENANT** and remove **TENANT** and all other persons and property from the Leased Premises. Any property left on the premises shall be deemed abandoned and **CITY** may dispose of same by private or public sale or otherwise without further legal action by **CITY** or liability to **TENANT** therefore.

19. SEPARABILITY

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

20. AMENDMENT

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

21. TAXES AND LICENSES

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

22. NOTICES

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

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

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 TENANT shall be deemed sufficient if in writing and mailed, Certified mail, Postage Prepaid, addressed to TENANT at the address shown below TENANT'S signature line, or hand-delivered to TENANT.

23. DEATH BENEFIT

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

24. CONSUMER PROTECTION

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

25. TEXAS LAW TO APPLY

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

26. CONFLICT OF INTEREST

- 26.1 TENANT 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 a financial interest in any contract with the City or any City agency, such City-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or services, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee, or his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10%) percent or more of the voting stock or shares of the business entity, or ten (10%) percent or more of the fair market values of a business entity; a business entity in which any

individual or entity above is listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

- 26.2 **TENANT** warrants and certifies, and this Lease Agreement is made in reliance thereon, that he, his officers, employees and agents, are neither officers or employees of the City of San Antonio or any of its agencies such as City-owned utilities.

27. LIEN FOR RENT

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

28. TENANT'S RIGHT TO QUIET ENJOYMENT

- 28.1 The relationship created herein by this Lease Agreement is that of Landlord and **TENANT** and not an agency or partnership. In accordance therewith, and subject to the conditions listed in Article 1 and subject to **TENANT'S** performance of all covenants herein made by **TENANT**, the **CITY** agrees that **TENANT** shall and may peaceably and quietly have, hold, and enjoy the Leased Premises.

29. GENDER

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

30. CAPTIONS

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

31. AUTHORITY

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

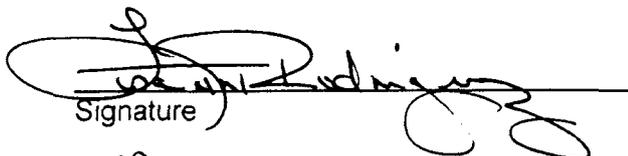
WITNESS, the signature of the parties hereto in multiple originals, this the _____ day of _____, 2006, **TO BE EFFECTIVE AS OF** ("Commencement Date") April 1, 2006.

**CITY OF SAN ANTONIO,
A Texas Municipal Corporation**

TENANT:

Ms. Lisa Rodriguez d/b/a Baptisml Boutique

By: _____
City Manager


Signature

ATTEST:

City Clerk

OWNER
Title

7805 W. Military Dr. W.
Residence Address

San Antonio TX 78227
City, State, and Zip Code

APPROVED AS TO FORM:

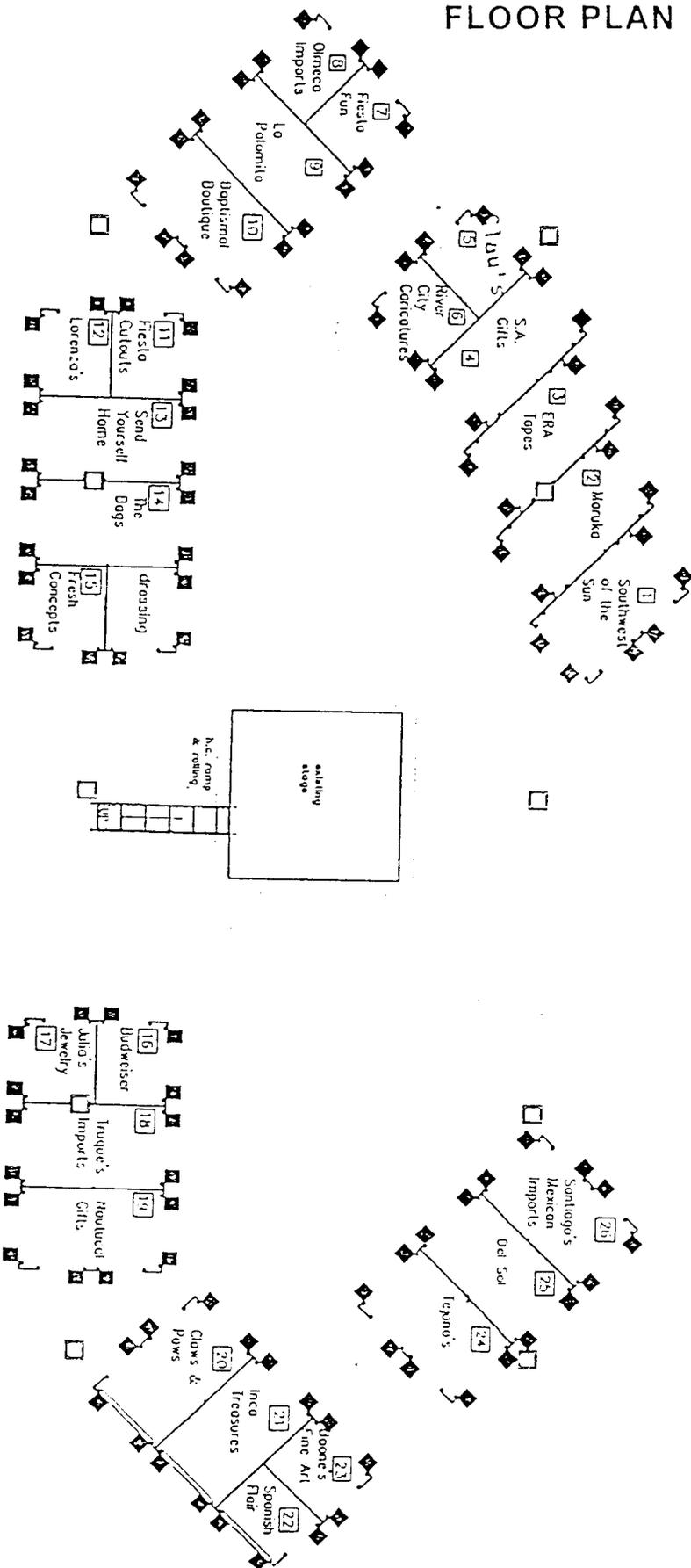
City Attorney

210-675-5600
Area Code/Telephone Number Residence

210-226-6442
Area Code/Telephone Number Business

EXHIBIT "A"

FLOOR PLAN



6 6 6 6

EXHIBIT "B"

BAPTISMAL BOUTIQUE AND LOVING TRADITIONS

**LEASE/ STORE STALL
MERCHANDISE USE CLAUSE**

STORE TALL NUMBER S-10

Apparel and Accessories Merchandise related to:

FIRST COMMUNION
QUINCEANERA - DEBUT
SWEET "16"
WEDDINGS
CHRISTENING
BAPTISMAL
CONFIRMATIONS
RCIA
PARTY DRESSES
RELIGIOUS ITEMS

SUBMITTED BY:



DATE:

2/5/04

ACKNOWLEDGED BY:



DATE:

2/5/04

MERCHANDISING OUTSIDE OF YOUR LEASE:

- *At each 10'-wide door opening select one option:
- A) Two - 2' X 2' X 6' high areas; or, B) One - 2' X 5' X 4' high merchandising area.
- *At each 6'-wide door openings select one option:
- A) One - 2' X 2' X 6' high areas; or, B) One - 2' X 3' X 4' high merchandising area.
- *Merchandise cannot extend more than 2 feet outside of lease line; No chairs outside of lease.
- *Display fixtures in the "outside merchandising zone" may remain outside of your lease after business hours. However, it is the responsibility of the tenant to secure the display and contents.
- *All exterior merchandising fixtures shall be anchored to floor with concealed fasteners.
- *No merchandising in front of or on the exterior walls of the lease.
- *No merchandising on columns OUTSIDE of your lease space

MERCHANDISING INSIDE OF YOUR LEASE:

- *Do not attach merchandisers of new walls to the thin metal wall lease divider panels with either nails, screws, or adhesives.
- *Merchandising is to be displayed on either free-standing wall cabinets, or by building a wall that attaches to the top beam structure metal angle and floor, and braced at the horizontal steel tube that runs approximately 5 feet above the ground (See details)
- *Floor and wall finishes are to be submitted to City Management for approval prior to installation or construction.
- *Columns inside the lease space may be merchandised with approval of Management - tenant must submit drawings and specifications of any construction improvements to columns.
- *Items may be suspended from the overhead wire grid; however, the items suspended must not cause the overhead grid to sag more than 1/2 inch at the center of the space.
- *Keep floor clear for 3 feet deep inside door openings - see plan drawing.

SIGNAGE EXISTING SIGNAGE:

- *The Tenants may reuse their existing exterior signs only if they have been inspected and approved by City Management.
- *The Tenants may purchase new exterior signs to match the Existing Sign Criteria.

NEW SIGNAGE:

- *The Tenants may purchase new signs for the exterior of their lease if they meet the following criteria:
- A) Sign size is a maximum of 18 inches high X 6 inches deep X 6 feet wide in size.
- B) Signs may be illuminated.
- C) Signs shall be professionally constructed with no exposed wiring and with hidden fasteners and attachment.
- D) Signs shall be centered above the door opening
- E) One sign may be located at each exterior side, centered above the door opening. Where there are two door openings on one side, the Tenant may select which opening to position the sign above.
- F) The power for the signs must fall below the maximum amperage of the electrical circuiting.

NOTE:

Design drawings and specifications for both existing and new signs must be submitted to City Management for review and approval prior to sign fabrication and installation.

SUBMITTAL REQUIREMENTS:

- Tenants shall submit the following drawings and specifications to City Management for review and written approval in order to start construction:
- 1) FLOOR PLAN AT 1/4" SCALE SHOWING GENERAL LAYOUT OF DISPLAYS AND 3-FOOT CLEAR SETBACK AT DOOR OPENINGS.
- 2) WALL ATTACHMENT DETAILS FOR ALL NEW WALLS.
- 3) INTERIOR PAINT SPECIFICATIONS AND COLOR SAMPLE(S)
- 4) FLOOR FINISHES SPECIFICATIONS AND MATERIAL SAMPLE(S)
- 5) EXISTING SIGNS: SUBMIT PHOTOS OF THE SIGN AND DETAILS OF HOW IT WILL BE ATTACHED.
- 6) NEW SIGNS: SUBMIT DESIGN DRAWINGS SHOWING THE SIGN FACE, CROSS-SECTION DETAIL SHOWING MATERIALS USED, AND DETAILS OF HOW IT WILL BE ATTACHED. INCLUDE POWER REQUIREMENTS; INCLUDE LIGHT SOURCE SPECIFICATIONS IF IT IS TO BE ILLUMINATED.

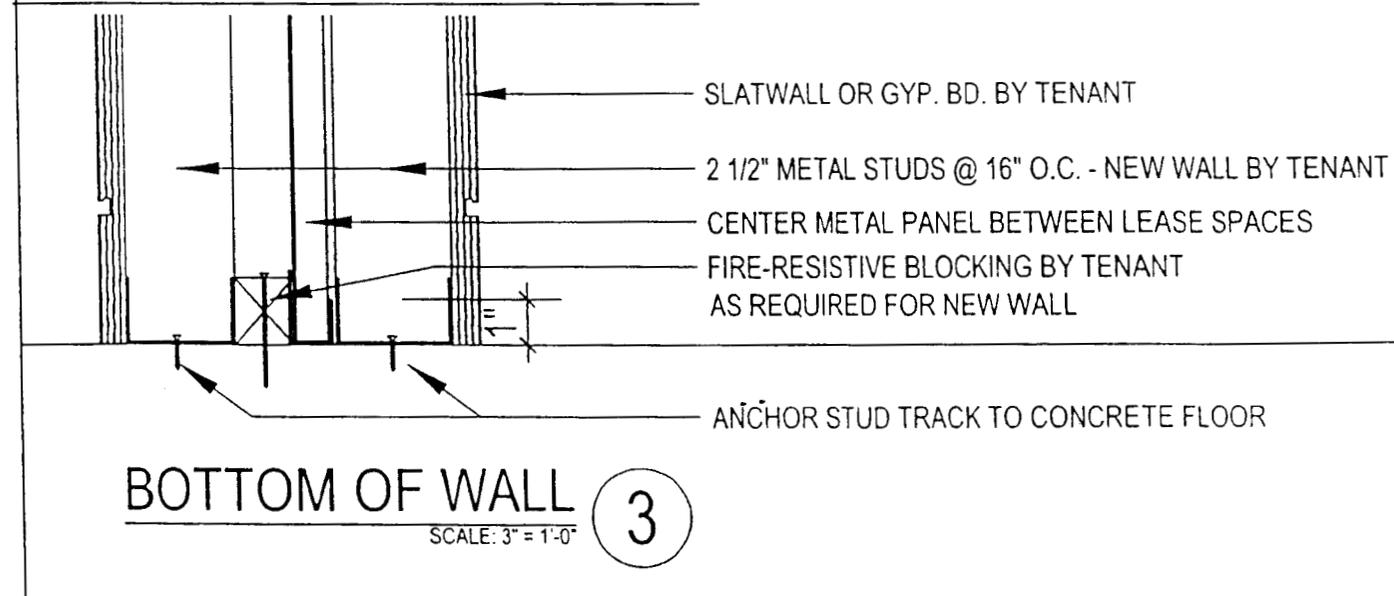
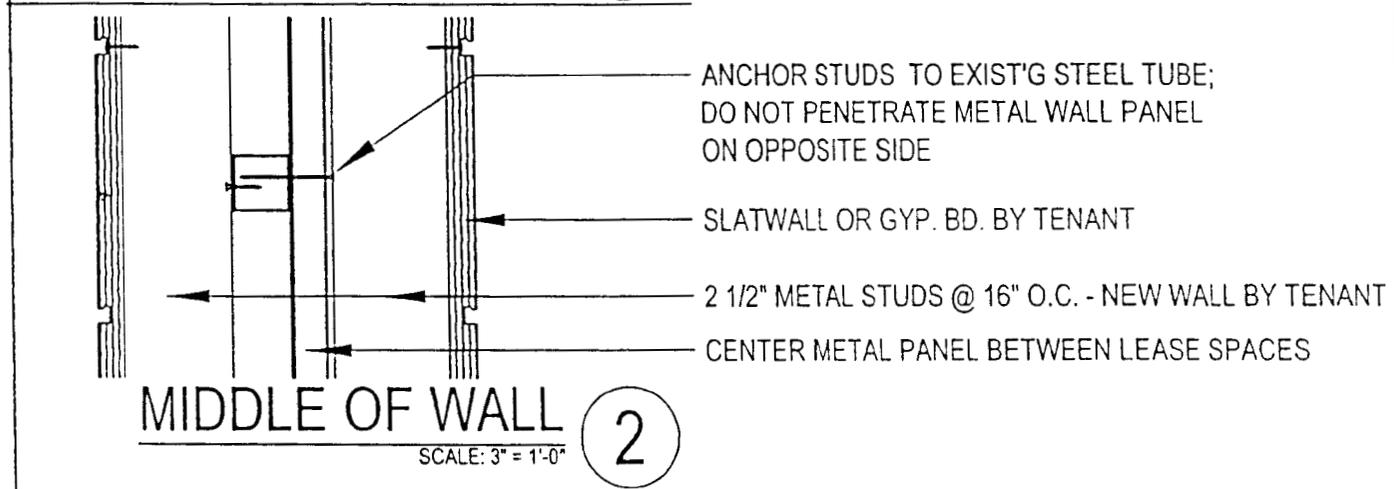
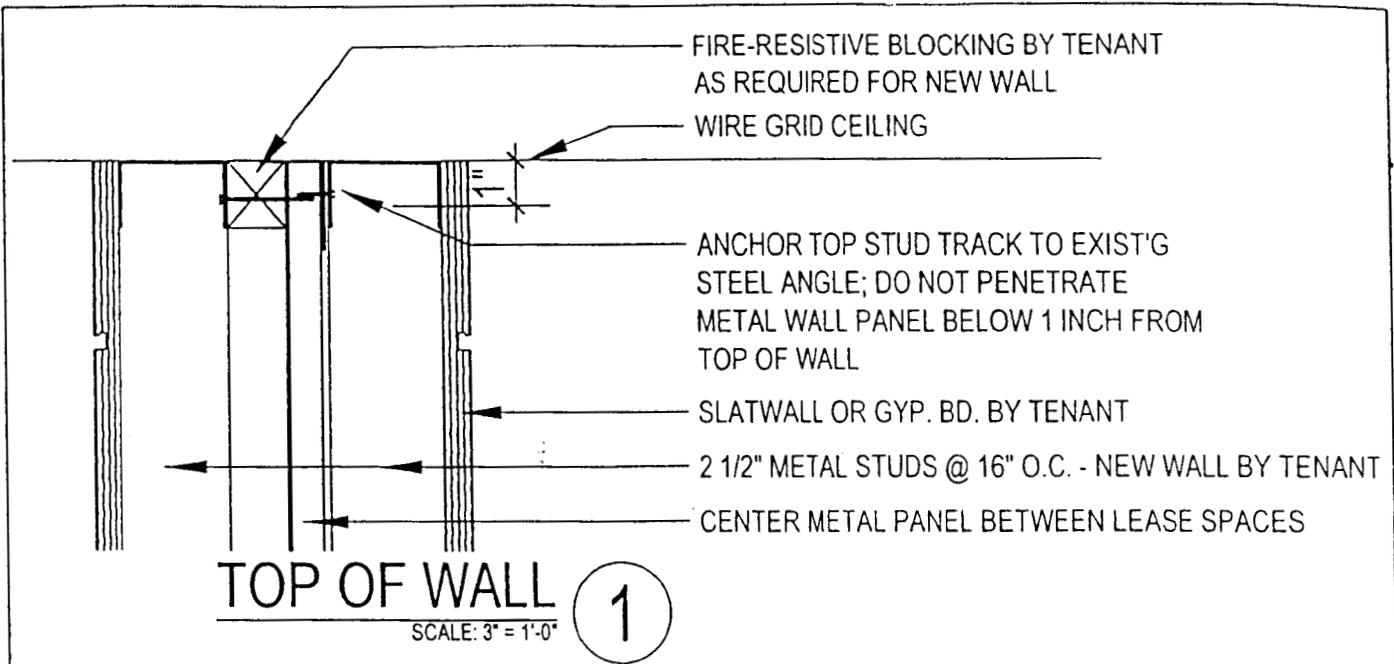
GENERAL NOTES:

- *TENANT TO FIELD VERIFY ALL DIMENSIONS OF LEASE SPACE PRIOR TO CONSTRUCTION.

Exhibit C

City of San Antonio
 Farmers Market Plaza
 Tenant Criteria

2-3-04



Farmers Market Operations and Maintenance Guidelines

(11/23/93 updated 1/28/04)

PURPOSE:

The main purpose of this manual is for the tenants of the Farmers Market Plaza building and the Market Square Management to have a guide in the operations and maintenance of individual store spaces and the common area.

OPERATING HOURS:

The retail operations of this building will commence from 10:00 a.m. through 6:00 p.m., during the months of January, February, March, April, May, September, October, November, December and 10:00 a.m. – 8:00 p.m. during the months of June, July, and August, Monday – Sunday. The building will officially open one hour prior to retail hours and close one hour after. At that time all persons must leave the building.

Tenants are required to open and close their stores during the stated retail operating hours seven days per week. The building will be closed New Year's Day, Easter, Thanksgiving Day, and Christmas Day. The Market Square Facilities Operations Coordinator will post any other holiday requiring the closing of the building.

STORE SECURITY:

Tenants should be knowledgeable in designing a store floor plan that is low in profile enabling employees to keep watch over customer activities. In hard to see areas the use of mirrors may improve visibility. Tenants should instruct all employees that in the case of robbery where the person is armed or the employees are threatened with any physical danger to cooperate with the robber. Once the robber has left the store the employee must notify the San Antonio Police immediately.

DELIVERIES:

Merchandise deliveries are permitted through the side storage area entrances one located on West Commerce and the other on Market Street. The Food Court tenants have been provided with rear entrances and must use the same entrance doors for their deliveries. Any tenant who rents back room storage space must received their deliveries through these entrances the same as Food Court tenants. It is important that each tenant delivery should take place in an efficient, swift and safe manner.

MAINTENANCE:

The overall cleanliness of the entire building including all tenants spaces is important to the presentation and image of the building to the public. Every tenant and all employees should take pride in keeping the facility spotless.

Common areas, restrooms, food court dining area and building exterior are the responsibility of the Market Square Maintenance Crew assigned to the building. Their responsibilities include cleaning food court tables, emptying common area trash receptacles and general cleaning and maintenance of the common area. Tenants are responsible to notify Market Square Facilities Operations Coordinator in the event that an area is not being kept properly clean and maintained.

Tenants are responsible for keeping their store floors clean, shelves, merchandise, display fixtures and for those tenants with glass windows the interior of those windows. Market Square Facilities Operations Coordinator has the right to inspect tenant stores for upkeep. If the tenant is not keeping the space clean to the standards of the Market Square Facilities Operations Coordinator, the Facilities Operations Coordinator has the right to notify the tenant in writing as to the items needing attention and that they be completed in 24 hours. In the event the tenant does not correct the items on the list in the 24-hour period the Facilities Operations Coordinator has the right to send in a maintenance crew to correct those items and bill the tenant for the labor and supplies used.

Restrooms take the most abuse. It is the responsibility of all tenants and employees to notify the Building Maintenance Crew or Market Square Facilities Operations Coordinator if it needs immediate attention.

Maintenance crews cannot be everywhere at all times. We would encourage tenants and employees that if they see paper or cigarette butts in the common area to stop, pick it up and dispose of it in the nearest trash receptacle. The cleanliness of the building makes an impression on the customers; help them to enjoy this facility and an enjoyable longer shopping visit.

LIGHTING & ELECTRICAL:

Each store has been provided with light units. It is the responsibility of each tenant to maintain the light bulbs in their stores. Any additional light fixtures added to the store must be approved by the Market Square Facilities Operations Coordinator. TENANT is limited to the number of current electrical circuits installed per store stall ("LEASED PREMISES"). No additional circuits may be installed on Leased Premises. The same is in accordance with the addition of any electrical equipment that will put an unsafe load on the circuit. Any lighting or electrical additions done without permission from the Market Square Facilities Operations Coordinator and causes damage to the building will be the responsibility of the tenant. The Market Square Facilities Operations Coordinator has the right to enter the premises and repair the damage and bill the expense to the tenant. Non-payment of this bill will be regarded as default in a rental payment, with termination of the lease and eviction as forthcoming.

STORE SIGNAGE:

Exterior sign standard size is 18" x 6' x 6". Signs may be illuminated. Signs shall be professionally constructed with no exposed wiring and with hidden fasteners and attachment. Signs shall be centered above the door opening. One sign may be located at each exterior side, centered above the door opening; where there are two door opening son one side, the Tenant may select which opening to position the sign above. The power for the signs must fall below the maximum amperage of the electrical circuiting. No other signs may be used on the exterior, which faces the common area. **Design drawings and specifications for both existing and new signs must be submitted to City for review and approval prior to sign fabrication and installation.**

Interior and exterior store windows. Those stores who have windows facing the common area and glass archway window may not hang or tape any signage on the glass. Tenants are limited to signs not larger than 8 ½" x 11" or standard poster size 22" x 28" and may only be displayed in an approved sign holder (stanchion).

Merchandising signs are recommended to use a printed, press on type or a professional lettering treatment rather than handwritten signs.

Exterior store signs are not permitted on the outside of the building.

STORE FIXTURES:

Retail In-line and Store Stalls are limited to store fixtures composed of wooden and chrome waterfalls, antique furniture, natural wood furniture, shelving, glass and wood cases, and any other fixture that is acceptable to Market Square Management. Prohibited is the use of cinder blocks, make shift display tables and plywood shelving.

Seating of customers and employee spaces in the sales area of the store are limited to either solid wood (unpainted, stained or natural finish) chairs or canvas and wood director chairs.

Special Truck areas are restricted to natural wood shelves, or white wire mesh systems, natural wood boxes, PVC piping for display fixtures. Only canvas and wood director's chairs may be used for seating. They may be tall or short, color is restricted to red, yellow or blue.

STORE LEASE LINES:

In-line retail stores are permitted a sales display space. That display space is measured between the stores middle of the left demising wall and the middle of the right demising wall and not to project in excess of three feet (3.0') from their storefront. Merchandise displayed in the display area outside the store must not exceed 40" (inches) in overall height from floor to top of merchandise. Tenants may use the iron gates to their store for display purposes. This space is included in the total square footage of each store. All tenants are responsible for removing that merchandise each night to allow maintenance workers to clean the floor area in front of each store. Any merchandise not removed from the specified area will be confiscated and donated to charity.

Store Stalls: At each 10' wide door opening select one option: (a) Two - 2' x 2' x 6' high areas; or (b) One - 2' x 5' x 4' high merchandising area. At each 6' wide door openings select one option: (a) One - 2' x 2' x 6' high areas; or (b) One - 2' x 3' x 4' high merchandise area. Merchandise cannot extend more than 2 feet outside lease line; No chairs outside of lease area. Display fixtures in the "outside merchandising zone" may remain outside of your lease area after business hours; however, it is the responsibility of the tenant to secure the display and contents. All exterior merchandising fixtures shall be anchored to floor with concealed fasteners. No merchandising in front of or on the exterior walls of the lease space.

Food Court tenants may not extend past their counter lines

Specialty trucks may not extend past their lease line. From middle of left demising wall to middle of right demising wall and not extend or project more than three feet (3.0') from their storefront or lease line

NOISE:

Stores are restricted from playing music loudly that it becomes annoying to customers and adjoining stores. Television sets permitted only for the purpose of selling merchandise demonstration arts & craft being made, or for promotional purposes. The use of any manufacturing equipment that is abusively noisy is strictly prohibited. The Market Square Manager will determine the acceptability of the noise level.

FOOD COURT TENANTS:

All restaurants must adhere to regular inspections of their premises by the Market Square Facilities Operations Coordinator. It is imperative that all restaurants keep their space up to the health code standards and if questionable the Market Square Facilities Operations Coordinator may order a health code inspection.

The Market Square Management will provide bus crews to maintain and clean the Food Court seating area. It is the responsibility of each tenant to notify the Facilities Operations Coordinator if this area is not being properly cleaned and maintained by the crew.

SPECIAL EVENTS STAGE:

The Farmers Market Plaza has a fully equipped special events stage. All staged special events are approved and coordinated through the Market Square Facilities Operations Coordinator office. The Market Square Facilities Operations Coordinator office will maintain a calendar of events, schedule, promote and approve any activities whatsoever that takes place on the stage. No tenant may use the stage without written permission from the Market Square Facilities Operations Coordinator office.

ALTERATIONS:

No alterations may be made to store exterior. The store interior space may not be altered without submitting a plan for approval by the Market Square Facilities Operations Coordinator which includes, paint, wallpaper, lighting and construction of any permanent display fixtures, or attachment to the walls, ceilings or floors, etc.