

EL MERCADO LEASE AGREEMENT

{ Insert TENANT NAME d/b/a BUSINESS NAME }

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1. Basic Information, Definitions.

Authorizing Ordinance:

Landlord: City of San Antonio

Landlord's Address: P.O. Box 839966, San Antonio, Texas 78283-3966
(Attention: Center City Development & Operations Department)

Tenant: TENANT NAME d/b/a BUSINESS NAME

Tenant's Address: _____, San Antonio, Texas ____

Premises: 514 W. Commerce Street, San Antonio, Bexar County, Texas, within the area commonly known as the El Mercado at Market Square and is depicted on the attached **Exhibit A "Floor Plan"**.

Total leasable area is _____square feet (the "Premises").

Permitted Use: Tenant's use shall be for specific purpose of sale of _____and attached as **Exhibit B**.

Commencement Date: Lease Begins Upon Execution

Set up: The 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 El Mercado and will avoid duplication of the products sold by the existing Farmers Market and/or El Mercado **TENANTS**, to the extent possible.

Initial Term: 06/01/2020 – 5/31/2025

Security Deposit: None

Base Rent:

Retail \$_____/psf/month
2% increase every 2 years beginning in Year 3.

Maintenance (CAM) Fees

Garbage Fee: \$0.025/psf/month
Waste Collection will increase 2.5% each year beginning in Year 1.

Storage Fees: Storage Fees shall be Current Rate of \$_____/month.
Storage Fees shall be increased by 2.5% each year.

Utilities Fees: 75% of pro rata share /psf/month or actual usage if tenant has an assigned individual meter

Address for Payment of Rent: City of San Antonio, Finance Department Division,
Central Billing Station, P.O. Box 839975, San Antonio, Texas 78283-3975

Common Areas: All areas, space, equipment, facilities, and services provided from time to time by Landlord for the common use and benefit of the tenants of the El Mercado at Market Square Area, their employees, volunteers, agents, customers, and other invitees, including access roads, driveways, sidewalks, landscaped space, public washrooms, pedestrian walkways or plazas within El Mercado at Market Square.

Director: The Director of the City of San Antonio's Center City Development & Operations Department or such other successor department as designated by Landlord.

2. Grant, Use.

2.01. Landlord leases the Premises to Tenant, and Tenant takes the Premises from Landlord on the terms and conditions of this Lease.

2.02. Landlord hereby agrees to permit Tenant use of above described Premises. Tenant agrees that the Premises shall be used for the following purposes only, specifically the sale of:

For a “theme-based” use-clause in said Premises shown on the **attached Exhibit “B”**, and for no other purposes, unless previously approved by CITY.

2.02.01. Tenant agrees that it will cooperate with City in facilitating the 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

2.02.02. 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 City Center Development and Operations Director or designee. Any such change of more than twenty-five per cent (25%) in the product mix shown on said Exhibit “B” must be approved by the City Center Development and Operations Director or his designee. Any new use not on Exhibit “B” must also be approved by said City Center Development and Operations Director or his designee.

2.03.03. Tenant agrees not to sell weapons within Market Square. It is the intent of the city council that the term weapon shall include a firearm, handgun, club, illegal knife, knife, and any prohibited weapon listed in Texas Penal Code Section 46.05(a) and have the same meaning as said items are defined in Section 46.01, Texas Penal Code. Tenant agree not to sell pellet guns, replica guns, and toy guns that can be mistaken for a real gun.

2.02.04. 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 not be grounds, at CITY’S option, for termination of this Agreement upon ten (10) days’ written notice to TENANT.

2.03. The Tenant covenants and agrees that it will operate and conduct its business except during repairs, improvements, or emergencies or while the Premises are untenable by reason of fire or other casualty. The Tenant agrees to conduct its business in the Premises at all time in a first-class manner consistent with reputable business standards and practices for such business.

2.04. The Tenant agrees to maintain the following minimum hours of operation as

follows:

Month/Events	Hours of Operation
January, February, March, April, May, second to weeks of August, September, October, November, and December	10:00 a.m. to 6:00 p.m. each and every day unless otherwise provided herein.
June, July, and August	10:00 a.m. to 7:00 p.m. on Monday through Saturday, and 10:00 a.m. to 6:00 p.m. on Sunday, unless otherwise provided herein.
Fiesta	10:00 a.m. to 6:00 p.m.
Easter Sunday, Thanksgiving Day, Christmas Day, and New Year's Day	Closed

2.04.01. The Director or a designee of the Director shall have authority to approve temporary closings in emergency situations such as a death or medical emergency in the immediate family of Tenant or Tenant's employee. Tenant shall notify the Director within 24 hours of any such emergency closing.

2.04.02. The Director or a designee of the Director shall have authority authorize temporary closings in response to weather emergencies.

2.04.03. TENANT understands and agrees that any violation of the above stated operating hours requirements would be a material breach of this Agreement, that just compensation for the harm suffered by CITY that would be caused by such violations would be difficult to quantify, and that the following charges and procedures are a reasonable and good faith estimate by the parties of the extent of the damage which is reasonably certain to occur in the event of a violation:

The first violation shall result in a written notice from CITY.

The second violation TENANT shall pay CITY \$25.00.

The third violation TENANT shall pay CITY \$250.00.

The forth fourth violation TENANT shall pay CITY \$500.00.

At the Landlord's option, the fifth or any succeeding violation may be deemed a material breach and default and cause for lease termination without opportunity to cure.

2.04.04 Tenants are allowed to request extended hours of operation for special events as per section 2.04.05, Landlord shall not unreasonably deny said requests.

2.04.05 Inclement Weather: 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 El Mercado Tenants based on their majority vote, as to temporary closing and/or extended hour of operation.

2.05. Tenant Vacation. Tenant shall have the right to close their business for up to

fourteen (14) days per calendar year during the Term of this Lease. Tenant shall not close for more than seven (7) consecutive days. Tenant must provide Landlord with written notice of the Tenant’s intent to close their business at least seven (7) days prior to said closure.

3. Rent.

3.01. Rent includes all sums due to Landlord under this lease, whether Base Rent, Garbage Fees, Utilities Fees, reimbursement for repairing damages caused by Tenant, express liquidated damages provided for herein, or otherwise, no matter how denominated.

3.02. Base Rent is comprised of charges for leased retail space. Base Rent is as follows:

Lease Year	Begin June 1	Rate/Month (s.f)	Square Ft. *	Total Square Footage Rental
1	2020			
2	2021			
3	2022			
4	2023			
5	2024			
6	2025			
7	2026			
8	2027			
9	2028			
10	2029			

**Square footage listed here is for rental rate example purposes only.*

3.03 The lease rate will increase by 2% every two years but shall not exceed the 5% and market rate.

3.04 Dedicated Fund: Landlord hereby covenants and agrees it will place the Rent paid by Tenant into a dedicated fund to be used in support of maintenance and program activities for the Market Square (the “Maintenance and Program Fund”). All monies earned at Market Square including plaza rentals, parking fees, vendor fee, etc. shall be placed into the “Maintenance and Program Fund”. The Maintenance and Program Fund shall be considered an enterprise fund that is independently accounted for and shall not be co-mingled with the Landlord’s general fund.

3.05. GARBAGE FEES: TENANT agrees to pay to CITY at the Office of the City’s Department of Finance or at such other place as may be designated by the CITY in writing, a monthly garbage collection fee in the amount of \$0.025 per square foot on the first day of each

month, starting on January 1, and ending five (5) years thereafter, but subject to annual adjustment. Waste Collection and Storage Fees will increase 2.5% each year beginning in year 1.

3.06. UTILITIES: 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 seventy-five percent (75%) of the total for all such utility services. CITY agrees to pay the other twenty-five (25%) percent. In cases where individual meters are installed, TENANT agrees to pay the entire cost of such utility services.

3.06.01 TENANTS pro rata share utilities is based upon the square foot space that the TENANT leases from the City excluding any storage that the TENANT may be leasing from LANDLORD.

3.07. Rental, garbage and utility fees specified in this Article 3 are to be paid promptly on the first day of each month by check, credit card, debit card, 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's Department of Finance. 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) Dollar late charge will be assessed on any payment received on the eleventh (11th) day of the applicable calendar month or any day thereafter.

3.07.01 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 made late. All payments are considered late if not received in the City's Department of Finance office by the close of business on the first day of each month.

3.07.02 At any time during the Lease term more than two (2) Insufficient Funds checks are presented to City in payment of rental and other considerations during a two (2) calendar year period, TENANT will be placed on a cash or money order basis for the following two (2) Lease years. No exceptions will be made.

3.07.03 At any such time, should City's Department of Finance establish and issue uniform policies related to late payment of rent and/or Insufficient Funds checks, which may be contrary to the terms stated in subsections 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.

3.08. 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.

3.08.01 In the event of a Repeated Event of Default, City, without giving Tenant any notice and without affording Tenant any opportunity to cure the default, may terminate this Lease forthwith without notice to Tenant.

3.09. Tenant's covenant to pay Rent and Landlord's covenants are independent. Except as otherwise provided herein. Tenant may not abate Rent for any reason.

4. Common Areas.

4.01. "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 El Mercado, 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 the Section.

4.02. 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.

4.03. TENANT hereby agrees not to install or display any sign(s) in the "Common Area" (hereinafter defined) including the exterior portions or walls of the LEASED PREMISES, but excluding interior building walls, without prior approval of said sign(s) by the CITY. TENANT further agrees to comply with such sign criteria as may be established and amended from time to time by duly authorized CITY authority and to comply with established sign review procedures for proposed new signs. Only permanent signs relating to TENANT'S business shall be allowed.

4.03.1 Temporary signage, such as that used for special events, must be approved in writing, five (5) days in advance, by the City Center Development and Operations Director or designee, and removed immediately following the conclusion of the event.

4.04. Display Area is defined as the two (2) feet extending in front of TENANT'S LEASED PREMISES, where possible, if not already included in the computation of square footage of the LEASED PREMISES, and shall be provided at no charge to TENANT. NO VENDING MACHINES SHALL BE PLACED WITHIN THE DISPLAY AREAS WITHOUT APPROVAL OF City's Director designee of City Center Development and Operation. Where applicable to TENANT, i.e., where TENANT'S LEASED PREMISES abuts sidewalks, no Display Area may encroach on the sidewalks during special event(s) or Fiesta Week events,

unless approved by CITY to TENANT to do so. CITY agrees that sidewalk doors, if applicable to TENANT’S LEASED PREMISES, will not be blocked during special events or Fiesta Week events.

4.05. Encroachment on the Common Area beyond the authorized display space sales area is not permitted and violations of such will be fined per day per City Code 32-19(c). Tenant shall be subject to fines for violation of this section as follows:

The first violation shall result in a written notice from CITY.

The second violation TENANT shall pay CITY \$25.00.

The third violation TENANT shall pay CITY \$250.00.

The fourth and subsequent violations TENANT shall pay CITY \$500.00.

5. Term, Termination, Renewal.

5.01. The term of this Lease is the Initial Term, June 1, 2020 – May 31, 2025 unless sooner terminated as provided in this Lease. The right is expressly reserved to the City, acting through the Director of City Center Development and Operations, to terminate this Agreement for the following:

5.01.1 In the event this Lease Agreement is deemed to be inconsistent with the best public use of the property, or

5.01.2 In the event the use of the Leased Premises shall have been deemed a nuisance by a court of competent jurisdiction, or

5.01.3 Unless the 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.

5.02. In the event of termination by City Council in relation to the above, CITY shall give TENANT notice in writing at least thirty (30) days prior to termination date.

5.03. TENANT may cancel this Lease by giving thirty (30) days’ written notice to the CITY.

5.04. In the event City plans to change the use of El Mercado and/or chooses to not renew Lease at the end of the Lease term, City shall provide eighteen (18) months advance written notice of same to TENANT.

5.05. CITY agrees to provide management of the Market Square area in a manner that continues to provide retail opportunities for Market Square merchants and visitors. CITY agrees

to continue maintain and upgrade structures and public amenities as appropriate in and around the Market Square area. CITY will use its best efforts to initiate programs to expand retailing in the district and promote the survival and preponderance of small family-owned shops, and activities and services that are essential to the functioning of the Market Square area.

5.06. If Tenant is not in default under the Lease, Tenant may ask to renew this Lease one (1) additional five (5)-year term by giving Landlord six months prior written notice before expiration of the previous term. Landlord's acquiescence in Tenant's holding over is not acquiescence to renewal. Renewal is effected only after written notice of intent to renew, negotiated agreement on rent for the renewal term, and approval of the proposed renewal by further City Council ordinance. Though no renewal is effective unless approved by City Council, Landlord has no duty to present a proposed renewal to Council, even though Tenant has given the requisite notice.

5.07. Renewal Terms are governed by this Lease just as the Initial Term, except for Rent. Rent will be renegotiated prior to the Renewal Term.

5.08. CITY shall begin negotiations of a new lease in good faith with the tenants at least six (6) months prior to the expiration of the renewal term.

6. Tenant's Reports and Records.

6.01. Quarterly and Annual Reports: Tenant shall deliver to the Landlord within 20 calendar days after the expiration of each quarter of the Lease Term, a copy of the Texas Comptroller Sales and Use Tax Reports filed for the preceding quarter.

6.02. Tenant agrees to work with and/or participate in programs provided by the City to enhance and increase potential business practices and maximize business plans such as but not limited to: merchandising, display layout, finance, customer experience, sales, marketing, etc.

7. Indemnity.

7.01. TENANT covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and 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' activities under this Agreement, including any acts or omissions of TENANT, any agent, officer, director, representative, employee, Tenant or subcontractor of TENANT, and their respective

officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT TENANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

7.02. The provisions of this INDEMNITY 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 advise the CITY in writing within 36 hours of any claim or demand against the CITY or TENANT known to TENANT related to or arising out of TENANT' 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.

8. Maintenance and Security.

8.01. 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.

8.02. CITY will be responsive to maintenance responsibilities and address repairs for which City is responsible for in a timely fashion. City is responsible for repair, replacement, and maintenance of the roof; foundation; common areas; structural soundness of the exterior walls, doors, and windows; and HVAC system, all plumbing and electrical that, according to the applicable City Codes, requires a licensed professional, and light bulbs that cannot be purchased in a local hardware store. Tenant is responsible for the repair, replacement, and maintenance of any part that the City is not obligated to repair, replace, or maintain. THE CITY SHALL NOT BE LIABLE TO TENANT FOR ANY DAMAGE CAUSED BY THE SAME BEING OR BECOMING OUT OF REPAIR AND INCLUDNG, BUT NOT LIMITED TO, DAMAGE TO MERCHANDISE, TRADE FIXTURES, OR PERSONAL PROPERTY, UNLESS CAUSED BY CITY'S SOLE ACTIVE NEGLIGENCE.

8.03. 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 7 p.m. TENANT shall be permitted to enter the LEASED PREMISES two (2) hours before opening by use of a keypad and/or ID badge system. The building shall remain locked and secured until TENANT'S opening hours the next morning, except in special circumstances as agreed between the City's Director designee of City Center Development and Operation and TENANT. Should TENANT require additional or different hours than listed herein, TENANT shall provide CITY with a request indicating the desired hours with at least a forty-eight (48) hours' notice.

8.04. CITY agrees to install and maintain landscaping i.e. trees, shrubbery and flowers, similar to what CITY now maintains as determined by CITY as appropriate for the Market Square area.

8.05. CITY agrees to maintain and repair restrooms and eliminate unsanitary conditions in a timely and professional manner.

8.06. 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 El Mercado Building. Any such installation, maintenance repair, or replacement shall be placed in locations which shall not unreasonable 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.

8.07 Covenant of Responsiveness. Landlord hereby covenants and promises to satisfy all reasonable maintenance and cleaning requests received with from the Tenant as follows: (a) for minor maintenance and cleaning requests, Landlord shall respond to said requests no later than twelve (12) hours after the request has been made; (b) for major cleaning and maintenance requests, Landlord shall respond to said request no later than 6 hours after the request has been made. "Respond" is defined as City staff person acknowledging the request and taking action to get request addressed (i.e. contact onsite janitorial, contact professional to investigate issue, order parts, etc.). City will make every effort to address maintenance and cleaning requests in a timely manner.

9. Improvements

9.01. TENANT shall not make or allow to be made any interior or exterior structural or electrical construction, repairs, alterations, additions, remodeling, renovations, reconstruction or improvements in any portion of the LEASED PREMISES, nor any alterations in the store-front of the exterior of the LEASED PREMISES, (collectively, or, as applicable, individually referred to, as improvements) without first obtaining the written consent of the CITY, which consent may

in the sole and absolute discretion of CITY be denied, except in accordance with Section 6.2 hereof.

9.02. If, however, CITY gives such consent, the TENANT agrees that the improvements to be constructed by TENANT shall be in accordance with approved retail and tenant mix plans and design specifications; and in addition, with architectural rendering drawings, detailed plans and specifications (hereafter “plans”), which, in all instances, have received the prior written approval of the City’s Director designee of City Center Development and Operation, and where applicable, the Market Square Commission, the Historic Design and Review Commission and any other City of San Antonio, Board, Commission, Department, or agency having authority and jurisdiction over the approval of said plans and further TENANT agrees that all improvements will be constructed to meet all Federal, State and/or local building codes. TENANT agrees that no construction or preliminary work of any kind will be done in connection with the aforementioned renovations and improvements until all written approvals and, if applicable, oral approvals are secured.

9.03. Furthermore, TENANT covenants that he shall not bind or attempt to bind CITY for payment of any money in connection with any construction, repair, alteration, addition, remodeling, renovations, or construction (collectively or individually) on or about, the LEASED PREMISES. Article 8 shall apply in case such improvements are made.

9.04. All permanent construction, repairs, alterations, additions, remodeling, renovations, reconstruction, and improvements, and TENANT’S work provided herein, shall become, upon expiration or other termination of the term of the Lease Agreement, the property of CITY without compensation by CITY to TENANT. Personal property, including, but not limited to, trade fixtures and merchandise not removed within ten (10) days after the termination date of this Lease Agreement, shall become the property of CITY without compensation or liability by CITY to TENANT for any disposition thereafter at private or public sale or otherwise.

9.05. In the construction of improvements on the LEASED PREMISES and at all times thereafter, TENANT shall conform to and comply with all Federal, State and local laws, ordinances, permits, rules and regulations applicable to the LEASED PREMISES and the operation of TENANT’S business therein.

9.06. TENANT covenants to undertake renovations or improvements in a reasonable and prudent manner with due regard to the safety of the public and with as little disruption as possible to the operation of the Market Square and other tenants. TENANT further agrees to complete such renovations or improvements within a period of six (6) months after the date of final CITY approval to start construction of same, unless CITY, in its sole discretion, in its sole discretion, agrees otherwise.

9.07. The CITY is committed to preserving the historic and cultural significance present in the market. To ensure small enterprises are preserved, in the Farmers Market and El Mercado CITY shall undertake renovations or improvements in a reasonable and prudent manner with due

regard to the safety of the public and with as little disruption as possible to the operation of the Market Square and other tenants.

9.08. TENANT understands that repairs and improvements may require relocation of the businesses temporarily. In the event of repairs and improvements TENANT may be relocate. The CITY will try to relocate them to an equivalent space temporarily until TENANT can return to their original space.

9.10. If the CITY must shut El Mercado at the Directors discretion for major and/or extensive repairs and improvements for an extended period of time rent will be abated pro rata.

9.10.01 For example, if the CITY shuts power down for 7 days, requiring El Mercado shut down during rent would be pro rata for the day.

10. Consumer Protection

10.01. 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.

10.02. 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.

10.03. If TENANT does in fact have a policy of allowing exchanges, then such exchanges or merchandise purchased from TENANT will be honored for merchandise of the same price paid to TENANT for the exchanged merchandise.

11. Liens Prohibited.

11.01. 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 reference herein.

11.02. In the event any mechanic's materialman's, or other liens or orders for payment shall be filed against the LEASED PREMISES or improvements thereon, or CITY-owned property located therein, during the term hereof, TENANT shall, within thirty (30) days after said date of filing, cause the same to be cancelled and discharged of record, by bond, payment directly (or into the registry of an appropriate Court), or otherwise in the manner chosen by TENANT and at the expense of TENANT and TENANT shall also defend on behalf of CITY, at TENANT'S sole cost and expense, any action, suit or proceeding which may be brought thereon or for the enforcement of such lien or order.

11.03. Failure of TENANT to comply with any requirements of this Article shall be cause for immediate termination of this Lease Agreement by CITY in accordance with provisions set forth elsewhere herein.

12. Insurance.

A) Prior to the commencement this Agreement, Tenant shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Center City Development & Downtown Operations Department, which shall be clearly labeled "El Mercado at Market Square Lease _____" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the Authorized Representative of the carrier, and list the agent's signature and phone number. The certificate shall be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Risk Management Division. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

B) The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereby City may incur increased risk.

C) A tenant's financial integrity is of interest to the City; therefore, subject to tenant's right to maintain reasonable deductibles in such amounts as are approved by the City, tenant shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at tenant's sole expense, insurance coverage written on an occurrence basis,

unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation 2. Employers' Liability Statutory	Statutory \$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury *d. Environmental Impairment/ Impact – sufficiently broad to cover disposal liability. *e. Explosion, Collapse, Underground	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. *Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence
5. *Professional Liability (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	\$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.
6. *Builder's Risk	All Risk Policy written on an occurrence basis for 100% replacement cost during construction phase of any new or existing structure.
7. *Property Insurance: For physical damage to the property of TENANT, including improvements and betterment to the Leased Premises	Coverage for replacement value with a minimum co-insurance factor of eighty percent (80%) of the cost of Contractor's property
*if applicable	

D) Tenant agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of tenant herein, and provide a certificate of insurance and endorsement that names the tenant and the City as additional insureds. Policy limits of the coverages carried by subcontractors will be determined as a business decision of tenant. Tenant shall provide the City with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

E) As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all required endorsements. Tenant shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within 10 days. Tenant shall pay any costs incurred resulting from provision of said documents.

City of San Antonio
Attn: Center City Development & Downtown Operations Department
P.O. Box 839966
San Antonio, Texas 78283-3966

F) Tenant agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, 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;
- 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;
- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
- Provide advance written notice directly to City of any suspension or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

G) Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, tenant shall provide a replacement Certificate of Insurance and applicable

endorsements to City. City shall have the option to suspend tenant's Agreement should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

H) In addition to any other remedies the City may have upon tenant's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order tenant to stop work hereunder, and/or withhold any payment(s) which become due to tenant hereunder until tenant demonstrates compliance with the requirements hereof.

I) 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 Agreement.

J) It is agreed that tenant's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

K) It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.

L) Tenant and any subcontractors are responsible for all damage to their own equipment and/or property.

13. Release of Claims/Subrogation.

The insurance requirements of this Lease are a bargained-for allocation of risk of loss. Landlord and Tenant release each other from claims arising from injury or loss to either of them or to third parties to which they are liable, if the injury or loss is covered by insurance the waiving party is required by this Lease to maintain, whether or not the party actually has the insurance ("Covered Claims"). This release is additional to and does not limit any other release contained in this Lease. Landlord and Tenant, to the maximum extent allowable without causing cancellation of a required policy, will require their insurers to waive subrogation against each other for Covered Claims.

14. Environmental Matters.

14.01. "Environmental Laws" means applicable federal, state, and local laws relating to protection of the public health, welfare, and the environment, including without limitation, those laws relating to the storage, handling, and use of chemicals and other hazardous substances,

those relating to the generation, processing, treatment, storage, transport, disposal, or other management of waste materials of any kind, and those relating to the protection of environmentally sensitive areas.

14.02. “Hazardous Material” means “hazardous substance,” “pollution or contaminant,” “petroleum,” and “natural gas liquids,” as those terms are defined by or used in Environmental Laws, or that are regulated because of their effect or potential effect on human health and the environment.

14.03. “Release” means depositing, spilling, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing.

14.04. In its use of the Premises, Tenant must comply with all applicable Environmental Laws and must cause its employees, agents, and contractors on the Premises to do so as well. Tenant will obtain all permits required under Environmental Law for its use of the Premises. At least 180 days before expiration of any such permit, Tenant must present proof to Landlord that it has applied for renewal.

14.05. Tenant must not allow the Release of any Hazardous Material from its use of the Premises on, onto, or from the Property. Tenant further must not handle, use, or otherwise manage any Hazardous Material on the Premises or the Property in violation of any Environmental Laws or in any but a reasonable and prudent manner.

14.06. Tenant must immediately provide to Landlord copies of: (i) any documents required to be submitted to a Governmental Authority under Environmental Law; (ii) any notice alleging a violation of Environmental Law, or (iii) any demand from or allegation by any third party in relation to Hazardous Materials or Environmental Law. Tenant must promptly deliver to Landlord any information it receives regarding any Release of Hazardous Materials on, to, from, or about the Premises.

14.07. Landlord may conduct, at Tenant’s expense, periodic inspections of the Premises and Tenant’s operations thereon to assure compliance with Tenant’s environmental covenants. Tenant need not pay the expense of more than one such inspection in any 12-month period.

14.08. If Tenant breaches any of its representations, warranties or covenants, Tenant at its sole expense, must take all actions required, including environmental cleanup of the Premises, to comply with the representations, warranties, and covenants or applicable law. Tenant must take all action required by applicable Environmental Laws. If Tenant’s actions under this provision involve cleaning up a Release of Hazardous Materials, Tenant must perform the cleanup consistently with residential use of the Premises and will not use any institutional controls or engineering controls in lieu of clean-up. Tenant will further obtain a Certificate of Completion from the TCEQ’s Voluntary Cleanup Program. Institutional controls include laws, rules, or regulations or private prohibitions limiting use of a property, such as a prohibition against water

well use within a certain contaminated track or area of a local government's jurisdiction. Engineering controls mean physical apparatus such as an asphalt or concrete cap, detention basin, extraction well, or other engineered device to control, contain, or remove pollutants.

14.09. Tenant must indemnify Landlord and hold Landlord and its officials, employees, and contractors from loss, cost, liability, or expense (including, but not limited to, attorneys' fees and expenses, including all attorney's fees and expenses incurred by Tenant in enforcing this indemnity) arising from or relating to breach of Tenant's environmental representations, warranties, and covenants.

15. Landlord's Municipal Powers.

15.01. Landlord is a municipality as well as landlord under this Lease. As a municipality, it may from time to time exercise municipal powers unrelated to the Lease that will nevertheless adversely affect Tenant. Such actions may include redirection of traffic, street closures, or other actions intended to facilitate public safety, the public interest, or the conduct of major events. No such action by Landlord as a municipality is a breach of Landlord's duties as landlord or entitles Tenant to any relief under this Lease. Likewise, no breach of contract or other duty by municipal utility providers is a breach of Landlord's duties as landlord or entitles Tenant to any relief under this Lease. Tenant has no more rights under this Lease than it would if its landlord were a private entity.

16. Prohibited Interests in Contracts.

16.01. The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

- (i) a City officer or employee;
- (ii) his parent, child or spouse;
- (iii) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;
- (iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

16.02. Tenant warrants and certifies as follows:

- (i) Tenant and its officers, employees and agents are neither officers nor employees of the City.
- (ii) Tenant has tendered to the City a Contracts Disclosure Statement in compliance with the City's Ethics Code.

16.03. Tenant acknowledges that City's reliance on the above warranties and certifications is reasonable.

17. Casualty/Total or Partial Destruction.

17.01. If the Premises are damaged by casualty and can be restored within ninety days, Landlord will, if funding is available, at its expense, restore the roof, foundation, exterior doors, windows, Common Areas, and structural soundness of the exterior walls of the Premises. Restoration must be to substantially the same condition existing before the casualty. If Landlord fails to complete the portion of the restoration for which Landlord is responsible within ninety days from the date of written notification by Tenant to Landlord of the casualty, Tenant may terminate this lease by written notice delivered to Landlord before Landlord completes Landlord's restoration obligations.

17.02. If the Premises cannot be restored within ninety days from the date of written notification by Tenant to Landlord, Landlord has an option to restore the Premises. If Landlord chooses not to restore, this lease will terminate. If Landlord chooses to restore, Landlord will notify Tenant of the estimated time to restore and give Tenant an option to terminate this lease by notifying Landlord within ten days. If Tenant does not terminate this lease, the lease will continue, and Landlord will restore the Premises as provided above.

17.03. To the extent the Premises are untenantable after the casualty; the Rent will be adjusted as may be deemed fair and reasonable by Landlord.

17.04. If Landlord is obligated to rebuild or chooses to do so, Tenant must promptly rebuild and restore all improvements the maintenance of which are its responsibility under this Lease. Restoration must be to substantially the same condition existing before the casualty.

17.05. As with the insurance requirements, the rebuilding obligations of this paragraph are a bargained-for allocation of risk.

17.06 If, during any approved renovations, the interior of the Premises is found to be damaged by water due to Landlord's failure to perform its maintenance obligations or asbestos or

lead paint is discovered Landlord will, if funding is available, at its expense, restore the damaged interior areas of the Premises, excluding Tenant's furniture, fixtures and other personal property. If Landlord fails to complete the portion of the restoration for which Landlord is responsible within ninety days from the date of written notification by Tenant to Landlord of the casualty, Tenant may as its sole remedy terminate this lease by written notice delivered to Landlord before Landlord completes Landlord's restoration obligations.

17.07 If the Premises cannot be restored within ninety calendar days from the date of written notification by Tenant to Landlord, Landlord has an option to restore the Premises. If Landlord chooses not to restore, this lease will terminate. If Landlord chooses to restore, Landlord will notify Tenant of the estimated time to restore and give Tenant an option to terminate this lease by notifying Landlord within ten days. If Tenant does not terminate this lease, the lease will continue, and Landlord will restore the Premises as provided above.

18. Condemnation/Substantial or Partial Taking.

18.01. If the Premises cannot be used for the purposes contemplated by this lease because of condemnation or purchase in lieu of condemnation, this lease will terminate.

18.02. If there is a condemnation or purchase in lieu of condemnation and this lease is not terminated, Landlord will, at Landlord's expense, restore the Premises, and the Rent payable during the unexpired portion of the Term will be adjusted as may be fair and reasonable.

18.03. Tenant will have no claim to the condemnation award or proceeds in lieu of condemnation.

19. Holdover.

19.01. If Tenant holds over after termination or expiration of this Lease, the terms of this Lease apply during the holdover period, except (A) the Lease shall have a month to month term, and (B) the Base Rent is 110% of what it was immediately before the term ended unless otherwise established in writing.

20. Contractual Lien.

20.01. To secure the payment of Rent and the full performance of this Lease by Tenant, Tenant hereby grants to Landlord an express first and prior security interest and contract lien on all property (including fixtures, furniture, furnishings, equipment, chattels, merchandise, goods, inventory, and all other personal property) that may now or hereafter be placed in the Premises and all additions, accessions and replacement thereto, and all proceeds therefrom and also upon

all proceeds of any insurance that may accrue to Tenant by reason of destruction of or damage to any such property ("Collateral"). Tenant must not remove the Collateral from the Premises without Landlord's written consent until Rent arrearages then due to Landlord are paid in full. Tenant waives all exemption laws in favor of this lien and security interest. Landlord does not waive its statutory lien, and this lien and security interest is cumulative with the statutory lien.

20.02. In case of an event of default, Landlord may, in addition to any other remedies, enter the Premises and take possession of any and all personal property of Tenant situated on the Premises, without liability for trespass or conversion. This lien may be foreclosed with or without court proceedings by public or private sale provided Landlord gives Tenant at least 10-days notice of the time and place of sale. Landlord has the right to bid and purchase at the sale. Any sale or disposition of the Collateral made under this section is commercially reasonable (A) if held at the Premises or where the Collateral is located and (A) if the time, place, and method of sale and a general description of the Collateral to be sold is advertised in a daily newspaper published in the county in which the property is located for five consecutive days before the date of sale. Tenant must inform Landlord as soon as reasonably possible after receiving the notice of sale about any and all prospects of whom Tenant is aware who have any interest in purchasing any of the Collateral. Tenant must further inform Landlord of any marketing or selling activity that Tenant believes will bring a fair sale price for the Collateral, balancing the cost of the activity. Should Tenant fail to cooperate in offering information to assist in the disposition of the Collateral, Tenant should not be heard to complain about the Landlord's disposition made according to this Lease.

20.03. The proceeds from any disposition of the Collateral, less any and all expenses connected with the taking of possession, holding and selling of the Collateral (including reasonable attorney's fees and other expenses), will be applied as a credit against the indebtedness secured by the security interest granted in this paragraph. Any surplus goes to Tenant or as otherwise required by law, and the Tenant must pay any deficiencies forthwith. Contemporaneously with the execution of this Lease (and if requested hereafter by Landlord), Tenant shall execute and deliver to Landlord Uniform Commercial Code financing statements in sufficient form so that, when properly filed, the security interest will be perfected. If Landlord requests, Tenant must also execute and deliver to Landlord Uniform Commercial Code financing statement change instruments in sufficient form to reflect any proper amendment of, modification in, or extension of the contract lien and security interest hereby granted. A carbon, photographic, or other reproduction of this Lease is sufficient as a financing statement. In addition to all of its rights, Landlord also has all the rights and remedies of a secured party under the Uniform Commercial Code as adopted in Texas. Landlord may execute any financing statement as agent for Tenant so that the document is in proper form to be filed.

21. Default, Remedies for Default.

21.01. *Events of Default.* If Tenant permits or fails to prevent any of the following

occurrences, it is a Tenant event of default:

21.01.01. Tenant fails to pay any installment of Rent when due.

21.01.02. Tenant fails to comply with any term, provision or covenant of this Lease, other than the payment of rental or expenses demanded by Landlord and does not cure such failure within 30 calendar days after written notice thereof to Tenant, or any representation or warranty by Tenant is false or misleading in any material respect when given to Landlord.

21.01.03. This Lease for the Premises or any part thereof is taken upon execution or by other process of law directed against Tenant, or is taken upon or subject to any attachment at the instance of any creditor or claimant against Tenant, and the attachment is not to be discharged or disposed of within 30 calendar days after the levy thereof.

21.01.04. Tenant files a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or voluntarily takes advantage of any such law or act by answer or otherwise, or is dissolved, or makes a transfer in fraud of creditors or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts as they mature.

21.01.05. Involuntary proceedings under any such bankruptcy law or insolvency act or for the dissolution of Tenant is instituted against Tenant, as the case may be, or a receiver or trustee of all or substantially all of the property of Tenant is appointed, and such proceeding is not dismissed or such receivership or trusteeship vacated within sixty (60) days after such institution or appointment.

21.01.06. Tenant deserts, vacates or abandons all or any portion of the Premises, or ceases to physically occupy any substantial portion of the Premises and continuously operate its business on the Premises, or fails to commence business operations in the Premises on or before the Commencement Date. If Tenant removes or makes preparations to remove its goods, equipment, inventory, and fixtures (other than in the normal course of business) in amounts sufficient to indicate a probable intent to vacate the Premises, Tenant's breach is established conclusively.

21.01.07. Tenant does or permits to be done anything that creates a lien upon the Premises.

21.01.08. The business operated by Tenant is closed for failure to pay any State sales tax as required or for any other reason, other than repairs, death of the principals of Tenant, or normal business holidays.

21.01.09. This Lease or the estate of Tenant hereunder is transferred to, or passes to any other person or party except in a manner permitted herein.

21.02. Remedies for Default. Upon the occurrence of any Tenant event of default, Landlord has the option to pursue anyone or more of the following:

21.02.01. In addition to, and without limiting any other remedies available to Landlord at law or in equity, immediately terminate this Lease and all rights of Tenant hereunder. Upon termination, Tenant must immediately surrender the Premises to Landlord. If Tenant fails to do so, Landlord may, without prejudice to any other remedy, enter and take possession of the Premises or any part thereof and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof, by force if necessary, without being liable for prosecution or any claim of damages.

21.02.02. Enter upon and take possession of the Premises or any part thereof and expel or remove Tenant and any other person who may be occupying said Premises or any part thereof, by force if necessary, without being liable for prosecution or any claim for damages therefore without having terminated the Lease.

21.02.03. Enter upon the Premises, by force if necessary, without being liable for prosecution or any claim for damages, and do whatever Tenant is obligated to do under the terms of this Lease. In such case, Tenant must reimburse Landlord on demand for expenses Landlord may incur in thus effecting compliance with Tenant's obligations. Landlord is not liable for any damages resulting to the Tenant from such action.

21.02.04. Alter all locks and other security devices at the Premises without terminating this Lease. If Landlord does so:

(i) Landlord need not allow Tenant re-entry to the Premises or provide Tenant with a new key unless and until Tenant cures any and all defaults under this Lease,

(ii) Landlord may refuse to give Tenant a new key unless Tenant establishes a security deposit by an amount determined by Landlord,

(iii) If Landlord does provide Tenant with a key, it will do so only during the Landlord's regular business hours, and

(iv) Tenant must pay Landlord all costs and expenses incurred by Landlord in connection with altering the locks and other security devices.

Landlord's remedies and rights under this Lease entirely supersede and supplant the provisions of Texas Property Code § 93.002.

21.03. *Repossession and Alteration of Locks.* Landlord's exercise of one or more remedies is not acceptance of Tenant's purported surrender of the Premises, whether by agreement or by operation of law. Surrender can occur only by the written agreement of Landlord and Tenant. No such alteration of locks or other security devices and no removal or other exercise of dominion by Landlord over the property of Tenant or others at the Premises is unauthorized or constitutes conversion. Tenant consents to Landlord's exercise of dominion over Tenant's property within the Premises in case of Tenant's default. Tenant waives (A) all claims for damages by reason of such reentry, repossession, or alteration of locks or other security devices; and (B) all claims for damages by reason of any distress warrant, forcible detainer proceedings, sequestration proceedings, or other legal process. Re-entry by Landlord may be pursuant to judgment obtained in forcible detainer proceedings or other legal proceedings or without the necessity for any legal proceedings, as Landlord may elect. Landlord is not liable in trespass or otherwise for such re-entry. Landlord's remedies and rights under this Lease entirely supersede and supplant the provisions of Texas Property Code § 93.002.

21.04. *Effect of Termination.* If Landlord terminates the Lease for an event of default, then despite the termination, Tenant is liable for and must pay Landlord, at the Address for Payment of Rent, all Rent accrued as of the date of termination. Landlord's acceptance of past-due rent after termination does not reinstate the Lease.

21.05. *Effect if No Termination.* If Landlord repossesses the Premises without terminating the Lease, then Tenant is liable for and must pay Landlord, at the Address for Payment of Rent, all Rent accrued as of the date of repossession, plus Rent due during the remainder of the term until the date of expiration. Tenant's obligation is diminished by any net sums thereafter received by Landlord through reletting the Premises (after deducting expenses of reletting). Tenant is liable for the full Rent for the remainder of the Lease term if the Premises are not relet. In no event is Tenant entitled to any excess of any rental obtained by reletting over and above the Rent. Actions to collect amounts due by Tenant to Landlord may be brought at one time or from time to time, on one or more occasions, without the necessity of Landlord's waiting until expiration of the Lease term. In the alternative, if Landlord relets the Premises, Landlord may recover from Tenant: (A) the unpaid Rent accrued before Tenant's default, plus (B) the then present value of the amount by which the Rent for the remainder of the term exceeds the rental received from reletting the Premises. Present value is computed by allowing interest at 1% in excess of the discount rate of the Federal Reserve Bank of Dallas, Texas. No repossession of the Premises by Landlord hereunder is either an acceptance of surrender or an election to terminate this Lease. Neither does it cause a forfeiture of Rent remaining to be paid during the balance of the Lease term, unless a written notice of such intention is given to Tenant or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding Landlord's right to relet and collect the difference in rental values, Landlord may, at any time after default, terminate this Lease. Landlord also may decline to repossess the Premises, and may from time to time, without terminating this Lease, recover all rent as it becomes due.

21.06. Liability for Costs Incurred. If Tenant defaults, in addition to any other sum required by this Lease, Tenant must also pay to Landlord, at the Address for Payment of Rent, (A) brokers and management fees incurred by Landlord in connection with reletting the whole or any part of the Premises; (B) the costs of removing and storing Tenant's or any other occupant's property, (C) the costs of repairing, altering, remodeling, or otherwise putting the Premises into a condition acceptable to a new tenant or tenants, (D) all rental concessions as a result of reletting, and (E) any and all other costs, fees, and expenses associated with reletting the Premises and all reasonable expenses incurred by Landlord in repossessing the Premises and in enforcing or defending Landlord's rights and/or remedies, including reasonable attorney's fees, which shall be not less than 10% of all sums then owing by Tenant to Landlord.

21.07. Obligation to Reimburse. If Tenant fails to timely make any payment or cure any default, Landlord, without an obligation to do so and without waiving default, may make the payment or remedy the other default for the account of Tenant (and enter the Premises for such purposes). Thereupon Tenant must pay upon demand, all costs, expenses, and disbursements (including reasonable attorney's fees) incurred by Landlord in taking the remedial action.

21.08. Default by Landlord. If Landlord defaults, Tenant's exclusive remedy is an action for damages (Tenant hereby waiving the benefit of any laws granting it a lien upon the property of Landlord or on rent due Landlord). Tenant is not permitted to withhold Rent. Before filing any such action Tenant must give Landlord 30-days prior written notice specifying the alleged default and giving Landlord opportunity to cure. Unless and until Landlord fails to timely cure a default after written notice, Tenant has no remedy or cause of action by reason thereof. All obligations of Landlord are covenants, not conditions. Landlord's liability to Tenant for default is limited to actual, direct, but not consequential, damages. **Tenant hereby waives its statutory lien under § 91.004 of the Texas Property Code.**

21.09. Payments After Termination. Tenant's payment of money to Landlord after termination or after notice of default (other than a demand for payment of money within any applicable cure period) does not reinstate, continue, or extend the term or affect any notice given to Tenant prior to the payment. After the service of a suit or after any final judgment granting Landlord possession of the Premises, Landlord may receive and collect any sums due under the terms of this Lease or may otherwise exercise any of its rights and remedies hereunder. Such payment, whether as rent or otherwise, does not waive any notice or a termination of Tenant's right of possession, or in any manner affect any suit theretofore commenced or judgment previously obtained.

21.10. Rights Respecting Personal Property. If Landlord takes possession of the Premises under the authority of this Lease, Landlord may keep in place and use all furniture, fixtures, and equipment at the Premises, including that owned by or leased to Tenant at all times before foreclosure thereon by Landlord or repossession thereof by any lessor thereof or lienholder thereon. Landlord may also remove from the Premises (without obtaining a distress warrant, writ of sequestration, or other legal process) all or any part of the furniture, fixtures,

equipment, and other property and place same in storage anywhere in the county in which the Premises are located. In such case, Tenant is liable to Landlord for costs incurred by Landlord in the removal and storage and must indemnify Landlord from all loss, damage, cost, expense, and liability arising from or relating to the removal and storage. Landlord also may relinquish all or any part of the furniture, fixtures, equipment, and other property to any person (“Claimant”) who presents to Landlord a copy of any instrument represented to have been executed by Tenant, if the instrument purports to grant Claimant the right under various circumstances to take possession of the property. Landlord need not inquire into the authenticity of the instrument or Tenant’s or Tenant’s predecessor’s signature thereon. Landlord further need not investigate or inquire into the validity of the factual or legal basis on which Claimant purports to act. Tenant hereby indemnifies Landlord from all loss, cost, liability, or expense arising from or relating to Landlord’s relinquishment of property to a Claimant. These rights of Landlord are additional to any other rights that Landlord has or may hereafter have at law or in equity. Tenant stipulates that the rights herein granted Landlord are commercially reasonable.

21.11. Cumulative Remedies. Each right and remedy provided to Landlord in this Lease is cumulative to every other right or remedy provided to Landlord by this Lease or applicable law, including, but not limited to, suits for injunctive relief and specific performance. The exercise or beginning of the exercise by Landlord of one or more of the right or remedy does not preclude the simultaneous or later exercise by Landlord of another remedy. All costs incurred by Landlord in collecting any amounts and damages owed by Tenant under this Lease or to enforce any provision of it, including reasonable attorneys’ fees from the date any such matter is turned over to litigation counsel, are also recoverable by Landlord from Tenant.

22. Landlord’s Mitigation of Damages.

Any duty imposed by law on Landlord to mitigate damages after a default by Tenant under this Lease will be satisfied in full if Landlord undertakes to lease the Premises to another tenant (a “Substitute Tenant”) in accordance with the following criteria:

22.01. Landlord will have no obligation to solicit or entertain negotiations with any other prospective tenants for the Premises until Landlord obtains full and complete possession of the Premises including without limitation, the final and unappealable legal right to relet the Premises free of any claim of Tenant;

22.02. Landlord will not be obligated to lease or show the Premises on a priority basis, or offer the Premises to a prospective tenant when other space in the Building suitable for the prospective tenant’s use is (or soon will be) available;

22.03. Landlord will not be obligated to lease the Premises to a Substitute Tenant for a Rent less than the current fair market Rent then prevailing for similar uses in comparable buildings in the same market area as the Building, nor will Landlord be obligated to enter into a

new lease under terms and conditions that are unacceptable to Landlord under Landlord's then current leasing policies for comparable space in the Building.

22.04. Landlord will not be obligated to enter into a lease with a Substitute Tenant whose use would:

- (i) violate any restriction, covenant, or requirement contained in the lease of another tenant of El Mercado at Market Square;
- (ii) adversely affect the reputation of El Mercado at Market Square; or
- (iii) be incompatible with other users of El Mercado at Market Square.

22.05. Landlord will not be obligated to enter into a lease with any proposed Substitute Tenant that does not have, in Landlord's reasonable opinion, sufficient financial resources to operate the Premises in a first class manner; and

22.06. Landlord will not be required to expend any amount of money to alter, remodel, or otherwise make the Premises suitable for use by a proposed Substitute Tenant unless:

- (i) Tenant pays any such sum to Landlord in advance of Landlord's execution of a lease with the proposed Substitute Tenant (which payment will not be in lieu of any damages or other sums to which Landlord may be entitled as a result of Tenant's default under this Lease; or
- (iii) Landlord, in Landlord's reasonable discretion, determines that any such expenditure is financially justified in connection with entering into a lease with the prospective Substitute Tenant.

23. Warranty Disclaimer.

23.01. There are no implied warranties of merchantability, of fitness for a particular purpose, or of any other kind arising out of this lease, and there are no warranties that extend beyond those expressly stated in this lease. Without limitation, this Lease contains no express or implied warranty that the Premises have no latent defects or that the Premises are or will remain suitable for Tenant's purposes.

23.02. Tenant acknowledges it has had ample opportunity to perform due diligence regarding the Premises and accepts the Premises in their present condition, as-is.

24. Abandoned Property.

24.01. Landlord may retain, destroy, or dispose of any property left on the Premises at the end of the Term.

25. Appropriations.

25.01. All obligations of the City of San Antonio under this instrument are funded through the City of San Antonio General Fund and are subject to the discretion of City Council whether to appropriate funding for any given year of a term. If the City Council fails to appropriate money for this Lease in an annual City of San Antonio Budget, the City may terminate this Lease and have no further liability. However, CITY shall deposit all Rents due under this Lease as required by Section 3.04 of this Lease.

26. Sublease, Assignment.

26.01. DEATH BENEFIT - 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.

26.02. LEGACY BUSINESS – Where TENANT is a Legacy Business, the following shall apply;

26.02.01. “Legacy Business” shall mean a business that can document that it has been in operation at Market Square for at least 20 years and has been owned by one or multiple generations of the same family.

26.02.02. “Family Member” shall mean first, second or third degree of consanguinity; or first or second degree of affinity.

26.02.03. Should a Legacy Business seek the City's approval to assign its Lease to another Family Member, then the Lease terms shall remain the same and the assignee shall assume the Lease in whole.

26.02.04. Tenant must notify City no later than ninety (90) days prior to the proposed date of assignment and shall pay a non-refundable process fee of ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00) to City following the City's notice to Tenant that such assignment will be recommended to the City Council for approval.

26.02.05. Should a Legacy Business seek the City's approval to assign its Lease to a non-family member will be subject to Section 26.03.01 and 26.03.02 below. All other terms of the Lease shall remain the same.

26.03. Except as provided under "DEATH BENEFIT" and in accordance with City Code Section 32-73, TENANT shall not assign the Lease Agreement and business conducted on the LEASED PREMISES or any interest therein without first obtaining the written consent of CITY, and which consent will be evidenced by passage of a CITY OF SAN ANTONIO Ordinance, based upon recommendations by City Staff, giving due consideration to the tenant mix and product mix as affected by such assignment.

26.03.01. Tenant must notify City no later than ninety (90) days prior to the proposed date of assignment and shall pay a non-refundable application fee of THREE HUNDRED DOLLARS (\$300.00) to initiate the assignment process. Tenant shall then pay a process fee of TWO THOUSAND AND SEVEN HUNDRED DOLLARS (\$2,700) for the assignment, which shall be refunded to the tenant if the assignment fails to occur, to City following the City's notice to Tenant that such assignment will be recommended to the City Council for approval.

26.03.02. The Lease Rate shall be adjusted to market rate as documented by a market study funded by the City and prepared by a third-party consultant. All other terms of the Lease shall remain the same. The market study to be done under this sub-section shall determine market rate using current rent charged for comparable lease spaces and buildings, taking into consideration the age of the building including physical condition of the facility and amenities, location of the building, stall size, and stall location.

26.04. Tenant cannot assign or sublease this lease without Landlord's prior written consent. Assignments include any transaction in which (A) a material part of Tenant's assets are sold outside the ordinary course of business or (B) a change in the identity of those owning, holding, or controlling the power to vote of 50% of the equity interest in Tenant.

26.05. In all cases of assignment, the assignment shall not be set for a City Council agenda until the Tenant has paid the assignment fee. Notification of the assignment and payment to City of the assignment fee shall not be deemed approval of the assignment. The City Council, in its sole discretion, shall be the determining body as to the approval or disapproval of the assignment.

26.06. All assignment fees shall be placed in the dedicated fund to be used in support of maintenance and program activities for the Market Square (the "Maintenance and Program

Fund”). The Maintenance and Program Fund shall be considered an enterprise fund that is independently accounted for and shall not be co-mingled with the Landlord’s general fund.

26.07. 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.

26.08. The receipt by the CITY of rent from an assignee or occupant of the LEASED PREMISES shall be deemed a waiver of covenant in this Lease Agreement against assignment or subletting or an acceptance of the assignee, subtenant, or occupant as a TENANT or release of the TENANT from further observance and performance by the TENANT of the covenants contained in this Lease Agreement. No provision of this Lease Agreement shall be deemed to have been waived by the CITY unless such waiver is in writing signed by the CITY.

26.09. 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.

26.10. 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.

26.11. In the event that the CITY determines that another person other than the TENANT is operating the business on the LEASED PREMISES, the CITY, at its option may declare the lease terminated upon ten (10) days written notice.

26.12. 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.

27. Dispute Resolution.

27.01. Before bringing any action arising out of this agreement, including an action for declaratory relief but not an action specifically excepted below, the disputants must first submit in good faith to mediation. The parties may not assert limitations, laches, waiver, and estoppel based upon attempts to mediate.

27.02. Filing suit on a claim that should be mediated waives the filer's right to demand mediation. But one party's waiver does not affect another party's right. A defendant does not waive mediation for so long as, within a reasonable time after appearing, the defendant gives written notice to the plaintiff or its counsel of intent to require compliance with this paragraph.

27.03. Mediation must be conducted in San Antonio, Bexar County, Texas.

27.04. The party desiring relief has the burden to initiate mediation. Waiting for another party to initiate mediation does not waive the right to it.

27.05. If the parties can otherwise agree on a mediator, they may do so. Alternatively, either party may petition any court of competent jurisdiction to appoint a mediator. The only predicate issues the court need consider before appointing a mediator are whether (i) the copy of the contract before the court is authentic and (ii) the contract was duly signed and delivered by all parties to be bound to mediate. If neither of those issues is denied under oath, the court may appoint a mediator upon motion, without trial.

27.06. Mediator fees must be borne equally.

27.07. The parties need not mediate before going to court (1) for either party to seek emergency injunctive relief or (2) for Landlord to seek forcible entry and detainer relief against Tenant.

28. Taxes and Licenses.

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

28.2 TENANT acknowledges that it is informed that Texas law prohibits contracts between the CITY and any local public official ("OFFICIAL"), such as a city officer or employees, and that the prohibition extends to an officer and employee of city agencies such as city-owned utilities and certain city boards and commissions, and to contracts involving a business entity in which the OFFICIAL has a substantial interest, as defined by Texas law, if it is reasonably foreseeable that an action on the matter would confer an economic benefit on the business entity. TENANT certifies (and this Lease

Agreement is made in reliance thereon) that neither TENANT, nor TENANT'S individual officers, employees, or agents, nor any person having a substantial interest in this Lease Agreement is an officer or employee the city or any of its agencies.

29. Miscellaneous.

29.01. *Applicable Law.* This Agreement is entered into in San Antonio, Bexar County, and State of Texas. **It's Construction and the Rights, Remedies, And Obligations Arising under It Are Governed by The Laws of The State of Texas.** Both parties' obligations under this agreement are performable in San Antonio, Bexar County, Texas, and venue for any action arising under this agreement is only in Bexar County, Texas.

29.02. *Severability.* If any part of this agreement is found invalid or unenforceable, the finding does not affect the remainder.

29.03. *Successors.* This Agreement inures to the benefit of and binds the heirs, representatives, successors, and permitted assigns of each party. This clause does not authorize any assignment not otherwise authorized.

29.04. *Integration.* **This Written Agreement Represents The Final Agreement Between The Parties And May Not Be Contradicted By Evidence Of Prior, Contemporaneous, Or Subsequent Oral Agreements Of The Parties. There Are No Oral Agreements Between The Parties.**

29.05. *Modification.* This Agreement may be changed only by a written agreement, signed by the party against whom enforcement of any modification is sought. Subject to that restriction, any of this Agreement's terms may be modified by the party entitled to their benefit, but no modification, express or implied, affects the right of the modifying party either (i) to apply any other term or condition or (ii) to apply the same term or condition to a later or earlier occasion. Any modification of this Lease must be authorized by an ordinance adopted by City Council that specifically addresses the modification.

29.06. *Third Party Beneficiaries.* This Agreement benefits the parties only. It has no third party beneficiaries.

29.07. *Notices.* Notices must be in writing and by certified mail, return receipt requested, addressed to the parties at their respective addresses set forth at the beginning. If the addressee is a corporation, notices must be addressed to the attention of its President. Notice is complete three days after deposit, properly addressed and postage prepaid, with the United States Postal Service. Failure to use certified mail does not defeat the effectiveness of notice actually received, but such notice is effective only on actual receipt. Address for notice may be changed by giving notice.

29.08. Pronouns. Plural constructions include the singular, and singular constructions include the plural. Whether a pronoun is masculine, feminine, or neuter does not affect meaning or application of the relevant term. The words "herein," "hereof," and other, similar compounds of the word "here" refer to the entire Agreement, not just to a part of it.

29.09. Captions. Paragraph captions are for ease of reference only and do not affect the interpretation.

29.10. Counterparts. This Agreement may be executed in multiple counterparts, each of which is an original, whether or not all parties sign the same document. Regardless of their number, counterparts constitute only one agreement. In making proof of this agreement, one need not produce or account for more counterparts than necessary to show execution by or on behalf of all parties.

29.11. Further Assurances. The parties must execute and deliver such additional documents and instruments as may be necessary to effect fully the provisions hereof. But no such additional documents can alter the rights or obligations of the parties stated in this agreement.

29.12. Administrative Actions and Agreements. The Director of City Center Development and Operations ("CCDO") may, without further council action, agree to, sign, and deliver on behalf of the City all consents, certificates, memoranda, estoppels, and modifications of nonmaterial rights and obligations arising under this Lease and may declare Tenant defaults and pursue remedies for such defaults, including terminating this Lease. This paragraph does not authorize lease amendments or renewals without council consent.

29.13. Incorporation of Exhibits. All exhibits to this Lease are incorporated into it for all purposes as if fully set forth.

29.14 Tenant understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate in its operations under this lease agreement on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

Nothing in this agreement waives an otherwise applicable exception to disclosure.

[Signatures to Follow]

In Witness Whereof, the parties have caused their representatives to set their hands.

Landlord:

Tenant:

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

Signature

Signature

Name

Name

Title

Title

Date

Date

Attest:

City Clerk

Approved as to Form:

City Attorney

Exhibit A: El Mercado at Market Square Floor

Exhibit B: El Mercado TENANT's Merchandise Use Clause Plan

Exhibit C: El Mercado Operation Guidelines

TENANT promises that it will:

- 1.** Accept the Premises in their present “AS IS” condition.
- 2.** To use the **LEASED PREMISES** only for the purposed permitted.
- 3.** Obey (a) all applicable Federal, State, and Local laws relating to the use, condition, and occupancy of the Premises and Building; (b) any requirements imposed by utility companies serving or insurance companies covering the Premises or Building; and (c) any rules and regulations for the Premises and Common Areas adopted by Landlord.
- 4.** Cooperate with the Landlord in facilitating 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.
- 5.** Allow Landlord to enter the Premises to perform Landlord’s obligations, inspect the Premises, and show the Premises to prospective purchasers or tenants.
- 6.** To keep the **LEASED PREMISES** in good condition (usual wear and tear excepted) and not to commit or permit any waste of said property
- 7.** To 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**.
- 8.** To not use nor permit the use of any explosive, flammable or otherwise dangerous materials, equipment, or goods.
- 9.** 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.
- 10.** To keep the Common Area immediately adjoining the **LEASED PREMISES**, including sidewalk, free and clear at all times of any obstruction.
- 11.** 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 cleaning obligations).

12. To comply with any other necessary rules and regulations established by the Director 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.

13. Should the CITY provide handicapped accessible ingress and egress in specific location, TENANT agrees not to block or otherwise cause the access way to be nonfunctional without providing an alternative means of access approved in writing by the Market Square Office of the Office of San Antonio.

14. TENANT agrees to be bound by the provisions of City Code Chapter 32, Article II Market Square, as such may be amended or hereafter changed. If such language conflict with this Lease Agreement, the City Code language shall be controlling.

15. TENANT agrees to abide by the El Mercado Operations and Maintenance Guidelines, a copy of which is attached hereto as Exhibit "D".

16. Repair, replace, and maintain any part of the Premises that Landlord is not obligated to repair, replace, or maintain, normal wear is accepted. Such maintenance shall include the provision of any necessary pest control measures subject to all applicable laws, rules and regulations and reasonable regulations established by Landlord.

17. After casualty loss not terminating the lease, rebuild the interior partitions/walls, ceilings, wiring, light fixtures, and plumbing.

18. Submit in writing to Landlord any request for repairs, replacement, and maintenance that are the obligations of Landlord.

19. Vacate the Premises and return all keys to the Premises on the last day of the Term, subject to any holdover rights.

20. On request, execute an estoppel certificate that states the Commencement Date and Expiration Date of the lease, identifies any amendments to the lease, describes any rights to extend the Term or purchase rights, lists defaults by Landlord, and provides any other information reasonably requested. If Landlord sells the Premises, Tenant must deliver to the buyer or the buyer's lender a subordination, nondisturbance, and attornment agreement reasonably satisfactory to the buyer and its lender. Tenant's obligation to deliver the agreement may be conditioned on buyer's agreement to honor this Lease according to its terms, but buyer will not be estopped to act on Tenant's default under this Lease.

21. Not to create a nuisance.

22. Not to place or 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.

23. Not to obstruct nor permit the blockage of any entrance, passageway, electrical panel rooms, CITY storage rooms, or exit.

24. To not use nor permit the use of loudspeakers, bull horns, strobe lights or other bright, loud or distracting devices. TENANTS may utilize televisions or radios within their leased premises so long as the sound of said devices is maintained at a reasonable level and does not create a distraction or nuisance to other tenants or in the common areas. .

25. Not to conduct nor permit the conduct of any auction, going out of business sale, or salvage sale on or about the LEASED PREMISES.

26. Not to use the LEASED PREMISES for the storage of material, inventory or supplies, except in accordance with rules and regulation promulgated by the CITY.

27. Not to use Common Area ceilings for storage without prior written permission of the City's Director designee of City Center Development and Operation.

28. Not to display, sell, give away, or otherwise distribute or keep live animals, including, but not limited to birds, snakes, chickens, fish, or turtles; and

29. Not to display or promote any activity or method of operation on or about the **LEASED PREMISES** which exposes patrons thereof to nudity or partial nudity. For purposes of this provision the following definitions apply:

- (a) Nudity means total absence of clothing or covering for the human body; and
- (b) Partial nudity means exposure of the female breast or the exposure of the male or female pubic are or buttocks.

30. Not to place or permit the display of any merchandise in the Common Area. Encroachment of the Common Area is subject to a fine.

31. Not to interfere with any other tenant's normal business operations or Landlord's management of El Mercado at Market Square.

32. Not to permit waste.

33. Not to use the Premises in any way that would increase insurance premiums or void insurance on the Premises.

- 34.** Not to alter the Premises without Landlord's written consent.
- 35.** Not to allow a lien to be placed on the Premises.
- 36.** Not to make repair, maintenance or cleaning requests to City personnel other than the City's Director designee of City Center Development and Operation.
- 37.** Not to make an outcry or do any hawking or spieling or to use loud or boisterous language for the purpose of drawing customers or attracting, in violation of City Code Chapter 32-45.

CITY promises that it will:

- 1.** Lease to Tenant the Premises for the entire Term beginning on the Commencement Date and ending on the Expiration Date.
- 2.** Obey all applicable laws with respect to Landlord's operation of El Mercado at Market Square and its Common Areas.
- 3.** Landlord promises that it will not interfere with Tenant's possession of the Premises as long as Tenant is not in default.
- 4.** Landlord promises that it will not communicate with any person regarding lease and contract issues other than Tenant and such persons as Tenant has indicated in writing are Tenant's attorneys, agents and/or lobbyists.
- 5.** Address maintenance and cleaning requests in a timely manner and provide Tenant with adequate contact information for the appropriate individual at the City charged with processing and completing maintenance or cleaning requests. Specifically, Landlord shall use its best efforts to address all restroom cleaning and maintenance request in a timely manner and strive to maintain regular (i.e. hourly) restroom cleaning and resupplying schedules.
- 6.** Enforce the provisions of this Agreement.
- 7.** LANDLORD agrees to abide by the El Mercado Operations and Maintenance Guidelines, a copy of which is attached hereto as Exhibit "D".
- 8.** Landlord shall enforce or provide for the enforcement of City of San Antonio Code Chapter 32-45. It shall be unlawful for any person to make an outcry or do any hawking or spieling or to use loud or boisterous language for the purpose of drawing customers or attracting.