

AN ORDINANCE 2017-02-23-0107

**APPROVING THE MARKET SQUARE LEASE ASSIGNMENT
OF FOREVER YOURS TO JOYCE DURAN DBA BESITOS &
JOY.**

* * * * *

WHEREAS, the City of San Antonio owns and manages Market Square, a unique and historic public market place that plays a vital role in the life, culture and economy of San Antonio; and

WHEREAS, Market Square, with a retail history dating back to the nineteenth century, provides a unique and authentic Mexican market experience, offering retail sales, holiday celebrations, and year round entertainment; and

WHEREAS, there are 56 businesses in the Farmers Market, 33 in El Mercado and 14 in Market Square Pláza, ranging from cafes to shops specializing in local, regional and Latin American products; and

WHEREAS, on June 23, 2011, City Council passed Ordinance No. 2011-06-23-0571, which authorized extensions to all Farmers Market and El Mercado leases until June 30, 2014; and

WHEREAS, the ordinance also provided the City the option to renew all the Farmers Market and El Mercado leases, including the aforementioned lease, for an additional three-year period and until June 30, 2017 and a subsequent two-year period until June 30, 2019; and

WHEREAS, the City has subsequently extended the Farmers Market and El Mercado agreements until June 30, 2017; and

WHEREAS, Violeta Duran dba Forever Yours has operated a Mexican imports store in El Mercado for over twenty-five years; and

WHEREAS, Joyce Duran has sold merchandise in El Mercado for over twenty years; and

WHEREAS, the Municipal Code provides authority for the City to assign leases when businesses are sold and establish an assignment fee of \$1,500.00; and

WHEREAS, this proposed ordinance will authorize an amendment to the lease agreement with Forever Yours, effectively assigning the lease agreement; **NOW THEREFORE:**

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

SECTION 1. The City Manager or her designee, or the Director of the Center City Operations and Development Department or his designee, is authorized to execute the Assignment and Amendment of the Lease Agreement with Forever Yours to Joyce Duran dba Besitos & Joy. A copy of the assignment and amendment of lease agreement, in substantially final form, is attached hereto and incorporated herein for all purposes as **Attachment I**.

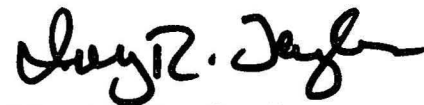
SW/vv
02/23/17
Item #14

SECTION 2. Funds generated by this Ordinance will be deposited into Fund 29604001, Internal Order 219000000146 and General Ledger 4406845.

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

SECTION 4. This Ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 23rd day of February, 2017.



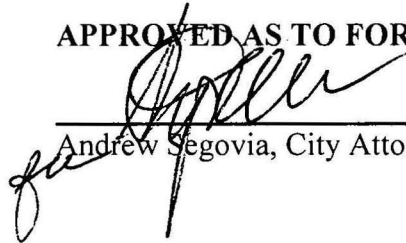
M A Y O R
Ivy R. Taylor

ATTEST:



Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:



Andrew Segovia, City Attorney

Agenda Item:	14 (in consent vote: 4, 5, 6, 9A, 9B, 9C, 11, 12, 14, 15, 16A, 16B, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27)						
Date:	02/23/2017						
Time:	09:31:13 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance approving the Market Square lease assignment of Forever Yours to Joyce Duran dba Besitos & Joy [Lori Houston, Assistant City Manager; John Jacks, Interim Director, Center City Development and Operations Department]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Treviño	District 1		x				x
Alan Warrick	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6	x					
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x			x	

**ASSIGNMENT AND AMENDMENT OF LEASE AGREEMENT
EL MERCADO AREA NUMBER S-6
(WITH LANDLORD'S CONSENT)**

WHEREAS, the City of San Antonio, a Texas Municipal Corporation, acting by and through its City Manager pursuant to Ordinance No. 91799 passed and approved by the City Council on May 18, 2000, as **LANDLORD ("CITY")**, entered into that certain Lease Agreement effective January 1, 2000 ("**LEASE**") with Violeta Duran d/b/a "**Forever Yours**" (**ASSIGNOR**) for the lease of the following described tract or parcel of real property situated in Farmers Market at Market Square, San Antonio, Bexar County, Texas to-wit:

A portion of the real property and improvements owned by **CITY** located at 514 W. Commerce Street, San Antonio Bexar County, Texas within the area commonly known as El Mercado at Market Square (said real property and improvements hereinafter referred to as the "**Leased Premises**"). Said Leased Premises contain approximately 71.4 square feet and is identified as area number S-6;

WHEREAS, Violeta Duran d/b/a "**Forever Yours**" desires, as **ASSIGNOR**, to convey and assign **TENANT'S** leasehold interest under the **LEASE** to Joyce Duran d/b/a "**Besitos and Joy**" as **ASSIGNEE**; and

WHEREAS, said assignment requires the prior approval of **CITY**; and

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

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

WHEREAS, amending the **LEASE** is in **CITY** and **TENANT'S** best interest; **NOW THEREFORE**,

In consideration of the mutual covenants and agreements set forth below the parties agree as follows:

1. **CONVEYANCE AND ASSIGNMENT**: **ASSIGNOR** does hereby grant, bargain, sell, convey, assign, transfer, set over, and deliver to **ASSIGNEE**, all of **ASSIGNOR'S** rights, title, and interest in and to the **LEASE**, including and also without limitation, all of the rights, duties, obligations, and liabilities of **ASSIGNOR** in, to, and under the **LEASE** to pay rent and to observe and perform all other covenants and duties of **TENANT** there under.
2. **ASSUMPTION**: By its execution hereof, **ASSIGNEE** hereby assumes and agrees to perform all of the terms, covenants, and conditions of the **LEASE** on the part of the **TENANT** therein required to be performed arising from and after the date hereof, and **ASSIGNEE** releases **ASSIGNOR** from all liability for such obligations.

ASSIGNEE hereby accepts the assignment of said **ASSIGNOR'S** rights, title and interest in and to the **LEASE** and; **ASSIGNEE** recognizes the superior fee title in and to the land and premises held by the **CITY**, as Landlord, and **CITY'S** right of reversion at the end of the **LEASE** term, whether occasioned by default or passage of time, as well as, the rights and

benefits of every description whatsoever belonging to or accruing to the benefits of the CITY under the LEASE.

3. **CONSENT:** CITY hereby consents to the assignment by Violeta Duran d/b/a "Forever Yours", as ASSIGNOR, and the assumption by Joyce Duran d/b/a "Besitos & Joy", as ASSIGNEE of said Violeta Duran dba "Forever Yours".

4. **REPRESENTATION AND WARRANTIES:** ASSIGNOR and ASSIGNEE represent and warrant that the following statements are true. Joyce Duran, as the ASSIGNEE, will be the exclusive owner of the business, formerly owned by Violeta Duran and operating as "Forever Yours". Joyce Duran will take full control of the business immediately upon execution of agreement and will operate as "Besitos & Joy".

Violeta Duran will not have any ownership or serve as agent in the new enterprise operating from the premises. This individual will have no authority, financial or otherwise, in the new enterprise operating from the premises.

In the event that any such representations and warranties are found by CITY not to be true, then CITY shall have authority to revoke its consent to this assignment and terminate the Lease without allowing ASSIGNOR or ASSIGNEE an opportunity to cure.

5. **USE AND CARE OF PREMISES:** ASSIGNEE agrees that that the Leased Premises shall be utilized for the sole purpose of retail sales of products reflecting an open market with a Mexican Market theme, excluding alcoholic goods and beverages.

6. **AMENDING USE AND CARE OF PREMISES:** Section 2.4 of LEASE is amended to include the following provisions:

2.4.1 Further, TENANT covenants and agrees, in keeping with the intent and spirit of El Mercado and Market Square, to operate the business conducted on the Leased Premises in an "OWNER PRESENCE" capacity, physically participating in the day-to-day operations of TENANT'S business, as opposed to employing a non-owner manager of said premises, hence an "absentee owner" posture, unless such management is first approved by the Director, Downtown Operations Department, or her designee. Failure to operate the business on the Leased Premises in such a manner will constitute an act of default hereunder and will be grounds, at CITY'S option to terminate this Lease Agreement upon ten (10) days written notice to TENANT.

7. **ACKNOWLEDGEMENT OF READING:** The parties hereto acknowledge that they have thoroughly read this Agreement, including any exhibits or attachments hereto, and have sought and received whatsoever competent advice and counsel which was necessary for them to form a full and complete understanding of their rights and obligations herein, and having done so, do hereby execute this Agreement.

EXECUTED this _____, 2017.

ASSIGNOR:
Violeta Duran
d/b/a "Forever Yours"

ASSIGNEE:
Joyce Duran
d/b/a "Besitos & Joy"



Violeta Duran



Joyce Duran

3544 SUMMITT CLIFF
Address

SAN ANTONIO, TX 78261
City, State, Zip Code

Business Telephone Number

(210) 860 2282
Other Telephone Number

duranjoy7@yahoo.com
Email Address

LANDLORD:
CITY OF SAN ANTONIO, a Texas Municipal
Corporation

ATTEST:

City Manager

City Clerk

APPROVED AS TO FORM:

City Attorney

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