

AN ORDINANCE 2015-02-19-0114

**APPROVING THE ASSIGNMENT OF A MARKET SQUARE
LEASE AGREEMENT FROM AURORA LOMAS
SANDOVAL DBA FRESH CONCEPTS TO BERTHA
MAYTE DE LA ROSA.**

* * * * *

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 10 in Market Square Plaza, ranging from cafes to shops specializing in local, regional and Latin American products; and

WHEREAS, Aurora Lomas Sandoval dba Fresh Concepts holds a lease agreement with the City of San Antonio; and

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

WHEREAS, the ordinance also provided the City the option to renew all the Farmers Market leases, including the aforementioned lease, for an additional three-year period and subsequently a two-year period; and

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

WHEREAS, Ms. Lomas Sandoval has operated Fresh Concepts, a Mexican Imports shop in Farmers Market since March 2009; and

WHEREAS, Ms. Lomas Sandoval is requesting to assign her store to Bertha Mayte De La Rosa; and

WHEREAS, the Municipal Code provides authority for the City to assign a lease 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 Aurora Lomas Sandoval dba Fresh Concepts, effectively assigning the lease agreement to Bertha Mayte De La Rosa dba Shainy Designs; **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 Culture and Creative Development Department or his designee, is authorized to execute the assignment of a Market Square lease agreement from Aurora Lomas Sandoval dba Fresh Concepts to Bertha Mayte De La Rosa. 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**.

SECTION 2. Funds generated by this ordinance will be deposited into Fund 29604001, Internal Order 228000000147 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 19th day of February, 2015.



M A Y O R
Ivy R. Taylor

ATTEST:



Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:



Martha G. Sepeda, Acting City Attorney

Agenda Item:	13 (in consent vote: 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21)						
Date:	02/19/2015						
Time:	10:27:04 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance approving the assignment of a Market Square lease agreement from Aurora Lomas Sandoval dba Fresh Concepts to Bertha Mayte De La Rosa. [Ed Belmares, Assistant City Manager; Felix Padron, Director, Culture and Creative Development]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Trevino	District 1	x					
Alan Warrick	District 2		x			x	
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				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				

**ASSIGNMENT AND AMENDMENT OF
LEASE AGREEMENT
FARMERS MARKET AREA NUMBER S-15
(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. 2006-03-16-0342, passed and approved by the City Council on March 16, 2006, as **LANDLORD ("CITY")**, entered into that certain Lease Agreement effective **April 1, 2006 ("LEASE")** with **J. David Kirby d/b/a "Fresh Concepts"** who subsequently through Ordinance No. 2009-03-19-0204, assigned to **Aurora Lomas-Sandoval d/b/a "Fresh Concepts" ("ASSIGNOR")** the lease of the following described tract or parcel of real property situated in Farmers Market Plaza at Market Square, San Antonio, Bexar County, Texas to-wit:

A portion of the real property and improvements owned by **CITY** located at 612 W. Commerce Street, San Antonio Bexar County, Texas within the area commonly known as Farmers Market Plaza at Market Square (said real property and improvements hereinafter referred to as the **"Leased Premises"**). Said **Leased Premises** contain approximately 114 square feet and is identified as Farmers Market Plaza area number S-15; and

WHEREAS, **Aurora Lomas-Sandoval d/b/a "Fresh Concepts"** desires, as **ASSIGNOR**, to convey and assign **TENANT'S** leasehold interest under the **LEASE** to **Bertha Mayte De La Rosa dba "Shainy Designs"** as **ASSIGNEE**; and

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

WHEREAS, **ASSIGNEE** desires to assume from **ASSIGNOR** all of **ASSIGNOR'S** rights, title, and interest as **TENANT** in and to the **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 **Aurora Lomas-Sandoval d/b/a "Fresh Concepts"**, as **ASSIGNOR**, and the assumption by **Bertha Mayte De La Rosa dba "Shainy Designs"**, as **ASSIGNEE** of said **ASSIGNOR'S** liability and obligations as **TENANT**, in that certain **LEASE** between the **CITY** and **Aurora Lomas-Sandoval d/b/a "Fresh Concepts"**, originally approved by City Council pursuant to Ordinance number 2006-03-16-0342 , passed and approved on April 1, 2006.

4. **REPRESENTATION AND WARRANTIES:** **ASSIGNOR** and **ASSIGNEE** represent and warrant that the following statements are true.

Bertha Mayte De La Rosa, as the **ASSIGNEE**, will be the exclusive owner of the business, formerly owned by **Aurora Lomas-Sandoval** and operating as **"Fresh Concepts"**. **Bertha Mayte De La Rosa** will take full control of the business immediately upon City Council approval and will operate as **"Shainy Designs"**.

Aurora Lomas-Sandoval will not have any ownership or serve as employee, or 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 automatically terminate the contract without allowing ASSIGNOR or ASSIGNEE an opportunity to cure.

5. **USE 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 and excluding alcoholic goods and beverages in accordance with applicable statutes, laws, ordinances, rules and regulations of the United States of America, the State of Texas, and the City of San Antonio, Texas.

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 Farmers Market Plaza 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 _____, 2015.

ASSIGNOR:

Aurora Lomas-Sandoval d/b/a "Fresh Concepts"

ASSIGNEE:

Bertha Mayte De La Rosa d/b/a "Shainy Designs"


Aurora Lomas-Sandoval


Bertha Mayte De La Rosa

1700 Jackson Keller
Address

San Antonio Tx . 78213
City, State, Zip Code

210-719-33-03
Business Telephone Number

Other Telephone Number

LANDLORD:

CITY OF SAN ANTONIO, a Texas Municipal Corporation

ATTEST:

City Manager

City Clerk

APPROVED AS TO FORM:

City Attorney