

AN ORDINANCE 2017-12-14-1003

**APPROVING THE MARKET SQUARE LEASE AGREEMENT
WITH JOSE HERNANDEZ DBA JOSEPH FINE ARTIST
GALLERY.**

* * * * *

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 Plaza, 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 for an additional three-year period until June 30, 2017 and a subsequent two-year period until June 30, 2019; and

WHEREAS, the City has exercised its first option to extend the Farmers Market and El Mercado agreements until June 30, 2017, and subsequently exercised the second option to further extend agreements until June 30, 2019; and

WHEREAS, Jose Hernandez Jr. is a local artist, who specializes in painting scenes depicting local venues. Mr. Hernandez has operated a successful gallery in Market Square plaza and now wishes to have a more permanent gallery located inside Farmers Market; and

WHEREAS, this proposed ordinance will authorize lease agreement with Jose Hernandez Jr. dba Joseph Fine Artist Gallery; **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 Development and Operations Department or his designee, is authorized to execute a Market Square lease agreement with Jose Hernandez Jr. dba Joseph Fine Artist Gallery. A copy of the 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 21900000147 and General Ledger 4407720 and 4407719.

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 Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers 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 14th day of December, 2017.


M A Y O R
Ron Nirenberg

ATTEST:



Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:



Andrew Segovia, City Attorney

| | | | | | | | |
|---------------------|--|--------------------|------------|------------|----------------|---------------|---------------|
| Agenda Item: | 20 (in consent vote: 4, 6, 7, 9, 10, 11, 12, 16, 18A, 18B, 18C, 19, 20, 23, 25, 26, 27, 28, 29, 30, 32, 33, 35, 38, 39, 40) | | | | | | |
| Date: | 12/14/2017 | | | | | | |
| Time: | 09:20:27 AM | | | | | | |
| Vote Type: | Motion to Approve | | | | | | |
| Description: | An Ordinance approving the Market Square lease agreement with Jose Hernandez dba Joseph Fine Artist Gallery. [Lori Houston, Assistant City Manager; John Jacks, Director, Center City Development and Operations Department] | | | | | | |
| Result: | Passed | | | | | | |
| Voter | Group | Not Present | Yea | Nay | Abstain | Motion | Second |
| Ron Nirenberg | Mayor | | x | | | | |
| Roberto C. Treviño | District 1 | | x | | | | |
| William Cruz Shaw | District 2 | | x | | | x | |
| Rebecca Viagran | District 3 | | x | | | | x |
| Rey Saldaña | District 4 | | x | | | | |
| Shirley Gonzales | District 5 | | x | | | | |
| Greg Brockhouse | District 6 | | x | | | | |
| Ana E. Sandoval | District 7 | | x | | | | |
| Manny Pelaez | District 8 | | x | | | | |
| John Courage | District 9 | | x | | | | |
| Clayton H. Perry | District 10 | | x | | | | |

SW
12/14/17
Item No. 20

ATTACHMENT I

**CITY OF SAN ANTONIO
FARMERS MARKET PLAZA LEASE AGREEMENT**

This License Agreement is made and entered into by and between the **CITY OF SAN ANTONIO**, a Texas Municipal Corporation, acting herein through its City Manager pursuant to Ordinance No. _____ passed and approved on the ____ day of _____, 2017, (hereinafter referred to as "**CITY**"), and **Jose Hernandez Jr. dba Joseph Fine Artist Gallery** (hereinafter referred to as "**LESSEE**"), acting by and through its duly authorized officers, WITNESSETH:

1. DEMISE OF PREMISES

- 1.1 **CITY**, for and in consideration of the rents, covenants and promises herein contained to be kept, performed and observed by **LESSEE**, does hereby Lease and demise to **LESSEE**, and **LESSEE** does hereby rent and accept from **CITY** a portion of the real property and improvements owned by **CITY** located at 612 W. Commerce Street, San Antonio Bexar County, Texas, within the area commonly known as the Farmers Market Plaza at Market Square Plaza (said real property and improvements hereinafter referred to as the Leased Premises). Said Leased Premises contain approximately 114 square feet and is identified as Farmers Market Plaza area **Stall S-6** and incorporated by reference herein for the purposes of this Lease Agreement, the same as if fully copied and set forth at length.

2. USE AND CARE OF PREMISES

- 2.1.1 The Leased Premises shall be used only for the sale of the following retail items.

- Original works of art
- Prints
- Art work on postcards, gift cards, coasters, mouse pads and other souvenir gift items

A violation of the above stated restrictions would be a material breach of this Lease Agreement and **LESSEE** would be subject to the following:

- The first violation shall result in a written notice from the City
- For each of the next three violations **TENANTS** shall pay **CITY** \$50.00
- The fifth violation shall be deemed a material breach and default and cause for lease termination without opportunity to cure.

- 2.2 In using the Leased Premises for the purpose(s) hereinbefore described, **LESSEE** may, with the written permission of **CITY**, demonstrate, exhibit or practice a specific art or craft on the Leased Premises related to **LESSEE**'s approved retail purpose.

- 2.3 The following minimum hours of operation are hereby specifically agreed to by the parties hereto:

- 2.3.1 During the months of January, February, March, April, May, September, October, November, and December, **TENANT** agrees to open each and every day by 10:00 a.m. and agrees to operate and conduct business from the time of opening until 6:00 p.m.

- 2.3.2 During the months of June, July, and August, **TENANT** agrees to open business each day by 10:00 a.m. and agrees to operate and conduct business from the time of opening until 8:00 p.m., seven days a week. **CITY** shall post business hours on all major entry and exit points.
- 2.3.2.1 With the exceptions of Sections 2.4 and 2.5 below, failure to comply with above stated minimum operating hours may result in a written warning on the first offense; a \$25.00 fine for the second offense; a \$50.00 fine for the third offense; and a \$500.00 fine for the fourth offense. The fifth offense shall be deemed as default and cause for lease termination as set forth in Article 18 "Defaults and Remedies".
- 2.3.2.2 **SPECIAL SITUATIONS:** **CITY** agrees that in special situations regarding weather conditions and/or extending/reducing hours of operation, **CITY** shall cooperate, to the best of its ability, with the Farmers Market Tenants based on their majority vote, as to temporary closings and/or extended hours of operation.
- 2.4 The preceding hours of operation shall not apply while the Farmers Market Plaza is closed for **THANKSGIVING DAY, EASTER, CHRISTMAS DAY, and NEW YEAR'S DAY**, or during such time as the Leased Premises become untenable because of casualty, repair or restoration.
- 2.5 **TENANT** may not close **TENANT'S** business under any circumstances, except where an emergency exists. **TENANT** must notify the Market Square Facilities Coordinator within 24 hours after closure to inform the Market Square Facilities Coordinator of the nature of the emergency.
- 2.5.1 Emergencies are defined as follows: A) Death in the **TENANT'S** or **TENANT'S** employee(s) family; B) Medical Emergency; C) Automobile Accident; and/or any other such occurrence, which may be deemed an Emergency by the Market Square Facilities Coordinator.
- 2.6 No **TENANT** may own, or operate as a "shop owner", more than two (2) stores in the Market Square Complex. The definition of "stores" includes, in-line stores, food court stalls, and store stalls. A **TENANT** may not have more than two of any combination of the above Farmers Market retail sites.

3. TERM AND EXPIRATION DATE

- 3.1 The term of this License Agreement is for a period beginning upon Commencement Date (as per Section 28 herein) and ending on June 30, 2019 unless sooner terminated as provided in this License.
- 3.2 **EITHER PARTY** may cancel this License by giving thirty (30) Calendar days written notice to **OTHER PARTY PER SECTION 21, NOTICES.**

4. RENTAL

- 4.1 **LESSEE** shall pay rental in either one lump sum in advance for Annual Payment or in monthly installments in advance, on, or before the first day of each. Any payment of rent or other charges and fees received after the first (1st) day of the month will be considered late. **Any payment of rent or other charges and fees received after the (10th) day of the month will be subject to a \$20.00 fee.**

4.2 The monthly lease rate for the period beginning on Commencement Date through June 30, 2018 shall be \$461.70. In addition to the lease rate, LESSEE agrees to pay a \$2.85 garbage collection fee for a total monthly rent of \$464.55. Beginning July 1, 2018 and continuing through June 30, 2019, LESSEE agrees to pay a monthly lease rate of \$470.93 and a monthly garbage collection fee of \$2.85 for a total month rent of \$473.78.

4.3 Payment shall be submitted by LESSEE to:

**City of San Antonio
Treasury Division
Central Billing Section
P.O. Box 839975
San Antonio, Texas 78283-3975**

4.4 Rent for the period from Commencement Date through December 31, 2018 has been paid by Jose Hernandez dba Joseph Fine Artist Gallery

5. ACCEPTANCE AND CONDITION OF PREMISES

5.1 LESSEE has had full opportunity to examine the Leased Premises and acknowledges that there is in and about them nothing dangerous to life, limb or health and hereby waives any claim for damages that may arise from defects of that character after occupancy. LESSEE'S taking possession of the Leased Premises shall be conclusive evidence of LESSEE'S acceptance thereof in good order and satisfactory condition, and LESSEE hereby accepts the Leased Premises in its present **AS IS, WHERE IS, WITH ALL FAULTS CONDITION** as suitable for the purpose for which Leased, LESSEE accepts the Leased Premises with the full knowledge, understanding and agreement that CITY disclaims any warranty of suitability for LESSEE'S intended commercial purposes.

5.2 LESSEE agrees that no representations respecting the condition of the Leased Premises, and no promises to decorate, alter, repair or improve the Leased Premises, either before or after the execution hereof, have been made by CITY or its agents to LESSEE unless the same are contained herein or made a part hereof by specific reference herein.

6. UTILITIES

6.1 **UTILITIES:** In addition to consideration of rent, TENANT hereby agrees to pay a pro-rata share, based on **square footage**, for electricity, lighting, air conditioning and gas service provided by the CITY to the Leased Premises per month based on fifty percent (50%) of the total of the utility services. In cases where individual meters are installed, TENANT agrees to pay the entire cost of the utility services.

7. IMPROVEMENTS

7.1 LESSEE shall not construct, or allow to be constructed, any new improvements or structures on the Leased Premises nor shall LESSEE make, or allow to be made, any alterations to the Leased Premises without the prior written approval of the CITY through the DIRECTOR and

any and all other necessary departments, boards or commissions of the CITY OF SAN ANTONIO, including, but not limited to, the Historic and Design Review Commission (HDRC).

LESSEE understands and agrees that any violation of the above stated restrictions would be a material breach of this Agreement and that just compensation for the harm suffered by CITY that would be caused by such violations cannot be accurately estimated and 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.
- For each of the next three violations LESSEE shall pay CITY \$50.00.
- The fifth violation shall be deemed a material breach and default and cause for License termination without opportunity to cure.

- 7.2 LESSEE covenants that it shall not bind, or attempt to bind, CITY for the payment of any money in connection with the construction, repair, alteration, addition or reconstruction in, on or about the Leased Premises. Further, LESSEE agrees to remove, within thirty (30) calendar days after filing, by payment or provisions for bonding, any mechanic's or materialman's liens filed against the Leased Premises and to indemnify CITY in connection with such liens to the extent of any damages, expenses, attorney's fees, or court costs incurred by CITY.

8. MAINTENANCE OF PROPERTY

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

9. SIGNS

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

10. COMMON AREA

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

11. TAXES AND LICENSES

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

12. ASSIGNMENT AND SUBLICENSING

- 12.1 Except as to the parent, subsidiary or similarly affiliated company, **LESSEE** shall not assign this License Agreement, or allow same to be assigned by operation of law or otherwise, any part thereof without the prior written consent of **CITY**, which may be given only by or pursuant to an Ordinance enacted by the City Council of San Antonio, Texas. Any assignment by **LESSEE** without such permission shall constitute an Event of Default.
- 12.2 **LESSEE**, may not without consent of Landlord, sublet the Leased Premises to a third Party for the use and operations consistent with the terms and conditions of this License Agreement.

Such subletting shall be at market value and shall not relieve LESSEE from any burdens, covenants, restrictions contained in this License Agreement.

- 12.3 Without the prior written consent of **LESSEE**, **CITY** shall have the right to transfer and assign, in whole or in part, any of its rights and obligations under this License Agreement; and, to the extent that such assignee assumes **CITY'S** obligations hereunder, **CITY** shall, by virtue of such assignment, be released from such obligation.
- 12.4 The receipt by the **CITY** of rent from an assignee, or occupant of the Leased Premises shall not be deemed a waiver of the covenant in this License Agreement against assignment and/or an acceptance of the assignee, or occupant as a **LESSEE**, or a release of the **LESSEE** from further observance or performance by the **LESSEE** of the covenants contained in this License Agreement. No provision of this License Agreement shall be deemed to have been waived by the **CITY** unless such waiver is in writing and signed by the **CITY**.

13. DISPLAY AREA

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

14. TERMINATIONS, DEFAULTS AND REMEDIES

14.1 The following events shall be deemed to be events of default by Tenant under this Lease Agreement in addition to any other events set forth herein:

14.1.1 Tenant shall fail to pay any installment, additional fees, penalty or rent as provided for in this Lease Agreement and shall not cure such failure within ten (10) days after the due date of such rent.

14.1.2 Tenant shall fail to operate or conduct business as prescribed by the City in Article 2, except on account of casualty, damage, remodeling or when the prior written consent of City is given.

14.1.3 Tenant shall fail to first obtain Market Square Facilities Coordinator approval prior to a request to TABC for a change in the establishment's alcohol license.

14.1.4 Tenant shall fail to comply with any term, provision or covenant of this Lease Agreement, other than the payment of rent, and shall not cure such failure within ten (10) days after written notice thereof to Tenant.

14.1.5 Tenant, shall within ninety (90) days following the Commencement Date, fail to take possession of the Leased Premises, or having taken said possession, fail to open such Leased Premises for the conduct of business.

14.1.6 Tenant deserts or vacates all or any part of the Leased Premises; Tenant will be deemed to have deserted or vacated the premises if, by any method or manner whatsoever, Tenant assigns, transfers, sells or sublets its interest or right to the Leased Premises without the prior written consent of the City.

14.1.7 The violation of covenants conditions or restrictions as detailed in sections (detail all of the sections where we have liquidated damages ending in termination without opportunity to cure)_____

Upon the occurrence of an Event of Default as heretofore provided, City may, at its option, declare this Lease Agreement, and all rights and interests created by it, terminated. Upon City electing to terminate, this Lease Agreement shall cease and come to an end as if that were the day originally fixed herein for the expiration of the term hereof. City, its agents or attorney may resume possession of the Leased Premises and relate the same for the remainder of the original term for the best rent City, its agents or attorney may obtain for the account of Tenant, who shall make good any deficiency.

Any termination of this Lease Agreement as herein provided shall not relieve TENANT from the payment of any sum or sums that shall then be due and payable or become due and payable to CITY hereunder, or from any claim or claims for damages then or theretofore accruing against TENANT hereunder, or any such sum or sums or claim for damages pursuant to any remedy provided for any law or in equity, or from recovering

damages from TENANT for any default there under. All rights, options and remedies of CITY contained in this Lease Agreement shall be cumulative of the other, and CITY shall have the right to pursue anyone or all of such remedies or any other remedy or relief available at law or in equity, whether or not stated in this Lease Agreement. No waiver by CITY of a breach of any of the covenants, conditions, or restrictions of this Lease Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or of any other covenant, condition, or restriction herein contained.

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

14.1.9 IF TENANT RECEIVES MORE THAN 3 NOTICES TO CURE DEFAULT WITHIN ANY TWELVE (12) MONTH PERIOD, ANY PROVISIONS IN REGARD TO INSURANCE, STAFFING AND HOURS OF OPERATION, OR PROVISIONS OF THIS LEASE, THEN REGARDLESS OF WHETHER SUCH PRIOR DEFAULTS HAVE BEEN TIMELY CURED, THE FOURTH SUCH DEFAULT (EVEN IF OF A DIFFERENT NATURE) SHALL CONSTITUTE A NON-CURABLE DEFAULT AND CITY SHALL BE ENTITLED TO TERMINATE THIS LEASE BY THIRTY (30) DAYS NOTICE TO TENANT.

15. INDEMNIFICATION

LESSEE 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 LESSEE'S activities under this Agreement, including

any acts or omissions of LESSEE, any agent, officer, director, representative, employee, consultant or subLESSEE of LESSEE, and their respective officers, agents employees, directors and representatives (collectively, the "LESSEE Parties") while in the exercise of performance of the rights or duties under this Agreement. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE WILLFUL MISCONDUCT OR NEGLIGENCE OF THE CITY OR ANY OF THE CITY'S ELECTED OFFICIALS, OFFICERS, EMPLOYEES, DIRECTORS, VOLUNTEERS OR REPRESENTATIVES (COLLECTIVELY, THE "CITY PARTIES"), INCLUDING, WITHOUT LIMITATION, ANY INSTANCES WHERE SUCH WILLFUL MISCONDUCT OR NEGLIGENCE OF ANY OF THE CITY PARTIES CAUSES PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE. IF THE FINAL JUDGMENT OF A COURT OF COMPETENT JURISDICTION ESTABLISHES, UNDER PRINCIPLES OF COMPARATIVE NEGLIGENCE THEN IN EFFECT IN THE STATE OF TEXAS, THAT THE WILLFUL MISCONDUCT OR NEGLIGENCE OF ANY OF THE LESSEE PARTIES OR ANY OF THE CITY PARTIES CAUSED A PERCENTAGE OF DAMAGES, THEN, AS TO SUCH PERCENTAGE ONLY, THE INDEMNITIES CONTAINED IN THIS PARAGRAPH SHALL NOT APPLY, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF ANY OF THE PARTIES UNDER TEXAS LAW.

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. LESSEE shall advise the CITY in writing within 24 hours after LESSEE receives actual notice, without any duty of independent inquiry or investigation, of any claim or demand against the CITY or LESSEE related to or arising out of LESSEE'S activities under this LICENSE AGREEMENT, and (ii) shall see to the investigation and defense of such claim or demand at LESSEE'S cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving LESSEE of any of its obligations under this paragraph.

16. INSURANCE REQUIREMENTS

- 16.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Center City Development and Operations Department, which shall be clearly labeled "insert name of project/contract" 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 _____ Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.
- 16.2 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.
- 16.3 A consultant's financial integrity is of interest to the City; therefore, subject to Consultant's right to maintain reasonable deductibles in such amounts as are approved by the City, Consultant shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Consultant'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> |
|---|--|
| | |
| <p>1. Workers' Compensation</p> <p>2. Employers' Liability</p> | <p>Statutory</p> <p>\$1,000,000/\$1,000,000/ \$1,000,000</p> |
| <p>3. Commercial General Liability Insurance to include coverage for the following:</p> <p>a. Premises/Operations</p> <p>b. Products/Completed Operations</p> <p>c. Personal/Advertising Injury</p> <p>*d. Environmental Impairment/ Impact – sufficiently broad to cover disposal liability.</p> <p>*e. Explosion, Collapse, Underground</p> | <p>For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence;</p> <p>\$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage</p> |

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|--|---|
| <p>4. Business Automobile Liability</p> <p>a. Owned/leased vehicles</p> <p>b. Non-owned vehicles</p> <p>c. Hired Vehicles</p> | <p>Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence</p> |
| <p>5. *Professional Liability (Claims-made basis)</p> <p>To be maintained and in effect for no less than two years subsequent to the completion of the professional service.</p> | <p>\$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.</p> |
| <p>6. *Builder's Risk</p> | <p>All Risk Policy written on an occurrence basis for 100% replacement cost during construction phase of any new or existing structure.</p> |
| <p>7. *Property Insurance: For physical damage to the property of LESSEE, including improvements and betterment to the Leased Premises</p> | <p>Coverage for replacement value with a minimum co-insurance factor of eighty percent (80%) of the cost of Contractor's property</p> |

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| | |
| ****Please consult w/ RM to amend the insurance table to suit the scope of your contract**** | |
| | |
| | |
| *if applicable | |

16.4 Consultant agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of Consultant herein, and provide a certificate of insurance and endorsement that names the Consultant and the City as additional insureds. Policy limits of the coverages carried by subcontractors will be determined as a business decision of Consultant. Consultant 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.

16.5 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. Consultant shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within 10 days. Consultant shall pay any costs incurred resulting from provision of said documents.

City of San Antonio
 Attn: _____ Department
 P.O. Box 839966

16.6 Consultant 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.

16.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Consultant shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Consultant's performance 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.

16.8 In addition to any other remedies the City may have upon Consultant'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 Consultant to stop work hereunder, and/or withhold any payment(s) which become due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof.

- 16.9 Nothing herein contained shall be construed as limiting in any way the extent to which Consultant may be held responsible for payments of damages to persons or property resulting from Consultant's or its subcontractors' performance of the work covered under this Agreement.
- 16.10 It is agreed that Consultant'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.
- 16.11 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.
- 16.12 Consultant and any subcontractors are responsible for all damage to their own equipment and/or property.

17. RULES AND REGULATIONS

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

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

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

18. RESERVATIONS: CITY

- 18.1 **CITY** reserves the right to enter the Leased Premises at all reasonable times for the purpose of examining, inspecting or making repairs as herein provided. **LESSEE** shall not be entitled to an abatement or reduction of rent by reason of such entry, nor shall said entry be deemed to be an actual or constructive eviction of **LESSEE** from the Leased Premises. Should construction or other activity by **CITY** prevent **LESSEE'S** use of the Leased Premises for the purposes outlined herein for longer than ten (10) days, then this License Agreement shall be automatically extended for the same number of days **LESSEE'S** use of Leased Premises was denied or an abatement for the period **LESSEE** was not able to use the premises may be considered but not both. The City will determine which resolution will be executed.

19. HOLDING OVER

- 19.1 Should **LESSEE** hold over the Leased Premises, or any part thereof, after the expiration or termination of the term of this License Agreement, unless otherwise agreed in writing, such holding over shall constitute and be construed as a tenancy from month to month only, at a rental equal to **One Hundred Twenty-Five percent (125%)** the amount of the rent paid for the last month of the term of this License Agreement. The inclusion of the preceding sentence shall not be construed as **CITY'S** consent for the **LESSEE** to hold over.

20. CONFLICT OF INTEREST

- 20.1 **LESSEE** acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined therein, from having 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: A City officer or employee, or his parent, child, or spouse; a business entity in which the officer or employee, or his parent, child, or spouse owns ten (10%) percent or more of the voting stock or shares of the business entity, or ten (10%) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.
- 20.2 **LESSEE** warrants and certifies, and this license is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City or any of its agencies such as city owned utilities

21. SEPARABILITY

- 21.1 If any clause or provision of this License Agreement is illegal, invalid or unenforceable under present or future laws effective during the term of this License Agreement, then and in that event it is the intention of the parties hereto that the remainder of this License Agreement shall not be affected thereby, and it is also the intention of the parties to this License Agreement that

in lieu of each clause or provision of this License Agreement that is illegal, invalid or unenforceable, there be added as a part of this License Agreement a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

22. NOTICES

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

City of San Antonio
Center City Development and Operations
Department
P.O. Box 839966
San Antonio, Texas 78283-3966

City of San Antonio
City Clerk's Office
City Hall-Second Floor
P.O. Box 839966
San Antonio, Texas 78283-3966

or to such other address as may have been designated in writing by the City Manager of the CITY OF SAN ANTONIO from time to time.

Notices to **LESSEE** shall be deemed sufficient if in writing and mailed, Certified mail, Postage Prepaid, addressed to **LESSEE** at:

Jose Hernandez Jr.
100 N. Santa Rosa St. Apt. 825
San Antonio, Texas xxx

or to such other address on file with the City Clerk as **LESSEE** may provide in writing to **CITY**.

23. PARTIES BOUND

- 23.1 If there shall be more than one party designated as **LESSEE** in this License Agreement, they shall each be bound jointly and severally hereunder.
- 23.2 The covenants and agreements herein contained shall inure to the benefit of and be binding upon the parties hereto; their respective heirs, legal representatives, successors, and such assigns as have been approved by **CITY**.

24. TEXAS LAW TO APPLY

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

25. RELATIONSHIP OF PARTIES

- 25.1 Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of principal and agent, partners, joint ventures, or any other

similar such relationships between the parties hereto other than that of **LICENSOR** and **LESSEE**.

26. GENDER

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

27. CAPTIONS

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

28. ENTIRE AGREEMENT/AMENDMENT

- 28.1 This License Agreement, together with its attached exhibits and the authorizing ordinance, in writing, constitutes the entire agreement between the parties, any other written or parole agreement with **CITY** being expressly waived by **LESSEE**.
- 28.2 No amendment, modification, or alteration of the terms of this License Agreement shall be binding unless the same is in writing, dated subsequent to the date hereof and duly executed by the parties hereto.
- 28.3 It is understood that the Charter of the **CITY** requires that all contracts with the **CITY** be in writing and adopted by ordinance. All amendments also need approval evidenced by an ordinance.

29. ACKNOWLEDGEMENT OF READING

- 29.1 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.

30. AUTHORITY

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

WITNESS, the signature of the parties hereto in multiple originals, this, the _____ day of _____, 2017 (Commencement Date).

CITY OF SAN ANTONIO,
A Texas Municipal Corporation

LESSEE:
Jose Hernandez dba Joseph Fine Artist
Gallery

By: _____
City Manager

Jose Hernandez owner/Artist
Printed Name, Title

ATTEST:

City Clerk

Jose Hernandez
Signature

APPROVED AS TO FORM:

100 N. Santa Rosa St. Apt 825
Business Address

City Attorney

San Antonio TX. 78207
City, State, and Zip Code

210-324-4167
Area Code/Telephone Number of Business
jkfineartist@yahoo.com