

First Amendment to Lease Agreement

(McGusta Fine Cigar Co., d/b/a Spirit of San Antonio)

This First Amendment to Lease Agreement is between McGusta Fine Cigar Co., d/b/a Spirit of San Antonio ("Lessee") and the City of San Antonio ("Lessor"), pursuant to the Ordinance Authorizing the First Amendment.

1. Identifying Information

Lessee: McGusta Fine Cigar Co., d/b/a Spirit of San Antonio

Lessee's Address: 801 E. River Walk

Lease: An area containing 326.40 square feet and 281.20 square feet, for a total of 607.60 square feet at San Antonio River Walk level under the northeast corner of the East Commerce Street Bridge, Lot 1, NCB 13812, San Antonio, Bexar County, Texas.

Ordinance Authorizing Original Lease: 2006-12-14-1435

Ordinance Authorizing First Amendment:

Beginning of Renewal Term: January 1, 2017

Expiration of Renewal Term: December 31, 2021

2. Defined Terms

2.1. All terms used in this instrument and not otherwise defined herein but defined in the Lease to it have the meanings previously ascribed to them.

3. Use of Premises

3.1. Lessee agrees to maintain the following minimum hours of operation 10:00 a.m. to 6:00 p.m. Monday through Saturday and 11:00 a.m. – 4:00 p.m. on Sundays. Lessee may close the Premises on the following traditional holidays: Easter Sunday, Thanksgiving Day, Christmas Day, and New Year's Day.

3.1.1. The Lessor, through the Landlord Representative, shall have authority to approve temporary closings in emergency situations such as a weather emergency, death or medical emergency in the immediate family of Lessee or Lessee's employee(s). Lessee shall notify the Landlord Representative within 24 hours of any such emergency closing.

3.2. Lessee 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 Lessor 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:

3.2.1. The first violation shall result in a written notice from Lessor.

3.2.2. Lessee shall pay Lessor \$50.00 for each violation thereafter.

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

4. Renewal

4.1. The term of the lease is extended from the Beginning of Renewal Term through and including the Expiration of Renewal Term.

5. Rent

5.1. The monthly rental shall be \$7.61 per square foot per month for first lease year of the Renewal Term.

5.2. The monthly rental for the second lease year shall be based on upon a Fair Market Value Study to be conducted by Lessor. This rate shall increase by 2.5% each remaining lease year.

5.3. The rental may be paid in one lump sum in advance or in monthly installments in advance on the first day of each month.

5.3.1. Lessee must pay Rent in advance on the first day of each month. If Lessee is delinquent in paying Rent, Lessee must pay to Lessor Landlord upon demand a late charge of \$50.00. Lessee shall be charged a fee for any insufficient funds checks used to pay the rent and shall be subject to other rules and regulations adopted by Lessor's Treasury Division, including the insufficient funds fee. Late charges are in addition to all Lessor's other rights and remedies.

6. No Default

6.1 Neither Lessor nor Lessee is in default under the Lease, and neither party is aware of a cause of action against the other arising out of or relating to the period before this renewal.

7. Same Terms and Conditions

7.1 This renewal instrument is a fully integrated statement of the modifications to the Lease. Except as expressly modified by this renewal, the Lease remains a comprehensive statement of the rights and obligations of Lessor and Lessee. Lessor and Lessee reaffirm the Lease as modified by this agreement and represent to each other that, except as expressly stated in this instrument, no

written right or obligation of either party has been waived such that it would impair exercise of the right or enforcement of the obligation on a future occasion.

8. Public Information

8.1 Lessee acknowledges that this instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public. Nothing in this agreement waives an otherwise applicable exception to disclosure.

Lessor

Lessee

City of San Antonio, a Texas municipal corporation

McGusta Fine Cigar Co., d/b/a Spirit of San Antonio

By: _____

By: 

Printed Name: _____

Printed Name and Title: Roland Palanco
managing partner

Title: _____

Date: _____

Date: 11-1-16

Attest: _____

City Clerk

Approved as to Form: _____

City Attorney

