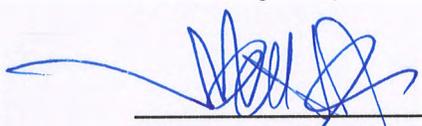


City of Santa Fe, New Mexico

memo

DATE: October 31, 2014

TO: Governing Body

VIA: 
Matthew S. O'Reilly, P.E.
Asset Development Director

FROM: Edward J. Vigil, Property Manager 

ITEM

Request for approval of amendments to an existing Lease Agreement dated June 1, 2010 between the City of Santa Fe and 60 E. San Francisco Street Ltd. Co. (d/b/a Santa Fe Arcade) for 440 square feet of air rights over city-owned property adjacent to the northern boundary of 60 E. San Francisco Street. (Edward Vigil)

BACKGROUND

This request concerns amendments to an existing lease of approximately 440 square feet of city-owned air rights above an existing portal located within the city's right-of-way adjacent and attached to 60 E. San Francisco St. The existing Lease Agreement was entered into as part of a License Agreement for the portal structure approved by the Governing Body on May 12, 2010. The lease allows commercial use of the roof of the portal for restaurant food and beverage service.

Joaquin Sanchez, President of 60 E. San Francisco Street Ltd. Co. (the Lessee), has requested certain amendments to the existing Lease Agreement in order to satisfy lending requirements related to a pending refinance of the 60 E. San Francisco Street property.

PROPOSED AMENDMENTS

The lease amendments requested by the Lessee consist of:

- 1) An extension of the lease term from 5 years with one additional renewal period to 5 years plus three optional additional terms of 5 years each for a total of 20 years and;
- 2) The addition of mortgagee (lender) provisions (Section 19 of the amended lease) related to the Lessee's pending loan to refinance the property.

The Lessee's purpose in lengthening the term of the lease is so that it more closely matches the term of the pending loan. The purposes of the additional mortgagee provisions are to allow the Lessee's lender to cure any default by Lessee under the lease. This is requested because the debt service requirements of the pending loan depend directly on the leasable square footage of the Lessee's property, including the property leased from the city, and the mortgagee provisions allow the lender to maintain the leasable square footage upon which the service of the loan debt is reliant.

RECOMMENDATIONS

The Asset Development office has reviewed the Lessee's request and the text of the proposed amendments. As noted above, the Lessee has requested to lengthen the lease term and to add certain mortgagee provisions. The grant of these additional considerations to the Lessee warrant additional consideration to the City. Staff has negotiated the following increased consideration:

- 1) Clarification that the use shall be at all times in conformance with the municipal code;
- 2) A minimum yearly rent escalation of 2.5%, and;
- 3) A 56.7% increase in the annual rent.

The 56.7% increase in annual rent increases the Lessee's current annual rent of \$3,369.34 to \$5,280.00. The new rate is based on a property value of \$120 per square foot at a lease yield of 10% resulting in a lease rate of \$12 per square foot annually. This new rent will total \$134,876.00 over the new lease term at the minimum escalation rate.

The Lessee has agreed to staff's recommended changes. All changes have been reviewed by the City Attorney and are incorporated into the Amended and Restated Lease Agreement (Exhibit "A").

REQUESTED ACTION

Please approve the attached Amended and Restated Lease Agreement.

Exhibits: A – Proposed Amended and Restated Lease Agreement;
 B – Existing Lease Agreement (Item # 10-0454)
 C – Existing License Agreement (Item # 10-0388)
 D – Lessor's Request for Amendment
 E – Fiscal Impact Report (FIR)

BUSINESS UNIT/LINE ITEM:

21117.460150

**AMENDED AND RESTATED LEASE AGREEMENT
BETWEEN
THE CITY OF SANTA FE AND 60 EAST SAN FRANCISCO LIMITED CO.**

This AMENDED AND RESTATED LEASE AGREEMENT (the "Lease Agreement") is made and entered into this _____ day of _____, 2014, by and between the City of Santa Fe, a Municipal Corporation ("Lessor") and 60 East San Francisco Limited Co., a New Mexico limited liability company, d/b/a Santa Fe Arcade ("Lessee"), acting by and through Southwest Asset Management, Inc., a New Mexico corporation. This Lease Agreement supersedes in its entirety that certain Lease Agreement by and between Lessor and Lessee dated June 1, 2010 (the "Previous Lease Agreement").

WITNESSETH:

In consideration of the Lessee's promises herein, Lessor hereby gives the Lessee a Lease Agreement, revocable and terminable as hereinafter provided, to enter on and make use of the property of the Lessor as follows:

1. PREMISES

Subject to the terms and conditions of this Lease Agreement, the Lessor allows the Lessee to use and occupy, subject to all of the terms and conditions hereinafter stated, that portion of the air rights over City real property along the northerly boundary of 60 East San Francisco Street, Santa Fe, NM (the "Property"). The leased property ("Premises") consists of approximately 440 square feet of air rights over the Property as more fully described and shown on Exhibit "A" attached hereto and made a part hereof. Lessee accepts the Premises in its present state and agrees that it is in good condition, without any representation or warranty by Lessor as to the condition of the Premises or as to the use, which may be made thereof.

2. USE OF PREMISES

Lessor agrees to allow the Lessee to use the Premises for the purpose of a restaurant food and beverage service area. No other commercial uses of the Premises are allowed, including but not limited to, the sale or display of merchandise or the installation of advertising signage. Outdoor lighting, properly permitted and installed in conformance with the City's building code and land development code, may be installed within the Premises at the Lessee's expense. Use of the premises shall at all times be in compliance with the City's municipal code.

3. LEASE TERM

The term of the Previous Lease Agreement was from June 1, 2010 to May 31, 2015, with one optional additional five year term. The initial term of this Lease Agreement shall be five (5) years with three (3) optional additional terms of five (5) years each for a total term of twenty (20) years, contingent upon compliance with this Lease Agreement and with proper written notice by Lessee to Lessor at least sixty (60) days prior to the expiration of the initial term or any additional term(s). In the event Lessee shall remain in possession of the Premises after the expiration of the initial or additional term(s) of this Lease, such possession may, at the sole option of Lessor, be continued as a month-to-month tenancy. During any such month-to-month tenancy, the rental fee shall be prorated and payable on a monthly basis in advance of the first day of each month, and the terms and conditions of the Lease Agreement shall be otherwise applicable.

4. RENT

Rent shall be paid as follows:

A. Rent. Lessee shall pay five thousand two hundred eighty dollars (\$5,280.00) as annual rent, due each year in full on the anniversary of this Lease Agreement without notice or demand and without deduction or offset for any cause whatsoever. Lessee shall make payments to the Lessor's cashier office, Room 114, 200 Lincoln Ave., Santa Fe, NM.

B. Increases in Rent. At the commencement of the second year and every subsequent year of the term of this Lease Agreement, or any additional terms thereof, the rent shall be increased by an amount calculated by multiplying the previous year's rent by the greater of:

(i) two and one-half percent (2.5%), or

(ii) the percentage change over the most recent 12 months in the Consumer Price Index seasonally adjusted U.S. City Average for All Urban Consumers published by the United States Department of Labor, Bureau of Labor Statistics (the "CPI-U").

5. TERMINATION BY LESSOR

Lessor may terminate this Lease Agreement upon Lessee's failure to comply with any provisions contained herein. Prior to termination, Lessor shall hand deliver or mail notice to Lessee via certified or registered mail specifying:

A. the breach;

B. the action required to cure the breach;

C. a date, not less than fifteen (15) days from the date the notice is hand delivered or mailed to Lessee, by which such breach must be cured; and

D. that failure to cure such breach on or before the date specified in the notice will result in termination of the Lease.

6. NON-ASSIGNMENT SUBLEASE

Lessee shall not assign, sublease or otherwise transfer this Lease Agreement, without the written consent of the Lessor, save and except for the assignment rights and duties of Lessee stated in Section 19 below with regard to its lender. Any such actions taken by Lessee shall result in the immediate termination of this Lease Agreement.

7. LIABILITY INSURANCE

Lessee shall carry and maintain in full force and effect during the term of this Lease Agreement, public liability insurance covering bodily injury and property damage, in a form and with an insurance company acceptable to Lessor, with limits of coverage not less than as stated in the New Mexico Torts Claims Act for each person injured and for each accident resulting in damage to property, against all claims and lawsuits arising from the Lessee's use of the Premises. Lessee shall cause the City of Santa Fe to be named as additional insured on such policy of insurance. Prior to this Lease Agreement taking effect and thereafter throughout the term of this Lease Agreement, Lessee shall provide Lessor with certificates of insurance evidencing that the coverage required hereunder is current. Such policy shall provide that the coverage evidenced thereby shall not be terminated or modified without 30 days prior written notice to the Lessor for any reason. A certificate or policy which states that failure to give such notice imposes no

obligation on the part of the insurer shall be unacceptable to Lessor, and Lessee shall be responsible for removing such language from such certificate or policy.

8. INDEMNIFICATION

The Lessee shall indemnify, hold harmless and defend the Lessor from all losses, damages, claims or judgments, including payment of all attorney’s fees and costs, on account of any suit, judgment, execution, claim, action or demand whatsoever arising from Lessee’s use of the premises hereunder, as well as that of any of Lessee’s employees, agents, representatives, guests or invitees.

9. REPAIR AND MAINTENANCE

Lessee shall not cause or permit any waste, damage or injury to the Premises. Lessee shall, at its sole expense, keep and maintain the Premises in good condition, reasonable wear and tear excepted, and shall be responsible for payment of all necessary expenses of repairs and replacements that arise during Lessee’s use of the Premises.

10. ALTERATIONS AND IMPROVEMENTS

Lessee shall make no alteration, addition or improvements to the Premises for the uses described in Article 2 herein without the prior written consent of the Lessor. Any alterations, additions or improvements made by Lessee after such consent has been given, and any fixtures installed as part thereof, shall become the property of the Lessor upon termination of this Lease Agreement, unless Lessee elects to remove them and restore the Premises to the condition existing prior to the installation of such fixtures, provided, however, that the Lessor shall have the right to require Lessee to remove such fixtures at Lessee’s sole expense, upon termination of this Lease Agreement.

11. EASEMENTS

Lessor reserves the exclusive right to grant access, utility or other easements on or through the Premises.

12. NOTICE

Any required notice will be deemed delivered, given and received (i) when personally hand delivered, or (ii) five days after the same are deposited in the United States mail, postage prepaid, registered, addressed to the applicable party at the address indicated below for such party, or at such other address as may be designated by either party in a written notice to the other party:

To Lessor:

City Manager
City of Santa Fe
P.O. Box 909, 200 Lincoln Ave.
Santa Fe, NM 87504-0909

To Lessee:

60 East San Francisco Limited Co.
Southwest Asset Management, Inc.
112 W. San Francisco St., Suite 312
Santa Fe, NM 87501

13. NO WAIVER

No waiver of a breach of any of the provisions contained in this Lease Agreement shall be construed to be a waiver of any succeeding breach of the same or any other provisions.

14. SEVERABILITY

In the event that one or more of the provisions contained in this Lease Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

15. ENTIRE LEASE AGREEMENT

The foregoing constitutes the entire Lease Agreement between Lessor and Lessee, represents their entire understanding and defines all of their respective rights, title and interests as well as all of their duties, responsibilities and obligations. Any and all prior Lease Agreements and understandings between the parties are merged herein. This Lease Agreement shall not be modified or amended except by a written document signed by the parties.

16. BINDING EFFECT

This Lease Agreement shall be binding upon and insure to the benefit of the parties hereto and their respective successors and permitted assigns.

17. LITIGATION EXPENSE

In the event of litigation between the parties, the Lessee shall pay any necessary costs, including reasonable attorney's fees, expenses and other costs of collection or otherwise, which the Lessor shall incur in enforcing this Lease or in recovering any and all damages caused to the Premises by Lessee, or Lessee's agents, employees or permitted assigns.

18. RECORDING

This Lease Agreement shall be recorded in its entirety. Lessee shall bear all costs for recording of the Lease Agreement and any other associated costs.

19. MORTGAGEE PROVISIONS

To the extent of any inconsistency between this Section 19 and any other provision of this Lease Agreement, the terms and conditions of this Section 19 shall prevail.

Lessor acknowledges and agrees that Cantor Commercial Real Estate Lending, L.P., a Delaware limited partnership (together with its successors and assigns, "Lender"), intends to make a loan (the "Loan") to Lessee in the principal amount of approximately \$13,000,000.00 which Loan will be secured by, among other documents, (a) a Deed of Trust, Security Lease Agreement, Assignment of Leases and Fixture Filing (as amended, restated, replaced, supplemented or otherwise modified from time to time, the "Security Instrument") encumbering the Premises and the Property, and (b) an Assignment of Leases and Rents (as amended, restated, replaced, supplemented or otherwise modified from time to time, the "Assignment of Rents"), pursuant to which Lessee will grant to Lender a collateral interest in this Lease Agreement as security for Lessee's obligations in connection with the Loan. Lessor hereby consents to such collateral assignment.

For so long as the Loan, or any portion thereof, remains outstanding, Lessor hereby agrees as follows:

A. none of the execution and delivery of the Security Instrument, any modification thereof or assignment of the beneficial interests thereunder, or any exercise of Lender's rights and remedies thereunder will be a default under this Lease Agreement.

B. Lessor will simultaneously send copies to Lender of all notices hereafter given by it to Lessee relating to this Lease Agreement, and no notice of default or termination will be effective unless and until such notice is given to Lender. Such notices will be sent to Lender at the following addresses (or such other address as Lender may designate by written notice to Lessor from time to time):

Cantor Commercial Real Estate Lending, L.P.
110 East 59th Street, 6th Floor
New York, NY 10022
Attn: Legal Department

with an additional copy to:

Wells Fargo Bank, National Association
Commercial Mortgage Servicing
MAC-D1100-090
201 South College Street, 9th Floor
Charlotte, NC 28244
Attn: Scott Rossbach

C. Lender may (without obligation to do so) cure any default by Lessee under this Lease Agreement as follows:

(i) Lender may cure any default under this Lease Agreement within thirty (30) days after the later of the expiration of any applicable cure period under this Lease Agreement and the date Lender received written notice of such default as provided herein, and

(ii) if any non-monetary default cannot reasonably be cured within the time period set forth in clause (i), then such non-monetary default will be considered timely cured if Lender commences reasonably appropriate curative action within the time period set forth in clause (i) and diligently prosecutes same to completion thereafter, provided, however, that if any such non-monetary default cannot reasonably be cured by Lender without Lender obtaining possession of the Property, such cure period set forth in clause (i) shall not commence until after Lender obtains possession of the Property, as long as all rent payments are made within the cure period set forth in clause (i) and all other defaults which reasonably can be cured by Lender without Lender obtaining possession of the Property are so cured within the cure period set forth in clauses (i) and (ii), and provided further that Lender commences to exercise any rights to obtain possession or to effect foreclosure, and diligently pursues the exercise of such rights thereafter. This Lease Agreement may not be terminated as a result of a default unless and until Lender receives written notice thereof and is afforded an opportunity to cure as provided herein.

D. If Lender or any other party succeeds to the interest of Lessee under this Lease Agreement as a result of foreclosure proceedings, the granting of a deed (or assignment) in lieu of foreclosure, or through any other means, Lender or any such other party (the "Successor Lessee"), and any transferee of Lender or such other party, shall become a substituted lessee under this Lease Agreement without necessity of any consent of, approval by Lessor. The Successor Lessee shall be deemed to have agreed to perform all of the Lessee's obligations hereunder only

from and after the date of such acquisition and only for so long as such purchaser is the owner of the Property. The Successor Lessee shall, upon any conveyance of the Property, be relieved of all obligations under this Lease Agreement.

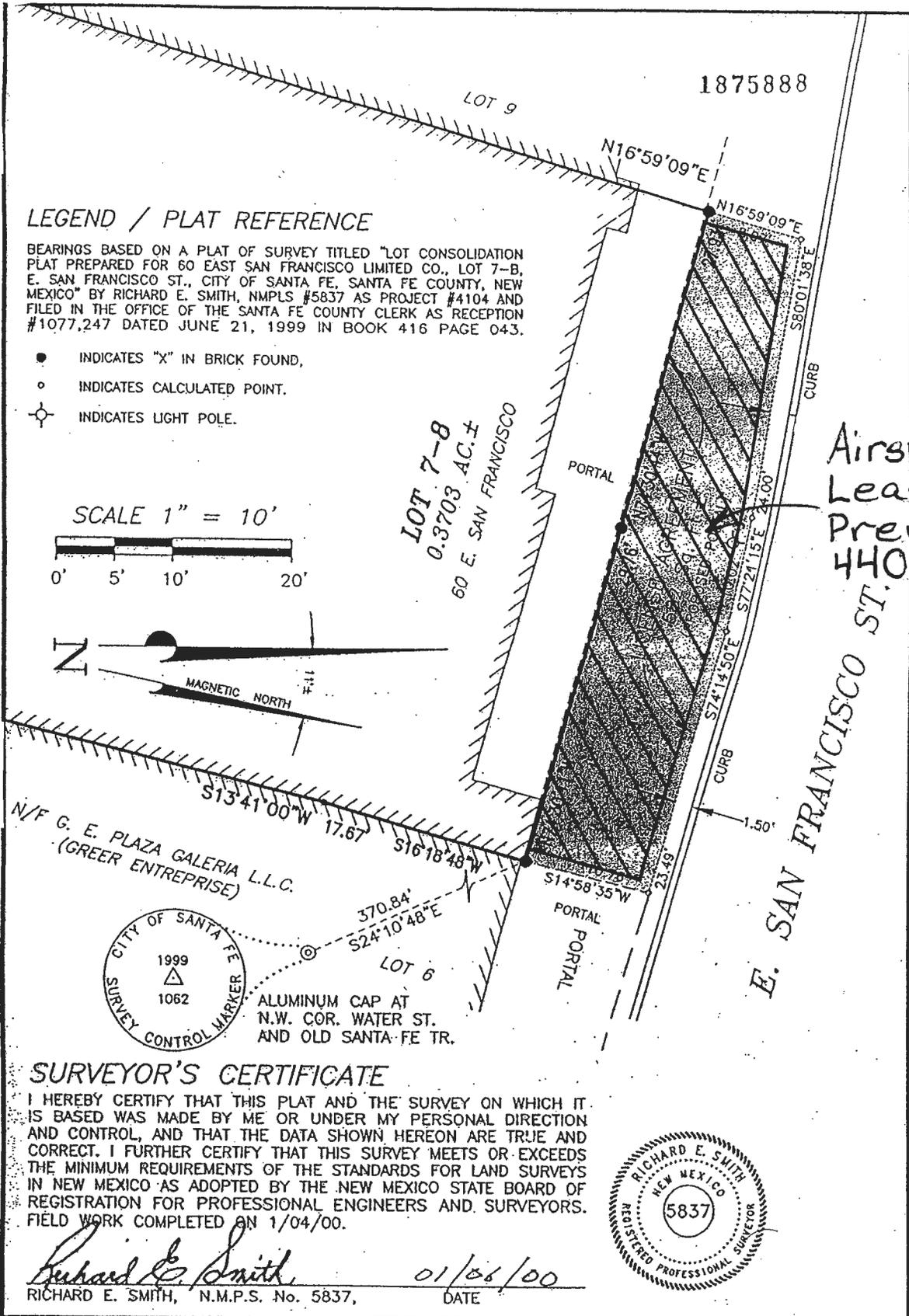
E. If (i) any default by Lessee under this Lease Agreement is of such a nature that it reasonably cannot be cured by Lender, (ii) this Lease Agreement is terminated for any reason prior to the expiration of the term thereof, as the same may be renewed or extended, or (iii) this Lease Agreement is rejected in connection with any bankruptcy or similar proceeding, then Lessor will enter into a new, direct lease of the Premises (any such new, direct lease, a "Replacement Lease") with any Successor Lessee, Lender or any other party designated by Lender, excluding the Lessee, for the remainder of the term of this Lease Agreement which was theretofore terminated (and such new lessee having the benefit of any extension or renewal rights that were granted to the lessee under this Lease Agreement) at the same rent and having the same other provisions as this Lease Agreement. The right to enter into a Replacement Lease hereunder will not be conditioned upon curing any default under this Lease Agreement. The lessee under any Replacement Lease will not be required to assume any obligations of the lessee under this Lease Agreement to the extent such obligations arose or accrued prior to the date of the Replacement Lease; provided however, that nothing herein shall relieve the lessee under a Replacement Lease from complying with the terms of such Replacement Lease from and after the date thereof. Lessor will look solely to the interest of the lessee under the Replacement Lease Agreement in the Property in the event of the breach or default by such lessee under the terms of a Replacement Lease Agreement.

F. This Lease Agreement shall not be modified or amended without Lender's prior written consent, and no Successor Lessee shall be bound by any amendment or modification made in violation hereof.

G. Lessor shall not sell, convey, mortgage, grant, bargain, encumber, pledge, assign, lease, sublease, grant options with respect to, or otherwise transfer, dispose of or allow any lien to be placed upon any interest of Lessor in this Lease Agreement or the Premises unless the transferee of such interest of Lessor simultaneously assumes Lessor's interest in this Lease and agrees to be bound thereby. Lessor shall not mortgage, encumber, or allow any lien to be placed upon any interest of Lessor in the Premises or this Lease Agreement unless the holder of any such mortgage, encumbrance or lien shall have agreed that such mortgage, encumbrance or lien is junior and subordinate to this Lease and the rights of Lessee and Lender hereunder.

Each of Lessor and Lessee hereby represents and warrants for the benefit of Lender that: (i) this Lease Agreement is in full force and effect and constitutes the entire Lease Agreement between the Lessor and Lessee with respect to the subject matter hereof; (ii) there is no existing default under this Lease Agreement or events or circumstances which, with notice or the passage of time or both, would constitute a default under this Lease Agreement; and (iii) there is no defense, offset, claim or counterclaim by or in favor of either Lessee or Lessor under this Lease Agreement.

Lessor understands that Lender would not be willing to make the Loan but for the provisions of this Section 19. So long as any portion of the Loan remains outstanding, Lender shall be an intended third party beneficiary of this Lease Agreement with respect to this Section 19 and shall be entitled to enforce the provisions of this Section 19.



SMITH WILLIAMSON & ASSOCIATES

1210 Luisa Street, Suite 3, Santa Fe, New Mexico 87505

(505)983-5234 FAX (505)983-5391

EXHIBIT "A"

FOR LICENSE AGREEMENT WITH THE CITY OF SANTA FE FOR 60 EAST SAN FRANCISCO LIMITED CO. 60 EAST SAN FRANCISCO ST.

SCALE	DATE	DRAWN BY	CHECKED BY	PROJECT No.
1" = 10'	DEC. 2000	R.D.W.	R.E.S.	4104-LIC

ITEM # 10-0454

LEASE AGREEMENT
BETWEEN
THE CITY OF SANTA FE
AND
60 EAST SAN FRANCISCO STREET LTD. CO.

This LEASE AGREEMENT is made and entered into this 1st day of June, 2010, by and between the City of Santa Fe, a Municipal Corporation, ("Lessor") and 60 East San Francisco Street Ltd. Co., a New Mexico limited liability company, d/b/a Santa Fe Arcade, acting by and through SouthWest Asset Management, Inc., a New Mexico Corporation ("Lessee").

WITNESSETH:

In consideration of the Lessee's promises herein, Lessor hereby gives the Lessee a Lease Agreement, revocable and terminable as hereinafter provided, to enter on and make use of the property of the Lessor as follows:

1. PREMISES

Subject to the terms and conditions of this Lease Agreement, the Lessor allows the Lessee to use and occupy, subject to all of the terms and conditions hereinafter stated, that portion of the air rights over City real property along the northerly boundary of 60 East San Francisco Street, Santa Fe, NM. The leased property ("Premises") consists of approximately 440 square feet of air rights over the real property as more fully described and shown on Exhibit "A" attached hereto and made a part hereof. Lessee accepts the Premises in its present state and agrees that it is in good condition, without any representation or warranty by Lessor as to the condition of the Premises or as to the use, which may be made thereof.

2. USE OF PREMISES

Lessor agrees to allow the Lessee to use the Premises for the purpose of a service area appurtenant to the adjoining commercial business named "Marble Brewery". No further use of the Premises area shall be allowed except those actions necessary for use and maintenance of the area, and also subject to the following conditions:

- A. Outdoor dining with food and beverage service only;
- B. No other commercial use of the Premises including, but not limited to, the sale or display of merchandise or installation of advertising signage shall be permitted;
- C. Adequate lighting, acceptable to the City Manager, to be provided at the Lessee's expense within the Premises.

3. LEASE TERM

The term of this Lease shall commence on June 1, 2010 and shall run for five (5) years from said date unless sooner terminated as provided herein. At the end of the five years, the agreement can be renewed with sixty days written notice. In the event Lessee shall remain in possession of the Premises after the expiration of the initial or subsequent term(s) of this Lease, such possession may, at the sole option of Lessor, be continued as a month-to-month tenancy. During any such month-to-month tenancy, the rental fee shall be prorated and payable on a monthly basis in advance of the first day of each month, and the terms and conditions of the Lease shall be otherwise applicable.

4. RENT

Rent shall be paid as follows:

- A. Base Rent. Lessee shall pay three thousand eighty-two dollars and forty-

six cents (\$3082.46) as base rent, due each year for five years ending on 5/31, 2015, without notice or demand and without deduction or offset for any cause whatsoever. Lessee shall make all payments of rent each year before anniversary date to the Lessor's cashier office, Room 114, 200 Lincoln Ave., Santa Fe, NM. . Lessee as a condition of this agreement will at its cost have property appraised to determine current market value, whereby the yearly rental may be adjusted accordingly by amendment to this agreement.

B. Increases in Base Rent. Commencing the second year and every subsequent year of the term of this Lease Agreement, or any renewal thereof the annual rent shall be adjusted by multiplying the previous year's annual rent by the sum of one and the change over the most recent 12 months in the Consumer Price Index ("CPI") seasonally adjusted U.S. City Average for All Urban Consumers published monthly in the "Monthly Labor Review" of the Bureau of Labor Statistics of the United States Department of Labor (hereinafter, the "CPI-U").

C. In no event shall there be a decline in the rent from year to year as a result of the adjustment provided for in Paragraph B hereof.

5. CANCELLATION BY LESSOR

Upon Lessee's failure to comply with a provision of this Lease, Lessor may cancel this Lease. Prior to cancellation, Lessor shall mail notice to Lessee via certified or registered mail specifying (1) the breach; (2) the action required to cure the breach; (3) a date, not less than fifteen (15) days from the date the notice is mailed to Lessee, by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice will result in termination of the Lease.

6. NON-ASSIGNMENT SUBLEASE

Lessee shall not assign, sublease or otherwise transfer this Lease Agreement, without the written consent of the Lessor, and any such actions taken by Lessee shall result in the immediate termination of this Lease Agreement.

7. LIABILITY INSURANCE

Lessee shall carry and maintain in full force and effect during the term of this Agreement, public liability insurance covering bodily injury and property damage, in a form and with an insurance company acceptable to Lessor, with limits of coverage not less than as stated in the New Mexico Torts Claims Act for each person injured and for each accident resulting in damage to property, against all claims and lawsuits arising from the Lessee's use of the Premises. Lessee shall cause the City of Santa Fe to be named as additional insured on such policy of insurance. Prior to this Lease Agreement taking effect and thereafter throughout the term of this Lease, Lessee shall provide Lessor with certificates of insurance evidencing that the coverage required hereunder is current. Such policy shall provide that the coverage evidenced thereby shall not be terminated or modified without 30 days prior written notice to the Lessor for any reason. A certificate or policy which states that failure to give such notice imposes no obligation on the part of the insurer shall be unacceptable to Lessor, and Lessee shall be responsible for removing such language from such certificate or policy.

8. IDEMNIFICATION

The Lessee shall indemnify, hold harmless and defend the Lessor from all losses, damages, claims or judgments, including payment of all attorney's fees and costs,

on account of any suit, judgment, execution, claim, action or demand whatsoever arising from Lessee's use of the premises hereunder, as well as that of any of Lessee's employees, agents, representatives, guests or invitees.

9. REPAIR AND MAINTENANCE

Lessee shall not cause or permit any waste, damage or injury to the Premises. Lessee shall, at its sole expense, keep and maintain the Premises in good condition, reasonable wear and tear excepted, and shall be responsible for payment of all necessary expenses of repairs and replacements that arise during Lessee's use of the Premises.

10. ALTERATIONS AND IMPROVEMENTS

Lessee shall make no alteration, addition or improvements to the Premises for the uses described in Article 2 herein without the prior written consent of the Lessor. Any alterations, additions or improvements made by Lessee after such consent shall have been given, and any fixtures installed as part thereof, shall become the property of the Lessor upon termination of this Lease Agreement, unless Lessee elects to remove them and restore the Premises to the condition existing prior to the installation of such fixtures, provided, however, that the Lessor shall have the right to require Lessee to remove such fixtures at Lessee's sole expense, upon termination of this Lease Agreement.

11. EASEMENTS

Lessor reserves the exclusive right to grant access, utility or other easements on or through the Premises.

12. NOTICE

Any required notice will be deemed delivered, given and received (i) when personally delivered, or (ii) five days after the same are deposited in the United States

mail, postage prepaid, registered, addressed to the applicable party at the address indicated below for such party, or at such other address as may be designated by either party in a written notice to the other party:

Lessor:
City Manager
City of Santa Fe
PO Box 909, 200 Lincoln Ave.
Santa Fe, NM 87504-0909

Lessee:
60 East San Francisco Street Ltd. Co.
Southwest Asset Management, Inc.
112 W. San Francisco St., Suite 312
Santa Fe, NM 87501

13. NO WAIVER

No waiver of a breach of any of the covenants contained in this Lease Agreement shall be construed to be a waiver of any succeeding breach of the same or any other requirements.

14. SEVERABILITY

In the event that one or more of the provisions contained in this Lease or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

15. ENTIRE AGREEMENT

The foregoing constitutes the entire agreement between Lessor and Lessee, represents their entire understanding and defines all of their respective rights, title and interests as well as all of their duties, responsibilities and obligations. Any and all prior agreements and understandings between the parties are merged herein. This Lease shall not be modified or amended except by a written document signed by the parties.

16. BINDING EFFECT

This Lease Agreement shall be binding upon and insure to the benefit of the parties hereto and their respective successors and permitted assigns.

17. LITIGATION EXPENSE

In the event of litigation between the parties, the Lessee shall pay any necessary costs, including reasonable attorney's fees, expenses and other costs of collection or otherwise, which the Lessor shall incur in enforcing this Lease or in recovering any and all damages caused to the Premises by Lessee, or Lessee's agents, employees or permitted assigns.

18. RECORDING

This Lease Agreement shall be recorded in its entirety. Lessee shall bear all costs for recording of the Lease Agreement and any other associated costs.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of this 1st day of June, 2010.

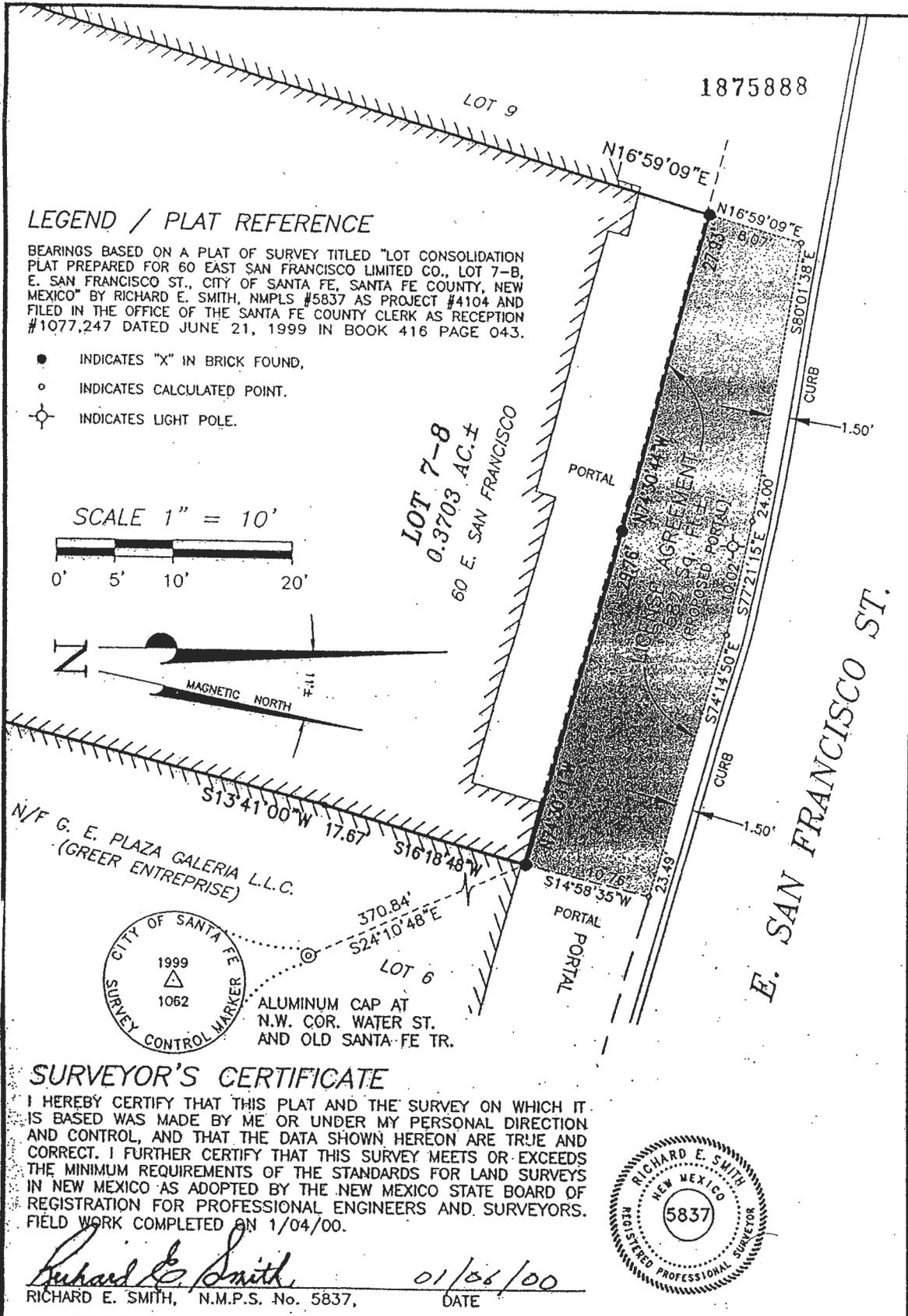
LESSOR:
CITY OF SANTA FE

Robert Romero
ROBERT ROMERO, CITY MANAGER



ATTEST
CITY OF SANTA FE
ORGANIZED 1847
Yolanda Yangilis
YOLANDA YANGILIS, CITY CLERK
NEW MEXICO

COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss
LEASE AGREEMENT
PAGES: 9
I Hereby Certify That This Instrument Was Filed for
Record On The 3RD Day Of June, 2010 at 01:36:06 PM
And Was Duly Recorded as Instrument # 1600542
Of The Records Of Santa Fe County
Witness My Hand And Seal Of Office
Valerie Espinoza
Deputy County Clerk, Santa Fe, NM



**SMITH
WILLIAMSON
& ASSOCIATES**

1210 Luisa Street, Suite 3, Santa Fe, New Mexico 87505
(505)983-5234 FAX (505)983-5391

EXHIBIT "A"
FOR LICENSE AGREEMENT WITH THE
CITY OF SANTA FE
FOR 60 EAST SAN FRANCISCO LIMITED CO.
60 EAST SAN FRANCISCO ST.

SCALE	DATE	DRAWN BY	CHECKED BY	PROJECT No.
1" = 10'	DEC. 2000	R.D.W.	R.E.S.	4104-LIC

**AMENDMENT TO LICENSE AGREEMENT BY AND BETWEEN
THE CITY OF SANTA FE, A MUNICIPAL CORPORATION
AND 60 EAST SAN FRANCISCO STREET LTD. CO.**

This Amendment to the License Agreement is entered into between the City of Santa Fe, a Municipal Corporation (herein "City") and 60 East San Francisco Street Ltd. Co. (herein "Licensee"). The date of this amendment shall be the date when executed by the City.

RECITALS

1. Under that certain License Agreement dated February 28, 2001 ("Agreement"), City has licensed certain use of real property described herein to Licensee for the purpose of construction of portal appurtenant to commercial building located at 60 East San Francisco Street;
2. Pursuant to Article 1 D of Agreement, "The roof of the portal shall not be used as a balcony or for a service area";
3. Pursuant to Article 1 G of Agreement, "Commercial use of the portal by the owner in any manner, including but not limited to the sale or display of merchandise, shall be prohibited";
4. Pursuant to Article 1 I of Agreement, "Licensees shall not increase, modify or replace the portal".

NOW THEREFORE in consideration of the mutual covenants and agreements hereinafter contained, the parties hereto agree to modification of the Agreement as follows:

1. Article 1 D shall be amended to allow for the roof of the portal to be used as a balcony and as a service area;

2. Article 1 G shall be amended to allow for the Commercial use of the upper deck of the portal, but shall be limited to a service area for the adjoining business only, the sale or display of merchandise and all other commercial activities shall be prohibited;
3. Article 1 I of the Agreement shall be amended to allow for the modification of the portal to be used as a balcony and service area based upon City approved building plans.
4. Licensee shall enter into Lease Agreement with City to allow for commercial use of air space over the City real property.
5. Licensee shall comply with requirements of Historic Design Review Board Case No. H-10-010.

AGREEMENT IN FULL FORCE Except as specifically provided in this Amendment, the Agreement remains and shall remain in full force and effect, in accordance with its terms.

IN WITNESS WHEREOF, the parties have executed this Amendment to Agreement between the City of Santa Fe, a Municipal Corporation and 60 East San Francisco Street Ltd. Co. on the date set forth below.

CITY OF SANTA FE:

David Cozz
 DAVID COSS, MAYOR

Date: 5-14-10

ATTEST:



APPROVED AS TO FORM:

Ally A. Brennan, for
GENO ZAMORA, CITY ATTORNEY

APPROVED:

Kathryn Ravling
KATHRYN RAVLING,
FINANCE DIRECTOR
21117.460150
BUSINESS UNIT/LINE ITEM

LICENSEE:
60 EAST SAN FRANCISCO STREET LTD.
CO.

Philip J. Garcia
PHILIP J. GARCIA, PRESIDENT

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

The foregoing instrument was acknowledged before me this 26th day of May, 2010, by Philip J. Garcia.

Ernestina Y. Dominguez
Notary Public

My Commission Expires: January 14, 2012

(Seal)



OFFICIAL SEAL
Ernestina Y. Dominguez
NOTARY PUBLIC
STATE OF NEW MEXICO

My Commission Expires: 01-14-2012



COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss AMENDMENT
PAGES: 3

I Hereby Certify That This Instrument Was Filed for
Record On The 3RD Day Of June, 2010 at 01:36:05 PM
And Was Duly Recorded as Instrument # 1600541
Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office
Valerie Espinoza
Deputy Valerie Espinoza County Clerk, Santa Fe, NM

VIGIL, EDWARD J.

From: Joaquin <Joaquin@swassetmanagement.com>
Sent: Friday, October 31, 2014 11:06 AM
To: VIGIL, EDWARD J.
Cc: OREILLY, MATTHEW S.
Subject: 60 East San Francisco

Mr. Vigil,

Per our previous conversations I am requesting on the behalf of the property owner (60 East San Francisco Limited Co.) to amend the Air Rights lease for the North portal over the sidewalk facing the Plaza. The request includes extending the base term for 20 years and other additional terms benefiting our new lender in case of default by the tenant. I am happy to assist the City of Santa Fe in any way to help facilitate getting this request completed. Please feel free to call or e mail me if you have any questions or concerns.

Sincerely,

Joaquin J. Sanchez
President
Southwest Asset Management, Inc.
112 W. San Francisco Street, Suite 312
Santa Fe, NM 87501
505-988-5792 Office
505-982-6123 Fax
joaquin@swassetmanagement.com

City of Santa Fe Fiscal Impact Report (FIR)

This Fiscal Impact Report (FIR) shall be completed for each proposed Bill, Resolution, or other Item as to its direct impact upon the City's operating budget and is intended for use by any of the standing committees of and the Governing Body of the City of Santa Fe. Bills, Resolutions, or other Items with no fiscal impact still require a completed FIR. Bills, Resolutions, or other Items with a fiscal impact must be reviewed by the Finance Committee. Bills, Resolutions, or other Items without a fiscal impact generally do not require review by the Finance Committee unless the subject of the item is financial in nature.

Section A. General Information

(Check) Bill: _____ Resolution: _____ Other: X
 (A single FIR may be used for related bills, resolutions, or items)

Short Title/Description(s): Amendments to an existing Lease Agreement dated June 1, 2010 between the City of Santa Fe and 60 E. San Francisco Street Ltd. Co. (d/b/a Santa Fe Arcade) for 440 square feet of air rights over city-owned property adjacent to the northern boundary of 60 E. San Francisco Street.

Sponsor(s)(if applicable): N/A

Reviewing Department(s): Asset Development Office; City Attorney's Office

Person Completing FIR: Matthew O'Reilly *MRO* Date: 10-31-14 Phone: x 6213

Reviewed by City Attorney: *Zandy* Date: 10-31-14
 (Signature)

Reviewed by Finance Director: *Desiree* Date: 11.1.14
 (Signature)

Section B. Summary

Briefly explain the purpose and major provisions of the Bill, Resolution, or other Item.

The proposed amendments to the existing lease will allow continued use of city-owned air rights over city right-of-way adjacent to 60 E. San Francisco Street. The amendments will extend the lease term to 20 years and add mortgage provisions. The amendments will also increase the existing annual rent by 56.7% and add a minimum annual escalation of 2.5 %.

Section C. Fiscal Impact

Note: Financial information on this FIR does not directly translate into a City of Santa Fe budget increase. For a budget increase, the following are required:

- a. The item must be on the agenda at the Finance Committee and City Council as a "Request for Approval of a City of Santa Fe Budget Increase" with a definitive funding source (could be same item and same time as bill/resolution)
- b. Detailed budget information must be attached as to fund, business units, and line item, amounts, and explanations (similar to annual requests for budget)
- c. Detailed personnel forms must be attached as to range, salary, and benefit allocation and signed by Human Resource Department for each new position(s) requested (prorated for period to be employed by fiscal year)*

1. Projected Expenditures:

- a. Indicate Fiscal Year(s) affected – usually current fiscal year and following fiscal year (i.e., FY 03/04 and FY 04/05)
- b. Indicate: "A" if current budget and level of staffing will absorb the costs
 "N" if new, additional, or increased budget or staffing will be required

- c. Indicate: "R" – if recurring annual costs
 "NR" if one-time, non-recurring costs, such as start-up, contract or equipment costs
 d. Attach additional projection schedules if two years does not adequately project revenue and cost patterns
 e. Costs may be netted or shown as an offset if some cost savings are projected (explain in Section 3 Narrative)

_____ Check here if no fiscal impact

Column #:	1	2	3	4	5	6	7	8
	Expenditure Classification	FY 14/15	"A" Costs Absorbed or "N" New Budget Required	"R" Costs Recurring or "NR" Non-recurring	FY 15/16	"A" Costs Absorbed or "N" New Budget Required	"R" Costs – Recurring or "NR" Non-recurring	Fund Affected

Personnel*	\$ 0	_____	_____	_____	\$ 0	_____	_____	_____
Fringe**	\$ 0	_____	_____	_____	\$ 0	_____	_____	_____
Capital Outlay	\$ 0	_____	_____	_____	\$ 0	_____	_____	_____
Land/ Building	\$ 0	_____	_____	_____	\$ 0	_____	_____	_____
Professional Services	\$ 0	_____	_____	_____	\$ 0	_____	_____	_____
All Other Operating Costs	\$ 0	_____	_____	_____	\$ 0	_____	_____	_____
Total:	\$ 0	_____	_____	_____	\$ 0	_____	_____	_____

* Any indication that additional staffing would be required must be reviewed and approved in advance by the City Manager by attached memo before release of FIR to committees. **For fringe benefits contact the Finance Dept.

2. Revenue Sources:

- a. To indicate new revenues and/or
 b. Required for costs for which new expenditure budget is proposed above in item 1.

Column #:	1	2	3	4	5	6
	Type of Revenue	FY 14/15	"R" Revenue Recurring or "NR" Non-recurring	FY 15/16 (* Estimate of CPI)	"R" Revenue Recurring or "NR" Non-recurring	Fund Affected
	<u>Amended Lease Revenue</u>	\$ 5,280	R	\$ 5,412	R	<u>Economic Development</u>
	<u>Current Existing Lease Revenue</u>	\$ 3,369	R	\$ 3,450*	R	
	<u>Net New Rev.</u>	\$ 1,911		\$ 1,962		

3. Expenditure/Revenue Narrative:

Explain revenue source(s). Include revenue calculations, grant(s) available, anticipated date of receipt of revenues/grants, etc. Explain expenditures, grant match(s), justify personnel increase(s), detail capital and operating uses, etc. (Attach supplemental page, if necessary.)

Approval of the amendments to the existing lease will increase the existing annual rent by 56.7% and add a minimum annual rent escalation of 2.5%. This will result in the following revenue from the amended lease:

<u>FY 2014/15:</u>	<u>\$ 5,280</u>
<u>FY 2015/16:</u>	<u>\$ 5,412</u>
<u>Full Lease Term (20 Years – Ending FY2034/35):</u>	<u>\$ 134,876</u>

Section D. **General Narrative**

1. Conflicts: Does this proposed Bill, Resolution, or other Item duplicate/conflict with/companion to/relate to any City code, approved ordinance or resolution, other adopted policies or proposed legislation? Include details of city adopted laws/ordinance/resolutions and dates. Summarize the relationships, conflicts or overlaps.

This proposed lease amendment does not duplicate/conflict with/companion to/relate to any City code, approved ordinance or resolution, other adopted policies or proposed legislation.

2. Consequences of not enacting/approving this Bill, Resolution, or other Item:

Are there consequences of not enacting/approving this Bill, Resolution, or other Item? If so, describe.

The increased lease revenue specified by the amended lease would not be realized if this Item is not approved.

3. Technical Issues:

Are there incorrect citations of law, drafting errors or other problems? Are there any amendments that should be considered? Are there any other alternatives which should be considered? If so, describe.

None.

4. Community Impact:

Briefly describe the major positive or negative effects the Bill, Resolution, or other Item might have on the community including, but not limited to, businesses, neighborhoods, families, children and youth, social service providers and other institutions such as schools, churches, etc.

The proposed lease amendments will have the positive effect of allowing the property owner to generate additional sales by using the city's property to conduct his business. This will have a positive effect of the vibrancy of the Plaza and surrounding area. The proposed lease amendments will also generate additional revenue for the City.