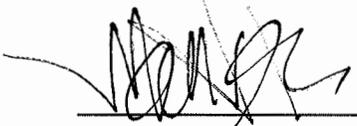


City of Santa Fe, New Mexico

memo

DATE: December 15, 2015

TO: Governing Body

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

FROM: Edward Vigil, Property Manager

ITEM

Request for Approval of a Lease Agreement for use of City property adjoining 115 E. San Francisco Street, containing approximately 234 square feet, for placement of merchandise and displays by Virginia B. Ulibarri and Kimberly C. Ulibarri, d/b/a L J S of Santa Fe (Matthew O'Reilly).

BACKGROUND

The subject property was acquired by the City of Santa Fe by means of dedication from the Catholic Church which was confirmed by ordinance recorded in Miscellaneous Book R, page 50, of the records of Santa Fe County, New Mexico. Virginia B. Ulibarri and Kimberly C. Ulibarri, d/b/a LJS of Santa Fe have requested to enter into a new Lease Agreement with the City as their current agreement has come to term. The applicants and their family have leased this parcel from the City since the late 1990's and the applicants are in compliance with the terms of the existing Lease Agreement and are current with their obligations to the City.

The Finance Committee and the Public Works, CIP & Land Use Committee approved this Lease Agreement on November 11, 2015 and November 9, 2015 respectively.

RECOMMENDATIONS

The Asset Development Office recommends the lease of this portion of City property with conditions placed on the Lease Agreement that obligate the Lessee to maintain the area and to provide insurance coverage and indemnifications of the City. This lease will continue to benefit the City by generating needed revenue. The lease rate has been adjusted to match updated rates for the area and the escalation clause has been modified to two and one half percent (2.5%) per year to provide a more predictable revenue stream. The lease payments will total \$31,459 over the lease term.

Memorandum to the Governing Body
December 15, 2015
Page 2

REQUESTED ACTION

Please grant final approval of this Lease Agreement.

Exhibits: A – Draft Lease Agreement;
 B – Request by Virginia B. Ulibarri and Kimberly C. Ulibarri dba LJS of Santa Fe;
 C – Current Lease Agreement Item 11-164 and Amendment No. 1 Item 12-892;
 D – Ordinance recorded in Misc. Book R, page 50;
 E – Copy of NMSA 1978 Section 3-54-1 (1999).

BUSINESS UNIT/LINE ITEM:
21117.460150

ACTION SHEET
ITEM FROM FINANCE COMMITTEE MEETING OF 11/30/15
FOR CITY COUNCIL MEETING OF 12/09/15

ISSUE:

10. Request for Conceptual Approval of a Lease Agreement for Use of City Property Adjoining 115 E. San Francisco Street, Containing Approximately 234 Square Feet, for Placement of Merchandise and Displays by Virginia B. Ulibarri and Kimberly C. Ulibarri d/b/a LJS of Santa Fe. (Matthew O'Reilly)

FINANCE COMMITTEE ACTION:

Approved as Discussion item.

FUNDING SOURCE:

SPECIAL CONDITIONS OR AMENDMENTS

STAFF FOLLOW-UP:

Approved with direction to staff.

VOTE	FOR	AGAINST	ABSTAIN
COUNCILOR TRUJILLO	X		
COUNCILOR RIVERA	X		
COUNCILOR LINDELL	X		
COUNCILOR MAESTAS	X		
CHAIRPERSON DOMINGUEZ			

4-13-15

**ACTION SHEET
ITEM FROM THE
PUBLIC WORKS/CIP AND LAND USE COMMITTEE MEETING
OF
MONDAY, NOVEMBER 9, 2015**

ITEM 7

REQUEST FOR CONCEPTUAL APPROVAL OF A LEASE AGREEMENT FOR USE OF CITY PROPERTY ADJOINING 115 E. SAN FRANCISCO STREET, CONTAINING APPROXIMATELY 234 SQUARE FEET, FOR PLACEMENT OF MERCHANDISE AND DISPLAYS BY VIRGINIA B. ULIBARRI AND KIMBERLY C. ULIBARRI, D/B/A LIS OF SANTA FE **(MATTHEW O'REILLY)**

PUBLIC WORKS COMMITTEE ACTION: Approved on Consent

FUNDING SOURCE:

SPECIAL CONDITIONS / AMENDMENTS / STAFF FOLLOW UP:

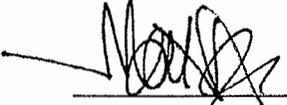
VOTE	FOR	AGAINST	ABSTAIN
CHAIRPERSON TRUJILLO			
COUNCILOR BUSHEE	X		
COUNCILOR DIMAS	X		
COUNCILOR DOMINGUEZ	Not Present		
COUNCILOR IVES	X		

City of Santa Fe, New Mexico

memo

DATE: October 30, 2015

TO: Public Works, C.I.P., and Land Use Committee
Finance Committee

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

FROM: Edward Vigil, Property Manager 

ITEM

Request for Approval of a Lease Agreement for use of City property adjoining 115 E. San Francisco Street, containing approximately 234 square feet, for placement of merchandise and displays by Virginia B. Ulibarri and Kimberly C. Ulibarri, d/b/a LJS of Santa Fe (Matthew O'Reilly).

BACKGROUND

The subject property was acquired by the City of Santa Fe by means of dedication from the Catholic Church which was confirmed by ordinance recorded in Miscellaneous Book R, page 50, of the records of Santa Fe County, New Mexico. Virginia B. Ulibarri and Kimberly C. Ulibarri, d/b/a LJS of Santa Fe have requested to enter into a new Lease Agreement with the City as their current agreement has come to term. The applicants and their family have leased this parcel from the City since the late 1990's and the applicants are in compliance with the terms of the existing Lease Agreement and are current with their obligations to the City.

RECOMMENDATIONS

The Asset Development Office recommends the lease of this portion of City property with conditions placed on the Lease Agreement that obligate the Lessee to maintain the area and to provide insurance coverage and indemnifications of the City. This lease will continue to benefit the City by generating needed revenue. The lease rate has been adjusted to match updated rates for the area and the escalation clause has been modified to two and one half percent (2.5%) per year to provide a more predictable revenue stream.

REQUESTED ACTION

Please approve this request for conceptual approval of this lease.

Memorandum to Public Works Committee and Finance Committee

October 30, 2015

Page 2

Exhibits: A – Draft Lease Agreement;
 B – Request by Virginia B. Ulibarri and Kimberly C. Ulibarri dba LIS of Santa Fe;
 C – Current Lease Agreement Item 11-164 and Amendment No. 1 Item 12-892;
 D – Ordinance recorded in Misc. Book R, page 50;
 E – Copy of NMSA 1978 Section 3-54-1 (1999).

BUSINESS UNIT/LINE ITEM:

21117.460150

**LEASE AGREEMENT
BETWEEN
THE CITY OF SANTA FE AND VIRGINIA B. & KIMBERLEY C. ULIBARRI**

This LEASE AGREEMENT (the Lease Agreement) is made and entered into this _____ day of _____, 2016, by and between the CITY OF SANTA FE, a municipal corporation (Lessor) and VIRGINIA B. ULIBARRI, a single woman, and KIMBERLEY C. ULIBARRI, a single woman, (together the Lessee) d/b/a “LJS of Santa Fe”, whose address is 1912 Anderson Place SE, Albuquerque, NM 87108.

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 that portion of the city-owned public alley located near the south entrance of 115 East San Francisco Street, Santa Fe, NM. The leased real property consists of approximately two hundred thirty-four (234) square feet of land located along the west side of the public alley (the Premises) 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 the display and sale of merchandise and associated display tables and lighting. No other commercial uses of the Premises or other portions of the public alley or overhanging portal or posts are allowed. 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. EFFECTIVE DATE

This Lease Agreement shall be effective on February 1, 2016 (the Effective Date).

4. LEASE TERM

The term of this Lease Agreement shall commence at 12:00 a.m. on the Effective Date. The term shall consist of an “Initial Term” of five (5) years with one (1) “Optional Additional Term” of five (5) years for a total term of ten (10) years. The Initial Term and any Optional Additional Terms are hereinafter referred to collectively as the “Term”.

Lessee’s exercise of any Optional Additional Term(s) is 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.

5. RENT

Rent shall be paid as follows:

A. Base Rent during Initial Term. Lessee shall pay two thousand eight hundred and eight dollars (\$2,808.00) as annual "Rent". Rent is due on the Effective Date and thereafter due in full each year on the anniversary of the Effective date 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. Base Rent during the initial term shall be subject to annual increases in accordance with Section 4.C below.

B. Base Rent during any Optional Additional Term(s). The base Rent for any Optional Additional Term(s) of this Lease Agreement shall be negotiated by the Lessor and the Lessee prior to the commencement of any such optional additional term(s). In no case shall the base Rent for any optional additional term(s) be less than the Rent during the last year of the previous term plus two and one-half percent (2.5%). Base Rent during any optional additional term(s) shall be subject to annual increases in accordance with Section 5.C below.

C. Increases in Rent. At the commencement of the second year and every subsequent year of the initial term or any optional additional term(s) of this Lease Agreement, the Rent shall be increased by an amount calculated by multiplying the previous year's Rent by two and one-half percent (2.5%).

6. 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.

7. NON-ASSIGNMENT SUBLEASE

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

8. 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.

9. 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.

10. 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.

11. 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.

12. EASEMENTS

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

13. 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:

Virginia B. & Kimberley C. Ulibarri
c/o LJS of Santa Fe
1912 Anderson Place SE
Albuquerque, NM 87108

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

[REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY]

REC'D CLERK RECORDED 03/15/2011

EAST PALACE AVE

CERTIFICATE

I hereby certify that this plat and the notes thereon are a true and correct delineation of a survey completed by me in the field on October 7, 1970.

Robert Rivera
REC. PROF. L.S. No 3149

PETCHESKY
1.5'

N.Y. Cor. of Footing for Bl'g

LEO J. WOLGAMOOD
Surveyed by J.D. Hayden March 16, 1966.

No. 115
East San Francisco St.

SCALE 1"=20'

NIF FIRST NATIONAL BANK
Surveyed by J.C. Harvey May 30-31, 1933
C.C. No. 25012

8' wide public alley shown was dedicated by ordinance of the City Council of Santa Fe, N.M. on Sept. 19, 1917 and a confirming dedication of the City by Lord A. Hughes on Sept. 20, 1917, and is recorded in Book R, Misc Page 50 on September 22, 1917.

U.S. GOVERNMENT

142.05' L.T.E. N 83° 45' W
To Ctr. of Sanitary Sewer
Intersection of Shelby & San Francisco Streets.

SAN FRANCISCO ST.

Exhibit "A"

VIGIL, EDWARD J.

From: Kimberly Ulibarri <ulibarri.kimberly@gmail.com>
Sent: Tuesday, September 01, 2015 10:42 AM
To: VIGIL, EDWARD J.
Subject: Ulibarri/ hallway

Hi Mr. Vigil,

You told me to contact you in September about the lease for the hallway at 115 E San Francisco St Santa Fe NM 87501. I would like to renew the lease for the maximum amount of years as well as add my name to the lease. Please let me know what we need to do to move forward. I hope all is well and thank you for your time, Kimberly Ulibarri
505-980-0230

Sent from my iPhone

ITEM # 11-0164

REC'D BY REC'D BY REC'D BY REC'D BY REC'D BY
2/15/2011

LEASE AGREEMENT
BETWEEN THE CITY OF SANTA FE AND
JOHN ULIBARRI D/B/A LONG JOHN SILVER TURQUOISE TREASURE CHEST

This LEASE AGREEMENT is made and entered into by and between the City of Santa Fe, a Municipal Corporation, ("Lessor") and John Ulibarri d/b/a Long John Silver Turquoise Treasure Chest ("Lessee").

WITNESSETH:

In consideration of the Lessee's promises herein, Lessor hereby leases to the Lessee the property of the Lessor identified as follows:

1. PREMISES

Subject to the terms and conditions of this Lease Agreement, the Lessor allows the Lessee to use and occupy that portion of public alley at the south entrance of the building located at 115 East San Francisco Street, Santa Fe, NM. The leased property ("Premises") consists of approximately 234 ± square feet located along the westerly 2.6 feet of the public alley, being the crosshatched area 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 purposes of Placing merchandise, displays and lighting along the westerly portion of the alleyway. No further use of the alleyway or overhanging portal or posts shall be allowed except those actions necessary for use and maintenance of the area.

SRC CLERK RECORDED 03/15/2011

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").

3. 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.

B. PAYMENT OF ARREARAGE.

1. The parties acknowledge that the demised premises was leased to Lessee pursuant to a prior lease agreement entered on or about July 25, 2007 and terminated on or about January 13, 2011.

2. At the time of termination of the prior lease, Lessee was past due on lease payments in an amount of \$15,169.26, and such amount of arrearage is acknowledged by the parties.

3. In further consideration for the lease terms contained in this agreement, and in addition to rent payments as described in this Section 4, Lessee shall pay the full amount of arrearage. Such arrearage shall be due at the time of execution of this agreement. However, at the election of the Lessee, arrearage payments shall be payable in monthly installments of \$1,000 on February 15, 2011 and every month thereafter on the 15th day of the month, during the term of the lease, until such past due amounts have been satisfied. In the event that this lease agreement is terminated prior to the satisfaction of past due amounts, the balance of any arrearage shall be immediately due and payable.

5. PENALTY FOR LATE PAYMENT OF RENT

SPC CLERK RECORDED 9/15/2011

In the event the monthly rent is not received by Lessor on or before the first day of the month, Lessee shall pay a penalty of one and one half percent of the rent due for each 30 day period or fraction thereof that the rent payment is outstanding.

6. CANCELLATION BY LESSOR

Upon Lessee's failure to comply with a provision of this Lease Agreement, Lessor may cancel this Lease Agreement. Prior to cancellation, Lessor shall mail, via certified or registered mail, or hand deliver notice to Lessee, 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 or hand delivered 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.

7. NON-ASSIGNMENT SUBLEASE

Lessee shall not have the right to transfer and assign, in whole or in part, its rights and obligations under their Lease Agreement and in the Premises. Any such actions taken by Lessee shall result in immediate termination of this Lease Agreement.

8. INSURANCE

A. The Lessee, at its own cost and expense, shall carry and maintain in full force and effect during the term of this Lease Agreement, comprehensive general liability insurance covering bodily injury and property damage liability, in a form and with an insurance company acceptable to the Lessor, with limits of coverage in the maximum amount which the Lessor could be held liable under the New Mexico Tort Claims Act for each person injured and for each accident resulting in damage to property. Such insurance shall provide that the Lessor is named as an additional insured and that Lessor will be

REC'D CITY REC'D 03/15/2011

notified within 10 days of cancellation for any reason. The Lessee shall furnish the Lessor with a copy of a "Certificate of Insurance" as a condition of the Lease.

B. The Lessee shall also obtain and maintain Workers' Compensation insurance required by law, to provide coverage for Lessee's employees throughout the term of this Lease Agreement. Lessee shall provide the Lessor with evidence of its compliance with such requirement prior to performing services under this Lease Agreement.

9. 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, and subcontractors.

10. THIRD PARTY BENEFICIARIES

By entering into this Lease Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the Lessor and the Lessee. No person shall claim any right, title or interest under this Lease Agreement or seek to enforce this Lease as a third party beneficiary of this Lease Agreement.

11. 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.

12. ALTERATIONS AND IMPROVEMENTS

SPS CLERK RECORDED 03/15/2011

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.

13. EASEMENTS

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

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

Lessee:
John Ulibarri d/b/a Long John Silver
Turquoise Treasure Chest
115 East San Francisco Street
Santa Fe, NM 87501

15. NO WAIVER

REC'D CIVIL RECORDS 8/15/2011

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.

16. 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.

17. 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 Agreement shall not be modified or amended except by a written document signed by the parties.

18. 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.

19. 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

LESSEE:
JOHN ULIBARRI D/B/A LONG JOHN
SILVER TURQUOISE TREASURE
CHEST

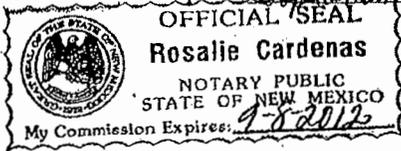
[Signature]
BY: JOHN ULIBARRI, OWNER

ACKNOWLEDGEMENT FOR NATURAL PERSONS

STATE OF New Mexico }
COUNTY OF Santa Fe } ss.

The foregoing instrument was acknowledged before me this 28th day of February,
2011 by John Ulibarri:

My Commission Expires: September 8, 2012



[Signature]
NOTARY PUBLIC



COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

LEASE AGREEMENT
PAGES: 10

I Hereby Certify That This Instrument Was Filed for
Record On The 15TH Day Of March, 2011 at 02:03:39 PM
And Was Duly Recorded as Instrument # 1629523
Of The Records Of Santa Fe County

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

REC'D CLERK RECORDED 93/15/2811

EAST PALACE AVÉ

CERTIFICATE

I hereby certify that this plat and the notes thereon are a true and correct collimation of a survey completed by me in the field on October 7, 1970.

George Rivera
R.B.G. 1809. L.B. 18 3149

mark on conc. sidewalk
S 77° 28' E 32.00'

N.W. cor. of lot for bidg

LEO J. WOLGAMOOD
Surveyed by J.O. Hayden March 18, 1966.

No. 115
East San Francisco St.

PETCHESKY

mark on sidewalk
N 78° 45' W 39.20'

NIF FIRST NATIONAL BANK
Surveyed by J.C. Harvey May 30-31, 1933
D.C.C. No. 27412

SCALE 1"=20'

N 13° 51' E 87.10'

No. 115 EAST

8' PUBLIC ALLEY
S 13° 43' W 13.43'

This 8' wide public alley shown was dedicated by ordinance of the City Council of Santa Fe, N.M. on Sept. 19, 1917 and confirmed dedication was acknowledged by Lori A. Hughes on Sept. 20, 1917, and is recorded in Book R. H.Lac Page 50 on September 22, 1917.

U.S. GOVERNMENT

N 77° 41' W 30.35'

mark on conc. sidewalk
N 83° 45' W 142.85'

To City of San Francisco
Interested by Sholby & Son
San Francisco Streets

SAN FRANCISCO ST.

Exhibit "A"

ITEM # 12-0892

SEC CLERK RECORDED 10/17/2012

**AMENDMENT NO. 1 TO LEASE AGREEMENT BY AND BETWEEN
THE CITY OF SANTA FE AND VIRGINIA B. ULIBARRI,
SURVIVING SPOUSE OF JOHN ULIBARRI, DECEASED**

Amendment No. 1 to the Lease Agreement is entered into by and between the City of Santa Fe, a Municipal Corporation (herein "Lessor") and Virginia B. Ulibarri, surviving spouse of John Ulibarri, deceased, dba Long John Silver Turquoise Treasure Chest (herein "Lessee"). The date of this amendment shall be the date when executed by the City.

A. Under a certain Lease Agreement dated March 15, 2011 ("Lease Agreement"), Lessor has leased certain real property described therein to deceased Lessee for the purpose of placing merchandise, displays and lighting along the westerly portion of the alleyway adjoining 115 East San Francisco Street;

B. On July 11, 2012, John Anthony Ulibarri, died from natural causes and now his surviving spouse, Virginia B. Ulibarri has requested to assume his obligation to the leasehold estate, and bring the outstanding balance on the rental to current;

C. Pursuant to Article 17 of the Lease Agreement, and in consideration of the mutual covenants and agreements hereinafter contained;

Now therefore the parties hereto agree as follows:

1. PARTIES TO AGREEMENT

Paragraph 1 pertaining to parties to agreement is hereby amended to read as follows:

This LEASE AGREEMENT is made and entered into this 15th day of March 2011, by and between the City of Santa Fe, a Municipal Corporation, ("Lessor") and Virginia B. Ulibarri dba Long John Silver Turquoise Treasure Chest, surviving spouse of John Ulibarri, deceased ("Lessee").

SFC CLERK RECORDED 10/17/2012

AGREEMENT IN FULL FORCE

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

IN WITNESS WHEREOF, the parties have executed this Amendment No. 1 to the Lease Agreement between the City of Santa Fe, a Municipal Corporation and Virginia B. Ulibarri dba Long John Silver Turquoise Treasure Chest on the date set forth below.

LESSOR:
CITY OF SANTA FE

Robert Romero
ROBERT R. ROMERO, CITY MANAGER

Date: 10.12.12

ATTEST: CITY OF SANTA FE
ORGANIZED 1852
SEAL
Yolanda P. Adib
YOLANDA P. ADIB, CITY CLERK
APPROVED AS TO FORM:

Geno Zamora for
GENO ZAMORA, CITY ATTORNEY
9/12/12

APPROVED:
Melville L. Morgan
DR. MELVILLE L. MORGAN,
FINANCE DIRECTOR

21117.460150 ✓
BUSINESS UNIT/LINE ITEM

LESSEE:
Virginia B. Ulibarri
VIRGINIA B. ULIBARRI

SFC CLERK RECORDED 10/17/2012

ACKNOWLEDGMENT FOR NATURAL PERSONS

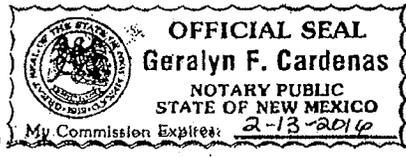
STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

The foregoing instrument was acknowledged before me this 9th day of October, 2012 by Virginia B Ulibarri.



Notary Public

My Commission Expires: February 13, 2016
(Seal)



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

I Hereby Certify That This Instrument Was Filed for Record On The 17TH Day Of October, 2012 at 08:39:38 AM And Was Duly Recorded as Instrument # 1684792 Of The Records Of Santa Fe County



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

115
R/50

Santa Fe, New Mexico,
October 2nd, 1917.

Regular Meeting of the
City Council, City of
Santa Fe, New Mexico.

The meeting was called to order at eight o'clock P. M., the Mayor presiding. Present: Messrs. Akers, Lopez, Shoemaker, Salazar, Armijo, Sena, Renehan and Ortiz. Absent: none. A quorum being present, the Council proceeded to business.

Upon motion of Mr. Armijo, reading of minutes of last previous meeting was dispensed with and the same were ordered approved, subject to the approval of the Mayor.

A delegation of four ladies, from the Woman's Club and from the Woman's Board of Trade addressed the Council, through their spokeswoman, Mrs. Adolph Fischer, on the subject of the moving pictures shown in Santa Fe, representing that certain of such pictures were unfit for public exhibition, and asking the cooperation of the Council in controlling the morality of such pictures. Mr. Armijo moved that the address of the ladies, through their spokeswoman, be received by the Council, and considered and acted upon at the proper time. The motion prevailed and it was so ordered.

Mr. W. L. Gullett, manager of the Paris Theatre, explained to the council and the women's delegation, his position in the matter last referred to, and answer questions put to him by the council and the delegation. At the close of his statement, Mr. Armijo moved: That a committee of three, to be composed of Messrs. Lopez, Shoemaker, and one other

Mr. Ortiz moved: That the tax levies to be certified to the Board of County Commissioners be as follows, namely, three (3) mills for general purposes and three-quarters (3/4) of a mill for interest. The motion was seconded by Mr. Akers. Roll-call on the passage of same was as follows: ayest Messrs. Akers, Lopez, Shoemaker, Arsiño, Sana, Ranchan and Ortiz (7); nays: none; absent: Mr. Salazar. The motion having received the unanimous vote of the Council, the Mayor declared the same adopted.

The next business before the Council was the dedication of the right-of-way to the west of the City Hall, as a public alley. Mr. Ranchan presented the following ordinance:-

AN ORDINANCE FOR THE PURPOSE OF DEDICATING AS A PUBLIC ALLEY THE STRIP OF LAND EIGHT FEET IN WIDTH FROM EAST TO WEST ON THE WESTERLY BOUNDARY OF THE CITY HALL, BEING PART OF THE LAND NOW UNDER PURCHASE BY THE UNITED STATES GOVERNMENT.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SANTA FE:

1. That that certain strip of land eight feet in width from east to west, along and in the westerly edge, of the parcel of ground on which the City Hall stands, and running from San Francisco Street northerly to the premises of Levi A. Hughes now occupied for post-office purposes, be, and the same hereby is, dedicated as a public alley, for the use of the public generally, forever.

2. That this ordinance shall be in full force and effect from and after its passage and publication.

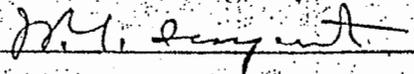
The ordinance was read the first time in full. On motion of Mr. Armijo, duly seconded and carried, the ordinance was read the second time in full. Mr. Renehan moved, that the rules be suspended, reference and lapse of time dispensed with, and that the ordinance be read a third time in full preparatory to its passage. Upon roll-call on the motion the vote was, ayes: Messrs. Akers, Lopez, Shoemaker, Armijo, Sena, Renehan and Ortiz (7); nays: none; absent: Mr. Salazar. The Mayor ordered third reading under suspension of the rules, accordingly. The ordinance was read the third time in full under suspension of the rules. Mr. Renehan now moved that the ordinance, under suspension of the rules, do now pass. Roll-call was as follows: Ayes: Messrs. Akers, Lopez, Shoemaker, Armijo, Sena, Renehan and Ortiz (7); nays: none; absent: Mr. Salazar. The ordinance having received the unanimous vote of the council, the Mayor declared the same to have passed, and the clerk was ordered to publish the same forthwith.

The next business before the Council was the matter of Streets and Sidewalks. Mr. Renehan moved: That a special committee of five be appointed by the Chair, one of whom shall be the President of the Council, another of whom shall be the Chairman of the Street and Bridge Committee, and a third member Mr. Ortiz, to determine upon and report at the next meeting (1) some

plan for improving the city streets (2) some plan for the improvement of the sidewalk on the west side of Don Gaspar Avenue from the bridge to the Diaz corner (3) as to the widening of Jefferson Street from the corner of San Francisco Street to the Sargent property (4) as to the acquirement of some part of the sidewalk on the northwest corner of San Francisco and Lincoln Streets; said committee to request the Mayor to call a special meeting to receive their report at any time, and such meeting to be called at any time when they are ready to report. The motion prevailed and the Mayor named as such committee:-

Mr. Sens
Mr. Lopez
Mr. Ortiz
Mr. Renshan and
Mr. Akers.

Upon motion of Mr. Renshan, the Council now adjourned, subject to call.


MAYOR

CITY CLERK

CHAPTER 3 MUNICIPALITIES

ARTICLE 54 SALE OR LEASE OF PROPERTY

3-54-1. Authority to sell or lease municipal utility facilities or real property; notice; referendum.
(1999)

3-54-1. Authority to sell or lease municipal utility facilities or real property; notice; referendum. (1999)

Statute text

- A. A municipality may lease or sell and exchange any municipal utility facilities or real property having a value of twenty-five thousand dollars (\$25,000) or less by public or private sale or lease any municipal facility or real property of any value normally leased in the regular operations of such facility or real property, and such sale or lease shall not be subject to referendum.
- B. A municipality may lease or sell and exchange any municipal utility facilities or real property having an appraised value in excess of twenty-five thousand dollars (\$25,000) by public or private sale or lease, subject to the referendum provisions set forth in this section. The value of municipal utility facilities or real property to be leased or sold and exchanged shall be determined by the appraised value of the municipal utility facilities or real property and not by the value of the lease. An appraisal shall be made by a qualified appraiser and submitted in writing to the governing body. If the sale price is less than the appraised value, the governing body shall cause a detailed written explanation of that difference to be prepared, and the written explanation shall be made available to any interested member of the public upon demand.
- C. If a public sale is held, the bid of the highest responsible bidder shall be accepted unless the terms of the bid do not meet the published terms and conditions of the proposed sale, in which event the highest bid which does meet the published terms and conditions shall be accepted; provided, however, a municipality may reject all bids. Terms and conditions for a proposed public sale or lease shall be published at least twice, not less than seven days apart, with the last publication no less than fourteen days prior to the bid opening, and in accordance with the provisions of Subsection J of Section 3-1-2 NMSA 1978.
- D. Any sale or lease of municipal utility facilities or real property entered into pursuant to Subsection B of this section shall be by ordinance of the municipality. Such an ordinance shall be effective forty-five days after its adoption, unless a referendum election is held pursuant to this section. The ordinance shall be published prior to adoption pursuant to the provisions of Subsection J of Section 3-1-2 NMSA 1978 and Section 3-17-3 NMSA 1978 and shall be published after adoption at least once within one week after adoption pursuant to the provisions of Subsection J of Section 3-1-2 NMSA 1978. Such publications shall concisely set forth at least:

- (1) the terms of the sale or lease;
- (2) the appraised value of the municipal utility facilities or real property;
- (3) the time and manner of payments on the lease or sale;
- (4) the amount of the lease or sale;
- (5) the identities of the purchasers or lessees; and
- (6) the purpose for the municipality making the lease or sale.

E. In order to call for a referendum election on a sale or lease ordinance, a petition shall be filed with the municipal clerk:

- (1) no later than thirty days after the adoption of the sale or lease ordinance;
- (2) containing the names, addresses and signatures of at least fifteen percent of the qualified electors of the municipality; and
- (3) containing the following heading on each page of the petition reprinted as follows:

"PETITION FOR A REFERENDUM

We, the undersigned registered voters of (insert name of municipality) petition the governing body of (insert name of municipality) to conduct a referendum election on ordinance number Ordinance number would cause a (insert "sale" or "lease") of municipal, (insert "real property" or "utility facilities").

Date	Name (printed)	Address	Signature."
------	----------------	---------	-------------

F. Section 3-1-5 NMSA 1978 shall apply to all petitions filed calling for a referendum election on a sale or lease ordinance.

G. If the municipal clerk certifies to the municipal governing body that the petition does contain the minimum number of valid names, addresses and signatures required to call a referendum election on the sale or lease ordinance, the municipal governing body shall adopt an election resolution within fourteen days after the date the clerk makes such certification, calling for a referendum election on the sale or lease ordinance. The election resolution shall be adopted and published pursuant to the provisions of the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978] governing special elections and shall also concisely set forth:

- (1) the terms of the sale or lease;
- (2) the appraised value of the municipal utility facilities or real property;

- (3) the time and manner of payments on the lease or sale;
- (4) the amount of the lease or sale;
- (5) the identities of all purchasers or lessees; and
- (6) the purpose for the municipality making the lease or sale.

H. The referendum election on the sale or lease ordinance shall be held not later than ninety days after the election resolution is adopted. Such election shall be held at a special or regular municipal election and shall be conducted as a special election in the manner provided in the Municipal Election Code. Any qualified elector of the municipality may vote in such a referendum election.

I. If a majority of the votes cast are to approve the sale or lease ordinance, the sale or lease ordinance shall be effective after the election results have been canvassed and certified. If a majority of the votes cast are to disapprove the sale or lease ordinance, the ordinance shall not be effective.

History

History: 1953 Comp., § 3-54-1, enacted by Laws 1983, ch. 115, § 1; 1985, ch. 208, § 119; 1999, ch. 134, § 1.

Disclaimer:

The New Mexico Statutes and any other documents that appear on this site may not reflect the most current legislation adopted by the State of New Mexico. Although this site is updated periodically (within 30 days of the current release of the New Mexico One Source of Law TM CD-ROM), please consult the official printed version of the New Mexico Statutes, including the printed Advance Annotation and Rules Service, for the latest statutory provisions, constitutional amendments, court rules, and annotations. American Legal Publishing Corporation provides these documents for informational purposes only.

For further information regarding the official version of the New Mexico Statutes or other documents posted on this site, contact American Legal Publishing Corporation toll-free at 800-445-5588. Please understand that we cannot provide legal advice. If you need assistance in understanding and applying these statutes or if you need an explanation or clarification of the contents, you will need to contact an attorney for assistance.

© 2003 State of New Mexico
techsupport@amlegal.com
1.800.445.5588.