

1 **CITY OF SANTA FE, NEW MEXICO**

2 **BILL NO. 2011-33**

3 **INTRODUCED BY:**

4  
5 Councilor Ortiz

6  
7  
8  
9  
10 **AN ORDINANCE**

11 **APPROVING A LEASE BETWEEN THE CITY OF SANTA FE AND MAJED**  
12 **HAMDOUNI D/B/A BURRO ALLEY CAFE FOR APPROXIMATELY 700 SQUARE**  
13 **FET OF CITY OWNED LAND LOCATED WITHIN THE BOUNDS OF THE BURRO**  
14 **ALLEY RIGHT OF WAY FOR OUTDOOR SEATING AND SERVICE AREA**  
15 **APPURTENANT TO RESTAURANT AT 207 W. SAN FRANCISCO ST.**

16  
17 **BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:**

18 Section 1. The City of Santa Fe hereby approves a certain lease dated  
19 \_\_\_\_\_, 2011, entered into between the City of Santa Fe and Majed Hamdouni d/b/a Burro  
20 Alley Cafe, which is attached hereto as Exhibit "A" and made a part hereof, for approximately  
21 700 square feet of land located in the southerly portion of the Burro Alley right-of-way, which  
22 expires on October 31, 2013, (the "Lease Agreement").

23 Section 2. This Ordinance shall be effective forty-five days after the date of  
24 adoption, unless a referendum is held pursuant to Section 3-54-1 NMSA 1978.

25 Section 3. This Ordinance shall be published as required by Section 3-17-3 NMSA

1 1978 and such publication shall contain the following information:

2 A. Property to be Leased. The City of Santa Fe shall lease to Majed Hamdouni  
3 d/b/a Burro Alley Cafe, 700 square feet more or less of land located in the southerly portion of  
4 the Burro Alley right-of-way, and more fully described under the Lease Agreement.

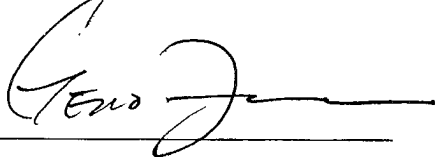
5 B. Market value of the Leasehold Premises. The appraised value of the Leasehold  
6 premises is ninety thousand dollars (\$70,000).

7 C. Payment terms of the Lease. The rental payment for the leasehold premises shall  
8 be in an amount of seven hundred ninety-eight dollars (\$7448.00) per year.

9 D. The Lessee is Majed Hamdouni d/b/a Burro Alley Cafe, 207 W. San Francisco  
10 St., Santa Fe, New Mexico 87501.

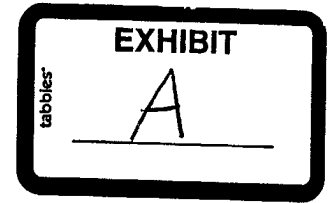
11 E. Purpose of the Lease. The purpose of the lease is for the Lessee to use and  
12 occupy the premises for outdoor seating and service area appurtenant to restaurant at 207 W. San  
13 Francisco St., as more fully described under the Lease Agreement.

14 APPROVED AS TO FORM:

15   
16 \_\_\_\_\_

17 GENO ZAMORA, CITY ATTORNEY

LEASE AGREEMENT  
BETWEEN THE CITY OF SANTA FE  
AND BURRO ALLEY CAFE



This LEASE AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2011, by and between the City of Santa Fe, a Municipal Corporation, (“Lessor”) and Majed Hamdouni dba Burro Alley Cafe (“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, subject to all of the terms and conditions hereinafter stated, that certain portion of the City public right-of-way within Burro Alley, Santa Fe, NM. The leased property (“Premises”) consists of approximately seven hundred (700) square feet, all 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 use of the premises for the purpose of allowing patrons of Burro Alley Cafe to congregate and consume food and beverages carried from the restaurant to the Premises. No further use of the Premises shall be allowed except those except those actions necessary for use and maintenance of the area at the sole and exclusive expense of the Lessee. The use of the Premises is also subject to the following conditions:

- (a) Installation and maintenance of a barrier along the perimeter of the dining patio area (chain link fencing is prohibited) ), with residual portion of alleyway to remain open for bike traffic;
- (b) Installation and maintenance of dining tables and seats shall be removed from the premises each night. Sidewalks shall be kept clear for pedestrian use at all times;
- (c) 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;
- (d) No blocking of any existing emergency entrances and exits to other businesses is strictly prohibited;
- (d) Adequate lighting, reviewed and approved by the City, may be provided at the Lessee's expense within the Premises. Lights strung from building to building are prohibited;
- (f) Lessor reserves the right to allow the use of Burro Alley for special events;
- (g) The Lessee has the right to conduct outdoor receptions provided such reception is directly associated with the Lessee. The entire alley including the leased premises shall be cleared for such uses on a case by case request;
- (h) Lessee shall comply with all local codes and regulations and any violations shall be considered grounds for termination of this Agreement;
- (i) No alcoholic beverages shall be allowed on leased premises without additional approvals by City Council;

- (j) All rental payments shall be made to the Lessor by means of cash, cashiers check, money order, or by credit card, no personal checks shall be accepted;

3. LEASE TERM AND OPTION TO RENEW

The term of this Lease Agreement shall commence on \_\_\_\_\_, 2011 and shall run for two (2) years unless sooner terminated as provided herein. At the end of the two years, the Lease Agreement can be renewed with 60 days written notice by Lessee to Lessor, and approval by committee process. In the event Lessee shall remain in possession of the Premises after the expiration of the term of this Lease Agreement, initial or subsequent term(s) of this Lease, such possession may, at the sole option of Lessor, will continue to be a month-to-month tenancy. During any such month-to-month tenancy, the rent 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 six hundred twenty dollars and sixty-seven (\$620.67) per month as base rent, beginning on \_\_\_\_\_, 2011, and due each month on beginning date for two years ending on \_\_\_\_\_, 2013, without notice or demand and without deduction or offset for any cause whatsoever. Lessee shall make all payments of rent each month before anniversary date to the Lessor's Cashier Office, Room 114, 200 Lincoln Ave., Santa Fe, NM.

B. Increases in Base Rent. Commencing the second 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. PENALTY FOR LATE PAYMENT OF RENT

In the event the yearly rent is not received by Lessor on or before the anniversary date of this Agreement each year due, Lessee shall pay a penalty of one and one half percent (1 ½ %) 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 hand deliver or 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.

7. ASSIGNMENT OR SUBLEASE

Lessee shall not transfer or assign in whole or in part, its rights and obligations under this Lease Agreement. 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 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 or seek to enforce this Lease Agreement 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

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. Lessor shall have the right to require Lessee to remove any alterations, additions or improvements made, 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  
200 Lincoln Ave.

Lessee:  
Majed Hamdouni dba  
Burro Alley Cafe  
207 W. San Francisco St.



15. 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.

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

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.

20. 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 \_\_\_\_ day of \_\_\_\_\_, 2011.

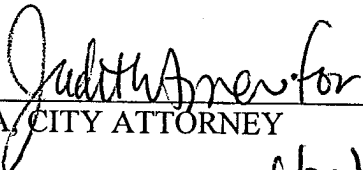
LESSOR:  
CITY OF SANTA FE

\_\_\_\_\_  
DAVID COSS, MAYOR

ATTEST:

\_\_\_\_\_  
YOLANDA Y. VIGIL, CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
GENO ZAMORA, CITY ATTORNEY

APPROVED:

6/29/11

\_\_\_\_\_  
KATHRYN RAVELING, FINANCE DIRECTOR

21117.460150  
BUSINESS UNIT/LINE ITEM

LESSEE:  
MAJED HAMDOUNI DBA  
BURRO ALLEY CAFE

\_\_\_\_\_  
BY: MAJED HAMDOUNI

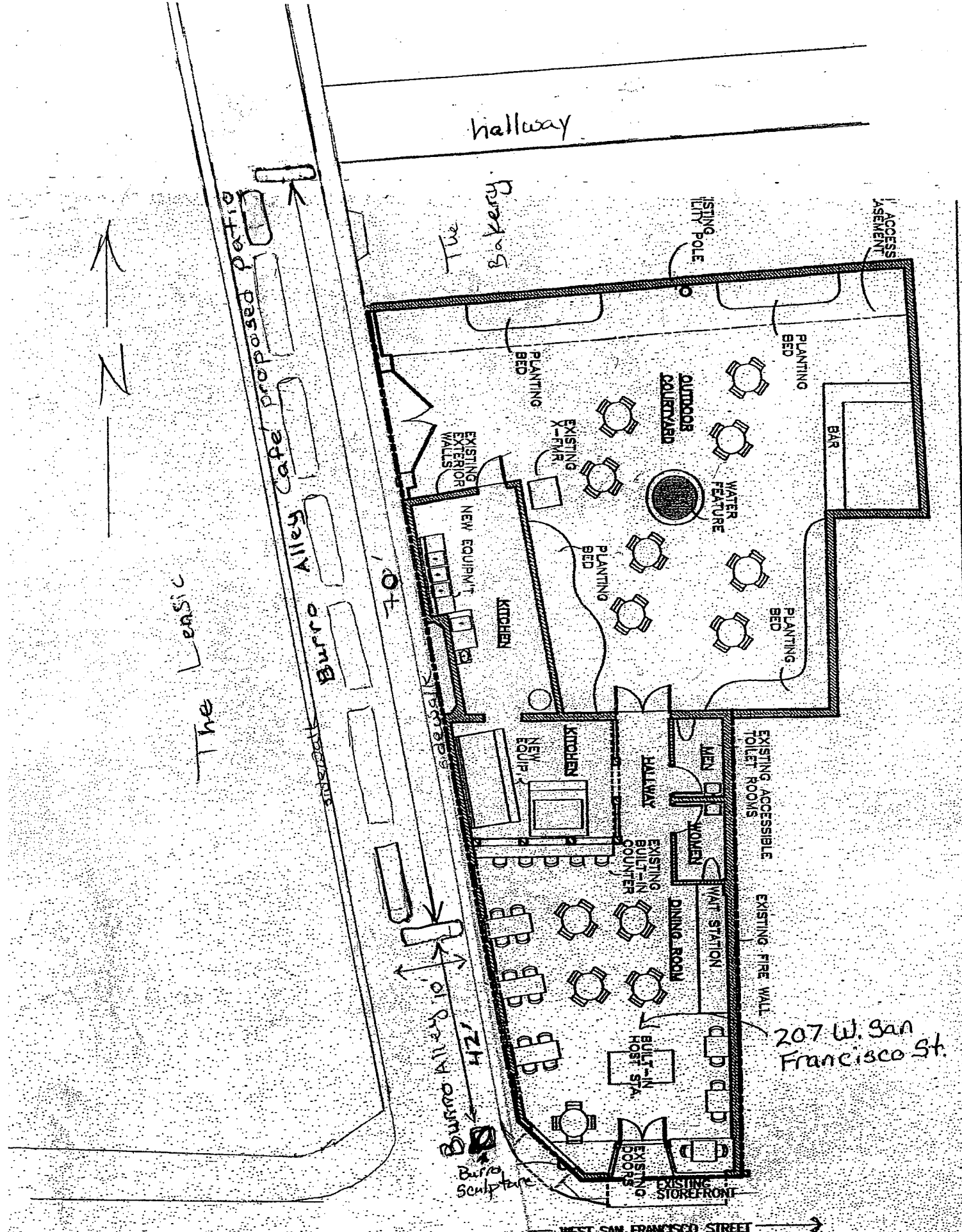
ACKNOWLEDGEMENT FOR NATURAL PERSONS

STATE OF NEW MEXICO }  
  }  
COUNTY OF SANTA FE }

The foregoing instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_  
2011 by Majed Hamdouni d/b/a Burro Alley Café.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_  
(seal)



hallway

The Bakery

The Leasie

Burro Alley Cafe proposed patio

Burro Alley

LOT

Burro Alley to

Burro Sculpture

207 W. San Francisco St.

WEST SAN FRANCISCO STREET

EXHIBIT A

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