

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

2 **BILL NO. 2011-34**

3 **INTRODUCED BY:**

4
5 Councilor Ortiz

6
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8
9
10 **AN ORDINANCE**

11 **APPROVING A LEASE BETWEEN THE CITY OF SANTA FE AND BOKUM BURRO**
12 **ALLEY LLC FOR APPROXIMATELY 900 SQUARE FEET OF CITY OWNED LAND**
13 **LOCATED WITHIN THE BOUNDS OF THE BURRO ALLEY RIGHT OF WAY FOR**
14 **OUTDOOR SEATING AND SERVICE AREA APPURTENANT TO RESTAURANT AT**
15 **31 BURRO ALLEY.**

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 Bokum Burro Alley LLC,
20 which is attached hereto as Exhibit "A" and made a part hereof, for approximately 900 square feet
21 of land located in the northerly portion of the Burro Alley right-of-way, which expires on October
22 31, 2016, (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 Bokum Burro Alley
3 LLC, 900 square feet more or less of land located in the northerly portion of the Burro Alley
4 right-of-way, and more fully described under the Lease Agreement.

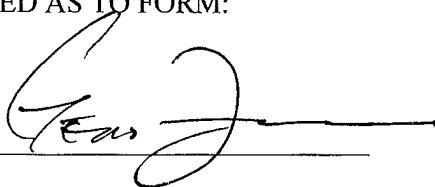
5 B. Market value of the Leasehold Premises. The appraised value of the Leasehold
6 premises is ninety thousand dollars (\$90,000).

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 (\$798.00) per month.

9 D. The Lessee is Bokum Burro Alley LLC, 31 Burro Alley, Santa Fe, New Mexico
10 87501.

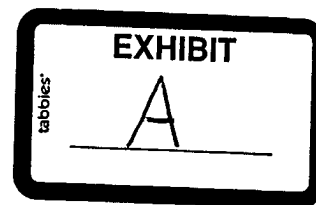
11 E. Purpose of the Lease. The purpose of the lease is for the Lessee to use and
12 occupy the premises for outdoor seating and service area appurtenant to restaurant at 31 Burro
13 Alley as more fully described under the Lease Agreement.

14 APPROVED AS TO FORM:

15 
16 _____

17 GENO ZAMORA, CITY ATTORNEY

LEASE AGREEMENT
BETWEEN THE CITY OF SANTA FE
AND BOKUM BURRO ALLEY LLC



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 Bokum Burro Alley LLC (“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 nine hundred (900) 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 San Q Japanese Pub 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 Lessor has the reserved right to conduct outdoor receptions provided such reception is directly associated with the Lessor. 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;
- (k) 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

The term of this Lease Agreement shall be for a five (5) year term, commencing August 1, 2011 through October 31, 2011 for the first year. The subsequent four (4) years the lease term shall be from April 1 through October 31 for the years of 2012 through 2016, unless sooner terminated as provided herein. In the event Lessee shall remain in possession of the Premises after the expiration of the term of this Lease Agreement, 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 seven hundred ninety-eight dollars (\$798.00) per month as base rent, beginning on August 1, 2011, and due each month on beginning date each rental period as described in Paragraph 3 above for the five years ending on October 31, 2016, 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 month 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 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. 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
P.O. Box 909
Santa Fe, NM 87504-0909

Lessee:
Bokum Burro Alley LLC c/o
Richard A. Montoya, Manager
31 Burro Alley
Santa Fe, NM 87501

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:

Judith Arroyo for

GENO ZAMORA, CITY ATTORNEY 6/29/11

APPROVED:

KATHRYN RAVELING, FINANCE DIRECTOR

21117.460150
BUSINESS UNIT/LINE ITEM

LESSEE:
BOKUM BURRO ALLEY LLC

BY: RICHARD A. MONTOYA,
MANAGING MEMBER

ACKNOWLEDGEMENT

STATE OF NEW MEXICO }
 }
COUNTY OF SANTA FE }

The foregoing instrument was acknowledged before me on this __ day of _____
2011 by Richard A. Montoya, managing member of Bokum Burro Alley LLC.

NOTARY PUBLIC

My Commission Expires: _____

(seal)

Palace Ave.

1
SCALE 1/8" = 1'-0"

Sidewalk →

Sidewalk →

LANE FOR TRUCKS AND BUSES

Sidewalk →

Sidewalk →

Lensic

Burro Alley

San Francisco St

Exhibit A

SEE PLAN

ENT. AREA

ENT. AREA

ENT. AREA

Entry

SPACE RESERVE

ENT. AREA

ENT. AREA

ENT. AREA

ENT. AREA

SPACE RESERVE

SPACE RESERVE

Restroom

ENT. AREA

