

**LEASE AGREEMENT
BETWEEN
THE CITY OF SANTA FE AND ELEANOR CASTRO
d/b/a/ THE BURRITO COMPANY**

This LEASE AGREEMENT (the Lease Agreement) is made and entered into this 24th day of May, 2018, by and between the CITY OF SANTA FE, a municipal corporation (Lessor) and ELEANOR CASTRO d/b/a THE BURRITO COMPANY (Lessee), whose address is 111 Washington Ave., Santa Fe, NM 87501.

WITNESSETH:

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

1. PREMISES

Subject to the terms and conditions of this Lease Agreement, Lessor allows Lessee to use and occupy, subject to all of the terms and conditions hereinafter stated, that portion of City real property along the westerly boundary of 111 Washington Ave., Santa Fe, NM (the Property). The leased property (Premises) consists of approximately 500 square feet of surface rights on 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 Lessee to use the Premises for the purpose of a restaurant food and beverage service area, including alcoholic beverages. 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. An approved barrier shall be installed and maintained along the perimeter of the Premises (chain link fencing is prohibited). 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 Lessee's expense. Music emanating from the Premises shall be in compliance with the City's noise ordinance. 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 May 1, 2018 (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 (the Initial Term) with one (1) optional additional term of five (5) years (the Optional Additional Term). The Initial Term and the Optional Additional Term are hereinafter referred to collectively as the "Term".

Lessee's exercise of any Optional Additional Term 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. In the event Lessee shall remain in possession of the Premises after the expiration of the initial term of this Lease or any Optional Additional Term,

SEC CLERK RECORDED 06/06/2018

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 five thousand three hundred and fifty dollars (\$5,350.00) as annual "Rent". Rent is 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, 200 Lincoln Ave., Santa Fe, NM. Base Rent during the Initial Term shall be subject to annual increases in accordance with Section 5.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 Lessor and Lessee prior to the commencement of any such Optional Additional Term. 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 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. Lessee shall submit a written request prior to any use of the Premises by others to Lessor detailing party(s) names, contact information, and proposed use of Premises of any proposed Sub-Lessee. 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 accepted, 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

The City of Santa Fe

To Lessee:

Eleanor Castro

d/b/a The Burrito Company

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

111 Washington Ave.
Santa Fe, NM 87501

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, Lessee shall pay any necessary costs, including reasonable attorney's fees, expenses and other costs of collection or otherwise, which 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.]

[SIGNATURES APPEAR ON THE FOLLOWING PAGE.]

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of this 24th day of May, 2018.

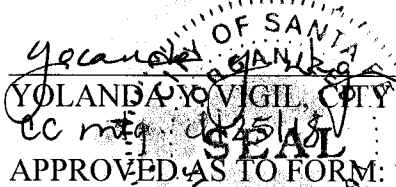
LESSOR:

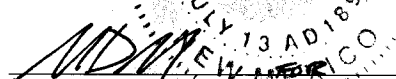
CITY OF SANTA FE



ALAN M. WEBBER, MAYOR

ATTEST:


YOLANDA YOVIGIL, CITY CLERK
APPROVED AS TO FORM:


KELLY A. BRENNAN, CITY ATTORNEY

APPROVED:



ADAM K. JOHNSON, FINANCE DIRECTOR

BUS. UNIT/LINE ITEM: 21117.460150

COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

LEASE AGREEMENT
PAGES: 6

I Hereby Certify That This Instrument Was Filed for
Record On The 6TH Day Of June, 2018 at 09:10:52 AM
And Was Duly Recorded as Instrument # **1859475**
Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office
Geraldine Salazar
Deputy  County Clerk, Santa Fe,



LESSEE:



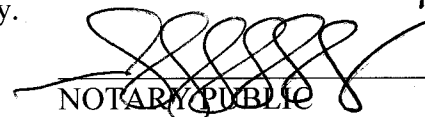
ELEANOR CASTRO d/b/a
THE BURRITO COMPANY

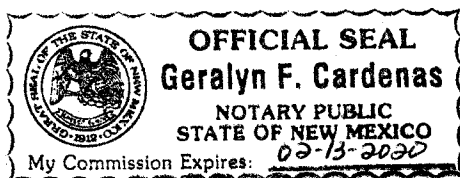
ACKNOWLEDGEMENT

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

The foregoing instrument was acknowledged before me this 24th day of May
2018, by Eleanor Castro d/b/a The Burrito Company.

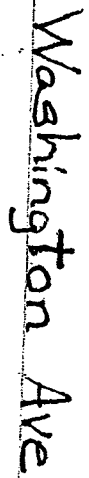
My Commission Expires: February 13, 2020
(SEAL)


NOTARY PUBLIC



STAFF CLERK RECORDED 06/06/2018

SAC CLERK RECORDED 07/17/2013



SFC CLERK RECORDED 03/20/2008

Exhibit A