

ARTICLE 12. TRANSFER OF INTEREST

12.1. Prohibitions and Limits on Transfer of Concession Agreement Interests. Merchant shall not involuntarily transfer by operation of law, or voluntarily transfer (either by assignment, use agreement, license or concession) the Concession Agreement or Premises, in whole or in part, nor sublet the use of, or license the use of all or any part of the Premises, except as provided herein.

12.1.1. Transfers of Interest - Conditions. City will consider written requests by Merchant to transfer the Premises or rights and duties of the Concession Agreement consistent with this Article and, after such consideration, may consent to such transfer at its reasonable discretion, as described in Section 12.1.3 below. Notwithstanding this consideration or consent, the proposed transfer will not take effect until all City contracting approvals and formalities are observed, and an amended Concession Agreement is executed by all parties.

12.1.1.1. If Merchant pays Tier One A rent, Tier One B rent or Tier Two rent, then Merchant may make an assignment to an immediate family member (spouse, registered domestic partner, children, adopted children and blood relative in the second degree) provided the Concession Agreement is assigned to, or placed in trust with, a single designee for all concession purposes.

12.1.1.2. If Merchant pays Tier One A rent, Merchant may also make a one-time assignment to another existing Olvera Street merchant (merchant to whom assignment is proposed must have been a concessionaire since at least 1999). However, if Merchant requesting the assignment at any time paid Tier One B rent or Tier Two rent, then said Merchant may only make the one-time assignment described in the preceding sentence if said Merchant paid Tier One A rent for at least 12 consecutive months prior to the requested assignment.

12.1.2. Transfers to Qualified Entities. Any assignment permitted in this Article may be made to a legally formed and legally qualified entity (corporation, limited liability company or partnership) provided that such an assignee includes an assignee authorized by this Article who is the Majority Owner. The Majority Owner must be the day-to-day operator of the concession.

12.1.3. City's Consent. City shall not unreasonably withhold its consent to a proposed transfer of the Concession Agreement or Premises consistent with this Article. The parties hereby agree that City may take into consideration the following in granting or withholding its consent to a requested assignment. City's failure to consent to a transfer

otherwise authorized by this Article shall be deemed reasonable as a matter of law where one or more of the following apply:

- (a) Only applicable to an assignment sought to another merchant under Section 12.1.1.2: The merchant to whom the assignment would be made (the assignee) has made three consecutive late or partial rent payments with respect to other City property including, but not limited to, on Olvera Street, without the City's prior written permission;
- (b) The merchant to whom assignment is proposed does not possess sufficient financial strength to assure compliance with the Concession Agreement terms;
- (c) The merchant to whom assignment is proposed has been convicted, pled guilty, or pled nolo contendere of a crime of moral turpitude, or is engaged in a business which is incompatible with the Monument's business plan or historical significance;
- (d) The merchant to whom assignment is proposed intends to use the Premises in manner different from Merchant's use of the Premises allowed under the Concession Agreement;
- (e) The Merchant owes the City any monies including, but not limited to, back Rent; or
- (f) The transfer of the Concession Agreement or Premises is requested within one (1) year of expiration of the Concession Agreement.

12.1.4. Improper Transfer. If Merchant agrees, orally or in writing, to transfer, assign, sublet or license any portion of the Premises in any manner inconsistent with this Concession Agreement, then any such transfer, assignment, sublease or license shall be void and be of no legal effect, and the City shall not recognize or grant any rights to any other party relating to said improper transfer, assignment, sublease or license. In the event of such an improper transfer, Merchant shall forfeit any remaining option to extend the term of the Concession Agreement as provided herein-above in Section 1.3, page 1. The City may also seek all damages and remedies available under the Concession Agreement and available in law and equity for any such improper transfer. Merchant also shall defend, indemnify and hold harmless City and any and all of City's boards, commissions, officers, agents, employees, assigns, and successors in interest and, at the option of City, defend by counsel satisfactory to City, from and against all suits and causes of action, claims, losses, demands, and expenses, including, but not limited to, attorneys' fees and cost of litigation, arising out of or relating to Merchant agreeing to transfer, assign, sublet or license any portion of the Premises. Rights and remedies available to City under this Section are cumulative of those provided for elsewhere in the Concession Agreement.

12.1.5. Re-set to Market Rate. If the City approves a transfer to a merchant pursuant to Section 12.1.1.2, upon the transfer, the Rent due hereunder from transferee re-sets to a market rate. A transfer to a merchant pursuant to Section 12.1.1.2 during the first year after Concession Agreement Commencement Date will result in a Rent due from the transferee at the level set by the Commission on April 1, 2010. Commencing with the second year after Concession Agreement Commencement Date, and each year thereafter through the fifth year, transferee's Rent will be the April 1, 2010 Commission-approved rent, adjusted by the Consumer Price Index for All Items, All Urban Consumers for the Los Angeles-Riverside-Orange County, California Area (1982-84=100) published by the United States Department of Labor, Bureau of Labor Statistics, with a cap on such CPI increase of 5% yearly. Thereafter, for all transfers approved by the City after the first 60 months of this Concession Agreement, transferee's Rent will be computed pursuant to Article 7.