

**CITY OF EL PASO, TEXAS
DEPARTMENT HEAD'S SUMMARY REQUEST FOR COUNCIL
ACTION (RCA)**

DEPARTMENT: Airport
AGENDA DATE: March 20, 2007
CONTACT PERSON/PHONE: Patrick T. Abeln, A.A.E.
DISTRICT(S) AFFECTED: 3

SUBJECT:

Resolution authorizing the City Manager to sign a La Placita Lease Agreement between the City of El Paso (Lessor) and ShoeSpring, Inc.TM dba SpiraTM (Lessee) effective April 1, 2007.

BACKGROUND / DISCUSSION:

ShoeSpring, Inc.TM dba SpiraTM ("Spira") opened a retail outlet selling sports shoes and miscellaneous sports apparel in La Placita Shopping Mall in 2003. The initial lease was effective from June 10, 2003 to December 31, 2006 at which time it expired and went into holdover status. The Lessee has now requested a new lease to allow the Spira store to remain in the El Paso International Airport Terminal for an additional three years with one two-year option. The Minimum Annual Guarantee rental rates will remain at \$20.00 per square foot for 1,065 sf totaling \$21,300.00 annually or 15% of the monthly Gross Receipts, whichever is greater.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one? If so, when?

Yes. The same type lease for the same lessee was approved by Council on June 3, 2003.

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

N/A. This is a revenue-generating lease.

*****REQUIRED AUTHORIZATION*****

LEGAL: (if required) Raymond L. Telles **FINANCE:** (if required) _____
Raymond L. Telles, Assistant City Attorney

OTHER: Patrick T. Abeln, Director of Aviation Patrick T. Abeln
(Example: if RCA is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

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07 MAR - 9 AM 9:34

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign a La Placita Lease Agreement between the City of El Paso and ShoeSpring, Inc.™ dba Spira™ to lease space within La Placita Shopping Mall in the Airport Terminal, El Paso, Texas effective April 1, 2007.

ADOPTED this ___ day of March 2007.

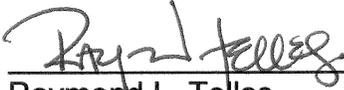
CITY OF EL PASO:

John F. Cook
Mayor

ATTEST:

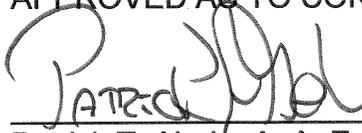
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Raymond L. Telles
Assistant City Attorney

APPROVED AS TO CONTENT:



Patrick T. Abeln, A. A. E.
Director of Aviation

CITY CLERK DEPT.
07 MAR -9 AM 9:34

LA PLACITA LEASE AGREEMENT

El Paso International Airport
El Paso, Texas

APRIL 1, 2007
Effective Date

ShoeSpring, Inc.™ dba Spira™
LESSEE

CITY CLERK DEPT.
07 MAR -9 AM 9:34

**LA PLACITA LEASE AGREEMENT
TABLE OF CONTENTS**

CITY CLERK DEPT.
07 MAR -9 AM 9:34

		<u>PAGE</u>
ARTICLE I	PREMISES AND PRIVILEGES	1
Section 1.01	Description of Premises.....	1
Section 1.02	Permitted Uses	1
Section 1.03	Restrictions on Privileges, Uses and Rights.....	2
ARTICLE II	TERM	5
Section 2.01	Term	5
Section 2.02	Option to Extend.....	5
Section 2.03	Holding Over.....	5
ARTICLE III	RENTAL, MINIMUM ANNUAL GUARANTEE AND PERCENTAGE FEES	6
Section 3.01	Rental	6
Section 3.02	Records of Lessee.....	6
Section 3.03	Audit.....	7
Section 3.04	Delinquent Rentals	8
Section 3.05	Default for Failure to Pay Rentals, Fees or Charges.....	8
Section 3.06	Place of Payment	8
ARTICLE IV	MAINTENANCE, REPAIRS, AND UTILITIES.....	8
Section 4.01	Lessor's Responsibilities	8
Section 4.02	Lessee's Responsibilities.....	9
ARTICLE V	ASSIGNMENT, TRANSFER AND SUBLETTING.....	10
ARTICLE VI	CANCELLATION AND REMEDIES	10
Section 6.01	Cancellation.....	10
Section 6.02	Remedies	11
ARTICLE VII	INDEMNIFICATION AND INSURANCE.....	12
Section 7.01	Indemnification.....	12
Section 7.02	Liability Insurance.....	13
Section 7.03	Workers' Compensation Insurance	13
Section 7.04	Fire and Other Risks Insurance.....	13
Section 7.05	Business Interruption.....	13
Section 7.06	Damage or Destruction of Premises.....	14
ARTICLE VIII	SURRENDER OF POSSESSION.....	14
ARTICLE IX	GENERAL PROVISIONS	15
Section 9.01	Rules and Regulations	15
Section 9.02	Time is of the Essence	15

TABLE OF CONTENTSPage

Section 9.03	Notices.....	15
Section 9.04	Attorney's Fees.....	15
Section 9.05	Agreement Made in Texas	16
Section 9.06	Nondiscrimination Covenant.....	16
Section 9.07	Affirmative Action.....	17
Section 9.08	Cumulative Rights and Remedies	17
Section 9.09	Interpretation.....	17
Section 9.10	Agreement Made in Writing	17
Section 9.11	Paragraph Headings.....	17
Section 9.12	Severability	17
Section 9.13	Successors and Assigns	17
Section 9.14	Taxes and Other Charges	17
Section 9.15	Authorization to Enter Agreement	18
Section 9.16	Quiet Enjoyment.....	18
Section 9.17	Effective Date	18

ACKNOWLEDGEMENTS

EXHIBIT A - PREMISES

CITY CLERK DEPT.
07 MAR - 9 AM 9:34

LA PLACITA LEASE AGREEMENT

THIS AGREEMENT ("Agreement") is entered into this ____ day of _____ 2007 by and between the **City of El Paso** ("Lessor") and **ShoeSpring, Inc.™ dba Spira™** ("Lessee").

WHEREAS, Lessor owns and operates the El Paso International Airport as depicted in the Airport Layout Plan dated February 18, 1999 ("Airport") located in the County of El Paso, Texas, which is under the management of the Director of Aviation ("Director");

WHEREAS, Lessor has constructed the La Placita Shopping Mall ("La Placita") on the lower level of the terminal building and has space now available for lease; and

WHEREAS, Lessor desires to lease and Lessee has indicated a willingness and ability to lease, properly operate, keep and maintain a portion of La Placita in accordance with the standards established by Lessor.

NOW THEREFORE, for and in consideration of the mutual covenants, agreements, and conditions contained herein, the parties hereto agree as follows:

ARTICLE I. PREMISES AND PRIVILEGES

Section 1.01 Description of Premises. The premises leased are described as follows:

Area Number AW 105, containing approximately 1065 square feet of shop space in La Placita on the lower level of the Airport terminal building, and storage area #105 located in the basement of the Airport terminal building, as shown on Exhibit "A" attached hereto and fully incorporated by reference ("Premises").

Section 1.02 Permitted Uses. The Premises are being leased for the sole purpose of operating a retail facility for the sale of ShoeSpring™ and Spira™ Shoes and related products ("Approved Merchandise"). Lessee acknowledges that it has been advised that there are other tenants and concessionaires in the Airport who have been granted exclusive rights to sell certain products or provide specific services and that Lessor has

sought to lease the space in La Placita to specific types of shops which will not infringe upon the exclusive rights and will not duplicate merchandise in the La Placita shops. Each tenant in La Placita will be required to agree that at least 70% of the merchandise displayed in their premises must be in the Approved Merchandise category described in their respective lease agreement. By signing this lease, Lessee covenants and agrees that at least 70% of the merchandise displayed in the Premises and sold at the Airport will be in the Approved Merchandise category and the Director or his designee must approve any other merchandise.

It is Lessor's intent that Lessee shall have full freedom to sell any quality item appropriate for the type of retail facility operated by Lessee; however, Lessor reserves the right to approve any and all items to be sold in La Placita and to grant any tenant under appropriate circumstances an exclusive right to sell particular items to the exclusion of all other tenants. The granting of any exclusive right to sell and the approval of merchandise to be sold shall be solely at the discretion of the Director or his designee.

Section 1.03 Restrictions on Privileges, Uses and Rights. The rights, privileges and uses granted herein are subject to and expressly limited by the following:

A. City Regulations, Public Use and Federal Grants.

1. The use and occupancy of the Premises by Lessee shall be subject to all ordinances, resolutions, rules and regulations as are now or may hereafter be prescribed by the City of El Paso through the lawful exercise of its governmental powers.
2. The Premises and the Airport are subject to the terms of certain Sponsors' Assurances made to guarantee the public use of the Airport arising from certain grant agreements between City of El Paso and the United States of America and the documents which conveyed title to the City of El Paso.
3. This Agreement shall not be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958.
4. This Agreement shall be subordinate to the provisions of any existing or future agreement between City of El Paso and the United States of America relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport. This Agreement shall also be subordinate to the license or permit of entry, which may be granted by the Secretary of Defense.
5. If the Federal Aviation Administration requires modifications in this Agreement as a condition precedent to the granting of funds for the

CITY CLERK DEPT.
07 MAR -9 AM 9:34

improvement of the Airport, Lessee agrees to consent to such modifications as may be reasonably required to obtain such funds.

6. Lessee understands that all of its agents, employees, servants, independent contractors and invitees must be individually authorized by the Lessor to enter restricted areas as defined in the El Paso Municipal Code. Lessee understands that no person authorized to enter a restricted area by virtue of this Agreement may permit any person who is not otherwise authorized to enter a restricted area unless such other person is at all times while in a restricted area in the company of an authorized person.
7. Lessee understands and agrees that in the event the Federal Aviation Administration assesses a civil penalty against the Airport for any violation of Federal Aviation Regulation, Part 107, Section 107.13 as a result of any act or failure to act on the part of Lessee, its agents, employees, independent contractor or invitees, Lessee will promptly reimburse the Airport in the amount of the civil penalty assessed.

B. Operation of Lessee's Business.

1. The Lessee shall provide all merchandise and services on a fair and reasonable basis to all users of the Airport. The Lessee shall operate the Premises in a first-class and safe manner at all times. Lessee's service shall be prompt, courteous and efficient and the Premises shall be kept in a clean and sanitary condition in compliance with all state and local health codes.
2. The Lessee shall, in the operation of the business allowed herein, employ or permit the employment of only such personnel as will assure a high standard of service to the public. The management, maintenance and operation of Lessee's business and the Premises shall, at all times, be under the direct supervision of the Lessee or an active, qualified, competent and experienced employee designated to represent the Lessee. All of Lessee's personnel, while on or about the Premises, shall be clean and properly attired for public sales. Lessee and its employees shall not use improper language or act in a loud, boisterous or otherwise improper manner nor shall they solicit business in the public areas of the Airport.
3. No goods or services may be allowed in the Premises, which may increase the premium on or suspend the Lessor's property or liability insurance on the Airport terminal building or which may be in violation of any security regulations applicable at the Airport.

CITY CLERK DEPT.

07 MAR -9 AM 9:35

CITY CLERK DEPT.
07MAR -9 AM 9:35

4. Lessee's prices for goods and services shall be fair, reasonable and comparable to prices for similar goods and services offered for sale in the City of El Paso. Lessor shall have the right to monitor all of Lessee's activities and prices and shall be the sole judge as to whether Lessee's prices are fair, reasonable and comparable.
5. In the event of a conflict between Lessee and any other lessee or concessionaire on Airport premises as to the services to be offered or sold by respective concessionaires or lessees, the Director shall decide which services may be offered or sold by each concessionaire or lessee and Lessee agrees to be bound by such decision.
6. Lessor, or any duly authorized representative of Lessor, may enter upon the Premises at any and all reasonable times during the term of this Agreement for the purpose of determining Lessee's compliance with the terms and conditions of this Agreement or for any other purpose incidental to the rights of the Lessor.
7. Lessee shall be continuously open for business and make its services and merchandise available to the public on the days and during the hours of operation established for La Placita Shopping Mall by the Director. The current hours of operation are 7:00 am to 7:00 pm seven days a week. The Director reserves the right to assign new hours or to modify the schedule to accommodate peak hours at the Airport.
8. Lessee shall not use any advertising medium which can be heard or experienced outside of six feet from the Premises, including but not limited to: flashing lights, search lights, loud speakers, CD or tape players, odors, radios or televisions, "barking & hawking", or any similar forms of solicitation or badgering of the public.

C. Improvements and Equipment.

1. Lessee shall, at its sole cost and expense, provide all special improvements, cash registers, computers, equipment, signs, furniture and furnishings necessary to operate its shop in a complete first-class manner. Prior to the installation of such improvements, the Director must approve the plans, specifications, designs and manner of installation, in writing. Lessee shall make no alterations, structural or otherwise, to the Premises without the prior written consent of the Director.
2. Special improvements, equipment, furniture, furnishings, supplies and merchandise provided by Lessee shall remain the property of Lessee. Upon termination whether by expiration of the term,

CITY CLERK DEPT.
07 MAR -9 AM 9:35

cancellation, forfeiture or otherwise, they shall be removed by Lessee who shall restore the Premises to their original condition prior to the Lessee's possession. Lessee shall make no alterations, structural or otherwise, to the Premises without the prior written consent of the Director.

3. Lessee shall not, without the Director's prior written consent (a) make any changes to the store front or (b) install any exterior lighting, decorations or paintings or (c) erect or install any signs, window or door lettering, placards, decorations or advertising media of any type which can be viewed from the exterior of the Premises. All signs, lettering, placards, decorations and advertising media shall be subject to the prior written approval of the Director as to construction, method of attachment, size, shape, height, lighting, color and general appearance. All signs shall be kept in good condition and in proper order at all times.
4. The displaying of any merchandise on floors outside of the shop's exterior walls is prohibited without the prior written approval of the Director.
5. Lessee shall not distribute leaflets, pamphlets, catalogs, coupons or any other promotional items, samples or merchandise outside the shop premises.

ARTICLE II. TERM

Section 2.01 Term. The term of this Agreement shall be for a period of three (3) years, commencing on the 1st day of April 2007 and expiring on the 31st day of March 2010.

Section 2.02 Option to Extend. Provided Lessee has fully complied with the terms of this Agreement and no event of default has occurred, Lessee shall have the option to extend this Lease for an additional term of two (2) years. If Lessee wishes to exercise this option, Lessee shall notify Lessor in writing by November 30, 2009.

Section 2.03 Holding Over. It is agreed and understood that any holding over by Lessee of the Premises at the expiration or cancellation of this Agreement shall operate and be construed as a tenancy from month to month at a rental of one and one-half times the current monthly rental, and Lessee shall be liable to Lessor for all loss or damage on account of any holding over against Lessor's will after the expiration or cancellation of this Agreement, whether such loss or damage may be contemplated at this time or not. No receipt or acceptance of money by Lessor from Lessee after the expiration or cancellation of this Agreement or after the service of any notice, after the commencement of any suit, or after final judgment for possession of the Premises, shall reinstate, continue or extend the terms of this Agreement, or affect any such notice, demand or suit or imply consent for

any action for which Lessor's consent is required or operate as a waiver of any right of the Lessor to retake or assume possession of the Premises; or for any arrears in rent, or other fees, charges or rent due Lessor by Lessee under the terms of this Agreement.

CITY CLERK DEPT.
07 MAR -9 AM 9:51

ARTICLE III. – RENTAL, MINIMUM ANNUAL GUARANTEE AND PERCENTAGE FEES

Section 3.01 Rental. Lessee agrees to pay \$20.00 per square foot of leased space per annum (the "Minimum Annual Guarantee") or 15% of Gross Receipts (the "Percentage Fee"), whichever is greater. For purposes of the calculation of rent, the parties agree that the Premises contain **1065** square feet of space. Therefore, the Rentals for this shop shall be either the Minimum Annual Guarantee of **\$21,300.00** per year (\$20.00 psf x 1065 sq. ft.) or the Percentage Fee of 15% of the Lessee's Gross Receipts, whichever is greater.

The term "Gross Receipts" is defined as all income received by the Lessee from the conduct of its business in the Premises. It shall be all-inclusive whether or not said income is made by cash or credit, or whether the income is collected or uncollected. Sales made from the Premises shall include items ordered in the Premises, whether in person or by computer or telephone and items which will be shipped to a customer as a result of a sale on the Premises.

Deductions from the calculation of Gross Receipts shall be allowed only for the amount of any federal, state, or local excise and sales taxes presently or hereafter levied upon such revenue.

The Minimum Annual Guarantee shall be paid in equal monthly installments of **\$1,775.00** each. The installments shall be paid in advance on or before the first day of each and every month during the term or any extension of this Lease. Any deficiency between this Minimum Annual Guarantee monthly installment and the Percentage Fee (if greater) shall be paid to the Lessor on or before the 20th day of the month following the month for which the Gross Receipts were reported.

Section 3.02 Records of Lessee. Lessee shall keep true and accurate amounts, records, books, and data which shall show all sales made for cash, credit, or otherwise (without regard to whether paid or not) and shall set forth the number of transactions and all the Gross Receipts of Lessee.

Lessee agrees to operate its business upon the Airport so that a duplicate invoice and cash receipt, if applicable shall be issued with each sale or transaction, whether for cash or credit. Lessee further agrees to keep, in the El Paso area, books and records, in accordance with generally accepted accounting practices, and such other records as Lessor may request. The duplicate invoices or cash receipts, if applicable, and all other books and records of Lessee, as mentioned in this Agreement, shall be available for inspection or audit by authorized representatives of Lessor at all

reasonable times during business hours for a minimum period of one (1) year after the end of each contract year and after any hold over period, if any. If an audit is required, appropriate records will be maintained legally for a period of sixty (60) days after completion of the audit.

With the payment of monthly Rentals, as provided in Section 3.01 above, Lessee shall submit to Lessor a statement showing the number of retail transactions and Gross Receipts from the operation of Lessee's business on the Premises for the preceding calendar month. These reports shall show such reasonable detail and breakdown as is required by Lessor.

Within ninety (90) days following the end of each contract year of operation of the concession, a statement showing Gross Receipts for the preceding contract year is to be submitted and verified from the records by a certified public accountant. Such statement shall be signed and sworn by a certified public accountant as an accurate report of Lessee's Gross Receipts for the preceding contract year. If, after the submission of Lessee's annual statement, Lessor reasonably questions the accuracy of such statement, Lessor may, at its sole option, require Lessee to submit at Lessee's own cost, a certified statement prepared by an independent certified public accountant. Any failure or omission by Lessor to request a certified statement in any given year shall not operate to bar or destroy the right of Lessor to request such a certified statement in any subsequent year. Such statement showing Gross Receipts for the preceding contract year is to be accompanied by Lessee's payment covering any deficiency between payment made during the year of previous operation and payment due for such year of operation. If the statement and other records show that the amount due to Lessor is less than the total payments already made by Lessee, then Lessor shall credit to Lessee the excess amount against the next year's monthly Minimum Annual Guarantee. Upon termination or cancellation of this Agreement, any amounts paid to Lessor in excess of the required amounts shall be refunded to Lessee provided Lessee is not in default of the terms of this Agreement. Lessee, at its own expense, shall supply all record forms in a type, style and form satisfactory to Lessor. The submission of such statement by Lessee shall not be construed to limit Lessor's right to request audits in accordance with Section 3.03 of this Agreement.

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Lessee shall maintain monthly statements, as required hereunder, for a minimum of one (1) year at a place of business accessible to Lessor in El Paso, Texas. Lessee shall maintain annual statements, as required hereunder, at its principal place of business, for a minimum of four (4) years, and shall forward same to Lessor during that time, if requested by the Director.

Section 3.03 Audit. For the purpose of determining accuracy of reporting Gross Receipts, the Director may make a spot test audit and base its findings for the entire period upon such spot test; provided however, that such a spot test shall include at least twenty-five percent (25%) of the total time of the period being audited.

In addition, the Director shall have the right, during any one calendar year of this

Agreement, to authorize up to two (2) audits of Lessee's records pertaining to Lessee's business conducted at the Airport. Such audits shall be undertaken by a reputable firm of certified public accountants with offices in El Paso. The cost of such audits shall be borne by Lessor, unless the results of such audits reveal a discrepancy of more than five percent (5%) between the Gross Receipts reported in accordance with this article III and the Gross Receipts as determined by audit for any twelve (12) month period. In case of such discrepancy, the full cost of the audit shall be borne by Lessee.

Failure of Lessor to exercise its right to audit Lessee, as set forth herein, shall in no way be construed as a waiver of any right to payment by Lessor of any rental or other payments due Lessor under the terms of this Agreement, and Lessor hereby expressly reserves its rights under common or statutory law, or otherwise, to enforce all terms of this Agreement, including any right to payment hereunder.

Section 3.04 Delinquent Rentals. Without waiving any other right of action available to Lessor in the event of default in payment of rentals, fees, or charges hereunder, should Lessee fail to pay any Rentals within ten (10) days from the time payment is due, Lessee agrees to pay interest in an amount equal to the highest rate allowed by applicable law.

Section 3.05 Default for Failure to Pay Rentals, Fees or Charges. Failure of Lessee to pay any rent due within ten (10) days after the due date shall cause Lessee to be in default under this Agreement. If Lessee is in default for failure to pay amounts due, Lessor shall have the right, upon ten (10) days written notice or demand, to cancel this Agreement

In the event of default under this section of the Agreement, Lessor shall then have the right to re-enter and resume possession of the Premises and to remove Lessee's property there from without being guilty of any manner of trespass or conversion and without prejudice to any other remedies, which might be used by Lessor.

Section 3.06 Place of Payment. All rentals, fees or other charges provided herein shall be paid to Lessor at the following address:

CITY CLERK DEPT
07 MAR -9 AM 9:25

Accounting Division
El Paso International Airport
P.O. Box 971278
El Paso, Texas 79925-1278

ARTICLE IV. - MAINTENANCE, REPAIRS, AND UTILITIES

Section 4.01 Lessor's Responsibilities.

- A. Lessor shall provide structural maintenance of the Premises, maintenance of temperature control equipment, and maintenance of internal plumbing, to the extent that such maintenance is not made necessary by the actions of Lessee, its employees, customers, invitees and/or guests. Lessor shall also

maintain and make repairs in the common areas of La Placita as those areas are depicted on Exhibit "A" attached hereto and fully incorporated by reference.

- B. Lessor will replace at its cost light bulbs and ballasts in electrical fixtures in common areas of La Placita.
- C. Lessor will provide heating, cooling and electricity to the Premises. Lessor shall not be responsible for any damage resulting from disruption of utilities.

Section 4.02 Lessee's Responsibilities.

- A. Lessee shall, without cost to the Lessor, maintain the Premises and every part thereof in good appearance and repair and in a safe condition. Lessee shall maintain and repair in good condition all improvements on the Premises, including furnishings, fixtures and equipment, whether installed by Lessee, Lessor, or both. Lessee shall refurbish and repaint the interior of the Premises as necessary. All maintenance, repairs and replacements shall be of quality equal to the original in materials and workmanship, and shall be subject to the prior written approval of the Director.
- B. Lessee shall pay for all labor done or materials furnished in the repair, maintenance, replacement or improvement of the Premises and shall keep said Premises and Lessee's possessory interest therein free and clear of any lien or encumbrance of any kind.
- C. Lessee shall make complete and proper arrangements for the adequate and sanitary handling of Lessee's trash and other refuse and shall provide for its timely removal to the common-use disposal area. Lessee shall provide and use suitable covered metal receptacles for trash and refuse. No boxes, cartons, barrels or similar items shall be piled in or in view of a public area.
- D. Lessee shall, at its cost, replace light bulbs, ballasts in electrical fixtures in the Premises.
- E. The Lessor shall be the sole judge of the quality of maintenance and the Director shall notify Lessee in writing if it is determined that satisfactory maintenance is not being performed. If said maintenance is not performed by Lessee within fifteen (15) days after receipt of written notice from the Director, the Lessor or its agents shall have the right to enter upon the Premises and perform such maintenance and Lessee agrees to promptly reimburse the Lessor for the cost thereof, plus twenty percent (20%) thereof for administrative overhead. Failure to reimburse Lessor upon demand shall constitute an event of default hereunder.

CITY CLERK DEPT.

07 MAR -9 AM 9:35

ARTICLE V. - ASSIGNMENT, TRANSFER AND SUBLETTING

Lessee shall not sell, assign or transfer any rights or privileges granted by this Agreement nor sublet any part or all of the Premises without the prior written consent of the Lessor. Any attempt to transfer, assign or sublease without the prior written consent of the Lessor shall be void and shall constitute an event of default hereunder.

ARTICLE VI. - CANCELLATION AND REMEDIES

Section 6.01 Cancellation. This Agreement shall be subject to cancellation by Lessor in the event Lessee shall:

- A. Be in arrears in the payment of the whole or any part of the amounts agreed upon hereunder for a period of ten (10) days after Lessor has notified Lessee in writing that payment was not received when due.
- B. File in any court a petition in bankruptcy or insolvency or for the appointment of a receiver or trustee of all or a portion of Lessee's property;
- C. Make any general assignment for the benefit of creditors;
- D. Abandon the Premises for a period of seven (7) calendar days;
- E. Default in the performance of any of the covenants and conditions required herein (except rental payments) to be kept and performed by Lessee, and such default continues for a period of thirty (30) days after receipt of written notice from Lessor to cure such default, unless during such thirty-day period, Lessee shall commence and thereafter diligently perform such action as may be reasonably necessary to cure such default;
- F. Be adjudged a bankrupt in involuntary bankruptcy proceedings; or
- G. Be made a party to any receivership proceeding in which a receiver is appointed for the property or affairs of Lessee where such receivership is not vacated within sixty (60) days after the appointment of such receiver.
- H. Failure to comply with provisions of this Lease regarding sale of Approved Merchandise.
- I. Failure to maintain hours of operation as specified by the Director or his designee.

CITY CLERK DEPT.
07MAR -9 AM 9:35

In any of the aforesaid events, Lessor may take immediate possession of the Premises including any and all improvements thereon and remove Lessee's effects, forcibly if necessary, without being deemed guilty of trespassing.

Failure of Lessor to declare this Agreement canceled upon the default of Lessee for any of the reasons set out shall not operate to bar or destroy the right of Lessor to cancel this Agreement by reason of any subsequent violation of the terms of this Agreement.

No receipt or acceptance of money by Lessor from Lessee after the expiration or cancellation of this Agreement or after the service of any notice, after the commencement of any suit, or after final judgment for possession of the Premises, shall reinstate, continue, or extend the terms of this Agreement, or affect any such notice, demand or suit or imply consent for any action for which Lessor's consent is required or operate as a waiver of any right of the Lessor to retake and resume possession of the Premises.

Section 6.02 Remedies. Upon the occurrence of any such event of default, Lessor shall have the option to pursue any one or more of the following remedies without any notice or demand whatsoever:

- A. Terminate this Agreement, in which event Lessee shall immediately surrender the Premises to Lessor, and if Lessee fails to do so, Lessor may, without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession of the Premises and expel or remove Lessee and any other person who may be occupying the Premises or any part thereof, by force if necessary, without being liable for prosecution or any claim of damages therefore; and Lessee agrees to pay to Lessor on demand the amount of all losses and damage which Lessor may suffer by reason of such termination, whether through inability to relet the Premises on satisfactory terms or otherwise.
- B. Enter upon and take possession of the Premises and expel or remove Lessee and any other person who may be occupying the Premises or any part thereof, by force if necessary, without being liable for prosecution or any claim for damages therefore, and if Lessor so elects, relet the Premises on such terms as Lessor may deem advisable and receive the rent therefore; and Lessee agrees to pay to Lessor on demand any deficiency that may arise by reason of such reletting.
- C. Enter upon the Premises by force if necessary without being liable for prosecution or any claim for damages therefore, and do whatever Lessee is obligated to do under the terms of this Agreement; and Lessee agrees to reimburse Lessor on demand for any expenses which Lessor may incur in thus effecting compliance with Lessee's obligations under this Agreement,

CITY CLERK DEPT.
07 MAR -9 AM 9:35

and Lessee further agrees that Lessor shall not be liable for any damages resulting to the Lessee from such action.

Pursuit of any of the foregoing remedies shall not preclude pursuit of any other remedies herein provided or provided by law, nor shall pursuit of any other such remedy constitute a forfeiture or waiver of any rent due to Lessor hereunder or of any damages accruing to Lessor by reason of the violation of any of the terms, provisions and covenants herein contained. Forbearance by Lessor to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of such default. In determining the amount of loss or damage which Lessor may suffer by reason of termination of this Agreement or the deficiency arising by reason of any reletting by Lessor as above provided, allowance shall be made for the expense of repossession and any repairs or remodeling undertaken by Lessor following repossession.

Failure of Lessor to declare this Agreement canceled upon the default of Lessee for any of the reasons set out shall not operate to bar or destroy the right of Lessor to cancel this Agreement by reason of any subsequent violation of the terms herein.

No receipt or acceptance of money by Lessor from Lessee after the cancellation of this Agreement or after the service of any notice, after the commencement of any suit, or after final judgment for possession of the Premises shall reinstate, continue or extend the terms of this Agreement, or affect any such notice, demand or suit, or imply consent for any action for which Lessor's consent is required or operate as a waiver of any right of Lessor to retake and resume possession of the Premises; or for any arrears in rent or other charges, fees or rental due Lessor by Lessee in accordance with the terms of this Agreement.

ARTICLE VII. - INDEMNIFICATION AND INSURANCE

Section 7.01 Indemnification. WITHOUT LIMITING THE GENERALITY OF ANY OTHER INDEMNITY CONTAINED IN THIS AGREEMENT, LESSEE AGREES TO INDEMNIFY AND HOLD LESSOR HARMLESS AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS, LIABILITIES AND EXPENSES, INCLUDING INVESTIGATION EXPENSES AND REASONABLE ATTORNEY'S FEES FOR THE DEFENSE OF SUCH CLAIMS AND DEMANDS, ARISING OUT OF OR ATTRIBUTED DIRECTLY, OR INDIRECTLY TO THE OPERATION, CONDUCT OR MANAGEMENT OF LESSEE'S ACTIVITIES ON THE PREMISES, ITS USE OF THE PREMISES, OR FROM ANY BREACH ON THE PART OF LESSEE OF ANY TERMS OF THIS AGREEMENT, OR FROM ANY ACT OR NEGLIGENCE OF LESSEE, ITS AGENTS, CONTRACTORS, EMPLOYEES, CONCESSIONAIRES, OR LICENSEES IN OR ABOUT THE PREMISES INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE, OR IN PART, FROM THE NEGLIGENCE OF LESSOR. IN CASE OF ANY ACTION OR PROCEEDING BROUGHT AGAINST LESSOR BY REASON OF ANY SUCH CLAIM, LESSEE, UPON RECEIPT OF WRITTEN NOTICE FROM LESSOR,

CITY CLERK DEPT.
07 MAR -9 AM 9:55

AGREES TO DEFEND THE ACTION OR PROCEEDING BY COUNSEL ACCEPTABLE TO LESSOR.

Section 7.02 Liability Insurance. Lessee, at its sole cost and expense shall, throughout the term of this Agreement, provide and keep in force for the benefit of Lessee with the Lessor as an additional insured, comprehensive general liability insurance in an amount not less than One Million Dollars (\$1,000,000.00) for bodily injury to one person for each occurrence, Two Million Dollars (\$2,000,000.00) for bodily injuries to more than one person arising out of each occurrence and Five Hundred Thousand Dollars (\$500,000.00) for property damage arising out of each occurrence, or in amounts equal to the maximum liability for damages for municipalities for claims arising under governmental functions, provided for under the Texas Tort Claims Act, whichever is greater.

All policies of insurance required herein shall be in a form and with a company or companies reasonably satisfactory to Lessor and shall name Lessor as an additional insured. Each such policy shall provide that such policy may not be materially changed (e.g., coverage limits reduced below the minimum specified in this Agreement) or otherwise materially altered, or canceled by the insurer during its term without first giving at least thirty (30) days written notice to Lessor. Policies or certificates of valid policies of insurance with required coverages shall be delivered to Lessor.

Section 7.03 Workers' Compensation Insurance. The Lessee shall obtain, and maintain throughout the term of its Lease, Workers' Compensation and Employers Liability coverage with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act and minimum policy limits for employers liability of \$1,000,000 bodily injury each accident, \$1,000,000 bodily injury by disease policy limit and \$1,000,000 bodily injury by disease each employee. The following endorsements shall be added to the policy:

- A A Waiver of Subrogation in favor of the City of El Paso; and
- B. A thirty (30) day Notice of Cancellation/Material Change in favor of the City.

Section 7.04 Fire and Other Risks Insurance. Lessee, at its sole cost and expense, shall throughout the term of this Lease, keep or cause to be kept all improvements equipment and merchandise now or hereafter located upon the Premises insured for the mutual benefit of Lessor and Lessee against loss or damage by fire and against loss or damage by other risks embraced by "extended coverage" and against civil commotions, acts of war, riots, vandalism and malicious mischief in an amount equal to the actual replacement cost of such improvements, equipment and merchandise. Lessor shall not be liable for any loss by any casualty, fire or theft. Lessee is solely responsible for carrying adequate insurance at its sole cost and expense to cover it for any such losses.

Section 7.05 Business Interruption. In the event the Lessor is required to suspend operations of La Placita in order to comply with security mandates or to avoid interference with aviation purposes, any losses resulting from the business interruption

CITY CLERK DEPT.
MAR -9 AM 9:52

shall be borne by the Lessee. Lessor shall make every reasonable effort to avoid such business interruptions and to restore operations as soon as possible but shall have not liability for such occurrences

Section 7.06 Damage or Destruction of Premises. If the building in which the Premises are located shall be partially damaged by fire, explosion, the elements, the public enemy or other casualty, but not rendered untenable, the same shall be repaired with due diligence by Lessor at its own cost and expense except where such damage is caused by the intentional or negligent acts or omissions of Lessee or any of its agents, servants, employees or independent contractors, in which case Lessee shall be liable and responsible for any repair or restoration. If the damage shall be so extensive as to render such building untenable, but capable of being repaired in ninety (90) days, the same shall be repaired with due diligence by Lessor at its own cost and expenses, and the rent payable hereunder with respect to Lessee's space such building shall be proportionately paid up to the time of such damage and shall thereafter cease until such time as such building shall be fully restored.

In case any such building is completely destroyed by fire, explosion, the elements, the public enemy or other casualty, or so damaged that it will or does remain untenable for more than ninety (90) consecutive days, Lessor shall be under no obligation to repair and reconstruct such building, and rent payable hereunder with respect to Lessee's space in said building shall be proportionately paid up to the time of such damage or destruction and shall thenceforth cease until such time as the Premises may be fully restored. If within six (6) months after the time of such damage or destruction said building shall not have been repaired or reconstructed for Lessee's use or other reasonable facilities provided in lieu thereof, Lessee shall have the right, by written notice to Lessor, to cancel this Agreement in its entirety or to cancel as of the date of such damage or destruction such part of this Agreement as relates only to said building.

Nothing in this Agreement shall be construed as a waiver of the right of either Lessor or Lessee to recover damages from the other arising out of the fault or negligence of the other for which such other would be legally liable.

Lessee shall be solely responsible for paying the cost of insurance covering its fixtures, furniture, stock in trade, equipment and Lessee's personal property.

ARTICLE VIII - SURRENDER OF POSSESSION

Upon the expiration or cancellation of this Agreement, Lessee's rights, privileges and use of all Premises and facilities shall cease and Lessee shall forthwith surrender the same. Lessee shall restore the Premises to its original condition as of the beginning of occupancy, ordinary wear and tear, and damage by the elements, fire, explosion or other causes entirely beyond Lessee's control excepted.

CITY CLERK DEPT.
07 MAR -9 AM
11:35

ARTICLE IX - GENERAL PROVISIONS

Section 9.01 Rules and Regulations. Lessee shall observe and obey all rules and regulations promulgated, from time to time, by the Director governing conduct on and operations at the Airport and use of its facilities, provided, however, that all rules and regulations so promulgated shall not be inconsistent with the terms of this Agreement, local or state laws, or any legally authorized rule or regulation of the Federal Aviation Administration or successor thereto which is binding in law on Lessor or Lessee as the same now are or may from time to time be amended or supplemented.

Section 9.02 Time is of the Essence. Time is and shall be deemed of the essence in respect to the performance of each provision of this Agreement.

Section 9.03 Notices. Wherever any notice is required or permitted hereunder such notice shall be in writing. Any notice or document required or permitted to be delivered hereunder shall be deemed to be delivered, whether actually received or not, when deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the parties hereto at the respective addresses set out below, or at such other addresses as they have theretofore specified by written notice.

Any notice required to be given to Lessor shall be addressed to the following address:

CITY CLERK DEPT.
07 MAR -9 AM 9:35

Director of Aviation
El Paso International Airport
6701 Convair Road
El Paso, Texas 79925-1029

With a copy to:

City Clerk
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79999

Any notice required to be given to Lessee shall be addressed to the following mailing address:

ShoeSpring, Inc.™ dba Spira™
Attn: Andrew Krafur
4687 North Mesa, Suite #100
El Paso, Texas 79912

Section 9.04 Attorney's Fees. If either party brings any action or proceedings to enforce, protect or establish any right or remedy under the terms and conditions of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees, as determined by a court of competent jurisdiction, in addition to any other relief awarded.

Section 9.05 Agreement Made in Texas. The laws of the State of Texas shall govern the validity, interpretation, performance and enforcement of this Agreement. Venue shall be in the courts in El Paso County, Texas.

Section 9.06 Nondiscrimination Covenant. Lessee, for itself, its heirs, personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree as follows:

- A. That no person on the grounds of race, creed, color, sex, age, disability, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. That in the construction of any improvements in the Premises and the furnishing of services therein, no person on the grounds of race, creed, color, sex, age disability, or national origin shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination.
- C. That Lessee shall use the Premises in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, and Department of Transportation, Subtitle A. Part 21, Nondiscrimination in federally assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulation may be amended. Lessee shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 CFR Part 27.
- D. Economic Discrimination. To the extent that, under this Agreement, Lessee furnishes goods or services to the public at the Airport, Lessee agrees that it shall:
 - 1. Furnish each and every good and service on a fair, reasonable, and not unjustly discriminatory basis to all users of the Airport, and
 - 2. Charge fair, reasonable and not unjustly discriminatory prices for each unit or service, provided that Lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers as otherwise permitted under the law.
- E. That, in the event of breach of any of the above nondiscrimination covenants, Lessor shall have the right to cancel this Agreement immediately and re-enter and repossess the Premises and hold the same as if said Agreement had never been made or issued.

CITY CLERK DEPT.
07 MAR -9 AM 9:36

Section 9.07 Affirmative Action. Lessee assures that no person, on the grounds of race, creed, color, sex, age, disability, or national origin be excluded from participating in or receiving the services or benefits of any program of activity covered by 14 CFR Part 152, Subpart E, and any amendments thereto, and any other federal statues or regulations applicable to the receipt of federal assistance from the Department of Transportation by local governments for Airport use, or otherwise applicable to persons leasing premises from the City of El Paso, Lessee assures that it will require that its covered suborganizations (sublessees) provide assurances to Lessor, as set forth herein, that they similarly will undertake affirmative action programs, and that they will require assistance from their suborganizations (sublessees) to the same effect.

Section 9.08 Cumulative Rights and Remedies. All rights and remedies of Lessor here enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law. Likewise, the exercise by Lessor of any remedy provided for herein or allowed by law shall not be to the exclusion of any other remedy.

Section 9.09 Interpretation. Words of gender used in this Agreement shall be held and construed to include any other gender, and words in the singular shall be held to include the plural and vice versa unless the context otherwise requires.

Section 9.10 Agreement Made in Writing. This Agreement contains all of the agreements and conditions made between the parties hereto and may not be modified orally or in any manner other than by agreement in writing signed by the parties hereto or their respective successors in interest.

Section 9.11 Paragraph Headings. The Table of Contents of this Agreement and the captions of the various articles and sections of this Agreement are for convenience and ease of reference only, and do not define, limit, augment or describe the scope, context or intent of this Agreement or any part or parts of this Agreement.

Section 9.12 Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Agreement will not be affected, and in lieu of each provision which is found to be illegal, invalid, or unenforceable, there will be added as part of this Agreement a provision as similar to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

Section 9.13 Successors and Assigns. All of the terms, provisions, covenants and conditions of this Agreement shall inure to the benefit of and be binding upon Lessor and Lessee and their successors, assigns, legal representatives, heirs, executors and administrators.

Section 9.14 Taxes and Other Charges. The Lessee shall pay all taxes, and governmental charges of any kind whatsoever that may be lawfully assessed against the Lessee or the Lessor, with respect to the Premises or Lessee's use of the Premises, during the term of this Agreement.

The Lessee in good faith may contest any tax or governmental charge, provided that the Lessee may not permit such tax or governmental charge to remain unpaid during the period of such contest and any appeal therefrom unless in the opinion of counsel satisfactory to the Lessor such action will not adversely affect any right or interest of the Lessor.

Section 9.15 Authorization to Enter Agreement. If Lessee signs this Agreement as a corporation, each of the persons executing this Agreement on behalf of Lessee warrants to Lessor that Lessee is a duly authorized and existing corporation, that Lessee is qualified to do business in the State of Texas, that Lessee has full right and authority to enter into this Agreement, and that each and every person signing on behalf of Lessee is authorized to do so. Upon Lessor's request, Lessee will provide evidence satisfactory to Lessor confirming these representations.

Section 9.16 Quiet Enjoyment. Lessor agrees that Lessee, upon payment of rent and all other charges and upon observation of the terms of this Agreement, shall lawfully and quietly hold, occupy, and enjoy the Premises during the full term of this Agreement without hindrance or molestation from Lessor or anyone claiming by, through, or under Lessor. Lessor's agreement is subject, however, to Lessee holding and enjoying the Premises under conditions which may be reasonably anticipated in connection with the operation of aircraft, and the operation of an airport, or in connection with construction activities associated with the renovation, repair or expansion of any Airport Premises.

Section 9.17 Effective Date. Regardless of date signed, this Agreement shall have an effective date of April 1, 2007.

IN WITNESS WHEREOF, the parties have hereunto set their hands as of this _____ day of _____ 2007.

LESSOR: CITY OF EL PASO

ATTEST:

Joyce A. Wilson City Manager

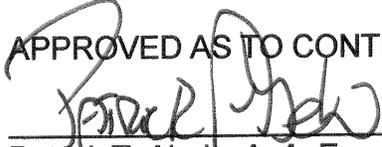
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Raymond L. Telles
Assistant City Attorney

APPROVED AS TO CONTENT:



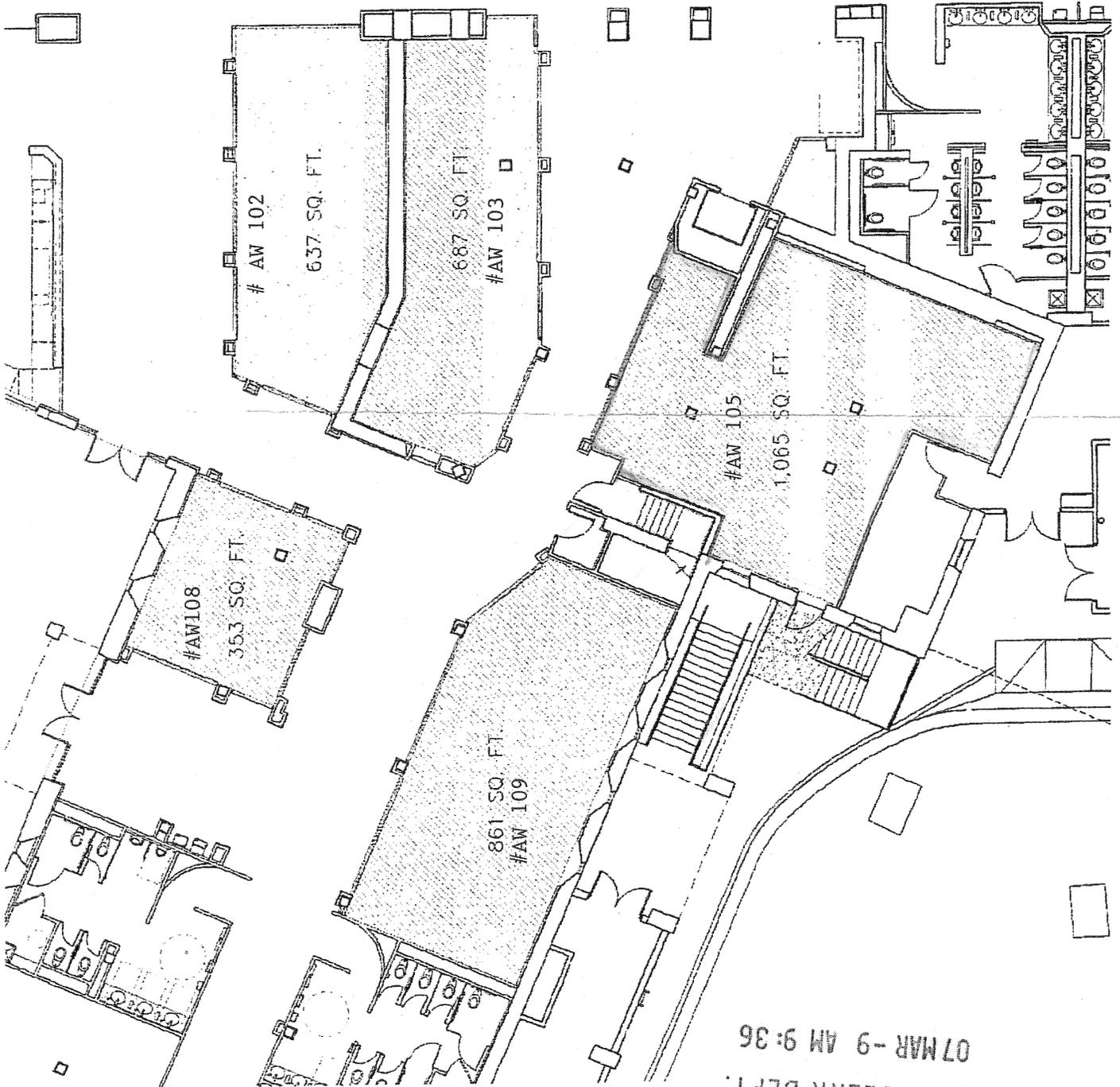
Patrick T. Abeln, A. A. E.
Director of Aviation

(SIGNATURES CONTINUE ON FOLLOWING PAGE)

07 MAR -9 AM 9:36

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EXHIBIT
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07 MAR -9 AM 9:36