

CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: Airport

AGENDA DATE: December 11, 2012

CONTACT PERSON/PHONE: Monica Lombraña, A.A.E. -780-4793

DISTRICT(S) AFFECTED: All

SUBJECT:

Approve a Resolution that the City Manager be authorized to sign a La Placita Lease Agreement (Agreement) by and between the City of El Paso ("Lessor") and Galeria Zia LLC ("Lessee") for the premises described as Space 1 containing approximately 687 square feet of shop space in La Placita on the lower level of the Airport terminal building, and storage area #AW 105 located in the basement of the Airport terminal building.

BACKGROUND / DISCUSSION:

The current La Placita Lease Agreements for the Galeria del Sol and La Zia shops located in La Placita expire on December 31, 2012 and the current tenants do not wish to renew their agreements. The current manager for the shops has formed a new local entity, Galeria Zia LLC, and desires to enter into an Agreement for the current La Zia location.

The products to be sold at the new Galeria Zia location consists of Native American hand crafts, jewelry of a southwestern theme, and hand-crafted original works, including items from local vendors and artists. The existing La Zia shop has been operating at the airport for the past 10 years and has established a customer base for travelers seeking unique artwork. The new Galeria Zia shop will continue to provide similar products with staff able to provide in depth information regarding the product as well as artist background.

The term of the Agreement is 3 years with the Lessee's option to extend the Agreement for an additional term of 2 years.

The rental rate is \$20.00 per square foot (Minimum Annual Guarantee) or 15% of Gross Receipts, whichever is greater. The Premises contain 687 square feet of space therefore the Minimum Annual Guarantee is \$13,740.00 per year and \$1,145.00 per month.

PRIOR COUNCIL ACTION:

None

AMOUNT AND SOURCE OF FUNDING:

N/A – Revenue Generating

BOARD / COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD:



Monica Lombraña, A.A.E., Director of Aviation

Information copy to appropriate Deputy City Manager

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 by and between the City of El Paso ("Lessor") and Galeria Zia LLC ("Lessee") for the premises described as follows:

Space 1 containing approximately 687 square feet of shop space in La Placita on the lower level of the Airport terminal building, and storage area #AW 105 located in the basement of the Airport terminal building.

Dated this ____ day of _____ 2012.

CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Theresa Cullen
Deputy City Attorney

APPROVED AS TO CONTENT:



Monica Lombraña, A.A.E.
Director of Aviation

LA PLACITA LEASE AGREEMENT
EI Paso International Airport EI Paso, Texas

GALERIA ZIA LLC
LESSEE

January 1, 2013
Effective Date

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EXHIBIT A-PREMISES

LA PLACITA LEASE AGREEMENT

THIS LA PLACITA LEASE AGREEMENT ("Agreement") is entered into this _____ day of _____ 2012 by and between the City of El Paso ("Lessor") and Galeria Zia, LLC ("Lessee").

WHEREAS, Lessor controls, operates and maintains an airport in the City and County of El Paso, State of Texas, known as the El Paso International Airport (hereinafter referred to as "Airport"); and

WHEREAS, Lessor has the La Placita Shopping Mall ("La Placita") on the lower level of the terminal building and has space 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:

Space 1 containing approximately 687 square feet of shop space in La Placita on the lower level of the Airport terminal building, and storage area #AW 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 Native American hand crafts, jewelry of a southwestern theme, and International hand-crafted original works ("Approved Merchandise"). Lessee acknowledges that it has been advised that there are other tenants and concessionaires in the Airport who have been granted 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. Lessee agrees that the merchandise displayed in their premises must be in the Approved Merchandise category. By signing this lease, Lessee covenants and agrees that the merchandise displayed in the Premises and sold at the Airport will be in the Approved Merchandise category and the Director of Aviation ("Director") or her 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 her 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 Lessor through the lawful exercise of its governmental powers.
2. The Premises and the Airport are subject to the terms of certain Sponsor's Assurances made to guarantee the public use of the Airport arising from certain grant agreements between Lessor and the United States of America and the documents which conveyed title to Lessor.
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 Lessor 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 improvement of the Airport, Lessee agrees to consent to such modifications as may be reasonably required to obtain such funds.
6. Lessee agrees that all of its tenants, subtenants, patrons, invitees, agents, employees, or independent contractors must be authorized by Lessor to enter restricted areas as defined in the El Paso Municipal Code. Lessee agrees that no person authorized to enter a restricted area by virtue of this Agreement shall permit any person who is not otherwise authorized to

enter a restricted area unless such unauthorized person is, at all times while in the 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 Lessor for any violation of 49 CFR Part 1542 or any successor or additional regulation pertaining to security at the Airport, as a result of any act or failure to act on part of Lessee, its tenants, subtenants, patrons, agents, servants, employees, invitees, or independent contractors, Lessee shall, upon demand of Lessor, immediately reimburse Lessor in the amount of the civil penalty assessed.

B. Operation of Lessee's Business.

1. Lessee shall provide all merchandise and services on a fair and reasonable basis to all users of the Airport. 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 codes.

"**First Class**" shall mean, as an adjective herein, a manner of operation of the concessions, a standard of quality of materials and construction, or a standard of quality of products, merchandise and services, as the context herein might be, comparable to those of upscale shopping centers and similar high-quality airport and non-airport retail establishments.

2. 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 Lessee or an active, qualified, competent and experienced employee designated to represent 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 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.
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 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 a.m. to 7:00 p.m. seven days a week. The Director reserves the right to approve new hours or modification to the schedule to accommodate flight schedules 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 players, odors, radios or televisions, or any similar forms of solicitation or badgering of the public, unless otherwise approved by the Director.

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. 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, cancellation, forfeiture or otherwise, they shall be removed by Lessee who shall restore the Premises to their original condition prior to 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 Premises 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 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 January, 2013 (Effective Date) and expiring on the 31st day of December, 2015.

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 June 30, 2015.

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 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.

ARTICLE III. RENTAL, MINIMUM ANNUAL GUARANTEE AND PERCENTAGE FEES

Section 3.01 Rental. During the first month of the Agreement, Lessee agrees to pay fifteen percent (15%) of Gross Receipts (the "Percentage Fee").

Beginning with the second month of the Agreement continuing to the end of the Term, Lessee agrees to pay Twenty and no/100 Dollars (\$20.00) per square foot of leased space per annum (the "Minimum Annual Guarantee") or fifteen percent (15%) of Gross Receipts (the "Percentage Fee"), whichever is greater. For purposes of the calculation of rent, the parties agree that the Premises contain 687 square feet of space. Thereafter, the Rental for this shop shall be either the Minimum Annual Guarantee of \$13,740.00 per year (\$20.00 psf x 687 sq. ft.) or the Percentage Fee of 15% of Lessee's Gross Receipts, whichever is greater.

The term "Gross Receipts" is defined as all income received by 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.

Beginning with the second month of the Agreement, the Minimum Annual Guarantee shall be paid in equal monthly installments of \$1,145.00. 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 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 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.

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 or Lessor's Internal Audit Office. 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 Security Bond. Lessee, without expense to Lessor, shall cause to be made, executed, and delivered to Lessor, from the Effective Date through the expiration or termination of this Agreement, a security bond, in a form acceptable to Lessor, in an amount equal to fifty percent (50%) of the Minimum Annual Guaranteed Rent. This performance bond shall guarantee performance of the Agreement by Lessee and shall be subject to claim in full or in part by Lessor in the event of default or nonperformance by Lessee to fully perform each of the terms and conditions of this Agreement. This security bond, at the option of Lessee, may be in the form of an irrevocable letter of credit from a lending institution or in the form of a bond from a surety company authorized to do business in the State of Texas and approved by Lessor, such approval not to be unreasonably withheld. The security bond shall be retained by Lessor for the entire Term and any extension of this Agreement. Lessor shall not be liable for any interest on such sums on deposit with Lessor.

In accordance with the Texas Insurance Code, if a security bond is in an amount of excess of ten percent (10%) of the surety's capital and surplus, Lessor will require, as a condition to accepting the bond(s), a written certification from the surety that the surety has reinsured the portion of the risk that exceeds ten percent (10%) of the surety's capital and surplus with one or more reinsurers who are duly authorized, accredited or trusted to do business in the State of Texas. If any portion of the surety's obligation is reinsured, the amount reinsured may not exceed 10% of the reinsurer's capital and surplus.

Section 3.05 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 3.06 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 3.07 Place of Payment. All rentals, fees or other charges provided herein shall be paid to Lessor at the following address:

Accounting Department
El Paso International Airport
6701 Convair Road
El Paso, Texas 79925-1029

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.
- D. Lessee shall notify Lessor, in writing, of any maintenance or repairs needed which are the responsibilities of the Lessor.
- E. Lessor, at its sole discretion, may be able to perform certain maintenance or improvements which are Lessee's responsibilities upon Lessee's written request. If the Director agrees staff can perform the identified maintenance or improvements as requested by Lessee, Lessor or its agents shall have the right to enter upon the Premises and perform the identified maintenance or improvements, and Lessee agrees to promptly reimburse Lessor for the cost thereof, plus a \$40.00 administrative charge for the work. Failure to reimburse Lessor upon demand shall constitute an event of default hereunder.

Section 4.02 Lessee's Responsibilities.

- A. Lessee shall, without cost to 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. 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, Lessor or its agents shall have the right to enter upon the Premises and perform such maintenance and Lessee agrees to promptly reimburse Lessor for the cost thereof, plus a \$40.00 administrative charge for the work. Failure to reimburse Lessor upon demand shall constitute an event of default hereunder.

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 Lessor. Any attempt to transfer, assign or sublease without the prior written consent of 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 bankrupt in involuntary bankruptcy proceedings;
- 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, or
- I. Failure to maintain hours of operation as specified by the Director.

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 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 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, and Lessee further agrees that Lessor shall not be liable for any damages resulting to 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. Lessee agrees to indemnify and hold Lessor and its officers, directors, agents, and employees harmless against any and all claims, demands, damages, costs, 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 business on the Premises, its use of the Premises, or from any breach on the part of Lessee of any terms of this Lease, or from any act or negligence of Lessee, its agents, contractors, employees, sublessees, 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 notice from Lessor, agrees to defend the action or proceeding by counsel acceptable to Lessor.

Section 7.02 Liability Insurance.

A. Commercial General Liability.

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 Lessor as an additional insured, comprehensive general liability insurance in an amount not less than One Million and no/100Dollars (\$1,000,000.00) for bodily injury to one person for each occurrence, Two Million and no/100 Dollars (\$2,000,000.00) for bodily injuries to more than one person arising out of each occurrence and Five Hundred Thousand and no/100 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.

B. Automobile Liability.

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 Lessor as an additional insured, automobile liability insurance covering allowed, non-owned, and hired vehicles used by Lessee for all operations with a minimum limit of One Million

and no/100 Dollars (\$1,000,000.00) combined single limit per accident for bodily injury and property damage.

The policy or policies shall include a waiver of subrogation with respect to Lessor. Loading and unloading of any motor vehicle must be covered by endorsement to the automobile liability policy or policies.

All policies of insurance required herein shall be in a form and with a company or companies reasonable 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.

Lessor reserves the right to conduct an annual review of the insurance requirements contained herein and modify accordingly to be consistent with currently accepted standards of practice as it relates to this type of contractual arrangement.

Section 7.03 Workers' Compensation Insurance. 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 One Million and no/100 Dollars (\$1,000,000.00) bodily injury each accident, One Million and no/100 Dollars (\$1,000,000.00) bodily injury by disease policy limit, and One Million and no/100 Dollars (\$1,000,000.00) bodily injury by disease each employee. The following endorsements shall be added to the policy:

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

Section 7.04 Fire and Other Risks Insurance. Lessee, at its sole cost and expense, shall throughout the Term of this Agreement, keep or cause to be kept all leasehold improvements, trade fixtures, equipment, merchandise, and personal property now or hereafter located upon the Premises properly 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, trade fixtures, equipment, merchandise, and personal property. Lessee is solely responsible for carrying adequate insurance at its sole cost and expense to cover it for any such losses.

Section 7.05 Release of Liability for Certain Damages. Lessor shall not be liable for, and is hereby released from any and all liability to Lessee, to Lessee's insurance carrier, or to anyone claiming under or through Lessee for any loss or damage whatsoever to the property or effects of Lessee including, but not limited to, damage resulting from the accidental discharge or discharge

beyond Lessor's control, of water or other substances from pipes, sprinklers, or conduits, containers or appurtenances thereto, or for any damage resulting from the discharge or failure of electrical current regardless of cause or origin. The provisions of this Section shall not be construed as a limitation of Lessor's rights, but are additional to the rights and exclusions from liability provided herein and by operation of law to which Lessor can resort to cumulatively or in the alternative.

Section 7.06 Business Interruption. In the event 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 shall be borne by 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 7.07 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 in said 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.

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:

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

With a copy to:
City Clerk
City of EI Paso
2 Civic Center Plaza
EI Paso, Texas 79999

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

11-1003-058.001/147281_3/Galeria Zia
La Placita Lease

Galeria Zia, LLC
Attn: David Villanueva
10673 Coralstone Drive
El Paso Texas, 79935

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. Lessee shall comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 CFR Part 27.
- 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.

Section 9.07 Affirmative Action. Lessee assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, and any amendments thereto, and any other federal statutes 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, to insure that no person shall, on the grounds of race, 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 this Subpart. Lessee assures that it will require that its covered suborganizations provide assurances to Lessor, as set forth herein, that they similarly will undertake affirmative action programs, and that they will require assurance from their suborganizations 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. Lessee shall pay all taxes and governmental charges of any kind whatsoever that may be assessed against Lessee or Lessor, with respect to the Premises, any improvements, equipment, personal property or inventory thereon or Lessee's use and/or occupancy of the Premises, during the Term of this Lease including any extensions

granted thereto. By March 1 of each year during the term of this Lease and at no cost to Lessor, Lessee shall provide written proof satisfactory to the Director that all taxes and governmental charges of any kind as described herein have been paid in full.

Lessor is a tax-exempt governmental entity and shall not be responsible for any taxes or assessments arising from Lessee's use of the property or possession of the Premises.

Lessee in good faith may contest any tax or governmental charge, provided that 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 Lessor, such action will not adversely affect any right or interest of 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 the date signed, this Agreement shall have an effective date January 1, 2013.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

LESSOR: CITY OF EL PASO

Joyce A. Wilson
City Manager

APPROVED AS TO FORM:

Theresa Cullen
Deputy City Attorney

APPROVED AS TO CONTENT:



Monica Lombraña, A. A. E.
Director of Aviation

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this _____ day of _____ 2012
by Joyce A. Wilson, as City Manager of the City of El Paso (Lessor).

My Commission Expires:

Notary Public, State of Texas

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

LESSEE: GALERIA ZIA, LLC

[Handwritten signature]

Printed Name: David Villanueva
Title: Partner

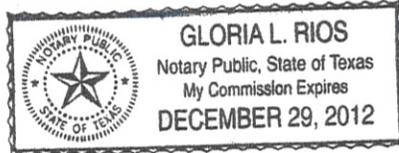
ACKNOWLEDGMENT

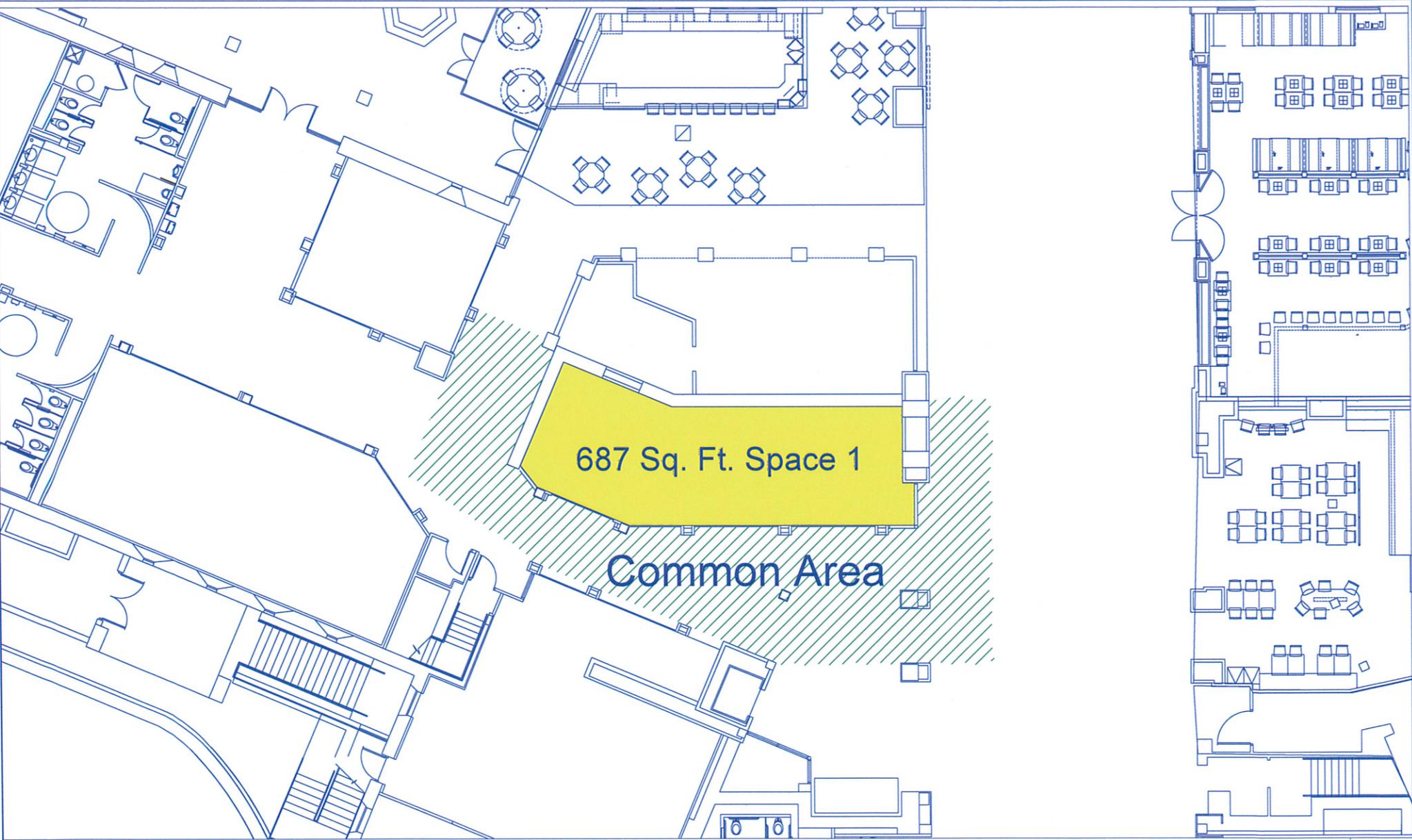
THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this 3 day of December 2012 by David Villanueva, as Partner of Galeria Zia, LLC (Lessee).

My Commission Expires:
12.29.12

[Handwritten signature: Gloria L. Rios]
Notary Public, State of TEXAS





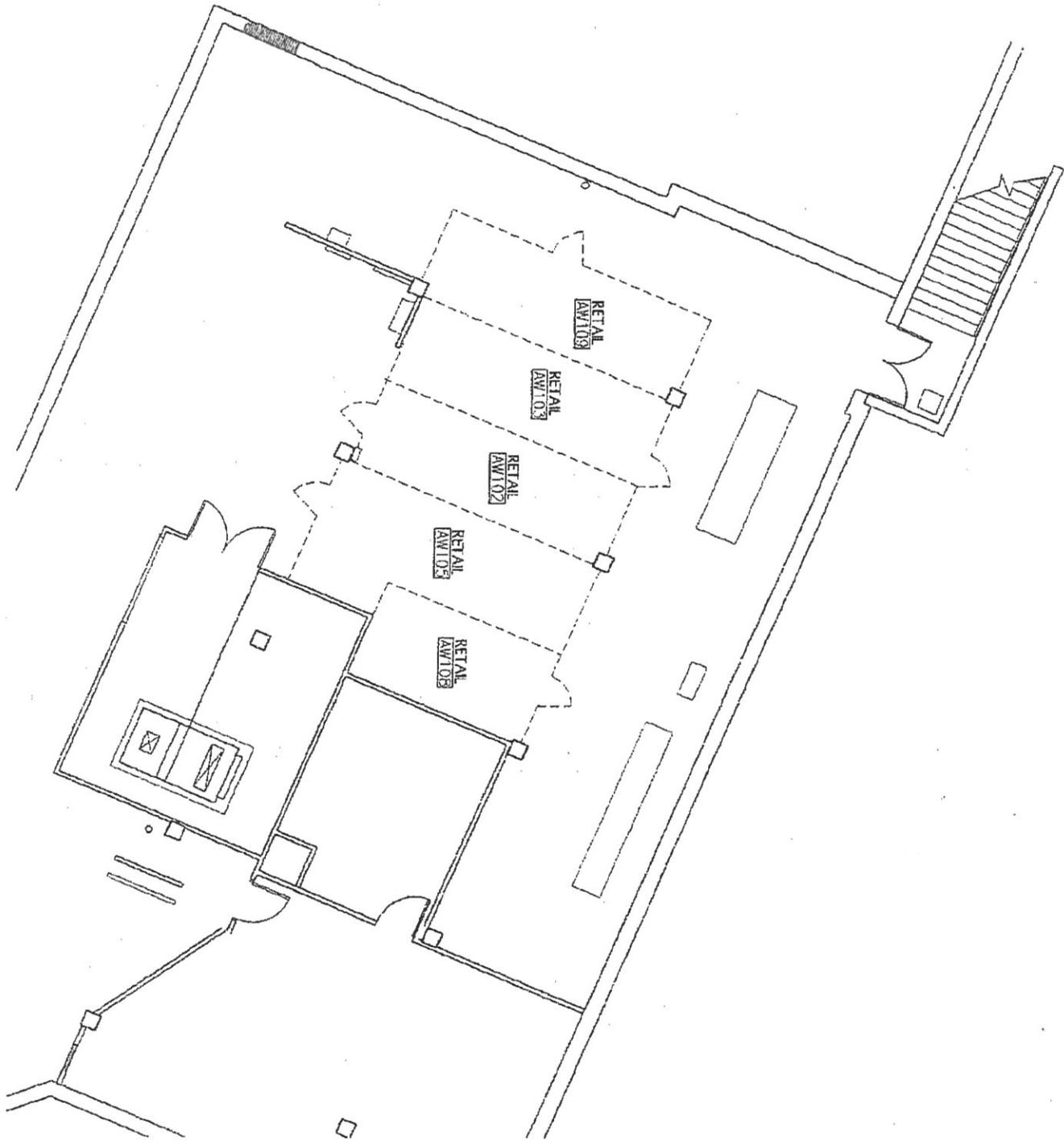


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