

**LEASE AGREEMENT
BETWEEN THE CITY OF SANTA FE AND D IV, INC.**

This LEASE AGREEMENT (the Lease Agreement) is made and entered into this 29 day of April, 2019, by and between the CITY OF SANTA FE, a Municipal Corporation (Lessor) and D IV, INC. (Lessee), whose address is PO Box 1322, Santa Fe, NM 87504.

WITNESSETH:

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

1. PREMISES

Subject to the terms and conditions of this Lease Agreement, the Lessor allows the Lessee to use and occupy that portion of the City owned public right-of-way within the Lincoln Avenue and W. Marcy Street rights of way adjoining 101 W. Marcy St., Santa Fe, NM. The leased real property consists of approximately Seventy-five (75) square feet of land for two outdoor seating areas for food service and one merchandise display area contiguous to the designated entries (the Premises) as more fully described and shown on Exhibit "A" attached hereto and made a part hereof. Lessee accepts the Premises in its present state and agrees that it is in good condition, without any representation or warranty by Lessor as to the condition of the Premises or as to the use, which may be made thereof.

2. USE OF PREMISES

Lessor agrees to allow the Lessee to sublease the Premises for the purpose of allowing patrons of "TRES COLORES RESTAURANT" and "LA LECHERIA" at 101 W. Marcy St. to congregate and consume food and beverages carried from the restaurant to the Premises. Lessor also agrees to allow the Lessee to sublease the Premises for the purpose of allowing tenant of "DESIGN WAREHOUSE" to place merchandise on Premises along common boundary with building. No further use of the Premises shall be allowed except those actions necessary for use and maintenance of the area at the sole and exclusive expense of the Lessee. The use of the Premises is also subject to the following conditions:

- (a) Installation of tables and seats shall be removed from the Premises each night.
- (b) Five feet (5') of public sidewalk adjoining Premises shall be kept clear for pedestrian use at all times;
- (c) No other commercial use of the Premises, including but not limited to, display or installation of advertising signage shall be permitted;
- (d) No blocking of any existing emergency entrances and exits to other businesses is strictly prohibited;
- (e) Adequate lighting, reviewed and approved by the City, may be provided at the Lessee's expense within the Premises;
- (f) Lessor reserves the right to allow the use of Lincoln Avenue and Marcy Street rights-of-way upon request for special events without discount or refund to Lessee;
- (g) Lessee shall comply with all local codes and regulations and any violations shall be considered grounds for termination of this Lease Agreement;
- (h) No alcoholic beverages shall be allowed on leased premises without additional

SEC. CLERK RECORDED 05/01/2019

approvals by City Council;

- (i) All rental payments shall be made to the Lessor by means of cash, cashiers check, money order, or by credit card, no personal checks shall be accepted;

3. **EFFECTIVE DATE**

This Lease Agreement shall be effective on April 29, 2019 (the Effective Date).

4. **LEASE TERM**

The term of this Lease Agreement shall commence at 12:00 a.m. on the Effective Date. The term shall consist of an "Initial Term" of five (5) year period commencing May 1st through April 30th for the years of 2019 through 2024. Hereinafter referred to collectively as the "Term".

In the event Lessee shall remain in possession of the Premises after the expiration of the initial term of this Lease, such possession may, at the sole option of Lessor, be continued as a month-to-month tenancy. During any such month-to-month tenancy, the rental fee shall be prorated and payable on a monthly basis in advance of the first day of each month, and the terms and conditions of the Lease Agreement shall be otherwise applicable.

5. **RENT**

Rent shall be paid as follows:

A. Base Rent during Term. Lessee shall pay Nine hundred dollars (\$900.00) as annual "Rent". Rent is due on the Effective Date and thereafter due in full each year on the anniversary of the Effective date of this Lease Agreement without notice or demand and without deduction or offset for any cause whatsoever. Lessee shall make payments to the Lessor's Cashier Office, Room 114, 200 Lincoln Ave., Santa Fe, NM. Base Rent during the initial term shall be subject to annual increases in accordance with Section 5.B below.

B. Increases in Rent. At the commencement of the second year and every subsequent year of the initial term or any optional additional term(s) of this Lease Agreement, the Rent shall be increased by an amount calculated by multiplying the previous year's Rent by two and one-half percent (2.5%).

6. **TERMINATION BY LESSOR**

Lessor may terminate this Lease Agreement upon Lessee's failure to comply with any provisions contained herein. Prior to termination, Lessor shall hand deliver, or by e-mail with receipt requested or by mail notice to Lessee via certified or registered mail specifying:

- A. the breach;
- B. the action required to cure the breach;
- C. a date, not less than fifteen (15) days from the date the notice is hand delivered, e-mailed or mailed to Lessee, by which such breach must be cured; and
- D. that failure to cure such breach on or before the date specified in the notice will result in termination of the Lease.

SEC CLERK RECORDED 05/01/2019

7. NON-ASSIGNMENT SUBLEASE

Lessee shall not transfer or assign in whole or in part, its rights and obligations under this Lease Agreement, without prior written consent of the Lessor. Lessee shall submit a written request prior to any use of the Premises by others to Lessor detailing party(s) names, contact information, and proposed use of Premises of any proposed Sub-Lessee. Any such actions taken by Lessee to sublease to others without prior written approval shall result in the immediate termination of this Lease Agreement.

8. LIABILITY INSURANCE

Lessee shall carry and maintain in full force and effect during the term of this Lease Agreement, public liability insurance covering bodily injury and property damage, in a form and with an insurance company acceptable to Lessor, with limits of coverage not less than as stated in the New Mexico Torts Claims Act for each person injured and for each accident resulting in damage to property, against all claims and lawsuits arising from the Lessee's use of the Premises. Lessee shall cause the City of Santa Fe to be named as additional insured on such policy of insurance. Prior to this Lease Agreement taking effect and thereafter throughout the term of this Lease Agreement, Lessee shall provide Lessor with certificates of insurance evidencing that the coverage required hereunder is current. Such policy shall provide that the coverage evidenced thereby shall not be terminated or modified without 30 days prior written notice to the Lessor for any reason. A certificate or policy which states that failure to give such notice imposes no obligation on the part of the insurer shall be unacceptable to Lessor, and Lessee shall be responsible for removing such language from such certificate or policy.

9. INDEMNIFICATION

The Lessee shall indemnify, hold harmless and defend the Lessor from all losses, damages, claims or judgments, including payment of all attorney's fees and costs, on account of any suit, judgment, execution, claim, action or demand whatsoever arising from Lessee's use of the premises hereunder, as well as that of any of Lessee's employees, agents, representatives, guests or invitees.

10. REPAIR AND MAINTENANCE

Lessee shall not cause or permit any waste, damage or injury to the Premises. Lessee shall, at its sole expense, keep and maintain the Premises in good condition, reasonable wear and tear excepted, and shall be responsible for payment of all necessary expenses of repairs and replacements that arise during Lessee's use of the Premises.

11. ALTERATIONS AND IMPROVEMENTS

Lessee shall make no alteration, addition or improvements to the Premises for the uses described in Article 2 herein without the prior written consent of the Lessor. Any alterations, additions or improvements made by Lessee after such consent has been given, and any fixtures installed as part thereof, shall become the property of the Lessor upon termination of this Lease Agreement, unless Lessee elects to remove them and restore the Premises to the condition existing prior to the installation of such fixtures, provided, however, that the Lessor shall have the right to require Lessee to remove such fixtures at Lessee's sole expense, upon termination of this Lease Agreement.

SEC CLERK RECORDED 05/01/2019

12. EASEMENTS

Lessor reserves the exclusive right to grant access, utility or other easements on or through the Premises.

13. NOTICE

Any required notice will be deemed delivered, given and received (i) when personally hand delivered, (ii) when delivered via e-mail with delivery receipt requested or (iii) five days after the same are deposited in the United States mail, postage prepaid, registered, addressed to the applicable party at the address indicated below for such party, or at such other address as may be designated by either party in a written notice to the other party:

To Lessor:

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

To Lessee:

D IV, Inc.
Paul P. Domenico, President
PO Box 1322
Santa Fe, NM 87504

14. NO WAIVER

No waiver of a breach of any of the provisions contained in this Lease Agreement shall be construed to be a waiver of any succeeding breach of the same or any other provisions.

15. SEVERABILITY

In the event that one or more of the provisions contained in this Lease Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

16. ENTIRE LEASE AGREEMENT

The foregoing constitutes the entire Lease Agreement between Lessor and Lessee, represents their entire understanding and defines all of their respective rights, title and interests as well as all of their duties, responsibilities and obligations. Any and all prior Lease Agreements and understandings between the parties are merged herein. This Lease Agreement shall not be modified or amended except by a written document signed by the parties.

17. BINDING EFFECT

This Lease Agreement shall be binding upon and insure to the benefit of the parties hereto and their respective successors and permitted assigns.

18. LITIGATION EXPENSE

In the event of litigation between the parties, the Lessee shall pay any necessary costs, including reasonable attorney's fees, expenses and other costs of collection or otherwise, which the Lessor shall incur in enforcing this Lease or in recovering any and all damages caused to the Premises by Lessee, or Lessee's agents, employees or permitted assigns.

19. RECORDING

This Lease Agreement shall be recorded in its entirety. Lessee shall bear all costs for recording of the Lease Agreement and any other associated costs.

SEC CLERK RECORDED 05/01/2013

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of this 29
day of April, 2019.

LESSOR:
CITY OF SANTA FE

ALAN WEBBER, MAYOR

ATTEST:

YOLANDA FARGUE CITY CLERK

APPROVED AS TO FORM:

ERIN K. MCSHERRY, CITY ATTORNEY

APPROVED:

MARY P. MCCOY, FINANCE DIRECTOR

21117.460150
BUSINESS UNIT/LINE ITEM

LESSEE:
D IV, INC.

PAUL P. DOMENICO, PRESIDENT

ACKNOWLEDGEMENT

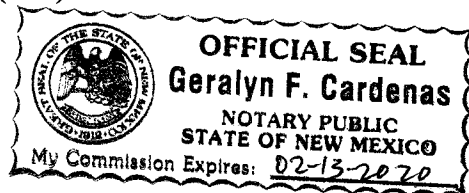
STATE OF NEW MEXICO)) ss.
COUNTY OF SANTA FE)

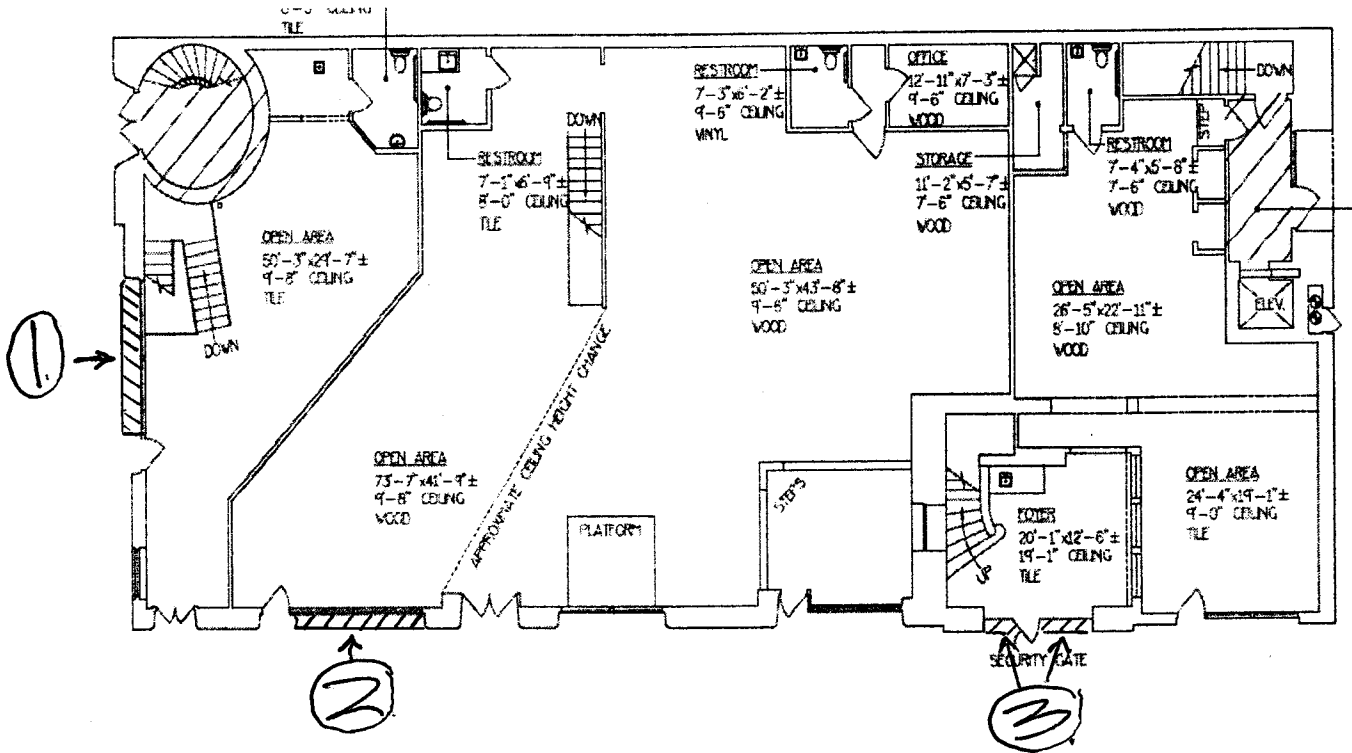
The foregoing instrument was acknowledged before me this 11th day of April 2019, by Paul P. Domenico, President of D IV, Inc.

My Commission Expires: February 13, 2020

(seal)

Notary Public





Areas to be used highlighted above

1. Tres Colores Restaurant: 2-ft x 14-ft
2. Design Warehouse: 2-ft x 13-ft
3. La Lecheria: 2-ft x 5-ft & 2-ft x 5-ft

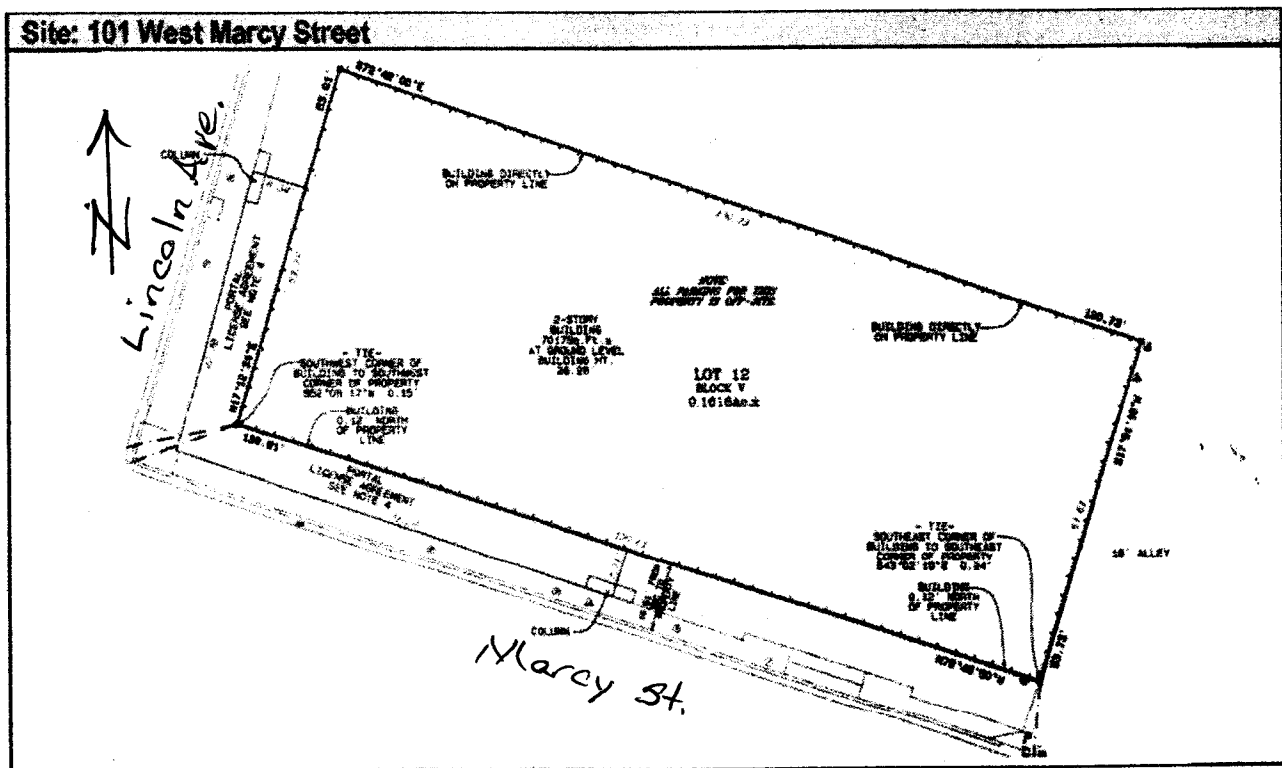


Exhibit "A"

COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

LEASE AGREEMENT
PAGES: 7

I Hereby Certify That This Instrument Was Filed for
Record On The 1ST Day Of May, 2019 at 10:45:20 AM
And Was Duly Recorded as Instrument # 1885195
Of The Records Of Santa Fe County

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

