



LEGAL COMMITTEE MEETING AGENDA
Thursday, February 28, 2019 at 4:00 PM
City Hall Conference Room
425 N. Richardson, Roswell, NM 88201

Chair: Judy Stubbs, Ward 3
Vice Chair: Barry Foster, Ward 5
Members: George Peterson, Ward 4
Savino Sanchez, Ward 4
Staff Liason: Aaron Holloman

ADDENDUM

The following items are to be considered along with the originally posted agenda items.

REGULAR ITEMS

1. To recommend to full Council that the following RIAC agreements to existing leases be placed on the Consent agenda for approval:
 - (E) Consider approval to authorize the City of Roswell to modify the current lease agreement of the café space inside the air terminal with Pecos Flavors.

Notice of this meeting has been given to the public in compliance with Sections 10-15-1 through 10-15-4 NMSA 1978 and Resolution 18-55.

NOTICE OF POTENTIAL QUORUM – A quorum of the City Council may or may not attend, but there will not be debate by the City Council. The Council, acting as attendees to an informational presentation, will not be discussing public business and no action will be taken.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Human Resources at 575-624-6700 at least one week prior to the meeting or as soon as possible. Public documents including the agenda and minutes can be provided in various accessible formats. Please contact the City Clerk at 575-624-6700 if a summary or other type of accessible format is needed.

Printed and posted: **Monday, February 25, 2019**



**AGENDA ITEM NO. 1-E – ABSTRACT
LEGAL COMMITTEE MEETING
Thursday, February 28, 2019 4:00 pm
City Hall Conference Room
425 N. Richardson, Roswell, NM 88201**

Pecos Flavors LLC RIAC Restaurant Lease

- ACTION REQUESTED:** Consider approval to authorize the City of Roswell to modify the current lease agreement of the café space inside the air terminal with Pecos Flavors.
- BACKGROUND:** State of New Mexico is requiring a start and stop date of the lease for issuance of the government liquor license, currently the lease start was based on a certificate of occupancy.
- FINANCIAL CONSIDERATION:** Pecos Flavors – No changes from previous lease.
- LEGAL REVIEW:** The City Attorney has reviewed the lease.
- BOARD and/or COMMITTEE ACTION:** The Legal Committee is scheduled to meet on February 28, 2019 at 4:00 pm.
- STAFF RECOMMENDATION:** Consider approval to authorize the City of Roswell to modify the current lease agreement of the café space inside the air terminal with Pecos Flavors.

LEASE AGREEMENT

THIS LEASE executed in Roswell, New Mexico on this 15th day of March, 2019 by and between the CITY OF ROSWELL, NEW MEXICO, a municipal corporation, hereinafter designated "Landlord", and PECOS FLAVORS, a New Mexico Limited Liability Company, hereinafter designated as "Tenant".

WHEREAS the City believes that the value and benefit provided to citizens using the Roswell International Air Center (the "Air Center") will be increased and improved by additional amenities;

WHEREAS, in an effort to foster development of such amenities, the City previously issued Requests for Proposals to establish a restaurant and bar in the Air Center and received no conforming responses;

WHEREAS the Tenant has proposed to operate a restaurant and bar at the Air Center upon terms, set forth more fully below, which the City believes will fulfill its goal of improving and increasing the value and benefit of the Air Center;

WHEREAS the parties acknowledge the need for gradual development of such services to ensure long term stability of the amenities;

AND WHEREAS Landlord has agreed to lease to Tenant the real property described below, together with the improvements thereon, in Chaves County New Mexico, and Tenant has agreed to lease said real property and improvements from Landlord;

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

1. GRANTING CLAUSE AND PREMISES. For the term, at the rent and otherwise upon the terms, provisions and conditions contained herein, Landlord hereby lets and leases unto Tenant the surface only to the following real property, together with all improvements located thereon:

A portion of Building No. 1, the coffee shop, consisting of 1,685 square feet, more or less, located at the Roswell International Air Center, identified on a plat attached hereto and made a part hereof, identified and listed as Exhibit "A" together with non-expendable fixtures (Premises).

2. TERM. The Lease term is for two (2) years, commencing on March 15, 2019 to be executed by the parties hereafter. Tenant shall have permission to enter into the Premises for purposes of remodeling and otherwise preparing the premises for occupancy by the Tenant, beginning on April 1, 2019.

3. RENT. Tenant agrees to pay to Landlord the following as rent and liquor license lease:

- a. During the first six months of the Lease term, \$600.00, paid in monthly installments of \$100.00.
- b. During the second six months of the Lease term, \$600.00 rent, \$600.00 liquor license lease, paid in monthly installments of \$200.00.
- c. During the final twelve months of the Lease term, \$3,600.00 rent, \$3000.00 liquor license lease, paid in monthly installments of \$550.00.

d. Rent and other fees are due on the first day of each month. If Tenant fails to pay all rent and other fees due for any month by the tenth calendar day of the month that said rent and fees are due, Tenant shall pay to Landlord an additional 2% finance charge, as a penalty, each month until the full amount of that month's rent is paid. This penalty shall be immediately payable without limiting Landlord in the exercise of any other right or remedy to which it may be entitled by reason of Tenant's failure to pay rent when due. All rent shall be paid to Landlord without abatement, reduction or set off of any kind except as herein specifically provided.

4. SECURITY DEPOSIT. Tenant shall pay \$500.00 in advance as security for Tenant's full and faithful performance of all terms of this lease. This amount shall be used by Landlord at the termination of this Lease Agreement toward a. payment for rent or penalties due Landlord, b. reimbursement of the costs of cleaning and repairing damages (beyond normal wear and tear) to the Premises and c. the cost of removal of any hazardous material not properly disposed of by Tenant. Landlord shall be the sole and reasonable judge of all cleaning and repairs required for the Premises and the amounts needed for these purposes. Upon termination or expiration of this Lease the security deposit shall first be applied to necessary cleaning and removal, repairs and the remaining balance, if any, may then be applied to rentals and penalties then owing to Landlord. Any refund of the security deposit due Tenant will be delivered or mailed in accordance with Paragraph 26 of this Agreement within 60 days after the termination of this Lease Agreement.

5. CONDITION OF PREMISES. Tenant has inspected Premises and accepts the Premises in its present condition "as is". Tenant acknowledges that any requirements for accessibility and/or public accommodation(s) are Tenant's responsibility. Tenant agrees that the Premises is in good repair and condition except as noted herein. Tenant agrees that, at the expiration of the term hereof, it shall yield up and deliver the Premises to Landlord in as good repair and condition, broom clean, as when received, except for loss resulting from ordinary use and wear.

6. MAINTENANCE AND CLEANING. Tenant shall maintain the Premises in a safe and clean condition, in good order and repair. Tenant is responsible for busing of dining area during operating hours. Landlord is responsible for maintenance of vent hood and fire suppression to meet current code requirements, all electrical, plumbing and HVAC and daily cleaning of dining area.

7. TAXES, LICENSES AND UTILITIES. During the term hereof, Tenant shall pay all taxes, licenses, charges, fees or assessments levied or to be levied upon personal-property, fixtures or equipment placed by Tenant upon said Premises, of whatsoever kind or nature, incident to or arising out of the conduct of Tenant's business. Failure to have an appropriate current license or permit shall be a breach of this Lease. Landlord shall pay electric, gas, and water utilities. Tenant is responsible for all other utilities.

8. PERSONAL PROPERTY AND FIXTURES OF TENANT. All personal property and fixtures of Tenant in the Premises shall be kept at the sole risk of Tenant, and Landlord shall not be liable for any damage thereto or to Premises or to Tenant for interruption of business or otherwise. Tenant hereby waives all causes or rights of recovery against Landlord, its agents, employees, invitees and tenants for any loss to such personal property and fixtures on the Premises or to consequential loss arising therefrom caused by fire or other casualty, whether negligently caused or not.

9. EQUIPMENT AND IMPROVEMENTS.

a. Except as otherwise provided herein, Tenant shall have the right to install such equipment as may be necessary for the conduct of its business on the Premises (including all restaurant and bar equipment); and at the expiration or termination of the Lease Tenant shall have the right to remove all of such equipment installed by Tenant that is removable without damage to the Premises. Also Tenant shall, upon written demand by Landlord, at Tenant's sole cost and expense, forthwith and with all due diligence, remove any alterations, additions, or improvements made by Tenant pursuant to this Paragraph 9.

b. Tenant shall not make, suffer or permit to be made, any major additions, alterations or improvements on the Premises (including but not limited to, installing carpeting, air conditioning, painting, or attaching anything to the walls other than by plug-in) without first obtaining the written consent of Landlord, which consent Landlord may withhold in its sole and absolute discretion. In the event that the consent is given and Tenant makes any major alterations, additions or improvements, such work shall be done in such a manner that no mechanic's lien, materialman's lien or other lien of any kind shall be created against or imposed upon the Premises or any part thereof, and Tenant shall indemnify and save harmless Landlord from any and all liability and claims for damage of any kind and nature which may be made or accrue against Landlord on account of any such major alterations, additions or improvements. Tenant shall be responsible for obtaining, if necessary, any and all permits and inspections required by such improvements. At the expiration or termination of this Lease such improvements shall become the property of Landlord and the value thereof will not be offset against any amounts claimed by Landlord as owing under the terms of this Lease. Tenant agrees to bear all costs and expenses incident to the occupancy and maintenance of the structure and improvements placed therein.

c. Landlord shall remove all wood from the interior of the kitchen and replace with NSF approved stainless steel.

d. Landlord shall build a bar and update the dining room upon specifications to be mutually agreed upon by the parties in writing hereafter.

10. INSURANCE.

a. Landlord will provide fire and extended coverage to the Premises during the term of the Lease. Tenant agrees to reimburse Landlord for the amount of insurance premium based upon the pro-rata per square foot cost attributable to the Premises as determined and billed by Landlord. Tenant understands that fire and extended coverage does not cover the property of Tenant or any property on the premises that does not belong to Landlord.

b. Tenant shall maintain in full force and effect a policy or policies of general public liability insurance in which Landlord is named an additional insured to the extent of the liabilities assumed by Tenant hereunder, covering both parties against claims for injury, death or damage to persons or property occurring upon, in or about the Premises, in such limits as set forth in the New Mexico Tort Claims Act or as may be amended. Tenant shall provide Landlord written evidence of this insurance within thirty (30) days of the effective date of the Lease.

11. DAMAGE OR DESTRUCTION OF PREMISES.

a. In the event the Premises are damaged by fire or other perils or casualty covered by fire and extended coverage insurance, Landlord may, in its sole and absolute discretion, repair or rebuild the same within a reasonable time after the event causing such damage. This Lease shall remain in full force and effect, except that Tenant shall be entitled to a proportionate reduction of the rent from the date of damage and while such repairs

are being made, such proportionate reduction to be based upon the extent to which the damage and making of such repairs shall reasonably interfere with the business carried on by Tenant in the Premises as determined by Landlord. If the damage is due to the fault or neglect of Tenant or its employees, as determined by Landlord in its sole discretion, there shall be no reduction of rent. Landlord may authorize or direct construction of an alternative structure or may elect to retain any insurance proceeds received by it if Landlord deems reconstruction or construction of an alternative structure to be impractical or unreasonable in its sole discretion.

b. In the event the Premises are damaged to any extent as a result of any cause other than the perils covered by fire and extended coverage insurance, Landlord shall in its sole discretion have the option to: (1.) to repair, reconstruct or restore the Premises within a reasonable time of the event causing the damage, in which case this Lease shall continue in full force and effect, but the rent shall be proportionately reduced as provided above in 11a. during the period of such repair, reconstruction or restoration, or (2.) to give notice to Tenant at any time within sixty (60) days after such damage occurs, terminating this Lease as of the date specified in such notice, which date shall be no more than thirty (30) days after the giving of such notice. In the event of giving to Tenant such notice of termination, this Lease shall terminate and all interests of Tenant in the Premises shall cease on the date so specified in such notice and Tenant shall pay the rent, as proportionately reduced, based upon the extent, if any, to which such damage interfered with the business carried on by Tenant in the Premises, up to the date of such termination.

c. With regard to Landlord's duty or option to repair, reconstruct or restore the Premises within a reasonable time of the event causing the damage as provided in 11a. and b. above, Landlord shall act promptly and with due diligence, but Landlord shall not be responsible for delays caused by factors beyond Landlord's control, including but not limited to delays because of strikes, work slowdowns or stoppages, accidents, acts of God, failure of any governmental or other authority to act in a timely manner, or delays caused by contractors. If such delays occur, Tenant agrees that Landlord shall not be responsible for damages, nor shall Landlord be deemed to be in default under this Lease.

d. Landlord shall not be required to repair any damage by fire or other casualty, or to make any repair or replacements of any leasehold improvements, fixtures, or other personal property of Tenant.

12. **LIABILITY.** Landlord shall not be liable to Tenant or to Tenant's employees, customers, visitors or any other person or entity for any death or injury or damage to person or property arising from any cause whatsoever which shall occur in any manner in or about the Premises in connection with, or arising out of Tenant's operations and use of the Premises. Tenant agrees to indemnify and save harmless Landlord from any claim for death, injury, damage or loss which may occur in any manner in or about the Premises, unless such death, injury, damage or loss is proximately and solely caused by negligent act or omission to act of Landlord's Agents.

13. **CONDEMNATION OR GOVERNMENTAL TAKING.** In the event that the Premises or any portion thereof shall be condemned for public or quasi-public purpose, or shall be taken by any governmental authority in any manner whatsoever during the term hereof, the parties hereto agree to the following:

a. In the event that the Leased Premises shall be totally condemned or taken, or condemned or taken so as to render the remainder thereof unusable for purposes for which said Premises was leased, this Lease shall terminate as of the effective date of such condemnation or taking.

b. In the event that a portion of the leased Premises is condemned or taken, but such condemnation or taking does not render the remainder thereof unusable for the purposes for which the Premises was leased, Tenant's obligation under this Lease shall continue in full force and effect, but the amount of rent payable by Tenant shall be reduced in the proportion which the portion of the leased Premises condemned or taken bears to the total area of the leased Premises. In such event, Tenant shall bear any necessary costs of relocating its equipment and placing the remaining Premises in proper and usable condition.

c. In the event of total or partial condemnation or taking of the leased Premises as aforesaid, all compensation awarded or paid upon a total or partial taking of the Premises shall belong to Landlord and Tenant shall have no right or cause of action against Landlord; provided, however that Tenant shall be entitled to participate in any award to the extent that such award includes the loss, if any, sustained by Tenant as a result of the termination of this Lease or diminution of its leasehold estate and the value of any fixtures condemned or taken if such fixtures were installed by Tenant and are located upon the Premises at the time of such condemnation or taking. Tenant reserves the right to proceed independently of Landlord with any claim for compensation for damages to which Tenant may become entitled by reason of such total or partial condemnation or taking.

14. **RIGHT OF FIRST NEGOTIATION ON AIRPORT EXPANSION.** In the event that the City undergoes development to expand the Air Center terminal during the Lease term, the Tenant shall have a right of first negotiation with regard to any additional restaurant and bar facilities.

15. **CONDITIONS OF DEFAULT.** If at any time during the term of this Lease, Tenant shall:

a. Default in the payment of any installment of rent or any other sums specifically to be paid by Tenant hereunder and such default shall not have been cured within ten (10) days after Landlord shall have given to Tenant written notice specifying such default; or

b. Default in the observance of any of the Tenant's covenants, agreements or obligations hereunder, other than the covenants to pay rent or any other sum herein specified to be paid by Tenant, and such default shall not have been cured within thirty (30) days after Landlord shall have given to Tenant written notice specifying such default; provided, however, that if the default complained of shall be of such nature that he same cannot be completely remedied or cured within such thirty (30) day period, then such default shall not be an enforceable default against Tenant for the purposes of this paragraph if Tenant shall have commenced curing such default within such thirty (30) day period and shall proceed with reasonable diligence and in good faith to remedy the default complained of; or

c. Finally and without further possibility of appeal or review (1.) be adjudicated bankrupt or insolvent, (2.) have a receiver or trustee appointed for all or substantially all of its business or assets, or (3.) suffer an order to be entered approving a petition filed against Tenant seeking reorganization of Tenant under the Federal Bankruptcy laws or any other applicable law or statute of the United States or any state thereof; or

d. Make an assignment for the benefit of its creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking reorganization or arrangement under the Federal Bankruptcy law or other applicable law or statute of the United States or any state thereof, or shall file a petition to take advantage of any insolvency act or shall assent to the appointment of a receiver or trustee of all or a substantial part of its business and property; or

e. Leave the Premises vacant or deserted for a period of ten (10) consecutive days without prior Landlord written consent; or

f. Use the Premises for purposes other than those set forth in Paragraph 18 hereof, or fail to use the Premises for any purpose for a period of sixty (60) consecutive days and such lack of use shall continue for thirty (30) days after Landlord has given Tenant written notice specifying the default.

16. REMEDIES OF LANDLORD FOR DEFAULT. If Tenant is in default of this Lease, then Landlord shall have the following remedies:

a. Landlord may sue to collect any and all sums which may accrue to Landlord by virtue of the provisions of this Lease and/or for any and all damage that may accrue by virtue of the breach of this Lease, Tenant hereby waiving all demands for rent;

b. Landlord may sue to restrain by injunction any violation or threatened violation of the covenants, conditions or provisions of this Lease;

c. Landlord may, without further notice to Tenant and without further demand for rent due or for the observance or performance of any of said terms, conditions or agreements, immediately re-enter the Leased Premises by force or otherwise, without being liable therefor, and remove all persons and property therefrom, using such force as may be necessary. If this Lease shall be terminated before its expiration by reason of Tenant's default, or if the Tenant shall abandon or vacate said Premises before the expiration of the term of this Lease, the same may be re-rented by Landlord (but Landlord shall not be obligated so to do) for such rent and upon such terms as Landlord may see fit and Tenant shall stand liable to Landlord for any deficiency. Any costs incurred in storing Tenant's property shall be considered additional damages recoverable by Landlord.

d. If Tenant shall at any time be in default in fulfilling any of the covenants of the Lease, Landlord may, but shall not be obligated so to do, and without notice to or demand upon Tenant, take or cause to be taken such action or make such payment as may be required by such covenant, at Tenant's risk and expense, and all expenses, costs and liabilities of Landlord incurred under this paragraph shall be deemed additional rent hereunder and shall be payable to Landlord on demand together with interest thereon at the rate of fifteen percent (15%) per annum.

e. The remedies of Landlord hereunder shall be cumulative and not exclusive of any other remedy hereunder or to which Landlord may be lawfully entitled. The failure of Landlord to insist upon strict performance of any of the covenants of this Lease or to exercise any option herein contained shall not be construed as a waiver or relinquishment for the future of such or any other covenant or option, nor shall the receipt by Landlord of rent with knowledge of any default by Tenant, or any other action of Landlord except a waiver expressed in writing signed by Landlord, be deemed a waiver of such default, nor shall the acceptance of any sum of rental less than the sum provided for in this Lease alter the rental terms hereof or absolve Tenant from its obligation to pay the full rental herein provided, but the acceptance of any lesser sum than the full rent herein stipulated shall be an acceptance of the amount paid on account of the full rent due.

17. LEGAL FEES. If any person not a party to this Lease shall institute an action against Tenant in which Landlord, involuntarily and without cause, shall be made a party defendant, Tenant shall indemnify and

save Landlord harmless from all liabilities, loss damage and expense by reason thereof, including reasonable attorney's fees and all reasonable costs incurred by Landlord in such action. If any action shall be brought to recover any rental under this Lease, or for or on account of any other default/breach of or to enforce or interpret any of the terms, covenants or conditions of this Lease, or for the recovery of possession of the Premises, Landlord shall be entitled to recover from Tenant all reasonable attorney fees and costs.

18. BANKRUPTCY. If Tenant should be adjudged bankrupt, either voluntarily or involuntarily, Landlord shall have the option to pursue with the Court having jurisdiction all remedies to which Landlord may be entitled in law or equity. In no event shall Tenant's interests in this Lease be deemed to be an asset of Tenant.

19. USE OF THE PREMISES.

a. Tenant shall use the Leased Premises solely for the purpose of operating a restaurant and bar together with such other related uses as shall be reasonably incidental thereto, and for no other purposes, and it shall not use the Leased Premises for any purpose prohibited by the laws of the United States and the State of New Mexico. Tenant shall be bound by the Roswell City Code or as may be amended from time to time and all applicable policies and procedures of the Roswell International Air Center "RIAC".

b. Proper disposal of trash, fluids, parts, hazardous or contaminated waste or materials of whatsoever kind, type or description generated on or as a part of Tenant's occupancy of the Premises is the sole and absolute responsibility of Tenant. Tenant shall comply with all Federal, State and local regulations, laws and ordinances of the City of Roswell in disposal of any such materials. Improper disposal of trash, fluids, parts, hazardous or contaminated waste or materials of whatsoever kind, type or description, generated on or as a part of Tenant's occupancy of the Premises shall be grounds for the immediate Lease termination with or without process of law. Tenant represents to Landlord that it will not release any hazardous materials at the leased premises or contaminated the leased premises. To the extent it is proven that hazardous materials have been released on the leased premises by Tenant, Tenant's employees or representatives during the term of Tenant's occupancy of the leased premises, Tenant hereby unconditionally agrees at its sole cost to defend, indemnify, protect and hold Landlord harmless from and against any bodily injury, death or property damage, including (1) environmental claims, (2) environmental expenses, including without limitation, the handling, investigation, treatment, storage decontamination, remediation, removal, transport or disposal of such hazardous materials, and (3) liabilities, losses, damages, fines, penalties, charges, orders, judgments, or liens caused by such release.

c. Tenant shall operate its business in such a manner as to prevent the performance of any act or creation or maintenance of any thing which, in the opinion of Landlord, is or may become a nuisance or otherwise noxious or objectionable condition including, but not limited to, any act or thing resulting in noise, vibration, shock, smoke, dust, odor or other forms of air pollution, or other condition, substance or element in such amount as to affect areas surrounding or adjoining the Premises. Landlord shall be the sole and reasonable judge as to whether or not any act done or thing created or maintained by Tenant on the Premises is or may become a nuisance or otherwise noxious or objectionable condition, and Tenant agrees to abide by Landlord's decision and act in accordance with its directions with respect thereto.

d. Landlord reserves the right to take any action it considers necessary to protect the aerial approaches to the RIAC's airport against obstruction, and together with the right to prevent Tenant from erecting or permitting to be erected any building or other structure on the Premises which, in the opinion of Landlord, would limit the usefulness of the airport or constitute a hazard to aircraft or conflict with a current restriction or master

plan.

20. **NONDISCRIMINATION PROVISIONS.** Tenant shall use the Premises in compliance with all requirements imposed by or pursuant to Nondiscrimination in Federally Assisted Programs of the Department of Transportation 49 CFR 21. Landlord shall itself comply with these requirements in its leasing activities.

21. **DOMINANT PROVISIONS.** The parties acknowledge that the Leased Premises are a part of the RIAC and are therefore subject to the provisions of the Indenture between the United States of America and the City of Roswell, dated 24 January 1968, and filed for record in Book 248, Page 901, Office of the County Clerk, Chaves County, New Mexico and any other agreements or understandings. The provisions of the above described indenture are hereby incorporated herein by reference and accepted as binding by the parties hereto.

22. **ACCESS TO INSPECTION OF PREMISES.** Upon giving reasonable notice to Tenant, Landlord and the Federal Aviation Administration, their agents, or contractors may enter upon the Premises during Tenant's regular business hours and have free access to all buildings and other improvements located thereon for the purpose of inspecting the condition thereof or exercising any right or power reserved to Landlord or the Federal Aviation Administration under the terms and provisions of this Lease.

23. **ASSIGNMENT AND SUBLEASE.** Tenant shall not assign this Lease, in whole or in part, nor sublet all or any part of the Premises.

24. **HOLDOVER.** In the event Tenant remains in possession of Premises after the expiration or termination of this Lease, Tenant shall be deemed a tenant from month to month only, at the rental provided for in this Lease plus an additional 5% and Tenant's occupancy shall be governed in all other provisions hereof, except as to the duration of the term, by the provisions of this Lease.

25. **INTERPRETATION OF LEASE AGREEMENT.** Nothing in this Lease Agreement shall be construed or interpreted as limiting, relinquishing or waiving of any rights of ownership enjoyed by Landlord in the Premises; or waiving or limiting Landlord's authority or control over the management, operation or maintenance of property, except as specifically provided for in this Lease Agreement; or impairing governmental rights and police powers of Landlord.

26. **PARAGRAPH HEADINGS.** The paragraph headings contained herein are for convenience and in reference and are not intended to define or limit the scope of any provision of this Lease.

27. **NOTICES.**

a. All notices, requests or other communications to Landlord shall be given by regular and certified mail addressed to the following:

Air Center Manager
1 Jerry Smith Circle
Roswell, NM 88203

b. All notices, requests or other communications to Tenant shall be given by regular and certified mail addressed to the following:

Pecos Flavors Winery
412 West Second Street
Roswell, NM 88201

28. EFFECT. The terms and provisions hereof shall extend to and be binding upon the successors and assigns of the parties hereto.

29. WAIVERS. One or more waivers of any covenant, term or condition of this Lease shall not be construed as a waiver of a subsequent default or breach of the same covenant, term or condition. The consent or approval by either party to or of any act by the other party requiring such consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.

30. GOVERNING LAW; VENUE. This Lease and the rights and obligations of the parties hereunder shall be governed by New Mexico law. Any suit brought by either party regarding this agreement or default or breach thereof shall be filed in the courts of Chaves County New Mexico.

31. TERMINATION. This Lease may be terminated by either party hereto by giving ninety (90) days written notice.

32. SPECIAL PROVISIONS.

a. Landlord shall provide a full service liquor license for lease and Tenant shall provide full liquor services in the restaurant and bar.

b. Tenant agrees to operate its restaurant and bar during normal business hours at least six days per week. Tenant may designate one day per week on which its business will be closed, subject to approval by Landlord, which approval shall not be unreasonably withheld. Tenant may, from time to time, change its weekly closure day, also subject to approval by Landlord, which approval shall not be unreasonably withheld.

c. Tenant agrees to provide a customer experience appropriate to the uniqueness of New Mexico and the local Roswell area.

d. Tenant shall have first right of negotiation to cater events sponsored by Landlord, inside the airport.

e. Tenant shall not pay rent until occupancy begins.

33. ENTIRE AGREEMENT AND AMENDMENT. This writing is intended by the parties as a final expression of their agreement and as a complete and exclusive statement of the terms thereof, with all negotiations, considerations, and representations between the parties having been incorporated herein. No course of prior dealings between the parties shall be relevant or admissible to supplement, explain, or vary any of the terms of this Lease Agreement. No representations, understandings, or agreements have been made or relied upon in the making of this Lease Agreement other than those specifically set forth herein. This Lease Agreement is the entire Agreement and may be amended only in writing signed by Tenant and approved by Landlord's Governing Body.

IN WITNESS WHEREOF, this Lease Agreement is executed this _____ day of March, 2019.

CITY SEAL

LANDLORD:
CITY OF ROSWELL, NEW MEXICO

Dennis J. Kintigh, Mayor

ATTEST:

Sharon Coll, City Clerk

TENANT:
PECOS FLAVORS

Josh Ragsdale
Owner/Manager

Paul Ragsdale
Owner

EXHIBIT “B”

Coffee Shop Inventory

NON-EXPENDABLE:

Keys front & back door of coffee shop-2 total
Keys outside back door-2 total
Keys counter and lobby gate-2 total
Pie Case, refrigerated, DELFIELD city tag 000423
Ice Maker, SCOTSMAN, SN: 11091320017350
Ice Maker, MANITWOC, SN: 020164467
Refrigerator, TRUE, Model T-35, SN: 12121865,
Freezer, TRUE SN: 922166
Cooler, food service, TRUE model TSSV-48-8 SN: 3183087
Range, Gas WOLF
Grill, VULCAN city tag 001342
Fryer, Deep fat, VULCAN 2 basket
Table, chopping with attached heavy duty can opener
Fire Extinguisher, AMEREX
Fire Extinguisher, GENERAL
Table, four person 8 each
Table, six person 2 each
Chair, table 36 each
Cart, serving mobile
Table, Prep AEROHOT dual controls, 6 compartment 3 extra inserts

EXHIBIT “B”