TO: James L. App, City Manager

FROM: Meg Williamson, Assistant City Manager

SUBJECT: Airport Restaurant Lease and Concession Agreement
LaGuardia's Homemade Since 1912

DATE: September 18, 2012

Needs: For the City Council to consider a lease and concession agreement with LaGuardia's Homemade Since1912 for restaurant space at the airport.

Facts:

1. On July 17, 2012 the City Council authorized city staff to negotiate a lease and concession agreement with Lou LaGuardia (restaurateur/proprietor of LaGuardia's Homemade Since 1912). LaGuardia was selected after a competitive proposal process.

2. The lease rate ($1.00/s.f.) and term (5 years with ability to extend) were established/published in the Request for Proposals. The lease rate was set based on a city-obtained Real Estate Broker's Opinion of Value.

3. City staff met several times with Mr. LaGuardia to review planned tenant improvements, costs and timing. As a result, specific deal points were developed in consideration of building improvement requirements and costs, equipment installation needs, and business start-up timeline.

4. The City Council ad hoc airport lease committee (John Hamon and Ed Steinbeck) reviewed the business points of the proposed lease agreement at their meeting of August 31, 2012. They are unanimous in their support of the lease agreement with the deal points as described.

5. As proposed, the City will:

   a) Purchase select kitchen equipment that will become the City's permanent property;

   b) Abate two (2) months rent for tenant improvements;

   c) Adjust rent for seasonal limitation of use of outdoor patio space.

Please see attached summary of Restaurant Lease Deal Points for additional detail.

6. The lease agreement is structured for the tenant to take formal occupancy of the building on October 1, 2012. Also proposed is that a "temporary occupancy agreement" will be arranged to accommodate vending for the September 29, 2012 Air Show event.

7. The attached draft lease and concession agreement captures the basic legal framework standard to all airport leases. With the City Council's approval of the business provisions described in the attachment labeled "Restaurant Lease Deal Points," these provisions will be incorporated into the Final lease and concession agreement / implementing documents with oversight by the City Attorney.

Analysis & Conclusion: The establishment of a successful restaurant within the vacant terminal space is a key business goal for the City's Airport enterprise. The City Council chose LaGuardia's after an open and competitive selection process, in recognition of his diversified service format that would meet the needs of both the on-airport breakfast/lunch clientele as well as other service markets (e.g. jet service catering).

The tenant's projected capital start-up costs for building improvements, equipment and supplies are approximately $61,000. The lease provides two months to complete tenant improvements.

The lease proposed for City Council's authorization is market based and is founded on sound business principles. The City will benefit from having a restaurant back in the terminal space to serve the public, and promote the City's long term economic goals.

Policy Reference: Council 2008-2011 Goals (Goal - C3) to develop the Airport and improve/expand general aviation, commercial and visitor service.

Fiscal Impact: The total annual income stream to the Airport enterprise from this lease agreement is approximately $19,700. The market rate would be then adjusted by CPI (consumer price index) on an annualized basis.

$6,900 (from Airport Enterprise reserve funds) for purchase of kitchen equipment. Two (2) months rent for tenant improvements is $3,560. The seasonally adjusted market rate rent of $1,642.50/month would begin on December 1, 2012.

Options:

A. Adopt the attached Resolution 12-XXX authorizing the City Manager to enter in to a Lease and Concession Agreement with Lou LaGuardia for use of the terminal restaurant space at the Paso Robles Airport; or

B. Amend, modify, or reject the above option.

Attachments:

1. Resolution 12-XXX authorizing entering into a restaurant lease and concession agreement
2. Lease Deal Points
3. DRAFT Lease

RESOLUTION NO. 12-xxx

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES APPROVING THE RESTAURANT LEASE AND CONCESSION AGREEMENT WITH LAGUARDIA'S HOMEMADE SINCE 1912 (LAGUARDIA'S) AT THE MUNICIPAL AIRPORT

WHEREAS, the selection of a vibrant, successful restaurant operator to occupy vacant restaurant space within the airport terminal is a key business goal for the City's Airport enterprise; and

WHEREAS, in May of 2012, the City circulated a Request for Proposals (RFP) for qualified parties to submit proposals for a restaurant operation within the vacant restaurant space in the Municipal Airport terminal building; and

WHEREAS, a City appointed Selection Committee oversaw the preparation of the RFP and the oral panel interview process, and all reasonable efforts were made to ensure that the selection process was open and competitive; and

WHEREAS, at a regular meeting on July 17, 2012 the City Council approved the restaurant candidate selection of LaGuardia's Homemade Since 1912, and directed staff to begin negotiation of a lease and concession agreement; and

WHEREAS, the draft restaurant lease and concession agreement has been prepared in accordance with City Council established business parameters and guidelines of standard business practice at the airport; and

WHEREAS, certain negotiated deal points that are advantageous to both the tenant and the City's business needs have been identified (summarized in the attached "Restaurant Lease Deal Points"); and

WHEREAS, it will be necessary for the provisions of the Restaurant Lease Deal Points to be fully incorporated into documents which will include, but may not be limited to, the final lease and concession agreement, and this work will be done with the oversight of the City Attorney and the City Manager prior to execution of the lease and concession agreement; and

WHEREAS, the proposed lease and concession agreement is market based and exercised on a foundation of sound business principles in the best interest of the Airport enterprise.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. The City Council hereby affirms the selection of LaGuardia's Homemade Since 1912 (Lou LaGuardia) as a restaurant operator and tenant at the Municipal Airport.

Section 2. The City Manager is authorized and directed to execute a lease and concession agreement on behalf of the City, in general conformance with the draft lease and concession agreement attached hereto, and fully incorporating the provisions contained in the attached Restaurant Lease Deal Points within said lease and concession agreement and/or within appropriate documents as determined by the City Attorney.

PASSED AND ADOPTED this 18th day of September, 2012, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Duane Picanco, Mayor

ATTEST:

Caryn Jackson, Deputy City Clerk

LaGuardia's Homemade
Restaurant Lease Deal Points

- 5-year term (with ability for additional 5-year extension)
- City to provide select kitchen equipment. ($6,900)
- City to provide 2-months for tenant improvements. ($3,560)
- Annual rent to be adjusted for reduced seasonal use of the 550 s.f. outdoor patio space – with per s.f. rate applying to that area for 9 months of the year. ($1,650 annually)
- Temporary occupancy agreement to be arranged between 9/19 and 9/30 to accommodate vending & business promotion at the 9/29 Airshow.
- Lease starts on October 1st. Monthly rent payment begins December 1st.
- Business opening is contingent on securing all necessary licenses/permits (State, etc.) and is not prohibited within the 60-day abated rent period.
- All other terms of the draft standard lease apply.
- Provide City with a minimum of three business references, and provide financial references (e.g. bank statements, a CPA's annual report and/or last year's tax statement) that can be confirmed before lease is signed.
- City to provide endorsement needed for wine & beer license.

AIRPORT FOOD SERVICE CONCESSION
AGREEMENT AND LEASE
PASO ROBLES MUNICIPAL AIRPORT

THIS LEASE AND AGREEMENT TO PROVIDE FOOD SERVICES (“Agreement”) is made on _____, 2012, between THE CITY OF EL PASO DE ROBLES ("Lessor" or “City”) and _____ ("Lessee" or “Restaurateur”), with reference to the following Recitals:

RECITALS

A. The City has a need for a Restaurateur to provide concession service by maintaining food and beverage service at the Paso Robles Municipal Airport Terminal; and

B. In response to a City request for proposal from interested persons, Restaurateur has expressed interest and desire to enter into a lease agreement to provide such services; and

C. Restaurateur has satisfactorily demonstrated sound financial and professional background in the food service field; and

D. Restaurateur represents that its personnel/employees and are properly trained, experienced and competent to perform such services.

NOW THEREFORE, this is an integrated contract and lease, relying on the statements in the above Recitals and with each and every covenant, term and condition stated below, each as a promise and consideration for the other, the parties do hereby covenant and agree as follows:

1. Premises

A. Leased Premises. City leases to Restaurateur and Restaurateur leases from the City a portion of the Airport Terminal Building described in Exhibit “A” which is attached hereto and made a part hereof (herein the “Premises” or “Leased Premises”).

B. Airport. The Leased Premises are a part of the Municipal Airport owned and operated by City and known as the Paso Robles Municipal Airport (the "Airport").

C. Common Use Facilities. In conjunction with Restaurateur's use of the Premises and for the purposes herein set forth in this Lease, Restaurateur is hereby granted the nonexclusive right during the term of this Lease to enter upon or make customary and reasonable use of such areas of the Airport as City may from time to time designate as "common areas." Restaurateur's rights hereunder shall be in common with City and with other persons authorized by City from time to time to use such areas.

D. Right of Ingress and Egress. The City hereby consents to the right to ingress and egress to and from the Premises over and across public roadways serving the Airport for Restaurateur, their agents and servants, patrons and invitees, suppliers of services and furnishers of material. Said right shall be subject to such ordinances, rules and regulations as now or may hereafter have application to the Airport.

E. Acceptance of the Premises. Restaurateur hereby accepts the Premises in the condition existing as of the date hereof. Restaurateur hereby agrees that the Premises are in a good and rentable

condition and acknowledges that it has inspected the Premises to its satisfaction and acknowledges that City is not obligated to make any repairs or alterations to the Premises or common areas.

2. Term

A. Term. The term of this Lease shall commence on _____, 2012 ("Commencement Date"), and shall terminate, unless earlier terminated in accordance with the provisions of this Lease, on a date ____ years from the Commencement Date ("Termination Date").

B. Possession. City shall use good faith efforts to give Restaurateur possession of the Leased Premises on the Commencement Date. If City does not do so, City shall have no liability to Restaurateur for any damages to Restaurateur, actual or consequential, but rent shall be abated and the Termination Date extended for the period of time until Restaurateur is granted possession.

Option to Renew. So long as Restaurateur is not in default of this Lease, Restaurateur shall have an option to renew this Lease for _____ additional term of ____ years, exercisable by written notice of Restaurateur's intent to renew at least one hundred twenty (120) and no more than one hundred eighty (180)days prior to the then expiration date of this Lease.

3. Use of the Premises and Conduct of Restaurateur's Business

A. Restaurateur hereby acknowledges that the principal use of the Airport consists of the operation of a public airport and that all other operations and businesses which are now or hereafter permitted by City, including the use hereunder, must be at all times compatible with such principal use, as City shall, in its sole discretion, determine.

B. Restaurateur shall, continuously and uninterruptedly during the term of this Lease, provide restaurant food and beverage sales, on the Premises, for a profit, to the general public on the Premises. Restaurateur shall remain open for business a minimum of __ hours per day, ____ days per week. Said hours shall be subject to modification as the need arises and may be modified by mutual written agreement between Restaurateur and City. At any time current circumstances or conditions beyond the control of Restaurateur cause an unhealthy or unsafe environment for said operation, Restaurateur may, subject to the provisions of Section 17, also close and remain closed until such conditions are remedied.

C. Restaurateur agrees to initially open for business no more than ____ days following receipt of notice from City that Tenant may enter and occupy the Premises.

D. In the operation of its business on the Premises, Restaurateur shall maintain the highest degree and standards of service and courteous, polite and inoffensive conduct and demeanor on the part of its representatives, agents, servants and employees.

E. Restaurateur shall have the right and duty to manage, operate and control the restaurant concession facilities and all of the above-mentioned activities and to do all things reasonably necessary in the exercise of such management, operation and control subject to the regulations and policies of the City, and in accordance with the terms and conditions set forth in this Agreement.

F. Restaurateur is limited to the privileges, uses, rights set forth above and shall exercise no other without the prior written consent of City.

G. (omitted)

H. Restaurateur expressly agrees at all times during the term of this Agreement, at their own cost and expense, to maintain and operate such Premises and areas adjacent in a clean, safe, wholesome and sanitary condition, free of trash, garbage or obstruction of any kind, and in compliance with any and all present and future laws, rules, or regulations of any governmental authority, now or at any time during the term of this Agreement in force, relating to sanitation or public health, safety or welfare, and Restaurateur shall at all times faithfully obey and comply with all laws, rules and regulations of Federal, State, City, County or other governmental bodies or department or officers thereof. Restaurateur shall remedy without delay any defective, dangerous or unsanitary conditions.

I. Restaurateur, at its sole cost, shall provide all other necessary supplies, equipment, furnishings and personnel necessary for the administration, staffing, operation and maintenance of the Premises as a restaurant as provided herein.

J. In addition to any other provisions of this Lease, Restaurateur shall not do or permit anything which may interfere with (A) the effectiveness or accessibility of utility, heating, ventilating or air-conditioning systems, or portions thereof, on the Premises or within the Paso Robles Municipal Airport Terminal, (B) free access and passage upon the Premises, the Airport, the Municipal Airport Terminal or public areas adjacent thereto, or (C) police, fire fighting or other emergency personnel in the discharge of their duties.

K. In connection with the use of the Premises, Restaurateur and its employees shall not engage in the handling, ticketing, boarding or unloading of revenue passengers through the Airport Terminal. Any such activity shall be done under separate agreement with the City.

L. Restaurateur shall, at Restaurateur's own cost and expense, obtain and maintain all licenses, permits, certificates or other authorizations of any governmental authority having jurisdiction over the Premises and Restaurateur's use of the Premises. Without limiting the generality of the foregoing, Restaurateur shall comply with all applicable laws, resolutions, codes, rules, orders, directions, ordinances and regulations of any department, bureau or agency or any governmental authority having jurisdiction over the operations, occupancy, maintenance and use of the Premises for the purpose demised hereunder, except for those requiring major Alterations to the Premises as distinguished from those relating to furniture, fixtures or equipment of Restaurateur therein. Restaurateur shall indemnify and save City harmless from and against any claims, penalties, losses, damages or expenses imposed by reason of Restaurateur's violation of any applicable law or the rules and regulations of governmental authorities having jurisdiction thereof.

M. Restaurateur shall not use or permit the use of the Premises in any manner that will (A) tend to create or permit any waste or nuisance, (B) tend to disturb other users of the Airport and the Airport Terminal (C) invalidate or cause cancellation or be in conflict with fire or other hazard insurance policies covering the Airport, or (D) increase the rate of fire insurance for the Airport or of property located therein, over that rate in effect on the Commencement Date hereof. Restaurateur, at its expense, shall comply with all rules, orders, regulations or requirements of the National Board of Fire Underwriters, or any other similar body.

4. Kitchen Improvements

Lessee agrees to accept the leased premises with the kitchen equipment currently provided and located on site. Said equipment is identified and listed in Exhibit "B", which exhibit is attached hereto and shall be

included as part of this agreement.

5. Airport Use

In connection with the ownership and use of the Airport by the City, Restaurateur hereby agrees as follows:

A. The City reserves the right to further develop or improve the landing area of the Airport as it sees fit, regardless of the desires or views of Restaurateur, and without interference or hindrance.

B. The City reserves the right, but shall not be obligated to Restaurateur, to maintain and keep in repair the landing area of the Airport and all publicly-owned facilities of the Airport, together with the right to direct and control all activities of Restaurateur in this regard.

C. This Lease shall be subordinate to the provisions and requirements of any existing or future agreement between the City and the United States relative to the development, operation or maintenance of the Airport.

D. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of any exclusive right within the meaning of Section 308(a) of the Federal Aviation Act of 1958 (49 U.S.C. Section 1349).

E. There is hereby reserved to the City, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises. This public right of flight shall include the right to cause within the said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from or operating on the Airport.

F. Restaurateur shall not erect or permit the erection of any structure or object on the Airport in violation of federal height restrictions and obstruction criteria. In the event the aforesaid covenants are breached, the City reserves the right to remove the offending structure or object, all of which shall be at the expense of Restaurateur.

G. Restaurateur shall not make use of the Premises in any manner which might interfere with the landing and taking off of aircraft from the Airport, or which might otherwise constitute a hazard. In the event the aforesaid covenant is breached, the City reserves the right to enter upon the Premises and cause the abatement of such interference, at the expense of Restaurateur.

H. This Lease and all the provisions hereof shall be subject to whatever right the United States Government now has, or in the future may have or acquire, affecting the control, operation, regulation and taking over of said Airport, or the exclusive or nonexclusive use of the Airport, by the United States during the time of war or national emergency or otherwise.

I. Restaurateur shall use reasonable precautions to prevent unauthorized persons from gaining access to restricted flight and aircraft operational areas, including the precautions established by Section 6 below.

J. At such time as is required by the City, Restaurateur shall comply with Part 107 of the Federal Aviation Regulations requiring that all persons who have unescorted access to the airfield side of the Airport security fence have background checks, including references and prior employment history. Restaurateur agrees to maintain records of employee background checks and to make such records available

to the Federal Aviation Administration and the City as may be requested from time to time.

6. Airport Security

A. Restaurateur is responsible for maintaining security in and around the Premises or any other area adjacent to or upon the Airport which Restaurateur has an exclusive right to use or which Restaurateur otherwise controls. Restaurateur is further responsible for maintaining security with respect to entry upon the airfield or other portions of the Airport designated by the City from time to time as security areas (the "Airport Operating Areas") by employees, agents, invitees or customers of Restaurateur or any other person who enters the Airport Operating Areas at Restaurateur's invitation, direction or authority, whether through or from the Premises or otherwise.

B. Upon request of the City, Restaurateur shall adopt and implement a written security program setting forth the manner and methods by which Restaurateur shall carry out its responsibility for maintaining security, including, but not limited to, preventing unauthorized entry into the Airport Operating Areas. Restaurateur shall include in its program all provisions necessary to comply with applicable guidelines, policies and procedures adopted from time to time by the FAA or by the City.

7. Rent

A. Monthly Rent. Restaurateur shall pay City as rent hereunder as follows: ___ per square foot for the gross area as depicted in Exhibit A. The monthly rental shall be _____. Restaurateur shall pay rent to City on or before the first day of each calendar month during the term of this Lease, in advance.

B. Rent Commencement. Rent payments shall commence on the Commencement Date, unless adjusted elsewhere herein, and shall be paid prior to the fifth (5^{th}) day of each month.

C. Rent Escalation. On July 1, 2013, and on July 1 of every year thereafter ("Adjustment Date") for the full term of this Lease, including any extensions, the Base Rent shall be increased, but not decreased, for the term of this Lease, by the same percentage increase in the Consumer Price Index for all Urban Consumers San Francisco-Oakland Metropolitan area, Bureau of Labor Statistics, United States Department of Labor, 1982 = 100 ("Index"), published immediately before the Adjustment Date increases over the Index which was published immediately before the Commencement Date or the preceding Adjustment Date (as the case may be) provided, however, that in no event shall the increase exceed ten percent (10%) of the Base Rent (or, after the first adjustment, the Adjusted Rent, as hereafter defined) payable for the year immediately prior to the Adjustment Date]. The Base Rent as so adjusted shall be the Adjusted Rent. [By way of example only, if the Index immediately prior to the Commencement Date were the Index as of the first Adjustment date were 220, the Adjusted Rent would be the Cumulative Base Rent increased by ten percent (10%). If, however, the Index as of the first Adjustment Date were 400, the Adjusted Rent would be the Cumulative Base Rent increased by ten percent (10%).] If the Index shall no longer be published, another Index generally recognized as authoritative for purposes of this paragraph shall be substituted.

D. Payments. All rent to be paid by Restaurateur to the City shall be in lawful money of the United States of America and shall be paid without deduction or offset, prior notice or demand, and at such place or places as may be designated from time to time by the City.

8. Construction on Premises/Capital Improvements

A. Any construction, capital improvements or physical modification to the leased Premises to be undertaken under the terms of this Lease Agreement specified herein, shall be done so only with the expressed prior written consent of the City. Said consent will not be unreasonably withheld, conditioned or delayed.

B. Said construction shall be done at the sole cost and expense of the Restaurateur.

C. Restaurateur agrees to first submit to the City, for review and approval, all plans including specifications, working drawings, and other information required by City for such projects as may be proposed to be accomplished by Restaurateur. No improvement or alteration shall be made to the Premises or any portion thereof without the submission to and prior written approval of the plans by the City.

D. Nothing contained herein shall be construed by Restaurateur to be a waiver by the City of Restaurateur's need to acquire building and construction permits to include, but not be limited to, required permits from the Planning and Health departments and other applicable licenses through normal governmental procedures.

E. Unless provided in Exhibit 'B', attached hereto, Restaurateur is responsible to purchase and install any equipment necessary for daily operation of the Concession. Installation of any such equipment that requires alteration of the Premises will require authorization and approval by the City prior to the initiation of such installation on the Premises.

F. Restaurateur agrees to use licensed contractors to perform the work described in this Section and other parts of this Agreement.

9. Ownership of Improvements

A. Title to improvements on the Premises at the commencement of this Agreement is retained by the City. The ownership of all approved improvements made by Restaurateur hereunder shall remain forever after with the City, as specified in Exhibit "B", attached hereto. Temporary and non-affixed improvements, trade fixtures, equipment and furniture that are furnished by the Restaurateur shall remain the property of the Restaurateur and must be removed at the conclusion of the tenancy.

B. In the event that City consents to the assignment or sublease of this Agreement, ownership of all approved improvements, excluding temporary and non-affixed improvements, trade fixtures, equipment and furniture constructed and/or supplied by the Restaurateur, if any, shall remain on the Premises under the original terms of this Agreement.

C. In the event of any termination of this Agreement, Restaurateur shall within thirty (30) days thereafter commence and diligently proceed to remove from said Premises at Restaurateur's sole cost and expense any and all temporary and non-affixed improvements, trade fixtures, equipment, and furniture constructed and/or supplied by Restaurateur under this Agreement; provided that if Restaurateur for any reason fails to do so, then such construction and/or improvements to said Premises not so removed shall automatically at the end of such thirty (30) days be and become the property of City and the title of Restaurateur therein shall automatically terminate.

D. Any and all improvements on the Premises, including any equipment and furniture, as specified above, at the expiration of the term (or sooner termination of this Agreement) shall, without compensation to Restaurateur, become City property free and clear of all claims to or against the improvements by Restaurateur or any third person, and Restaurateur shall defend and indemnify the City against all liability and loss arising from such claims or from the City's exercise of the rights conferred by this paragraph.

10. Personal Property

Title to all personal property, not described in Section 9 above, provided by the Restaurateur shall

remain in the Restaurateur.

11. Protection of Premises

Restaurateur agrees to take all reasonable precautions to protect the Premises from damage, theft, vandalism and other such hazards.

12. Providing of Services

In addition to other provisions of this Agreement, Restaurateur shall provide and maintain the following minimum standards throughout the term of this Agreement.

A. Restaurateur shall operate and conduct their business in a good, efficient and economical manner so as to be conducive to rendering service to the public on a fair, equal and not unjustly discriminatory basis, and in a manner which will compare favorably to the service or services offered to the public in operations of like kind, and so far as is possible in a manner conducive to the obtaining and retaining of the general good will of the public.

B. It is distinctly and particularly understood and agreed between the parties hereto that the City is in no way associated or otherwise connected with the actual performance of this Agreement on the part of Restaurateur nor as to the employment of labor or the incurring of other expenses; that the Restaurateur is an independent contractor in the performance of each and every part of this Agreement and is solely and personally liable for any and all damages which may be occasioned on account of the operation of this Agreement, whether the same be for personal injury or damages of any other kind.

C. Restaurateur does, because of their status as independent contractors, hereby agree to forebear from making any claims against the City, pursuant to any Federal or State laws providing for employees' liability compensation for personal injury or unemployment compensation.

13. Utilities

Restaurateur agrees to pay before delinquency all charges for natural gas, electricity, telephone, and meter charges, including connection charges, provided during the term hereof whether charged or assessed at flat rates, measured by separate meters, or prorated by the utility company or City. City shall in no event be liable to Restaurateur for any interruption in the service of any utility furnished to the Premises howsoever caused, provided that such interruption is not caused by the intentional act or omission of City or its authorized representatives. This lease shall continue in full force and effect despite any such interruptions.

14. Maintenance and Repairs

A. Restaurateur covenants and agrees, at Restaurateur's sole cost and expense, to keep the Premises, and each and every part thereof, including without limitation, all plumbing and electrical conduits, wiring, fixtures and pipes and all floors, flooring, walls, lighting, storefronts, plate glass and glazing, ceilings and all other parts thereof in good condition and repair at all times during the term hereof and to make promptly any and all repairs, renewals and replacements which may at any time be necessary or proper to put and keep the Premises in good, clean, safe and wholesome condition at all times during said term. City reserves the right, upon ten (10) days written notice of needed repairs to Restaurateur, to make said repairs and bill Restaurateur for the cost thereof and Restaurateur shall promptly pay for said repairs on demand. Plate glass maintenance and repair shall be subject to the provisions of Section 19B.

B. Restaurateur may employ, pay and supervise maintenance personnel to maintain the Premises. Maintenance personnel shall be responsible to Restaurateur and cooperate with City personnel.

C. The Restaurateur shall not grant, with respect to said Premises, easements, rights-of-way, licenses and permits.

15. Janitorial

A. Restaurateur shall be solely responsible for complete janitorial services and the furnishing of janitorial supplies, lamps and tubes for the proper maintenance of the leased premises. Janitorial services for the public-use areas of the terminal and other common use areas adjacent thereto shall be the responsibility of the City.

B. Restaurateur shall provide proper maintenance and inspection, as required by Municipal Code and Public Health Regulations, for all applicable facilities and equipment, including, but not limited to, exhaust hoods and systems, dry chemical fire extinguishing and alarm systems, grease separators and traps.

16. Quality of Service and Control of Rates and Charges

A. Restaurateur agrees that they will operate and manage the services and facilities offered in a manner equal to or exceeding the standard met by comparable concessions providing similar facilities and services during the entire term of this Agreement. The standards required shall be subject to the review and approval of the City.

B. The City reserves the right to prohibit the sale of any item that is deemed objectionable or beyond the scope of merchandise deemed necessary for proper service to the public. A competent employee of Restaurateur shall be on the Premises at all times while the Concession is in operation. Restaurateur agrees that they shall and will furnish and maintain a high standard of service.

17. Closure

A. At any time, should an occurrence necessitate the closing of the restaurant to the general public, Restaurateur shall have no recourse by law to the City for losses incurred.

B. In the event the restaurant is closed for at least forty-eight (48) hours, the minimum monthly rental payment shall be reduced pro-rata for the period the restaurant is closed.

18. Hold Harmless Agreement

A. The Restaurateur shall indemnify and save harmless the City of Paso Robles, its officers, agents and employees from any and all claims, demands, damages, costs, expenses, liability or judgment arising out of this Agreement or attempted performance of the provisions hereof, including, but not limited to those predicated upon theories of violation of statute, ordinance, or regulation, professional malpractice, negligence, or recklessness including negligent or reckless operation of motor vehicles or other equipment, furnishing of defective or dangerous products or completed operations, Premises liability, liability arising from trespass or inverse condemnation, violation of civil rights and also including any adverse determination made by the Internal Revenue Services or the State Franchise Tax Board with respect to Restaurateur's "independent contractor" or "Restaurateur" status that would establish a liability for failure to make social security and income tax withholding payments, or any act or omission to act, whether or not it be willful, intentional or actively or passively negligent on the part of Restaurateur or their agents, employees or other independent contractors in the chain of contractual privity with Restaurateur; providing further that the foregoing shall apply to any wrongful acts or any active or passively negligent acts or omissions to act, committed jointly or concurrently by Restaurateur or Restaurateur's agents, employees or

other independent contractors and the City, County or State, their agents, employees or independent contractors. Nothing contained in the foregoing indemnity provision shall be construed to require indemnification for claims, demands, damages, costs, expenses or judgments resulting solely from the negligence or willful misconduct of the City.

B. Restaurateur hereby agrees that City shall not be liable for injury to Restaurateur's business or any loss of income therefrom or for damage to the goods, wares, merchandise, or other property of Restaurateur, Restaurateur's employees, invitees, customers, or any other person in or about the Premises or the Airport Terminal Building, nor shall City be liable for injury to the person of Restaurateur, Restaurateur's employees, agents, or contractors, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water, or rain, or from the breakage, leakage, obstruction, or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning, or lighting fixtures, or from any other cause, whether said damage or injury results from conditions arising upon the Premises or upon other portions of the Airport Terminal Building or from other sources or places and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Restaurateur. City shall not be liable for any damages arising from any act or neglect or any other tenant, occupant, or user of the Airport Terminal Building, nor from the failure of Landlord to enforce the provisions of any other lease of the Airport Terminal Building.

19. Insurance

Restaurateur shall obtain and maintain for the entire term of the Agreement and Restaurateur shall not perform any work under this Agreement until after they have obtained insurance complying with the provisions of this paragraph, delivered a certified copy of each insurance policy to the City, and obtained City approval of all such policies. Said policies shall be issued by companies authorized to do business in the State of California. Restaurateur shall maintain said insurance in force at all times. The following coverage with the following features shall be provided:

A. Commercial Liability Insurance. Restaurateur shall maintain in full force and effect for the period covered by this Agreement, commercial liability insurance. This insurance shall include, but shall not be limited to, comprehensive general and automobile liability insurance providing protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from any act or occurrence arising out of Restaurateur's operations in the performance of this Agreement, including, without limitation, acts involving vehicles. The policy shall provide not less than single limit coverage applying to bodily and personal injury, including death resulting therefrom, and property damage in the total amount of One Million Dollars ($1,000,000.00). The following endorsements must be attached to the policy:

(1) If the insurance policy covers on an "accident" basis, it must be changed to "occurrence".

(2) The policy must cover personal injury as well as bodily injury.

(3) Blanket contractual liability must be afforded and the policy must contain a cross liability or severability of interest endorsement.

B. Plate Glass. Except for damages to plate glass caused by aircraft, Restaurateur shall be responsible for the maintenance and replacement, whenever necessary, of all plate and other glass on the

Premises and shall have the option to insure against this risk.

C. Leasehold Improvements and Restaurateur's Personal Property. During the Term, Restaurateur shall maintain in full force and effect on all leasehold improvements, including the City improvements referenced in Section 4 above, interior and exterior signage, trade fixtures, merchandise, and other personal property from time to time in, on or upon the Premises, fire and extended coverage insurance in the amount of the full replacement value thereof containing sprinkler leakage, replacement cost, and inflation endorsements, and providing for no deductible in excess of five hundred dollars ($500) per loss. All proceeds from the insurance required pursuant to this subsection shall be used for the repair or replacement of the property damaged or destroyed. Both City and Restaurateur shall be named as co-insureds as to coverage of leasehold improvements and alterations, though not as to Restaurateur's personal property.

D. Workers' Compensation Insurance. In accordance with the provisions of sections 3700 of the California Labor Code, et seq., if Restaurateur has any employees, Restaurateur is required to be insured against liability for workers' compensation or to undertake self-insurance. Restaurateur agrees to comply with such provisions before commencing the performance of this Agreement.

E. Additional Insureds to be Covered. The commercial liability policy shall name the "City of Paso Robles, its officers, employees, and agents" as additional insureds. The policy shall provide that the Restaurateur's insurance will operate as primary insurance and that no other insurance maintained by the City, or additional insureds will be called upon to contribute to a loss hereunder.

F. Certification of Coverage. Prior to commencing work under this Agreement, Restaurateur shall furnish City with the following for each insurance policy required to be maintained by this Agreement:

(1) A copy of the Certificate of Insurance shall be provided. The certificate of insurance must include a certification that the policy will not be canceled or reduced in coverage or changed in any other material aspect without thirty (30) days prior written notice to the City.

(2) A copy of the Restaurateur's Workers' Compensation policy need not be provided, but a copy of proof of coverage does need to be provided.

(3) Upon further written request, the Restaurateur shall provide a copy of the entire insurance policy and not just the "face sheet" or proof of coverage.

(4) Approval of Insurance by City shall not relieve or decrease the extent to which the Restaurateur may be held responsible for payment of damages resulting from Restaurateur's services or operations pursuant to this Agreement. Further, City's act of acceptance of an insurance policy does not waive or relieve Restaurateur's obligations to provide the insurance coverage required by the specific written provisions of this Agreement.

G. Effect of Failure or Refusal. If Restaurateur fails or refuses to procure or maintain the insurance required by this Agreement, or fails or refuses to furnish City with the certifications required by subparagraph (d) above, City shall have the right, at its option, to forthwith terminate the Agreement for cause.

H. Waiver of Subrogation. Restaurateur and City each hereby release and relieve the other and hereby waive their entire right of recovery against the other for loss or damage arising out of or incident to the perils covered by fire and extended coverage insurance or special form all-risk insurance in force at the time of such loss or damage, which perils occur in, on, or about the Premises or the Project, whether due to the negligence of City or Restaurateur or their agents, employees, contractors, and/or invitees. Restaurateur and City shall, upon obtaining the policies of insurance required, give notice to the insurance carrier or carriers that the foregoing waiver of subrogation is contained in this Lease.

I. Payment of Premium Increase. Restaurateur shall pay the entirety of any increase in the property insurance premium for the Project over what it was immediately prior to the commencement of the Term of this Lease if the increase is specified by City's insurance carrier as being caused by the use of the Premises, the nature of Restaurateur's occupancy, or any act or omission of Restaurateur.

20. Taxes

During the term of this Agreement, Restaurateur hereby agrees to pay, prior to delinquency, all taxes and assessments, including both general and special, levied or assessed against the Premises and in connection with the Premises and Restaurateur's operation thereof, including without limitation taxes on Restaurateur's possessory interest hereunder or in the Premises, and taxes or assessments on all structures, improvements, and fixtures now or hereinafter existing on the Premises, and on any personal property situated in, on, or about the Premises, or in, on or about any structures or improvements thereon. Restaurateur is hereby informed that a possessory interest subject to property taxation shall be created by this Agreement and that the party to whom the possessory interest is vested (Restaurateur) shall be subject to the payment of property taxes levied on such interest and must pay such taxes.

21. Quiet Possession By Restaurateur

City shall place Restaurateur in the peaceful and undisturbed possession of the Premises on the commencement of the term hereof, and Restaurateur performing and observing all of the conditions and covenants on their part to be performed, City shall secure to Restaurateur the quiet and peaceful possession of the Premises during the term hereof against all persons claiming the same.

22. Termination For Unsatisfactory Service

The City retains the right and the duty to assure quality and satisfactory service by Restaurateur to the public. If City determines, either through investigation or public complaint is unsatisfactory, City may issue a Notice of Termination for Unsatisfactory Service. Said notice shall specify the manner in which Restaurateur's service has been unsatisfactory and why/how it does not compare favorably with similar service offered in the community.

Within thirty (30) days of receipt of said notice Restaurateur shall remedy the conditions and provide written notice to the City of remedies completed by Restaurateur.

In the event that City determines in good faith that Restaurateur has not remedied the conditions, or in the event that Restaurateur disagrees either with the Notice of Termination for Unsatisfactory Service or with City's determination that Restaurateur has not remedied the conditions, Restaurateur may petition for in writing and be granted a hearing before the City Council to determine if said "Unsatisfactory Service" is sufficient to terminate this Agreement.

Unless Restaurateur quits said Premises and/or ceases operation therein, this Agreement shall continue until receipt of notice from City that the City Council determined after the hearing to deny petition and to terminate this Agreement. Said petition shall be filed with the City Clerk within twenty

(20) days of Restaurateur's receipt of the Notice of Termination for Unsatisfactory Service or with the City's determination that Restaurateur has not remedied conditions. Failure to file a written petition as herein provided shall be conclusive evidence of Restaurateur's default under this Section 22.

23. Signs

Restaurateur shall have the right, with prior written permission of City, as provided herein, to place such signs as deemed acceptable, and in compliance with any City codes or regulations relative to sign ordinances, on airport property sufficient to advertise the location and presence of restaurant.

24. Parking

Restaurateur shall have the nonexclusive right to utilize existing City parking facilities subject to all applicable fees. City may, from time to time, modify the approved parking plan for the terminal area.

25. Notices

Any notice required to be given pursuant to the terms and provisions hereof shall be in writing and shall be sent by certified or registered mail as follows:

To the Restaurateur at: _____
_____
Paso Robles, CA 93446

To the City at: City of Paso Robles
1000 Spring St.
Paso Robles, CA 93446

The address to which the notices may be mailed as aforesaid by either party may be changed by written notice given by such party to the other as herein before provided, but nothing herein contained shall preclude the giving of any such notice by personal service.

26. Default

The occurrence of any one or more of the following events shall constitute a default under this Lease by Restaurateur, if, following 30 days written notice from the City, Restaurateur fails to cure default:

A. Failure to pay an installment of rent or other sum when due;

B. Failure to pay any insurance premium, lien, claim, demand, judgment or other charge provided for in this Lease to be paid or caused to be paid by Restaurateur at the time and in the manner as provided for in this Lease;

C. Failure to maintain the Leased Premises as provided for in this Lease;

D. Abandonment of the Leased Premises;

E. Default by Restaurateur under the terms of any mortgage on the estate of Restaurateur;

F. Failure to perform or breach of any other covenant, condition or restriction provided for in this Lease;

27. Remedies in Event of Default

Upon any default of Restaurateur, and in the event the said default is due to the failure of Restaurateur to make the payment of any installment of rent or other sum when due, and in the event Restaurateur shall fail to remedy such default within ten (10) days after written notice to do so, or upon any other default by Restaurateur, and in the event that Restaurateur shall fail to remedy such other default within ten (10) days after written notice from City so to do specifying the nature of such default, or if such default cannot be cured within ten (10) days, Restaurateur has not commenced corrective action and prosecuted the same to completion with due diligence, or in the event that the default is of such a nature that it cannot be cured by any action of Restaurateur, then and in any of these events, in addition to any other remedy City may have by operation of law, City shall have the right but not the obligation without any further demand or notice to reenter the Leased Premises and eject all persons from the Leased Premises, using due process of law, and either:

A. Immediately terminate Restaurateur's right to possession of the Premises, and repossess the same by summary proceedings or other appropriate action, and City shall thereupon be entitled to receive from Restaurateur all damages specified in California Civil Code Section 1951.2(a), including, without limitation, the right to receive the worth at the time of the award, of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss for the same period that Restaurateur proves could be reasonably avoided; all of which damages to the extent specified in Section 1951.2(b) shall be computed by allowing interest at the maximum rate permitted by law. City shall also have the right, but no duty, to cure any default of Restaurateur under the terms of any mortgage on the estate of Restaurateur.

B. Without terminating this Lease or the Restaurateur's right to possession, relet the Leased Premises or any part of the Leased Premises as the agent and for the account of Restaurateur upon such reasonable terms and conditions as City may deem advisable, in which event the rents received on such re-letting and collection shall be applied first to the reasonable expenses of such re-letting and collection, including necessary renovation and alterations of the Leased Premises, reasonable attorneys' fees, any real estate commissions paid, and thereafter to payment of all sums due or to become due to City under this Lease, and if a sufficient sum shall not be thus realized by the payment of such sums and other charges, Restaurateur shall pay City any deficiency monthly notwithstanding City may have received rental in excess of the rental stipulated in this Lease in previous or subsequent months, and City may bring an action therefor as such monthly deficiency shall arise.

If Restaurateur fails to provide necessary repair and maintenance of the Premises and all improvements thereon, City shall have the right, after notice provided for above and failure of Restaurateur to cure or commence and diligently pursue a cure, to enter the Premises and take all corrective action necessary in the sole judgment of City. Any such entry shall be at the sole risk and expense of Restaurateur. Restaurateur shall immediately, upon presentation of a statement therefor, reimburse City for all costs incurred by City in taking such corrective action with interest on said sums from the date of payment by City at the lower of: (A) the highest rate allowed by law; or (B) two points over the prime rate charged from time to time by the Bank of America, or if the Bank of America no longer exists, an equivalent institution. Nothing in this Section shall: (i) require City to take any corrective action on the Premises; (ii) diminish the rights and remedies of City under this Lease, whether or not City elects to take such corrective action; and (iii) cause a waiver by City of any of its rights and remedies under this Lease. Any such reentry shall be

allowed by Restaurateur without hindrance, and City shall not be liable in damages for any such reentry, or be guilty of trespass or forcible entry.

28. Sublease or Assignment of Agreement

A. Inasmuch as this Contract is intended to secure the specialized services of the Restaurateur, Restaurateur shall not hypothecate, pledge, convey, obligate, assign, transfer, delegate, or sublet this Contract or any interest therein without the prior written consent of City. Any such hypothecation, pledge, conveyance, obligation, assignment, transfer, delegation, or sublet without the City's written approval shall be null and void ab initio and shall have no force or legal effect.

B. Any proposed Assignee or Sublessee shall have at least six (6) years of food and beverage experience in the management and/or operation of a restaurant substantially the same as the food and beverage business operated by the Restaurateur in the Premises.

C. In lieu of such actual experience, the proposed Assignee or Sublessee shall provide satisfactory evidence to the City that the proposed Assignee or Sublessee will hire, as employees or independent contractors, personnel competent to inventory, merchandise, market and operate the food and beverage business being conducted in the Premises.

D. City's consent to such assignment or sublease shall not constitute a waiver of any provision of this Agreement and no further assignment or sublease shall be made without City's prior written consent. The Assignee or Sublessee shall not further assign the Premises without City's prior written consent, and then only in compliance with all of the provisions contained in this paragraph.

E. Prior to City's consent to any assignment or sublease, Restaurateur shall provide copies of any and all agreements or contracts, whether written or oral, relative to the operation of the Concession to City upon request. Any changes, modifications or further amendments to the Agreement shall be negotiated prior to Board approval of the assignment or sublease.

F. In the event City consents to such assignment or sublease of this Agreement, City shall reserve the right to renegotiate the rental amount not to exceed an increase in the rental amount equal to fifteen (15) % of the then-current rental rate. The City shall negotiate any subsequent changes, modifications or further amendments to the Agreement prior to approval of the assignment or sublease.

G. In the event City consents to a sublease, if the proportional rent paid by Sublessee to Sublessor is greater than the rent paid by Restaurateur to the City, then the Restaurateur shall pay the City fifty percent (50%) of the monthly rent received from Sublessee in excess of Restaurateur's rental obligation to the City, for the same portion of the Premises.

H. City may at its option sell, assign, transfer to or delegate the Premises to another governmental agency provided that such sale, assignment transfer or delegation shall not terminate this Agreement, excluding any transfer, assignment, or delegation pursuant to section 29 of this Agreement.

29. Assignment for Purposes of Financing

Anything herein to the contrary notwithstanding and subject to the covenants and conditions otherwise herein contained, Restaurateur shall have the right to assign or sell this Agreement if required for the purposes of financing any additional improvement upon the Premises, as security therefore,

provided the same be to a duly qualified and licensed institutional financing agency or duly qualified individual which shall entitle any such lending institution or individual to become the successor to Restaurateur's rights hereunder in the event Restaurateur should default in the performance of its obligations to such lending institution, or individual.

30. Waiver of Claim

Restaurateur hereby waives any claim against the City, its officers, agents or employees for damage or loss caused by any suit or proceeding directly or indirectly attacking the validity of this Agreement, or any part thereof or by any judgment or award in any suit or proceeding declaring this Agreement null, void or voidable, or delaying the same or any part thereof from being carried out.

31. Duration of Public Facilities

By entering into this Agreement, the City makes no stipulation as to the type, size, location and duration of public facilities to be maintained at the airport.

32. Non-Discrimination

A. Restaurateur for themselves, their heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree, that in the event facilities are constructed, maintained or otherwise operated on said property described in this Agreement for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar service or benefits, the Restaurateur shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, DOT, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assigned Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Acts of 1964, and as said Regulations may be amended.

B. In the event of breach of any of the above nondiscrimination covenants, City shall have the right to terminate the Agreement and to re-enter and repossess said land and the facilities thereon, and hold the same as if said had never been made or issued. This provision does not become effective until the procedures of 49 CFR Part 21 are followed and completed including expiration of appeal rights.

C. Restaurateur shall furnish their accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and they shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service; PROVIDED, THAT the Restaurateur may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar type of price reductions to volume purchasers.

D. Noncompliance with the hereinabove provision shall constitute a material breach thereof, and in the event of such noncompliance the City shall have the right to terminate this Agreement and the estate hereby created without liability therefore; or at the election of the City or the United States either or both said Governments shall have the right to judicially enforce the provision.

E. Restaurateur agrees that they shall insert the above provisions in any Agreement by which said Restaurateur grants a right or privilege to any persons, firm or corporation to render accommodations and/or services to the public on the Premises herein provided.

F. Restaurateur assures that they will undertake an affirmative action program as required by 14 CFR Part 152, Sub-part E, to ensure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in or receiving the service or benefits of any program or activity covered by this sub-part. The Restaurateur assures that they will require that their covered sub-organizations provide assurances to the Restaurateur that they similarly will undertake affirmative action programs and that they will require assurances from their sub-organizations, as required by 14 CFR Part 152, Sub-part E, to the same effect.

33. Laws

A. It is understood and agreed that general control over said Premises and all flying activities in connection therewith are vested by law in City acting by and through its City Council, committees and officers appointed by such City Council. In the general operation of any activities conducted under the terms of this Agreement, Restaurateur agrees to comply with all reasonable rules and regulations adopted by City for the use and operation of the said Premises.

B. Restaurateur shall, at their sole cost and expense, comply with all the requirements of all local, municipal, County, State and Federal authorities now in force, or which may hereafter be in force, pertaining to the said Premises, and shall faithfully observe in the use of the Premises all local, municipal and County ordinances and State and Federal statutes, rules and regulations now in force or which may be hereafter in force. The judgment of any court of competent jurisdiction, or the admission of Restaurateur in any action or proceeding against Restaurateur whether City be a party thereto or not, that Restaurateur has violated any such ordinance, statute, rules or regulations in the use of the Premises shall be conclusive of the fact as between City and Restaurateur and may be grounds for termination of this Agreement by City as provided herein.

34. Americans With Disabilities Act

The Restaurateur acknowledges the passage of the Americans With Disabilities Act of 1990, 42 U.S.C. sect. 12101 et seq., ("ADA"). The City hereby certifies that the leased premises complies with all applicable ADA requirements at the commencement of this agreement. The City further agrees to indemnify, defend, and hold Restaurateur harmless in any claims to the contrary. Restaurateur, as required by law, hereby agrees and is required to install any and all equipment, perform any and all alterations, improvements or modifications to the premises such that the premises are in strict compliance with ADA requirements.

35. Sexual and Gender Harassment Warranty and Liability

Restaurateur and all Contractors have a contractual obligation to become fully trained and knowledgeable regarding behavior prohibited by law as sexual and gender harassment and at all times to comply with and ensure that all persons performing this Agreement comply with an appropriate standard of conduct. Restaurateur or any Contractor who violates sexual and gender harassment laws shall be liable to the City for all claims, demands, damages, costs, expenses, and attorney's fees incurred by the City as a result of behavior of any of Restaurateur's or Restaurateur's Contractor's personnel performing this Agreement.

36. Drug Free Workplace

Restaurateur and Restaurateur's employees shall comply with City's policy of a drug free workplace. Neither Restaurateur nor Restaurateur's employees shall unlawfully manufacture, distribute, dispense, possess, or use controlled substances, including but not limited to marijuana, heroin, cocaine, methamphetamine, or amphetamines at any of Restaurateur's facilities or City facilities or work sites. If any employee of Restaurateur is found to be under the influence of or in possession of any illegal substance at or on City's Premises, that employee may not return to any of City's Premises. Further return shall be a breach of Agreement. If Restaurateur becomes aware that any of Restaurateur's employees has been convicted or pleads nolo contendere to a criminal substance abuse statute Restaurateur shall notify the County's Mental Health Director within five (5) days and Restaurateur shall be responsible for making sure that employee does not return to City's work site. Violation of this notification provision shall constitute a breach of this Concession Agreement.

37. Inspection of Premises

City, its agents and employees, shall have access to and the right to enter upon the Premises at any time to examine the condition thereof, and to direct Restaurateur to make such repairs as may be necessary and, in the event of an emergency, to take such action therein as may be required for the protection of persons or property, at the expense of Restaurateur. City shall, except in an emergency, make reasonable attempt to give 24 hours' notice to Restaurateur, prior to such inspection.

38. Hazardous Materials

A. Restaurateur, its agents, employees and contractors, at all times, shall keep the Premises and Common Areas free of Hazardous Materials (as hereinafter defined). Restaurateur shall not use, generate, manufacture, store, release, or dispose of Hazardous Materials in, on, or about the Premises or the Common Areas. "Hazardous Materials" shall include, but not be limited to, substances defined as "hazardous substances," "hazardous materials," or "toxic substances" in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 USCS Sec. 9601, et seq.; the hazardous Materials Transportation Act, 49 USCS 1801, et seq.; the Resource Conservation and Recovery Act, 42 USCS Sec. 6901, et seq.; and those substances defined as "hazardous wastes" in Section 25117 of the California Health & Safety Code or as "hazardous substances" in Section 25316 of the California Health & Safety Code; and in the regulations adopted and publications promulgated pursuant to said laws.

B. Restaurateur, shall, except in the event of City's sole negligence, indemnify, defend, protect, and hold City, each of City's officers, directors, employees, agents, attorneys, successors and assigns, free and harmless from and against any and all claims, liabilities, penalties, forfeitures, losses or expenses or death of or injury to any person or damage to any property whatsoever, arising from or caused in whole or in part, directly or indirectly, by Restaurateur's failure to comply with subparagraph A above.

C. Restaurateur's obligations hereunder shall include, without limitation, and whether foreseeable or unforeseeable, all costs of any required or necessary repair, cleanup or detoxification or decontamination of the Premises and/or Common Areas, and the preparation and implementation of any closure, remedial action or other required plans in connection therewith caused by Restaurateur and shall survive the expiration or earlier termination of the terms of the Lease.

39. Sevarability

The invalidity of any provision of this Agreement shall not affect the validity, enforceability or any other provision of this Agreement.

40. Remedies Not Exclusive

The use by either party of any remedy specified herein for the enforcement of this Agreement is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.

41. Law

This Agreement has been executed and delivered in the State of California and the validity, enforceability and interpretation of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California.

42. Venue

San Luis Obispo County shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

43. Attorneys' Fees

In the event any action is brought by City to recover any rent due and unpaid hereunder or to recover possession of the Leased Premises, or in the event any action is brought by City or Restaurateur against the other to enforce or for the breach of any of the terms, covenants or conditions contained in this Lease, the prevailing party shall be entitled to recover reasonable attorneys' fees to be fixed by the Court, together with costs of suit therein incurred.

44. Waiver

No waiver of any breach of any of the terms, covenants, agreements, restrictions or conditions of this Lease shall be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions and conditions hereof. No delay or omission of City to exercise any right or remedy shall be construed as a waiver of any such right or remedy or of any default by Restaurateur under this Lease. The various rights and remedies reserved to City herein including those not specifically described in this Lease shall be cumulative and, except as otherwise provided by California statutory law in force at the time of execution of this Lease, City may pursue any or all of such rights and remedies whether at the same time or otherwise.

45. Holding Over

If Restaurateur shall hold over the Leased Premises after the expiration of the term hereof with the consent of City, either express or implied, such holding over shall be construed to be only a tenancy from month to month, subject to all the covenants, conditions and obligations hereof, and Restaurateur hereby agrees to pay to City 110% as provided, however, that nothing herein contained shall be construed to give Restaurateur any rights to so hold over and to continue in possession of the Leased Premises after the expiration of the term hereof.

46. Surrender at End of Term

Upon the end of the term of this Lease, as provided herein, or any extension thereof, or sooner termination of this Lease, Restaurateur shall surrender to City all and singular the Leased Premises, together with all improvements, except as hereinabove provided, and all fixtures and equipment in good condition, reasonable wear and tear excepted.

47. Lease Binding Upon Successors and Assigns

Subject to the limitations on assignment and subleasing, each of the terms, covenants and conditions of this Lease shall extend to and be binding on and inure to the benefit of not only City and Restaurateur, but each of their successors and assigns. Whenever in this Lease reference is made to either City or Restaurateur, the reference shall be deemed to include, wherever applicable, the successors and assigns and such parties the same as if in every case expressed.

48. Relationship of Parties

The relationship of the parties hereto is that of Landlord and Tenant, and it is expressly understood and agreed that Landlord does not in any way nor for any purpose become a partner of Tenant or a joint venturer with Tenant in the conduct of Tenant's business or otherwise.

49. Time of the Essence Time is expressly declared to be of the essence of this Lease.

50. Memorandum of Lease

This Lease shall not be recorded, but the parties agree to execute and deliver a Memorandum of this Lease in recordable form which will include the restrictions on assignment.

51. Quitclaim

At the expiration or earlier termination of this Lease, Restaurateur shall execute, acknowledge and deliver to City within five (5) days after written demand from City to Restaurateur any quitclaim deed or other document required by any reputable title company to remove the cloud of this Lease from the real property subject to this Lease.

52. Headings and Titles

The marginal headings or titles to the Sections of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part of this Lease.

53. Force Majeure

Except as to the payment of rent, neither of the parties hereto shall be chargeable with, liable for, or responsible to, the other for anything or in any amount for any delay caused by fire, earthquake, explosion, flood, hurricane, the elements, acts of God, or the public enemy, action or interference of governmental authorities or agents, war, invasion, insurrection, rebellion, riots, strikes, or lockouts or any other cause whether similar or dissimilar to the foregoing, which is beyond the control of such parties and any delay due to said causes or any of them shall not be deemed a breach of or default in the performances of this Lease.

54. Disclaimer of Representation

Except as otherwise specifically provided herein, City has made no representations or warranties to the Restaurateur concerning the Leased Premises, the present use thereof or the suitability for Restaurateur's intended use of the property. The foregoing disclaimer includes, without limitation, topography, climate, air, water, water rights, utilities, present and future zoning, soil, subsoil, drainage, access to public roads, proposed routes of roads, or extension thereof, or effect of any state or federal environmental protection laws or regulations. Restaurateur represents and warrants to City that he and his representatives have made or will make their own independent inspection and investigation of the Leased Premises and Restaurateur, in entering into this Lease, is relying solely on such inspection and investigation. No patent or latent physical condition of Leased Premises, whether or not known or discovered, shall affect the rights of either party hereto. Any agreement, warranties or representations not expressly contained herein shall in no way bind either Restaurateur or City. City and Restaurateur waive any right of rescission and all claims for damages by reason of any statement, representations, warranty, promise and agreement, if any, not contained in this Lease.

55. Late Charge

Both City and Restaurateur acknowledge and agree that City is dependent on the revenue from Restaurateur for Airport operations and that it would be extremely difficult to estimate the damages to City from late payment by Restaurateur. If any installment of Base Rent or other payment due from Restaurateur is not received by City within ten (10) days of the date upon which it is due, Restaurateur shall pay to City an additional charge of five percent (5%) of the overdue payment as a late charge.

56. Entire Agreement and Modifications

This Agreement supersedes all previous Agreements and constitutes the entire understanding of the parties hereto. Restaurateur shall be entitled to no other benefits than those specified herein. No changes, amendments, or modifications shall be effective unless in writing and signed, in advance of the effective date of the change, amendment or modification, by both parties. Restaurateur specifically acknowledges that in entering into the executing this Agreement, Restaurateur relies solely upon the provisions contained in the Agreement and no other Agreements or oral discussions prior to entering this Agreement.

57. Corporate Authority

Any individual executing this Agreement on behalf of Restaurateur represents and warrants that he is duly authorized to execute and deliver this Agreement on behalf of said Restaurateur, and that this Agreement is binding upon said Restaurateur in accordance with its terms.

In witness whereof, the parties hereto have caused this lease to be duly executed on the date first stated above.

CITY OF PASO ROBLES

_____
James L. App, City Manager

ATTEST:

_____
Dennis Fansler, City Clerk

APPROVED AS TO FORM:

_____
Iris P. Yang, City Attorney

RESTAURATEUR

_____