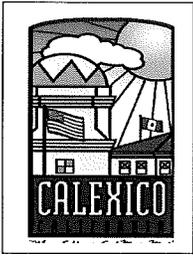


AGENDA
ITEM

10



CITY COUNCIL AGENDA STAFF REPORT

DATE: March 21, 2018

TO: Mayor and City Council

APPROVED BY: David Dale, City Manager *DD*

PREPARED BY: Miguel Figueroa, Community and Economic Development Director

SUBJECT: Approve And Authorize the City Manager to Sign the Enclosed Airport Land Lease Agreement with Enrique Juarez

=====

Recommendation:

Consideration to approve and authorize the City Manager to sign the enclosed Airport Land Lease Agreement with Enrique Juarez located at 805 W. 2nd St., Calexico, CA, for operating Desert Rose restaurant at the Calexico International Airport.

Background:

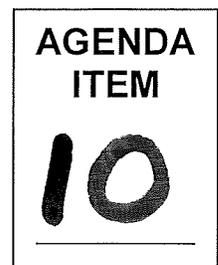
Mr. Enrique Juarez will manage and operate Desert Rose restaurant that will be open to the public at least eight hours each day five days per week of every calendar month. The previous tenant at this location closed operations in the month of November 2017.

Discussion & Analysis:

The lease agreement will be for the period beginning March 8, 2018 through March 7, 2021 with an option of renewing this lease for an additional three years from and after the termination of the initial period. The monthly rent payment shall be \$884.05 with a three percent annual increase over the term of the lease.

Fiscal Impact:

March 8, 2018	March 7, 2019	\$884.05
March 8, 2019	March 7, 2020	\$911.55
March 8, 2020	March 7, 2021	\$938.89
Automatic Renewal Option		
March 8, 2020	March 7, 2021	\$967.05
March 8, 2021	March 7, 2022	\$996.06
March 8, 2022	March 7, 2023	\$1025.94



Funds are deposited to General Fund.

Coordinated With:

City Manager's Office.

Attachment:

1. City of Calexico - Airport Land Lease Agreement with Enrique Juarez.

CITY OF CALEXICO
AIRPORT LAND LEASE AGREEMENT
THE CITY OF CALEXICO, a municipal corporation
CALEXICO INTERNATIONAL AIRPORT
608 HEBER AVENUE
CALEXICO, CA 92231
"LESSOR"

AND

ENRIQUE JUAREZ
DESERT ROSE
805 WEST 2ND STREET
CALEXICO, CA 92231
"LESSEE"

DATE: March 7, 2018

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LEASE AGREEMENT

PREAMBLE

This agreement is intended to memorialize the terms of an agreement between the City of Calexico and Enrique Juarez, to rent certain real property to said individual for the purpose of operating a restaurant (Desert Rose) at the Calexico International Airport. IT IS HEREBY AGREED THAT:

I

PARTIES

The CITY OF CALEXICO, a municipal corporation, is hereinafter referred to as LESSOR. ENRIQUE JUAREZ, is hereinafter referred to as "LESSEE." LESSOR and LESSEE, do hereby enter into this lease as of March 8, 2018.

II

LEASE PROPERTY

LESSOR, for and in consideration of the terms, condition and covenants herein contained, does hereby lease to the LESSEE, and the LESSEE hereby leases and rents from LESSOR, that certain land located at 805 West Second Street, Calexico, California described as follows:

A facility comprising two thousand four hundred (2,400) square feet located eighty feet west of and in line with the existing terminal building at the Calexico International Airport. It also includes two thousand seven hundred twenty (2,720) square feet of space on the west side of the building that is used as parking space (Exhibit "A").

III

PURPOSE

It is intended by the Parties that LESSEE use said premises for the purpose of operating a restaurant open to the general public at least eight (8) hours each day and five days per week of every calendar month. LESSEE shall not use the premises for any other purpose that specified above without first obtaining the written consent of LESSOR. Using the premises for any other purpose than that specified above shall constitute a material breach of the terms of this lease.

IV

LEASEHOLD TERM

The term of this lease shall be (3) years commencing on **March 8, 2018** and expiring on **March 7, 2021**, at midnight, unless sooner terminated as hereinafter provided.

It is understood and agreed that if the LESSEE shall make all payments called for herein promptly as the same become due, and perform all of the covenants herein required by the Lease, the LESSEE hereunder is hereby given the right and option of renewing this lease for an **additional period of three (3) years** from and after the termination of the basic period of this lease, which option must be exercised by giving notice in writing of intention to exercise this option to the LESSOR, WHICH NOTICE MUST BE GIVEN NOT MORE THAN SIXTY (60) DAYS NOR LESS THAN THIRTY (30) DAYS PRIOR TO THE TERMINATION OF THIS LEASE. Such renewal shall be upon the same terms as herein contained except that the rental rates shall be the rate then currently in effect subject to the adjustments for increase in rental value of the property in accordance with this lease agreement.

PROVIDE, HOWEVER, that during the time of war or national emergency, the LESSOR shall have the right to lease the demised premises, or any part thereof, to the United States Government for military or naval use; and, if any such lease is executed, the provisions of this instrument insofar as they are inconsistent with the provisions of the lease to the government, shall be suspended.

V

RENT

The monthly rental payment shall be the sum of Eight Hundred Eighty Four Dollars and five cents (\$884.05), and will be payable in advance on the first day of each month commencing March 8, 2018. Said rental payment is to be adjusted annually by a 3% (three) percent annual increase over the term of the lease. The initial sum paid shall include the first and last month's rent.

VI

CONDITION RIGHT OF ENTRY FOR INSPECTION

LESSEE has inspected this property and agrees to lease the property "as is". LESSOR hereby retains the right to enter the premises at reasonable times for the purpose of inspecting the facility as to its maintenance and repair.

VII

COMPLIANCE WITH CITY, STATE AND FEDERAL LAWS

The LESSEE hereby agrees to comply with all City, County, State, and Federal ordinances and statues that are applicable to this lease agreement and this restaurant business. In the Federal Aviation Administration section, as shown on Exhibit "B", F.A.A. Requirements attached hereto and made a part hereof.

VIII

LICENSES AND CERTIFICATION

The LESSEE will not conduct any business activity, nor offer any services without obtaining, and maintaining in current status at all times, all licensing and/or certification as may be required by applicable Federal, State, and local authorities.

IX

LIABILITY OF LESSOR

LESSEE agrees to save and hold LESSOR harmless from any injury to person or damage to property arising out of or in connection with LESSEE'S occupancy of the premises covered by this lease. LESSEE agrees to indemnify LESSOR for any and all damages that may result to LESSOR from LESSEE'S use of the facility pursuant to this agreement.

X

FIRE AND CASUALTY INSURANCE

LESSEE agrees to carry fire and casualty insurance on the building and premises in an amount of replacement cost.

XI

PUBLIC LIABILITY AND INSURANCE

This lease is made upon the expressed condition that LESSOR shall be free from all liability and claim for damages for reason of any injury to any person or persons including but not limited to LESSEE, their employee, subtenants, agents, contractors, assigns and/or customers, or property of any such person and to whomsoever belonging, including LESSEE'S caused by any acts or omissions of LESSEE, his employees, subtenants, agents, contractors, assigns and/or customers whether in, upon or in any way connected with said premises or in the runways and streets adjacent thereto during the term of this lease or any extension thereof or any occupancy hereunder.

LESSEE hereby covenants and agrees to indemnify and save LESSOR harmless and the whole of the leased premises free from all claims, liens, loss, detriments, or liability at any time or time resulting from injuries to or the death of any person or persons or from damage to any and all property adjoining, caused by any acts or omissions of LESSEE, his employees, subtenants, agents, contractors, assigns and/or customers, including but not limited to, the non-compliance or mis-compliance of any law, ordinance, regulation or authority respecting the condition, use, occupancy, sanitation or safety of the leased premises or any part thereof, or resulting from any act or omission, whatever done or suffered in or about the leased premises, or any part thereof, including the reasonable costs and attorney's fees of LESSOR in defending against same.

LESSEE further agrees to take out and keep in force during the term hereof at LESSEE's expense, insurance against any injury to persons or property LESSEE's employees, subtenants, agents, contractors and assigns and/or customers resulting from accidents occurring in or about said premises in the amount of not less than ONE MILLION DOLLARS (\$1,000,000.00) to indemnify against the claim of one person and not less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) for property damage. The LESSEE shall provide the LESSOR with a Certificate of Insurance naming the City of Calexico as an additional insured covering such liability.

XII

UTILITIES AND REAL ESTATE TAXES

LESSEE hereby agrees to pay before delinquency all charges for water, gas, electricity, telephone and other public services used on the leased premises.

LESSEE shall pay before delinquency all real property taxes, sales tax, and assessments assessed against the leased premises including land, buildings and improvements.

LESSEE also shall pay all taxes, licenses and fees levied, assessed or imposed by reason of LESSEE's use of the premises including all personal property taxes. In the event that any taxes and/or assessments are paid by LESSOR, LESSEE hereby agrees to reimburse LESSOR upon presentation of bills for same by LESSOR or the public agency responsible therefore.

XIII

ASSIGNMENT

The LESSEE shall not sublet the leased premises or any part thereof, nor assign or transfer this lease without the written consent of LESSOR, but LESSOR agrees that it will not unreasonably withhold consent provided such assignment, subletting, or transfer will not relieve LESSEE of the agreements and obligations contained herein. The

voluntary or other surrender of this lease by LESSEE, or a mutual cancellation thereof, shall not work a merger, and shall at the option of LESSOR, terminate all or existing subleases or sub tenancies or may, at the option of LESSOR, operate as an assignment to him of any or all of such subleases or sub tenancies.

XIV

DEFAULT

In the event that LESSEE shall any time fail, neglect or refuse to pay when due any other sum or sums which may become due from LESSEE to LESSOR hereunder, or shall fail, neglect or refuse to perform or observe one or more of the other covenants or conditions of this lease on its part to be performed or observed, or should the leased premises be vacated or abandoned, and in the event that any such failure, neglect, refusal or abandonment shall continue after the expiration of a three (3) day period from after the service of written notice by LESSOR upon LESSEE in the event of non-payment of rent, or of a fifteen (15) day period from and after the service of such a notice in the event of any other default, then, after the expiration of said period or at any time thereafter during the continuance of such failure, neglect, refusal or abandonment without further notice or demand either to LESSEE or any persons or person claiming under it, LESSOR may, at its option (a) accelerate the rental for the whole of the unexpired term and it shall become immediately due and payable; (b) remain out of possession of the leased premises and continue to enforce all of the terms and conditions of this lease, which shall include the right to recover from LESSEE each installment of rent as it becomes due; (c) enter upon and repossess the leased premises.

XV

ALTERATIONS, MAINTENANCE AND REPAIRS

LESSEE, at his sole cost and expense, shall maintain subject premises in a neat and orderly condition at all times. Trash, papers, garbage and other debris shall not be permitted to accumulate on parking lot or around leased premises.

In the event LESSOR notifies LESSEE in writing of any unsightly condition existing on subject premises, LESSEE hereby agrees to forthwith correct the condition to LESSOR's satisfaction.

LESSEE further agrees to maintain and keep in good repair all improvements on subject premises including buildings and structures so that said buildings and improvements are at all times in a neat, orderly, attractive and safe condition and in good repair.

LESSEE shall not make any alterations or place or permit to be placed any sign, marquee or awning on the premises without written consent of LESSOR first obtained,

and LESSOR may post notices of said premises to exempt him from responsibility for any work done by LESSEE on the leased premises.

LESSOR reserves the right, without obligation on its part to do so, to further develop or improve the facilities herein regardless of the desire or view of the LESSEE, and without interference or hindrance. In the event LESSOR so elects to install, erect, improve or construct such improvements, the LESSOR shall bear the entire costs thereof.

XVI

SIGNS

LESSEE may affix on premises signs bearing LESSEE's name or the name of the propose business, provided, however, that such signs must be first submitted to the LESSOR for its approval of the design, size, style, color and dimension and locations of all such signs. Within ten (10) days after submittal of a sketch of such signs showing the details specified above, LESSOR shall indicate its written approval or disapproval and suggested alterations to correct the sign to LESSOR's satisfaction. LESSOR shall not be unreasonable in withholding approval in connection with the foregoing.

XVII

CHANGES REQUIRED BY LAW

In the event any changes, improvements, or additions to the premises, as distinguished from repairs, are required to be made during the term of this lease by any governmental authority or under or by virtue of any law, ordinance or governmental regulation because of the nature of LESSEE's business or his use of the premises, the same shall be made and paid for by LESSEE.

XVIII

LIENS

LESSEE covenants to keep the premises and the improvements thereon at all times during the term hereof free of mechanics' liens and other liens of like nature other than liens created or claimed by reason of any work done or the instance of LESSOR, and at all times to protect fully and indemnify LESSOR against all such liens or claims which may ripen into such liens and against all attorneys' fees, and other costs and expenses growing out of or incurred by reason of or on account of such liens or claims.

XIX

SUBORDINATION

This lease shall be subordinate to the provisions and requirements of any existing or future agreement between the LESSOR and the United States of America relative to the development, operation, or maintenance of the Airport and the provisions of any existing or future agreement between the LESSOR and the United States of America relative to the operation or maintenance of the Airport, the execution of which has been or may be required as condition precedent to the expenditures of federal funds for the development of the Airport.

XX

COSTS AND FEES

LESSEE agrees to pay all costs, expenses and LESSOR's attorney's fees in any action or proceeding commenced by LESSOR to enforce provisions in this lease.

LESSOR, however, shall be required to pay costs, expenses and LESSEE's attorney's fees in the event that the Court sustains LESSEE in any action between LESSOR and LESSEE.

XXI

NOTICE

Wherever in this lease it shall be required or permitted that notices of demand be given or served by either party to this lease to or on the other, such notice or demand shall be given or served and shall not be deemed to have been duly given or served unless in writing which is served personally or by certified or registered mail, addressed as follows:

LESSOR: City Hall, 608 Heber Avenue, Calexico CA 92231

LESSEE: Enrique Juarez, 805 West 2nd Street, Calexico CA 92231

XXII

WAIVER

Except to the extent that the LESSOR may have otherwise agreed in writing, no waiver by LESSOR of any breach by LESSEE of any of their obligations, agreements or covenants hereunder shall be deemed to be a waiver of any subsequent breach of the same or any other covenant, agreement or obligation. No shall any forbearance by

LESSOR to seek a remedy for any breach LESSEE be deemed a waiver by LESSOR of its rights or remedies with respect to such breach.

XXIII

TIME OF ESSENCE

Time is expressly declared to be the essence of this lease, and of each, every and all of the covenants and conditions herein contained.

XXIV

CONSTRUCTION OF LANGUAGE

Wherever in this lease any word of obligation or duty regarding either party are used they shall have the same force and effect as though in the expressed forms of covenants. The language in all parts of the lease shall be construed simply, according to its fair meaning and not strictly in favor of or against LESSOR or LESSEE.

XXV

PARTIES BOUND

This lease shall be binding upon and inure to the benefit of, as the case may require, the parties hereto and their executors, administrators, personal representatives, heirs, devisees, legatees and assigns, subject, however, all agreements and restrictions herein contained with respect to the assignment of, or other transfer of the interests of LESSEE.

XXVI

AGREEMENT

This lease containing a complete expression of the agreement between the parties hereto, and each party warrants there are no promises, representations, agreements, warranties, or inducements except such as are made herein and fully set forth. No alterations of any of its terms, covenants, or conditions shall be binding unless reduced to writing and signed by the parties hereto. It is agreed that each and every of the rights, remedies and benefits provided by this lease shall be cumulative, and shall not be exclusive of any other of said rights, remedies and benefits or of any other rights, remedies and benefits allowed by law.

XXVII

RENT ADJUSTMENT

The rental payments shall be adjusted annually by a 3% (three) percent annual increase over the term of the lease. See Exhibit "C".

XXVIII

TERMINATION OF LEASE

LESSOR OR LESSEE may terminate this lease upon giving sixty (60) days notice of said intent. If LESSOR (the City) exercises its right to terminate this lease, any improvements made by the LESSEE including the metal building, if not owned by the LESSOR, shall be removed from the land within a period time, and under terms and conditions agreed upon in writing between LESSOR and LESSEE. If LESSEE terminates this lease for any reason, any improvements made by the LESSEE and the metal building, if not owned by the LESSOR, shall be removed from the land within 30 days from the date of termination. If after 30 days LESSEE has not removed the metal building, or made other arrangements in writing with LESSOR, said building and any remaining contents shall become the property of LESSOR.

XXIX

SEVERANCE

If any provisions of this lease is determined to be void by a court of competent jurisdiction, then such determination shall not affect any other provision of this lease, and all such other provisions shall remain in full force and effect.

XXX

FUTURE AIRPORT DEVELOPMENT RESERVATIONS

Any lease or lease amendment will be with a complete understanding by both parties that the City of Calexico is planning future development and expansion of the Calexico International Airport within the next few years and the lease agreement will not in any way provide the LESSEE a leasehold or restriction on the property to be developed.

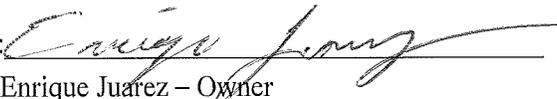
IN WITNESS WHEREOF, the LESSOR and LESSEE have executed this lease agreement as of the day and year first above written.

IN WITNESS WHEREFORE, the parties hereto have executed this agreement in duplicate on the day and year above written.

LESSOR: CITY OF CALEXICO

By: _____
City Manager

LESSEE: TENNANT

By: 
Enrique Juarez – Owner

Attention:
(The California Government Code requires that all lease of City property be recorded at the Office of the County Recorder. Therefore, the signatures on this page must be notarized)

#

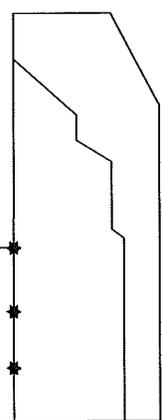
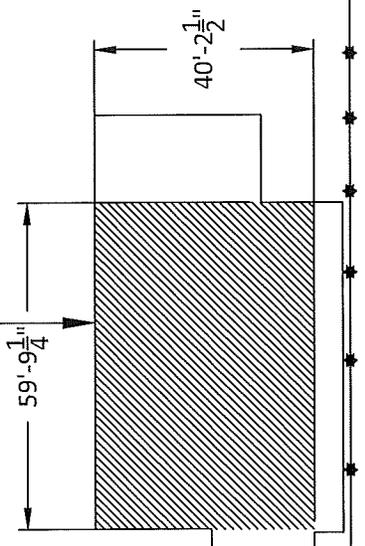
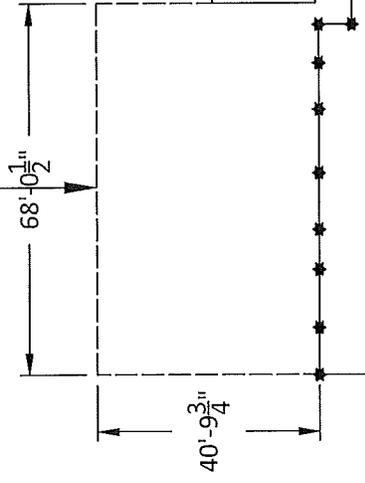
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EXHIBIT - A

Parking Area
(2720 SFT)

Restaurant
(2400 SFT)

Terminal Building



2nd Street

EXHIBIT "B"

LEASE PROVISIONS REQUIRED BY THE
FEDERAL AVIATION ADMINISTRATION

1. The LESSEE, for herself, hers heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree "as a covenant running with the land" that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this lease, for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, the LESSEE 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 Assisted Programs of the Department of Transportation Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
2. The LESSEE, for herself, her personal representative, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree "as a covenant running with the land" that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination, (3) that the LESSEE shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulation may be amended.
3. That in the event of breach of any of the above nondiscrimination covenants, LESSOR shall have the right to terminate the lease, and to reenter and repossess said land and the facilities thereon, and hold the same as if said lease, had never been made or issued. This provision does not become effective until the procedures of 49 CFR Part 21 are allowed and completed including expiration of appeal rights.

.....

4. LESSEE shall furnish its accommodations and/or services on a fair equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service; PROVIDED THAT the LESSEE may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar type of price reductions to volume purchasers.
5. Non-compliance with Provision 4 above shall constitute a material breach thereof and in the event of such non-compliance with LESSOR shall have the right to terminate this lease agreement, and the estate hereby created without liability therefore or at the election of the LESSOR or the United States either or both said Governments shall have the right to judicially enforce provisions.
6. LESSEE agrees that it shall insert the above five provisions in any lease agreement, by which said LESSEE grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public on the premises herein leased.
7. The LESSEE assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The LESSEE assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The LESSEE assures that it will require that its covered sub-organizations provide assurance to the LESSOR, 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, Subpart E, to the same effect.
8. The LESSOR reserves the right to further develop or improve 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 the LESSEE in this regard.
9. The LESSOR reserves the right, but shall not be obligated to the LESSEE 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 the LESSEE in this regard.
10. This lease shall be subordinate to the provisions and requirements of any existing or future agreement between the LESSOR and the United States, relative to the development, operation or maintenance of the airport.

11. There is hereby reserved to the County, 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 herein leased. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace of landing at, taking off from or operation on this airport.
12. LESSEE agrees to comply with notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction of building is planned for the leased premises, or in the event of any planned modification or alteration of any present or future building or structure situated on leased premises.
13. The LESSEE, by accepting this lease expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or object nor permit the growth of any tree on the land leased hereunder which would violate the obstruction height limitations as set forth in Federal Air Regulation (FAR), Part 77. In the event the aforesaid covenants are breached, the LESSOR reserves and the right to enter upon the land leased hereunder and to remove the offending obstruction, all of which shall be at the expense of the LESSEE.
14. The LESSEE, by accepting the lease, agrees for itself, its successors and assigns that it will not make use of the leased premises or any manner which might interfere with the landing and taking off of aircraft from this airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the LESSOR reserves the right to enter upon the premises hereby leased and cause the abatement of such interference at the expense of the LESSEE.
15. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308a of the Federal Aviation Act of 1958, as amended.
16. 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 non-exclusive use of the airport by the United States during time of war or national emergency.

Calexico International Airport
March 8, 2018
Exhibit "C"

Desert Rose
Fees for new 3-year lease agreement
And automatic renewal

March 8, 2018	March 7, 2019	\$884.05
March 8, 2019	March 7, 2020	\$911.55
March 8, 2020	March 7, 2021	\$938.89
Automatic Renewal Option		
March 8, 2021	March 7, 2022	\$967.05
March 8, 2022	March 7, 2023	\$996.06
March 8, 2023	March 7, 2024	\$1025.94