AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

AgendaTitle:
Retail Lease Agreement; Donald Ruwald dba Peaceful Forest Creations; 7/1/13 thru 6/30/14

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement: Peaceful Forest Creations and Gunnison County

Term Begins: 7/1/2013 **Term Ends:** 6/30/2014 **Grant Contract #:**

Summary:
Vendor Services in the Airport; Retail Shop

Fiscal Impact: Likely less than $500

Submitted by: B. Lucero for S. Mick **Submitter's Email Address:** smick@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:

This agreement resulted in $175.74 from July 1 through December 31, 2012. Depending on how long the vendor took to get the sales cycle started, this agreement will likely result in less than $500 of contract revenue from gross sales.

Reviewed by: Bcowan Discharge Date: 6/11/2013

County Attorney Review: (●) Required ( ) Not Required

Comments:

o.k. db 6/11/13

Reviewed by: DBaumgarten Discharge Date: 6/11/2013 Certificate of Insurance Required Yes (●) No ( )

County Manager Review:

Comments:

Reviewed by: MBirnie Discharge Date: 6/12/2013

(●) Consent Agenda ( ) Regular Agenda ( ) Worksession Time Allotted:

Agenda Date: 6/18/2013 Follow Up Agenda Date: N/A

Revised April 2013

RETAIL LEASE AGREEMENT

This Lease Agreement is made and entered into on this ____ day of _____, 20___ by and between the BOARD OF COUNTY COMMISSIONERS OF GUNNISON COUNTY, COLORADO, a political subdivision of the State of Colorado, hereinafter referred to as the "County", and Donald Ruwald dba Peaceful Forest Creations, hereinafter referred to as the "Lessee".

WHEREAS, the County, owns and operates the Gunnison-Crested Butte Regional Airport located within and adjacent to the City of Gunnison, including the Air Carrier Terminal building; and

WHEREAS, the County has determined that the convenience and interests of air travelers and members of the public would best be served if gifts, souvenirs and similar items were offered for sale at such Terminal during regular business hours; and

WHEREAS, the Lessee is willing to operate a retail shop at the Terminal under the terms and conditions of this agreement;

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, the County and the Lessee do hereby agree as follows:

1. TERM

The term of this lease agreement shall commence on July 1, 2013, and continue until June 30, 2014, unless sooner terminated under the terms hereof.

2. GRANT OF LEASE

The County hereby grants to the Lessee the right to occupy and use, together with necessary rights of ingress and egress, those premises more particularly identified in Exhibit 1, and by reference incorporated herein. The premises are located on the second floor of the Terminal and consist of 120 square feet of floor space as indicated on **Exhibit 1**.

3. USE OF LEASED PREMISES

The Lessee hereby agrees to use the subject premises for the purpose of operating a retail shop for clothing, jewelry, photographs, handcrafted items and gift shop merchandise, serving airline passengers and members of the general public who utilize the Airport Terminal. Such use shall at all times be conducted in a manner consistent with the terms of this agreement, in accordance with applicable federal, state and local laws, rules and

regulations and in accordance with any rule, manual or program adopted for the operation of the Gunnison-Crested Butte Regional Airport.

No amusement or vending machines shall be installed or maintained in or upon the Lessee's leased premises without prior written approval of the County. No food sales shall be permitted on the leased premises without prior written approval of the County.

The Lessee, its employees, passengers, guests, patrons and invitees shall have the right to use all public areas and facilities in the Terminal including, but not limited to common areas, restrooms, vehicle parking areas and vehicle loading and unloading areas adjacent to the Terminal building. Nothing contained in this paragraph shall prevent the County from enforcing the provisions of ordinances, resolutions or regulations relating to the control of parking at the Gunnison-Crested Butte Regional Airport or the collection of fees and fines for such parking.

Neither the Lessee, its employees, passengers, guests, patrons nor invitees shall be allowed to bring or keep animals or pets on the leased premises.

4. COMPENSATION

For and in consideration of the rights granted herein, the Lessee agrees to pay monthly to the County 8% of the gross revenue for each calendar month of the lease term.
All compensation to be made pursuant to this Section 4. shall be delinquent if not received by the 30th day of the month following the then-current month. In addition to each such delinquent payment due, for each delinquent payment due, a late charge of two hundred dollars ($200.00) per month shall be assessed against Lessee and paid forthwith by Lessee for each calendar month or portion of a calendar month for which the payment remains delinquent; interest shall accrue against Lessee and shall be forthwith paid by Lessee at the rate of one percent (1%) per month on all delinquent balances.

Payments for space rental are due on the 30th day of each month and made payable to the "Gunnison County Treasurer". Payments should be mailed or delivered to the Gunnison County Finance Office at 200 East Virginia Avenue, Gunnison, CO, 81230.

5. OPERATIONS

The Lessee agrees to secure all necessary sales tax licenses, business permits and other approval required by the City of Gunnison and the State of Colorado. Such licenses shall be separate and apart from licenses and permits relating to any other retail location operated by the Lessee.

The Airport Manager shall have the right to make reasonable objections to or require the immediate removal from sale or display of any materials, which in the sole discretion of the County are objectionable for any reason whatsoever. The Lessee shall promptly comply or such failure shall constitute a material breach of this agreement.

The Lessee may place one sign not larger than eight square feet on the signboard outside the leased premises. Any sign to be attached to or hung upon the wall must receive prior approval from the County. The activities of the Lessee shall be limited to the leased premises only and no solicitation; advertising or personal contact shall take place out the leased premises or on other Airport property.

Lessee's hours of operation shall be commensurate to fit the needs of passengers departing from and arriving at the Airport as may vary from time to time.

The Lessee specifically recognizes and agrees that the leased premises are part of the Terminal, which is closed during certain hours of the day and evening and is utilized expressly for purposes relating to members of the public traveling to and from Gunnison County by commercial airlines. The Lessee hereby agrees that the use proposed for the leased premises is consistent with the use of the building for the intended purpose and accepts the closure of the building during those times when it is not required for such purpose.

The Lessee agrees to conduct its business hereunder for the accommodation of the public using the Gunnison-Crested Butte Regional Airport and to furnish good, prompt and efficient service. The Lessee agrees to provide service on a fair, equal and non-discriminatory basis to all airport users and to charge fair, reasonable and non-discriminatory prices for merchandise and service. The Lessee, its agents and employees, will not discriminate against any person or class of person by reason of race, color, creed or national origin in providing any services or in the use of any of its facilities provided for the public in any manner prohibited by Part 21 of the regulations of the office of the Secretary of Transportation.

The County has, at its own expense, brought certain public utility services to the Terminal building and the premises leased hereunder. Within the limits of capacity and without charge other than the monthly lease payments set forth herein, the Lessee shall have the right to use and make connection therewith; provided, however, that the County may, at its sole option, install metering devices to determine the amount of electrical power consumed by computers equipment utilized solely by and for the benefit of the Lessee. Thereafter, the Lessee shall pay for the electrical power measured by such meter. If additional or expanded utility services or lines are required by the Lessee's operations, the cost of such services and lines shall be paid by the Lessee.

It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right, except insofar as this Lease grants an exclusive right to occupy the leased premises in accordance with its terms.

6. MAINTENANCE, REPAIRS AND IMPROVEMENTS

During the term of this agreement, the Lessee shall provide its own janitorial services and shall at all times keep its leased premises in a neat and clean condition and in good repair (ordinary wear and tear, unavoidable accident and fire excepted). In all events and in each day of its operation, Lessee shall periodically and fully cleanup the area around its leased premises. The County shall operate, maintain and keep in good repair the Terminal building and Airport facilities.

The County and its authorized officers, employees, agents and other representatives shall have the right (at such times as may be reasonable under the circumstances) to enter upon the Lessee's leased premises to inspect the premises at reasonable business hours or in case of emergency, to perform necessary maintenance and repairs in order to preserve the structural safety of such premises or the Terminal building or to correct dangerous conditions, or in the exercise of the County's police power. No such entry by or on behalf of the County upon such leased premises shall, in and of itself, cause or constitute a termination of letting thereof or be deemed to constitute an interference with the possession thereby by the Lessee.

The County reserves the right, at its sole cost and expense, to enlarge and improve the Terminal and Airport facilities. The Lessee recognizes and accepts that during the term of this lease agreement such enlargement and improvements, together with some ordinary maintenance activities, may cause inconvenience for the Lessee. The Lessee agrees that no liability shall attach to the County or its agents or employees by reason of such inconvenience caused by such activities. Prior to taking any action, which would adversely affect the operations of the Lessee, the County agrees to consult with the Lessee; however, this shall not preclude the County from taking any action it deems necessary for the immediate protection of persons or property.

The Lessee shall not modify, alter, construct or reconstruct the leased premises and shall obtain prior written approval for the installation of any electrical wiring or other utilities except telephone. The County shall approve the method of installation of all utilities, including telephones. Any changes in decor shall be in keeping with the general decor of the Terminal and shall receive prior approval of the County's building & grounds supervisor. Existing wood surface shall not be painted, stained or otherwise covered in a permanent manner.

All equipment and property placed by the Lessee at its expense in, on or about the leased premises, including all trade fixtures temporarily affixed to the leased premises but which

may be removed without damage thereto, shall remain the property of the Lessee and the Lessee shall have the right at any time during the term hereof, when not in default hereunder, to remove all such equipment, property and trade fixtures. All property placed by the Lessee at its expense in, on or about the premises and affixed to the premises so that the same may not be removed without damage thereto, shall become the property of the County and shall not be removed by the Lessee at any time.

7. IMMIGRATION

Operator certifies that it does not and will not knowingly contract with or employ illegal aliens to work under this Agreement.

Operator certifies that it will require its subcontractors to certify that they do not knowingly contract with or employ illegal aliens to work under this Agreement.

Operator certifies that it will attempt to verify the eligibility of its employees and subcontractors to work through the Basic Pilot Employment Verification Program administered by the Social Security Administration and Department of Homeland Security.

Operator agrees to comply with the provisions of C.R.S. 8-17.5-101 et seq., and comply with all reasonable requests made in the course of an investigation under said statute by the Colorado Department of Labor and Employment

8. INDEMNIFICATIONS AND INSURANCE

The Lessee agrees to hold the County harmless, to release and indemnify the County from and against any and all claims, demands, damages and liabilities (including costs and expenses incurred in the defense thereof) for injury to persons or damage to property arising from the Lessee's operations or the activities of any officer, agent or employee of the Lessee. For the purposes of this paragraph, "operations" shall include, but not be limited to, those activities and services required or permitted under the terms of this agreement.

The County agrees that the Lessee need not release, save harmless or indemnify the County against damages or injuries caused solely by the negligence of the County, its agents, officers or employees.

The Lessee agrees to obtain and keep in force, throughout the term of this lease agreement, comprehensive general liability insurance including contractual liability with limits not less than $350,000 for any injury to one person in any single occurrence, and $990,000 for any injury to two or more persons on any single occurrence. The Lessee shall also maintain and keep in force at all times adequate Workers' Compensation insurance, including occupational disease hazards, for all of its employees. The County shall not be named as an insured in any

insurance policy required hereunder, but said policies shall contain a provision insuring contractual liability of the Lessee to the County. The Lessee shall furnish, at the County's request, current certificates of insurance to the County, which shall include a provision that the policies will not be canceled without ten days' prior notice to the County.

The Lessee further agrees to promptly pay when due all bills, debts and obligations incurred by it in connection with its operation of said business on the leased premises and not permit the same to become delinquent and to suffer no lien, mortgage, judgment or execution to be filed against said premises or improvements thereon which will in any way impair the rights of the County under this agreement.

Neither the existence of the insurance required hereunder nor the naming of the County as an additional insured shall be deemed a waiver by the County of any defense or claim of sovereign immunity, nor a waiver of any other provision of law relating to the liability of governmental units or the limits thereof.

9. DAMAGE TO OR DESTRUCTION OF PREMISES

In the event that the premises leased hereunder, or any portion thereof, shall be destroyed or damaged by fire or otherwise to an extent which renders them untenable, the County may rebuild or repair such destroyed or damaged portions, and the obligation of the Lessee to pay the compensation hereunder shall abate as to such damaged or destroyed portions during the time they shall be untenable. In the event that the County shall elect not to proceed with the rebuilding or repair of the major portion of the premises (if so destroyed or damaged) within a period of 90 days after the destruction or damage, the Lessee may, it its option, cancel and terminate this lease. In the event that the County shall elect to rebuild, the Lessee must replace all personal property at its sole cost.

The County shall not be liable for any loss of property by theft or burglary from the Airport or Terminal or for any damage to persons or property on said Airport or Terminal resulting from the electric lighting or water, rain or snow, which may come into or issue or flow from any part of said Airport, or from the pipes, plumbing, wiring, gas or sprinklers thereof.

10. ASSIGNMENT

The Lessee covenants and agrees not to assign, sublet, pledge or transfer any of its rights granted in this agreement, in whole or in part, nor grant any license or concession hereunder, without first obtaining the written consent of the County, which consent may be withheld by the County for any reason whatsoever in the County's sole discretion. Any attempt by the Lessee to assign, sublet or in any way transfer its interest hereunder without such prior written consent shall, at the County's option, automatically terminate this agreement and the Lessee's rights hereunder.

11. DEFAULT

The Lessee shall be considered to be in default of this agreement upon or after any one of the following:

a. the Lessee fails to pay the compensation required hereunder when due; or

b. the Lessee fails to pay each and every late charge and interest payment within thirty (30) days of its being due; or

c. the Lessee files a voluntary bankruptcy petition or makes a general assignment for the benefit of creditors or consents to the appointment of a receiver, trustee or liquidator of any or substantially all of its property; or

d. the Lessee transfers its interest under this agreement without the approval of the County by reason of death, operation of law, assignment, sublease or otherwise, to any other person, firm or corporation; or

e. the Lessee voluntarily abandons, deserts or vacates the leased premises; or

f. any lien is filed against the leased premises because of any act or omission of the Lessee and shall not be discharged or contested by the Lessee in good faith by proper legal proceedings within 20 days after receipt of notice thereof by the Lessee; or

g. the Lessee fails to keep, perform and observe each and every other promise, covenant and agreement set forth in this lease agreement which failure continues for a period of more than 30 days after written notice from the County of such breach or default; or

h. the Lessee uses or gives its permission to any person to use any portion of the Airport, Terminal or leased premises for any illegal purpose.

If the Lessee defaults in any of the covenants, terms and conditions herein contained, the County may proceed in either of the following manners. The County may elect to allow this agreement to continue in full force and effect and to enforce all of the County's rights and remedies hereunder, including without limitation, the right to collect monthly lease payments as they become due together delinquent payments and interest as set forth herein. The County may, at its sole option, cancel and terminate this agreement upon 30 days' written notice to the Lessee and may repossess the premises without liability for so doing, in the event of any breach of the covenants contained herein, unless such default has been cured within such 30 days.

No waiver of default by either party any of the terms, covenants or conditions hereof to be performed, kept and observed by the other party shall be construed as, or operate as, a waiver of any subsequent default of any of the terms, covenants or conditions herein contained to be performed, kept and observed by the other party.

12. FORCE MAJEURE

Neither party hereto shall be liable to the other for any failure, delay or interruption in the performance of any of the terms, covenants or conditions of this agreement due to causes beyond the control of that party including, without limitation, strikes, boycotts, labor disputes, embargoes, shortage of material, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellion, sabotage or any other circumstances for which such party is not responsible or which is not in its power to control.

13. AGREEMENT WITH THE UNITED STATES

This lease agreement is subject and subordinate to the terms, reservations, restrictions and conditions of any existing or future agreements between the County and the United States, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to the County for airport purposes, and the expenditure of federal funds for the extension, expansion or development of the Gunnison-Crested Butte Regional Airport.

14. NOTICES

Notices to the County provided for herein shall be sufficient if sent by registered mail addressed to:

Airport Manager
519 Rio Grande Ave.
Gunnison, CO 81230

and notices to the Lessee, if sent by registered mail, addressed to:

Donald Ruwald
P.O. Box 7032

Gunnison, CO 81230

15. SEVERABILITY

In the event any covenant, condition or provision contained in this lease agreement is held by any court of competent jurisdiction to be invalid, the in validity of such covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained. Provided, however, that if the invalidity of such covenant, condition or provision causes material prejudice to either party hereto with respect to its respective rights and obligations contained in the remaining valid portions of this agreement, then at the option of such party, this agreement may be declared to be terminated.

16. GOVERNING LAW - BINDING AGREEMENT

This lease agreement shall be deemed to have been made in and be construed in accordance with the laws of the State of Colorado and be binding upon the parties hereto, their successors and assigns.

17. ENTIRE AGREEMENT

The parties acknowledge and agree that the provisions contained herein constitute the entire agreement and that all representations made by any officer, agent or employee of the respective parties unless included herein are null and void and of no effect. No alterations, amendments, changes or modifications, unless expressly reserved herein, shall be valid unless executed by an instrument in writing by all the parties within the same formality as this agreement.

18. VENUE

Venue for any and all legal actions regarding this Retail Lease Agreement shall lie in the District Court in and for the County of Gunnison and State of Colorado.

19. GROSS REVENUES

In order to facilitate County compliance with federal requirements, the Lessee shall submit to the County by September 30 of each year a written report of gross revenues generated by the Lessee at the Gunnison-Crested Butte Regional Airport during the preceding twelve (12) months. The County shall have the right at its own expense to audit the lessee's book and records and any portions thereof.

In witness whereof, the parties hereto have set their hands and seals on the day and year first set forth above.

BOARD OF COUNTY COMMISSIONERS
OF GUNNISON COUNTY, COLORADO

By _____
Paula Swenson, Chairperson

By _____
Phil Chamberland, Commissioner

By _____
Jonathan Houck, Commissioner

Attest:

_____

Peaceful Forest Creations

By_____
Donald Ruwald, Owner