

# CITY CLERK ORIGINAL

C-7846-1  
02/26/2013

AMENDMENT NO. 1  
TO  
GLENDALE AIRPORT RESTAURANT LEASE

This Amendment No. 1 to the Glendale Airport Restaurant Lease (Contract No. C-7846) is made this 26<sup>th</sup> day of FEBRUARY, 2013 ("Effective Date"), by and between the City of Glendale, an Arizona municipal corporation ("City") and Left Seat West at Glendale, Inc., an Arizona corporation ("Lessee").

## RECITALS

- A. City and Lessee previously entered into the Glendale Airport Restaurant Lease (Contract No. C-7846), effective November 22, 2011 ("Original Lease"); and
- B. City and Lessee wish to modify and amend the Lease subject to and strictly in accordance with the terms of this Amendment.

## AGREEMENT

In consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Lessee hereby agree as follows:

- 1. **Recitals.** The recitals set forth above are not merely recitals, but form an integral part of this Amendment.
- 2. **Rent.** Section 3.1 of the Original Lease is deleted and replaced with the following as of the Effective Date of this Amendment:

3.1 Lessee's rent for the lease of the Premises is as follows:

- a. During the first year of Lessee's lease of the Premises:
  - 1. The rent due for month one will be equal to 1% of Gross Revenue, as defined in this section below (the "Percentage Rent" for this period).
  - 2. The rent due for month two will be equal to 2% of Gross Revenue.
  - 3. The rent due for month three will be equal to 3% of Gross Revenue.
  - 4. The rent due for month four will be equal to 4% of Gross Revenue.
  - 5. The rent due for month five will be equal to 5% of Gross Revenue.
  - 6. The Rent due for month six will be equal to 6% of Gross Revenue

7. The rent due for months seven through 11 will be equal to \$800 (the "Base Rent" for this period) or 6% of Gross Revenue, whichever is greater.
  8. For months 12 through 60 of Lessee's lease of the Premises, the Base Rent will be equal to \$300 and the Percentage Rent will be 3% of Gross Revenue. Lessee will remit, as set forth below, for each month the greater of the Base Rent or the Percentage Rent.
3. **Utilities.** Section 6 of the Original Lease is deleted and replaced with the following as of the Effective Date of this Amendment:

**6. Utilities**

6.1 Lessee is responsible for the following utility services to the Premises:

- a. **Natural Gas.** For months 1 through 11 of Lessee's lease of the Premises, natural gas, which the City will bill to Lessee and Lessee will pay to the City, is at a flat rate of \$220 per month, with the initial partial month prorated based on a daily rate. For month 12, natural gas will be billed to Lessee at a flat monthly rate of \$415. Beginning in month 13, which the parties agree is January 1, 2013, gas will be billed to Lessee at a flat monthly rate that represents 1/12 of the total cost of the natural gas consumed by Lessee during the prior calendar year. The natural gas consumed by Lessee during the prior calendar year will be determined by the following formula:

Total Glendale Municipal Airport natural gas consumption for prior year MINUS the Base Natural Gas Usage. The Base Natural Gas Usage is the total Therms used in calendar year 2011 as shown on the Glendale Municipal Airport invoices or 3,637 Therms.

The flat rate will be adjusted annually based on the previous 12 month's actual consumption.

- b. **Electrical Service.** For month's 1 through 11, City will bill electrical service, which is sub-metered for the Premises, and the Lessee will pay to the City in full on a monthly basis. For month 12, electric service will be billed to Lessee at a flat monthly rate of \$200. Beginning in month 13, which the parties agree is January 1, 2013, electric service will be billed to Lessee at a flat monthly rate that represents 1/12 of the total cost of the electricity consumed by Lessee during the prior calendar year. The electricity consumed by Lessee during the prior calendar year will be determined by the following formula:

Total electrical usage for the Glendale Municipal Airport terminal building, meter No. CG5447, MINUS the Base Electricity Usage. The Base Electricity Usage is the total kilowatt hours used in calendar year 2011 or 583,120 KWh.

The flat rate will be adjusted annually based on the previous 12 month's actual consumption.

- c. Other. Any communications fees, including telephone, internet, television, etc., which Lessee will arrange and pay directly to the service provider.
- 6.2 The City is responsible for the payment of water and wastewater service and trash collection.
- 6.3 Lessee must pay all utility charges to the provider before the charge becomes delinquent, and Lessee must pay all billings from the City within 15 days of receipt of the billing.
- 6.4 If Lessee fails to pay all utility charges to the City by five days after the due date Lessee is responsible for interest on the unpaid balance at the rate of 18% per annum from the due date until payment is made in full.
- 4. **Assignment and Sub-Letting.** Section 12 of the Original Lease is deleted and replaced with the following as of the Effective Date of this Amendment:
  - 12. **Assignment and Sub-Letting**
  - 12.1 Lessee may not assign or sub-lease any of its interest under this Agreement, nor permit any other person to occupy the Premises.
  - 12.2 Lessee may not mortgage, encumber, or assign any portion of its right, title, and interest in this Agreement to lenders for any purpose.
- 5. **Ratification of Agreement.** City and Lessee hereby agree that except as expressly provided herein, the provisions of the Original Lease shall be and remain in full force and effect and that if any provision of this Amendment conflicts with the Original Lease, then the provisions of this Amendment shall prevail.

(Signatures appear on the following page.)

