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MARICOPA COUNTY RECORDER
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11/22/2011

WHEN RECORDED, RETURN TO:
City of Glendale
City Clerk
5850 West Glendale Avenue
Glendale, Arizona 85301

GLENDALE AIRPORT RESTAURANT LEASE

This Lease Agreement ("Agreement") is executed to be effective the 22nd day of November, 2011, between the City of Glendale, an Arizona municipal corporation ("City"), and Left Seat West at Glendale, Inc., an Arizona corporation, authorized to do business in the State of Arizona ("Lessee").

RECITALS

A. The City is the owner of the Glendale Municipal Airport located at 6801 North Glen Harbor Boulevard ("Airport") and the Glendale Municipal Airport Terminal Building (the "Terminal");

B. Lessee desires to lease certain space (the "Premises") in the Terminal on which to occupy and operate a restaurant for Airport patrons and visitors as described in Exhibit A attached hereto as well as certain equipment within the Premises described as Exhibit B attached hereto; and

C. The City is willing to lease the Premises to Lessee on the terms and conditions specified herein.

AGREEMENT

1. Grant of Lease

1.1 The City leases to Lessee the Premises described as Suite 104 of the Terminal consisting of 1,729 square feet of terminal space and 512 square feet of adjoining patio space, which is further described in Exhibit A of this Agreement.

1.2 The purpose of the lease of the Premises by the City to the Lessee under the terms and conditions set forth herein is to provide for Lessee's:

a. Operation of a restaurant establishment on the Premise that is open to the public and made available for the convenience of Airport patrons and visitors.

b. Preparation of food to be catered at locations within the Airport other than the Premises.

c. Limited marketing and sale of merchandise, such as t-shirts and caps, displaying the name or symbols of Lessee, provided however, Lessee's sale of merchandise will not become competitive with any gift shops operating in the Terminal.

1.3 By this Agreement, Lessee is granted the following privileges, uses, and rights related to the Premises:

a. All public facilities and improvements that are a part of the Terminal, including corridors, lavatories, and designated parking areas.

b. Ingress and egress from and to the Premises over and across the public portion of the Airport property and the public roadways serving the Airport to be utilized by the Lessee, its agents, employees, and invitees.

1.4 Lessee may not use the Premises for any purposes other than those specified above.

1.5 All rights and privileges granted in the Agreement to Lessee are non-exclusive.

1.6 Lessee is required to operate the restaurant each and every day except for legal holidays that are declared by the City or unless the Airport Manager provides a written exception to the restaurant being open and serving food to patrons and visitors of the Airport as follows:

a. 6:00 a.m. to 2:00 p.m.

b. Dinner hours are at the option of Lessee.

2. Term

2.1 Lessee's lease of the Premises commences on November 23, 2011 and expires on December 31, 2016, unless sooner terminated pursuant to the provisions of this Agreement.

2.2 Lessee may renew this Agreement three times each for a three-year period, subject to the same terms and conditions set forth herein, provided that:

a. Lessee is not in default of any of its obligations under this Agreement at the time of renewal or on more than one occasion during the term of this Agreement; and

b. Lessee and the City agree upon the rent for the Premises during the extension period.

2.3 To exercise a renewal option, Lessee must deliver to the Airport Manager:

a. Written notice of its intention to do so at least 90 days prior to any expiration of this Agreement; and

b. Proof of insurance as required by this Agreement must be presented with the notice of the intent to seek a renewal term.

3. Rent

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 12 will be equal to $800 (the "Base Rent" for this period) or 6% of Gross Revenue, whichever is greater.

b. During the 13th month through the 24th month of Lessee's lease of the Premises, the Base Rent will be $1,000 per month and the Percentage Rent will be 6% of Gross Revenue, and Lessee will remit, as set forth below, for each month the greater of the Base Rent or the Percentage Rent.

c. During the 25th month through the 60th month of Lessee's lease of the Premises, the Base Rent will be $1,200 per month and the Percentage Rent will be 6% of Gross Revenue, and Lessee will remit, as set forth below, for each month the greater of the Base Rent or the Percentage Rent.

3.2 Lessee must remit payment to the City on the first day of each month.

a. Payments must be remitted to the City's finance and accounting office at 5850 W. Glendale Avenue, Glendale, Arizona 85301.

b. On or before the 20th calendar day of each month (or the following business day if the 20th calendar day falls on a weekend or a legal holiday) Lessee will furnish City with a written statement, in a form satisfactory to the Airport Manager, reflecting Lessee's Gross Revenue for the preceding calendar month along with the amount due if the applicable Percentage Rent is greater than the applicable Base Rent for that month.

3.3 Lessee will furnish to the City an annual statement of Gross Revenue, prepared in accordance with generally accepted accounting principles, and an audit report on the statement from an independent certified public accountant, along with any amount not paid when due in accordance with the above provision of this Agreement.

3.4 For purposes of this Agreement, the term "Gross Revenue" means all amounts received or due from all sales, including service charges (but excluding ordinary and customary gratuity left for and provide directly to food service personnel) made at or from the Premises, whether made by Lessee or any of its agents, representatives, or affiliates and regardless of when or where the sales are made; whether sales are paid with money, by barter or through any other form of property or consideration; and when or whether payment for sales actually collected.

a. For any non-cash sales, the reasonable value of the consideration received or to be received is considered to be the sales price.

b. The following is excluded from Lessee's gross revenue:

1. All transaction privilege taxes, excise taxes or similar taxes collected by Lessee from its customers.

2. Receipts from any sale for which Lessee issues a partial or total refund to the extent of the refund actually made, whether by cash or credit, so long as Lessee does not claim any exclusion or deduction from gross revenues resulting from any arrangements for a hidden rebate, kickback or credit given or allowed to any customer.

3. As noted above, ordinary and customary gratuity left for and provide directly to food service personnel.

3.5 If Lessee fails to pay any rent in full on or before the fifth day following the due date, the unpaid amount will accrue interest at a rate of 18% per annum from the due date until payment in full is made.

3.6 City's acceptance of any monies from Lessee is not an admission of the accuracy of Lessee's figures or of the sufficiency of the amount of the payment, and the City reserves all legal rights to question the accuracy of Lessee's statements and the sufficiency of Lessee's payments.

4. Books and Records

4.1 At all times during the term of this Agreement and until all claims by the City for payments hereunder have been fully ascertained and paid, Lessee must keep, in accordance with generally accepted accounting principles, separate and accurate records of Lessee's gross revenues, showing in detail all business transacted on or from the Premises, and Lessee must enter all receipts arising from the business in regular books of account kept at the Airport for that purpose, and all entries in the records must be made at or about the time of the underlying transactions.

4.2 The City may inspect and copy the books and records of Lessee with respect to Lessee's operations under this Agreement at any time during normal business hours.

a. Information acquired by the City concerning Lessee's financial records will not be made public except as required by law.

b. Lessee must maintain all books and records at a mutually agreeable location in the City.

c. Lessee must provide the Airport Manager with a written description of Lessee's cash and sales record system and install a system, including equipment upon which Lessee records each transaction made on or from the Premises.

d. Each cash register will have locking totals and be accessible to and subject to inspection by the City.

4.3 The City may employ a certified public accountant to examine Lessee's books and records.

a. If the City determines, pursuant to an audit, that a discrepancy of more than 2% exists between the fees reported and paid to the City and the fees actually due, Lessee must pay the costs of the City's audit and resulting deficiencies within 15 days of billing by the City.

b. If the audit reveals an overpayment by Lessee to the City, a credit memorandum from the City will be issued for an amount equal to the overpayment and Lessee may deduct the overpayment from the next amount due to the City from Lessee after receipt of the credit memorandum.

c. If no future amount is due to the City by the Lessee, the overpayment will be promptly refunded by the City to Lessee.

4.4 Records of Lessee's gross revenues must be kept by Lessee and made available to the City for at least six years after the end of the term of this Agreement or the last renewal thereof.

5. Equipment

5.1 The City will supply to Lessee the equipment, furnishings and supplies ("City Equipment") listed in Exhibit B, attached hereto.

5.2 Lessee has the exclusive right to use the City Equipment in its operations of the Premises during the term of this Agreement; however, the City will continue to maintain full ownership of all City Equipment and the City Equipment may not be removed from the Premises nor may the equipment by pledged as collateral or security in any fashion.

5.3 The City will warranty the operation of the City Equipment for a period of one year as follows ("Equipment Warranty"):

a. The City will make any repairs to the City Equipment should it cease to perform in a functional manner.

b. The City will replace any City Equipment if it cannot be repaired, provided however, the City has the sole discretion to determine if the City Equipment can be repaired or should be replaced.

c. Lessee is responsible for all routine maintenance of the City Equipment associated with normal usage during the warranty period.

d. Lessee is responsible for repair or replacement of any City Equipment that is damaged due to unreasonable use, abuse, damage that could have been prevented by Lessee, or the failure of Lessee to properly maintain the City Equipment in accordance with the manufacturer's instructions.

5.4 After expiration of the Equipment Warranty, Lessee is responsible for all repairs, maintenance, and replacement of the City Equipment; provided however, except to the extent of any applicable manufacturer's warranty.

5.5 Lessee must return the City Equipment (or suitable replacements) to the City upon termination of this Agreement in as good a condition as the City Equipment was in at the start of this Agreement, normal wear and tear excepted.

5.6 All replacement City Equipment must be purchased by Lessee, ownership being free and clear, with no liens or encumbrances attached to the City Equipment.

5.7 Lessee will supply all other equipment, furnishings and supplies which Lessee considers necessary to operate its business, at its sole expense.

5.8 Lessee will maintain the grease traps for the property in accordance with industry practice but in all events maintenance will be as necessary to prevent odor or other nuisance and as necessary to prevent damage, and, at the termination of this Agreement, Lessee will arrange for the grease trap to be emptied and cleaned by the date of surrender.

5.9 The City will maintain and repair:

a. The fire suppression systems, both those integrated into the Terminal building structure and that which is a part of the fixtures of the Premises; and

b. The walk-in refrigerator and freezer, including the compressors serving these units.

6. Utilities

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

a. Natural gas, which the City will bill to Lessee and Lessee will pay at a flat rate of $220 per month, with the initial partial month prorated based on a daily rate;

b. Electrical service, which is sub-metered for the Premises and the City will bill Lessee who will pay to the City in full on a monthly basis; and

c. 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.

7. Improvements

7.1 All improvements and modifications made by Lessee must be constructed in a good, workmanlike manner and must comply with applicable City codes.

7.2 Lessee must secure written approval by the City prior to starting any improvement to or modification of the Premises.

a. Before commencing any improvements or modifications, Lessee will submit detailed construction plans and specifications to the City, and upon completion of any improvements or modifications, Lessee will furnish to the City two complete sets of detailed plans and specifications of the work as completed.

b. Prior to starting any construction of improvements or modifications to the Premises, Lessee must secure all applicable building permits, approvals and required insurance.

c. Lessee will begin construction of any improvements and modifications to the Premises within a reasonable period of time following the approval of the City and the issuance of a building permit, if necessary, for the construction, and construction must be completed in accordance with the schedule as listed for completion or as otherwise agreed upon by the City.

7.3 In addition, Lessee will furnish any additional information concerning any proposed improvements or modifications that the City may consider necessary with regard to the safety of the Premises or compatibility with the general use of the Airport.

7.4 The City may require modifications to the Premises that are necessary for the safety of air navigation.

7.5 If any of Lessee's improvements or modifications to the Premises interfere with any FAA navigational aid, Lessee is responsible, regardless of any City approval, for immediately removing the interference at its sole cost.

7.6 Prior to the commencement of any construction on the Premises, Lessee must provide the City with payment and performance bonds in amounts equal to the full amount of the written construction contract and which comply with A.R.S. §§ 34-222, 34-223.

a. The payment bond is solely for the protection of claimants supplying labor or materials for required construction, and the performance bond is solely for the protection of the City, conditioned upon the faithful performance of the required construction.

b. Each bond must be filed with the City Clerk immediately upon execution.

7.7 Without waiving any prohibition against liens being placed upon public property, Lessee must keep the Premises and all improvements free of any mechanic's or materialmen's liens or liens of any kind or nature for any work done, labor performed or material furnished on or to the Premises and, if any lien is filed, Lessee must, at its sole cost, cause the lien to be removed from the Premises within 30 days of notice.

7.8 Lessee is not entitled to any offset or credit in rent or otherwise from the City in connection with improvements made by Lessee under this Agreement.

8. Performance Bond

8.1 In addition to any other bond required by this Agreement, not later than 30 days from the effective date of this Agreement Lessee will provide the City with a cash deposit, certified check, or performance bond in the amount of $10,000.

a. Within 30 days after the termination of this Agreement, the parties together will conduct a walk-through of the Premises to identify any issues that will be addressed with the bond.

b. The bond, or the remaining unused portion of the bond, will be released on the later date of (i) the completion of any work that is required and which will be paid from bond proceeds, (ii) the payment of all claims upon the bond, or (iii) within 30 days after completion of the walk-through without identification of any claims upon the bond.

8.2 This performance bond is conditioned upon Lessee's faithful performance of all of its obligations under this Agreement.

8.3 The bond will include a provision allowing the prevailing party in any litigation or arbitration on the bond to recover as part of its judgment or award, the party's reasonable attorney's fees incurred in the litigation or arbitration.

8.4 The bond must be executed by a surety company authorized to do business in Arizona and acceptable to the City's Risk Manager.

9. Acceptance, Maintenance, and Repairs

9.1 Prior to commencement of this Agreement, the City made the Premise available to Lessee for inspection and the parties agreed upon all repair that needed to be made prior to commencement; therefore, Lessee accepts possession of the Premises and the improvements thereon "as is" in its present condition, except for the warrants specifically provided herein, and subject to all limitations imposed upon the use by the rules and

regulations of the FAA and by ordinances of the City, and acknowledges the suitableness and sufficiency of the Premises for the uses authorized.

9.2 City will maintain the structural integrity, basic utility accessibility, and other major building capital expanses, including roof repairs and repair or replacement of the plate glass windows within the Premises, that are necessary to preserve the value of the Premises, provided however, the City is not required to maintain or to make any improvements, repairs, or restorations upon or to the Premises or to any of the improvements presently located thereon and under no circumstances will the City repair, maintain, or restore any improvements placed on the Premises by Lessee.

9.3 Lessee is solely responsible, at its cost, for all repairs, maintenance or for any damage caused by Lessee, or its agents, employees, or invitees to the Premises.

a. Lessee must maintain the Premises, including utilities exclusively serving the Premises, whether the repair or maintenance be ordinary or extraordinary, structural or otherwise, and must keep the Premises at all times, in a clean and orderly condition and appearance, including any personal property or fixtures of the Lessee.

b. Lessee is responsible for regular and routine janitorial services on the Premises.

9.4 If Lessee fails to repair or maintain the Premises to the satisfaction of the City, after the City's 30 days' written notice to the Lessee requiring that the maintenance or repair work be completed, the City may:

a. Terminate this Agreement or,

b. At the City's option, enter the Premises without being deemed to have caused a termination of this Agreement or interference with Lessee possession of the Premises, to maintain or repair, any part of the Premises or its improvements and do all things reasonably necessary to accomplish the work required.

1. All costs incurred by the City as a result of this re-entry must be immediately reimbursed to the City by Lessee upon demand.

2. The City work will be accomplished in such a manner as to not unreasonably interfere with Lessee's operations.

9.5 If the City, its officers, employees or agents undertake any work hereunder, Lessee waives any claim for damages, consequential or otherwise, resulting therefrom except for claims for damages arising from the City's sole negligence.

9.6 The City's rights set forth in this section in no way affect or alter the primary obligations of the Lessee and do not impose upon the City any obligations unless specifically stated otherwise herein.

10. Additional Obligations of Lessee

10.1 Lessee will at all times employ and designate a manager to supervise and manage its operations on the Premises.

a. Lessee will provide the City with the manager's name and contact information within 48 hours of the manager's appointment.

b. Lessee will employ a sufficient number of trained personnel to provide for the efficient and proper compliance with its obligations under this Agreement.

c. Upon request of the Airport Manager, Lessee will provide, and its employees must wear or carry, badges or other suitable means of identification.

d. Lessee is responsible for controlling the conduct and demeanor of its officers, agents, employees, and invitees and, upon objection from the City concerning the conduct or demeanor of any such person, Lessee will immediately take all lawful steps necessary to remove the cause of the objection.

10.2 Lessee must conduct its operations in an orderly and proper manner so as to not unreasonably annoy, disturb, endanger, or be offensive to others.

10.3 Lessee must not produce on the Airport any disturbance that interferes with the operation by the City or the FAA of air navigational, communication, or flight equipment and reduce to a minimum any vibration tending to damage the Premises, or any Airport equipment, structure, or building.

10.4 Lessee must comply with all written instructions of the City in disposing of its trash and refuse and use a system of refuse disposal approved by the City.

10.5 Lessee must not commit nor permit to be done:

a. Anything which may result in the commission of a nuisance, waste, or injury on or to the Premises;

b. Any act or thing upon the Premises that may constitute a hazardous condition so as to increase the risk attendant upon the operations permitted by this Agreement or that may invalidate or conflict with any fire insurance policies or regulations, the Uniform Fire Code, N.F.P.A. Standard No. 409 for operation of aircraft, or any other provisions as applicable to the Premises or other contiguous property at the Airport;

c. Anything that may interfere with the effectiveness or accessibility of the drainage system, sewerage system, fire protection system, sprinkler system, alarm system, and fire hydrants and hoses, if any, that are installed or located on the Premises;

d. Any overloading of a floor, structure, or structural member on the Premises, or any paved area on the Airport, and must repair, at Lessee's sole expense, any floor, structure, structural member, or any paved area damaged by overloading; or

e. Interfere with the free access and passage of others to space adjacent to the Premises.

10.6 Lessee will take measures to ensure security of the Premises and implement any additional security measures as requested in writing by the Airport Manager, the costs of which are to be borne by Lessee.

10.7 Lessee must maintain a 100% rating with the Maricopa County Health Department or any health inspection conducted by the City.

a. Lessee will keep all current inspections by the Maricopa County Health Department or the City on file with the Airport Manager, updating inspection reports within five days after Lessee's receipt of the report.

b. Should Lessee receive an inspection report less than 100%, Lessee must remedy the defects or deficiency within 14 calendar days of Lessee's receipt of the report, unless the defect or deficiency is an immediate threat to health and safety of airport patrons, in which case the defect or deficiency must be effected immediately.

11. Ingress and Egress

11.1 The City may, at any time, temporarily or permanently, close or consent to or request the closing of any roadway at the Airport and any other roadway at, in, or near the Premises that is currently or that may hereafter be used as ingress and egress to the Premises provided that reasonable alternative means of ingress and egress remains available to Lessee.

11.2 Lessee hereby releases and discharges the City, its officers, employees, and agents, and all other governmental authorities from all claims, demands, or causes of action which Lessee may at any time have against any of the foregoing, arising out of the closing of any roadway or other area, provided that a reasonable means of access to the Premises remains available to Lessee.

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, without the prior written consent of the City.

a. City will not unreasonably withhold consent so long as Lessee proposed assignee has in the City's sole determination the experience and financial capacity to continue Lessee's operations at the level of service required herein.

b. As a condition of approval, Lessee will submit biographical and financial information of the proposed assignee or sub-lessee as well as the potential terms of the sub-lease at least 30 days prior to any anticipated transfer of Lessee's interest.

c. The terms of this Agreement will be considered as incorporated into any sub-lease.

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.

12.3 With an approved sub-lease, Lessee will pay the City 2% of any increment of rent paid to Lessee by the sub-lessee that is greater than the amount of rent then currently paid by the Lessee to City (sub-lease surcharge) and this sub-lease surcharge payment must be made concurrently with the rental payment required under this Agreement.

13. Advertising

13.1 Lessee may install signage on or in the Terminal identifying its business.

a. The number, general type, size, and location of signs must be approved in writing by the Airport Manager prior to installation.

b. Any use of the City's advertising board is subject to the then current terms, conditions, and rates for use.

c. Any sign installation outside the terminal building or elsewhere on the Airport must comply with this section as well as with applicable City zoning code requirements.

13.2 The City will erect a directional sign on Glendale Avenue informing motorists that a restaurant is located in the Airport and a sign along Glen Harbor Blvd adjacent to the Airport informing drivers that the restaurant is located within the Terminal.

13.3 Upon execution of this Agreement, and during the initial three months of operation, the City will post a link on the Airport webpage providing information about Lessee, its restaurant, and its offerings; provided however, the City may discontinue the link at any time in its sole discretion.

13.4 During the initial three months of operation, the City will post on the Airport webpage a feature article about the reopening of the Airport restaurant and its new ownership.

a. Lessee will provide to the City Lessee's desired content for the feature article.

b. The City will have sole discretion with respect to the content of the feature article and the content of any subsequent City communications related to the restaurant or Lessee's services.

14. Default by Lessee

14.1. The City may terminate this Agreement by giving Lessee 30 days' written notice after any of the following events and Lessee fails to cure the event:

a. The failure of Lessee to perform any of its obligations under this Agreement; or

b. The taking of possession for a period of ten days or more of substantially all of the personal property used on the Premises belonging to Lessee by or under lawful authority of any legislative act, resolution, rule, order, or decree or any act, resolution, rule, order or decree of any court or governmental board, agency, officer, receiver, trustee, or liquidator.

14.2 If the City terminates this Agreement for default, the City, without further notice to Lessee, may re-enter the Premises and recover damages, including but not limited to, all costs of repossession and re-letting and brokerage commissions for services performed by or for the City.

14.3 Upon the termination of this Agreement for any reason, all rights of Lessee will terminate, including all rights of Lessee's creditors, trustees and assigns, and all others similarly situated as to the Premises.

14.4 Alternatively, the City may elect to:

a. Institute an action, in equity or at law, to enforce this Agreement;

b. Take possession of the Premises, without terminating this Agreement, and on behalf of Lessee, re-let the same or any part thereof for a term, shorter, longer, or equal to the then unexpired remainder of the Agreement's term and Lessee must pay any deficiency in the Base Rental amount; provided however, the City may at any time after taking possession terminate this Agreement by giving notice to Lessee and sue for damages;

c. Exercise the "Remedies of Landlord" as set forth in Arizona Revised Statutes, Title 33;

d. Exercise any other remedy allowed by law or equity.

14.5 Failure by the City to take any authorized action upon default by Lessee of any of its obligations hereunder does not constitute a waiver of default nor of any subsequent default by Lessee.

14.6 Acceptance of rent and other fees by the City under this Agreement for any period after a default by Lessee is not a waiver by the City of its right to terminate this Agreement or to seek any other remedy provided herein, nor does acceptance constitute an estoppel of the City or any partial payment does not constitute any form of accord and satisfaction.

15. Default by City

Lessee may terminate this Agreement at any time that it is not in default in its obligations by giving the City 30 days' written notice after any of the following events:

15.1 Issuance by a court of competent jurisdiction of an injunction in any way preventing or restraining Lessee's use of any substantial portion of the Premises and thereafter remaining in force for a period of 30 consecutive days.

15.2 The inability of Lessee to use any substantial portion of the Premises for a period of 30 consecutive days due to the enactment or enforcement of any law or regulation or because of fire, earthquake or similar casualty, local or airport emergencies or Acts of God or the public enemy.

15.3 The lawful assumption by the United States Government of the operation, control, or use of the Airport or any substantial part of it for military purposes in time of war or national emergency.

16. Indemnification

16.1 Lessee must defend, indemnify and hold harmless the City, including its elected or appointed officials, agents, boards, commissions, and employees, from all loss, damages or claims of whatever nature, including attorney's fees, expert witness fees and costs of litigation, that arise out of any act or omission of Lessee, including its agents, employees, and invitees in connection with Lessee's operations at the Airport and that result directly or indirectly in the injury to or death of any persons or the damage to or loss of any Premises, or arising out of the failure of Lessee to comply with any provisions of this Agreement.

16.2 The City will in all instances, except for loss, damages or claims resulting from the sole negligence of the City, be indemnified by Lessee against all such loss, damages or claims.

16.3 The City will give to Lessee prompt notice of any claim made or suit instituted which may subject Lessee to liability under this Section, and Lessee may compromise and defend the same to the extent of its own interest.

16.4 The City may, but has no duty to, participate in the defense of any claim or litigation with attorneys of the City's selection without relieving Lessee of any obligations hereunder.

16.5 Lessee's obligations hereunder survive any termination of this Agreement or Lessee's activities at the Airport.

17. Insurance

17.1 Lessee must procure and at all times maintain the types and amounts of insurance as set forth in Exhibit C – Insurance.

17.2 Lessee must provide to the City proof of insurance in the form and as requested by the City's Risk Manager.

17.3 Lessee must list the City as an Additional Insured on all policies required by this Agreement.

17.4 In the event Lessee fails to secure or maintain the required insurance.

a. Upon 30 days' written notice, and Lessee's failure to cure during this notice period, the City may terminate this Agreement, or

b. The City may secure the required insurance at Lessee costs, which will be paid to the City immediately upon demand.

17.5 The City's Risk Manager may from time to time reasonably modify the insurance required under this Agreement and the City will provide Lessee with written notice of any modification providing Lessee not less than 30 days to procure coverage consistent with the modification.

18. Quiet Enjoyment

18.1 So long as Lessee timely pays the rent required under this Agreement and performs all of its other obligations under this Agreement, Lessee may peaceably have and enjoy the exclusive use of the Premises and all the privileges granted herein.

18.2 Exclusive use of the Premises does not confer any exclusivity as to the type of operation relative to other Airport tenants.

19. Surrender of Possession

19.1 Upon the expiration or termination of this Agreement, Lessee's right to occupy the Premises and exercise the privileges and rights granted under this Agreement immediately cease.

19.2 Lessee must surrender and leave the Premises in as good condition as it was upon initial occupancy, normal wear and tear excepted.

19.3 All trade fixtures, equipment, and other personal property installed and placed by Lessee on, but not attached to the Premises, remain the property of Lessee, and Lessee may, at any time during the term of this Agreement, remove the fixtures, equipment or personal property and repair, at its sole cost, any damage caused by the removal.

19.4 Upon expiration or termination any property not removed by Lessee becomes part of the Premises and ownership vests with the City.

19.5 All improvements and modifications made by Lessee that become attached to the Premises immediately become the property of the City upon the expiration or termination of this Agreement and Lessee must assure the property is free of any security interest or claims of any kind.

20. Damage or Destruction

20.1 If the Premises or any improvements thereon, insurable or uninsurable, are damaged or destroyed (except damage or destruction caused by Lessee or its invitees) to such an extent Lessee is prevented from continuing operations, the City will within 30 days provide notice to Lessee that the City:

a. Will repair or reconstruct the Premises and improvements substantially as they were immediately prior to the casualty, or in a new or modified design, and the time period of the reconstruction or repair, or

b. Terminate this Agreement; provided however,

c. If the City fails to provide notice within 30 days of becoming aware of the damage or destruction, and the damage or destruction has not been caused by Lessee or its invitees, Lessee may terminate this Agreement by written notice to the City.

20.2 If the City elects to repair or reconstruct as set forth above, the rent provided for herein will be fully abated during the period from the date of the damage or destruction until repair or reconstruction is complete.

a. Abatement will not exceed the actual time required for arranging for and the doing of the work.

b. The City has no obligation to repair or rebuild any fixtures, equipment or other personal property installed by Lessee under this Agreement, whether damage or destruction to the Premises is partial or entire.

c. Abatement of rent does not operate as an extension of the Agreement period.

20.3 If damage or destruction to the Premises (except damage or destruction caused by Lessee) is partial and does not prevent Lessee from continuing operations, the City will promptly commence repairing the partial damage and pursue the work with diligence.

a. To the extent that partial damage is covered by any of Lessee's insurance, Lessee will reimburse the City for its costs of repair or replacement.

b. If the insurance proceeds exceed the City's costs of repair or replacement, Lessee may retain the excess.

20.4 If the improvements on the Premises are damaged or destroyed by fire or any cause whatsoever attributable in whole or in part to any act or omission of Lessee or its agents, employees, or invitees, the above subsections do not apply and this Agreement will continue in full force and effect.

a. Lessee must promptly repair or rebuild the improvements so damaged or destroyed, at Lessee's own cost, in a good workmanlike manner to the same standards existing at the time of the casualty, subject to applicable building codes existing at the time of repair or rebuilding.

b. Upon the failure of Lessee to promptly repair or rebuild, the City may repair or rebuild the damaged or destroyed improvements, and Lessee must reimburse the City, on demand, for all cost of such work.

20.5 There is no obligation on the part of the City to reimburse Lessee for the loss or damage to fixtures, equipment, or other personal property of Lessee, and Lessee, for its own protection, may separately insure such fixtures, equipment, or other personal property as it so desires.

21. Notice

21.1 All notices required or permitted under this Agreement will be personally delivered or mailed by certified mail, return receipt requested, postage prepaid, to the following addresses:

TO CITY:	Glendale Municipal Airport Attention: Airport Manager 6801 N. Glen Harbor Blvd., Suite 201 Glendale, Arizona 85307
with a copy to:	City of Glendale City Attorney 5850 W. Glendale Avenue Glendale, Arizona 85301
TO LESSEE:	Left Seat West at Glendale, Inc. 6801 N. Glen Harbor Blvd., Suite 104 Glendale, Arizona 85307

21.2 Any notice given by certified mail is considered received on the next business day after the date of mailing. Either Party may designate in writing a different address for notice purposes under this section.

22. Severability

If any provision of this Agreement is declared invalid by a court of competent jurisdiction, the remaining terms remain effective if elimination of the invalid provision does not materially prejudice either Party with regard to its respective rights and obligations.

23. Taxes and Licenses

23.1 Lessee must pay any leasehold tax, possessory interest tax, sales tax, personal property tax, transaction privilege or other exaction assessed or assessable as a result of its occupancy of the Premises or conduct of business at the Airport under authority of this Agreement, including any tax assessable on the City. In the event that laws or judicial decisions result in the imposition of a real property tax on the interest of the City, the tax must also be paid by Lessee for the period this Agreement is in effect.

23.2 Lessee acknowledges that it may be considered, a "prime lessee," as defined in A.R.S. § 42-6201, and that it may, or in the future, may be subject to government property lease excise tax liability under this Agreement. Lessee further acknowledges that any failure by Lessee to pay taxes due under this paragraph after notice and an opportunity to cure constitutes a default that could result in divesting Lessee of any interest in or right to occupancy of the Premises.

23.3 Lessee must, at its own cost, obtain and maintain in full force and effect during the term of this Agreement, all licenses and permits required for its business purpose.

23.4 The taxes due under this paragraph are not a substitute for nor in lieu of any other fees or surcharges associated with sales transactions and otherwise required under this Agreement.

24. Litigation

24.1 This Agreement is governed by the laws of the State of Arizona and any action taken hereunder will be filed within the courts of Maricopa County.

24.2 In the event of any litigation or arbitration between the City and Lessee arise under this Agreement, the successful Party is entitled to recover its attorney's fees, expert witness fees and other costs incurred in connection with the litigation or arbitration.

25. Rules and Regulations

25.1 Lessee must comply with all federal, state and local laws, ordinances, rules and regulations applicable to its operations, the Premises (including the Americans with Disabilities Act), or the operation, management, maintenance or administration of the Airport, including all laws, ordinances, rules and regulations adopted after the effective date of this Agreement.

25.2 The Airport Manager will provide Lessee with the currently applicable rules for the Airport, and will promptly advise Lessee of any laws, ordinance, rules and regulations adopted after the effective date of this Agreement.

25.3 Lessee will, upon request, provide the City with any permits, licenses, or other evidence of compliance with the law.

25.4 All rules and regulations and minimum operating standards for the Airport, as currently existing or as may be amended or adopted, are hereby incorporated as terms of this Agreement.

26. Right of Entry Reserved

26.1 The City may, at all reasonable times, enter upon the Premises for any lawful purpose if the action does not unreasonably interfere with Lessee's use, occupancy or security of the Premises.

26.2 Without limiting the above, the City and any utility provider may, at their own cost, whether for their own benefit or for the benefit of others at the Airport, enter the Premises to maintain, repair or replace existing and future utility, mechanical, electrical or other systems that are, in the opinion of the City, necessary or advisable; or construct or install over, in or under the Premises systems or parts in connection with maintenance and use the Premises for access to other parts of the Airport otherwise not conveniently accessible.

26.3 If any personal property of Lessee obstructs the access of the City or any utility company providing service to any of the existing utility, mechanical, electrical and other systems, Lessee must move the obstruction, as directed by the City or utility company.

a. If Lessee fails to move the obstruction after direction, the City or the utility company may move it, and Lessee must pay the cost of moving the obstruction immediately upon demand.

b. Lessee hereby waives any claim for damages as a result of the involuntary removal except for claims for damages arising from the City's sole negligence.

27. Security Plan

27.1 City reserves the right to implement an Airport Security Plan, in a form acceptable to the FAA, limiting access of persons, vehicles and aircraft in and around the airside and landside of the Airport and to modify that plan from time to time as necessary to accomplish its purposes.

27.2 The Airport Manager will provide Lessee with information from the Security Plan that is applicable to Lessee and the Premises and advise Lessee of any modifications thereto.

27.3 The implementation of a security plan will not in any respect be deemed a detriment to this Agreement or the consideration provided for any obligation on the part of the Lessee.

27.4 Lessee must at all times comply with the Security Plan or any directives of the Airport Manager under an imminent threat to security.

28. FAA Requirements

28.1 Lessee for himself, heirs, personal representatives, successors in interest and assigns, as a part of the consideration for this Agreement hereby covenants, and agrees as a covenant running with the land, that in the event facilities are constructed, maintained, or otherwise operated on the Premises for a purpose for which a U.S. Department of Transportation (DOT) program or activity is extended or for another purpose involving the provision of similar services or benefits, the Lessee will maintain and operate the facilities and services in compliance with all other requirements imposed under 49 C.F.R. Part 21, Nondiscrimination in the Federally Assisted Programs of the DOT, and as may be amended.

28.2 Lessee for himself, heirs, personal representatives, successors in interest and assigns, as part of the consideration of this Agreement hereby covenants, and agrees as a covenant running with the land, that: 1) no person on the grounds of race, color or national origin will be excluded from the participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises; 2) that in the construction of any improvements on, over or under the Premises and the furnishing of services thereon, no person on the grounds of race, color or national origin will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and 3) that the Lessee will use the Premises in compliance with all other requirements imposed by or under 49 C.F.R. Part 21, Nondiscrimination in Federally Assisted Programs of the DOT, and as may be amended.

28.3 In the event of breach of any of the above nondiscrimination covenants, upon 30 days' notice and Lessee's failure to cure, but only to the extent such a notice period will not cause the City to be or become in violation of any applicable law, rule, or regulation, the City may terminate this Agreement and re-enter and repossess the Premises and hold the Premises as if this Agreement had never been issued. This provision does not become effective until the procedures under 49 C.F.R. Part 21 are completed, including expiration of appeal rights.

28.4 Lessee will insert the provision of this section in any sublease in which Lessee may grant rights or privileges to render accommodations or services to the public on the Premises.

29. Survival of Lessee's Obligations

29.1 If this Agreement is terminated by the City in accordance with the provisions herein or if the City reenters or resumes possession of the Premises as provided herein, all of Lessee's obligations under this Agreement will survive the termination, re-entry, or resumption of

possession and remain in full force and effect for the full term of this Agreement, and the amounts of damages or deficiencies will become due and payable to the City to the same extent, at the same times, and in the same manner as if no termination, re-entry or resumption of possession had taken place.

29.2 The City may, at its option and at any time, sue to recover the full deficiency for the entire unexpired term of this Agreement.

29.3 The amount of damages for the period of time subsequent to termination (or re-entry or resumption of possession) will include all expenses incurred by the City in connection with regaining possession, restoring the Premises, acquiring a new lease for the Premises, putting the Premises in order, maintenance and brokerage fees.

30. Remedies to be Nonexclusive

All remedies provided in this Agreement are cumulative and additional, not in lieu of or exclusive of, each other, or of any other remedy available to the City or Lessee at law or in equity, and the exercise of any remedy, or the existence of other remedies, does not prevent the exercise of any other remedy.

31. Time is of the Essence

Time is of the essence with regard to the performance of all of the Parties' obligations as set forth in this Agreement.

32. Miscellaneous

32.1 This Agreement constitutes the entire agreement between the Parties, except as to documents incorporated herein by reference, and supersedes all prior negotiations, understandings and agreements between the Parties concerning the matters.

32.2 This Agreement is to be interpreted, applied, and enforced according to the fair meaning of its terms and not construed strictly in favor of or against either Party, regardless of which Party may have drafted any of its provisions.

32.3 No provision of this Agreement may be waived or modified except by a writing signed by the Party against whom such waiver or modification is sought to be enforced.

32.4 The terms of this Agreement are binding upon and inure to the benefit of the Parties' successors and assigns.

32.5 Immigration Law and Compliance.

a. Lessee, and on behalf of any subcontractor, warrants to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.

b. Any breach of warranty of this section is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.

c. The City retains the legal right to inspect the papers of any of Lessee's or subcontractor employee who performs work under this Agreement to ensure that the Lessee or any subcontractor is compliant with the warranty under this section.

d. The City may conduct random inspections, and upon request of the City, Lessee must provide copies of papers and records of Lessee demonstrating continued compliance with the warranty under this section.

e. Lessee agrees to keep papers and records available for inspection by the City during normal business hours.

f. Lessee must cooperate with the City in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this section.

g. Lessee must incorporate into any subcontract agreements that are allowable under this Agreement, if any, the same obligations imposed upon Lessee and expressly accrue those obligations directly to the benefit of the City.

h. Lessee must require any allowable subcontractor to incorporate into each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of the City.

i. Warranty and obligations under this section to the City is continuing throughout the term of this Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement.

j. The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

32.6 Prohibitions. Lessee certifies under A.R.S. §§ 35-391 *et seq.* and 35-393 *et seq.*, that it does not have and during the term of this Agreement will not have, "scrutinized" business operations, as defined in the preceding statutory sections, in the countries of Sudan or Iran.

33. Exhibits

Exhibit A – Diagram of Leased Premises

Exhibit B – Equipment Inventory

Exhibit C – Insurance Requirements

(Signatures appear on following page.)

EXECUTED to be effective on the date specified above.

CITY OF GLENDALE,
an Arizona municipal corporation

By: _____
Ed Beasley, City Manager

ATTEST:

_____
Pamela Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:

_____
Craig Tindall, City Attorney

LESSEE
Left Seat West at Glendale, Inc.

_____
By: RONALD ZAMENSKI
Its: DIRECTOR

STATE OF ARIZONA)
)ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 15th day of November, 2011 by Ronald Zamenski, the Director of Left Seat West at Glendale, Inc, Lessee.

Stacey Doran
Notary Public
Maricopa County, Arizona
My Comm. Expires 06-25-15

_____
Notary Public

My Commission Expires:

06-25-2015

EXHIBIT A
Diagram of Leased Premises

(See attached)

04MP20-1H-2/22/06

FIRST FLOOR

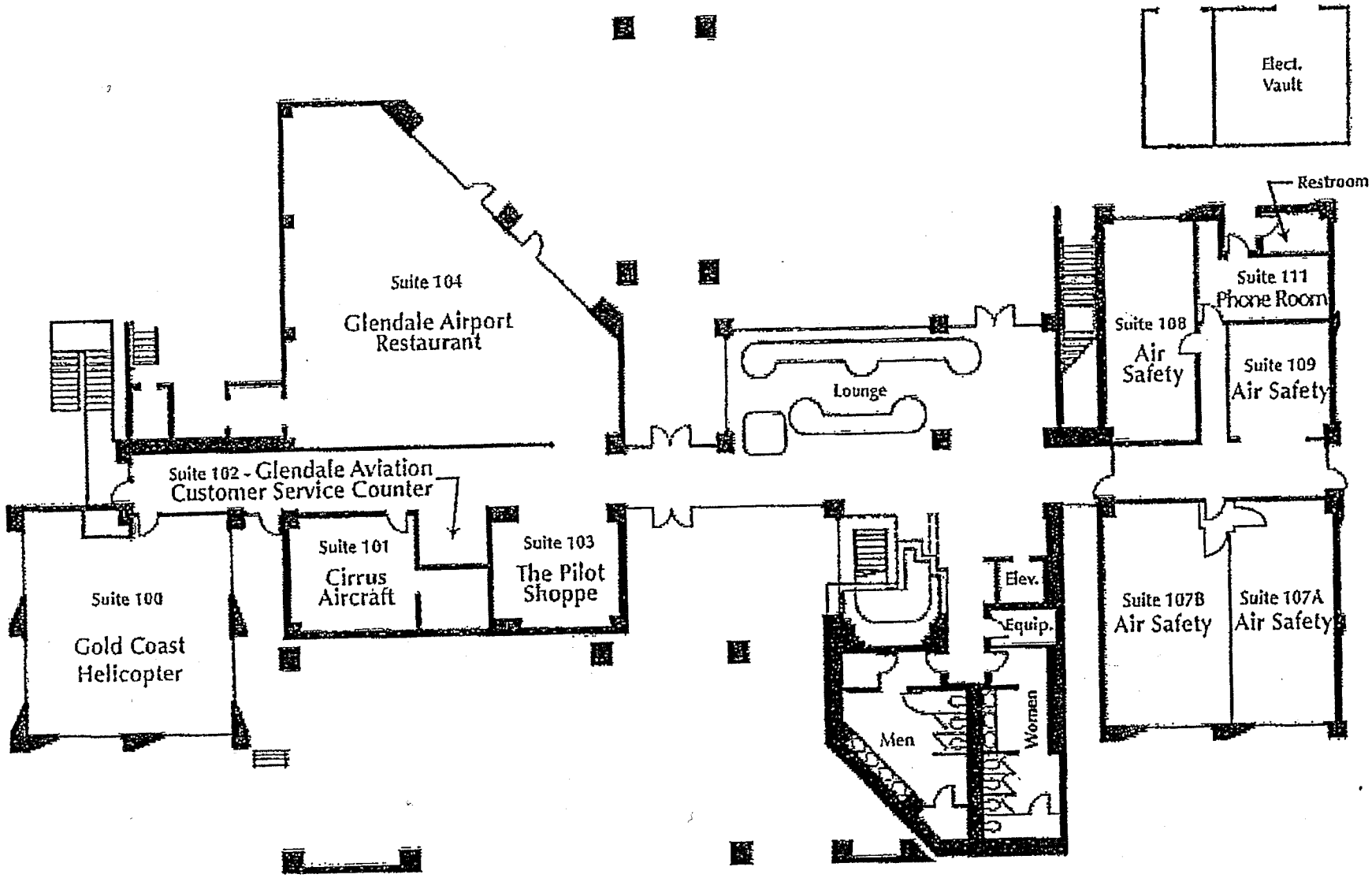

EXHIBIT B

Equipment Inventory

(See attached)

EXHIBIT B
Equipment Inventory

GUEST AREA

1. Built-in counter (in seating area & cash register area)

2. Tables:
   - Round with space for six chairs
   - (5) Square with space for two chairs
   - (12) Rectangular with space for four chairs

3. Chairs: (64)

4. Counter Stools: (6)

5. Childs High Chair: (1)

6. Lamps:
   - Hanging –small, 6" diameter shades (10)
   - Hanging – large, 18" diameter shades (3)

7. Roll –up window screens on all outside windows.

8. Wall Décor:
   - Challenger Series / Colombia (2) Patches in shadow boxes
   - Gemini Series Patches in shadow boxes
   - Mercury Series Patches in shadow boxes
   - Aircraft Mfg. Patches in shadow boxes
   - Challenger Crew Special Patches in shadow boxes

9. Décor – hanging wooden aircraft models (6)

10. Credit Card Machine (1)

11. Clear Plastic Pastry/Cookie Display Box

12. Salt Shakers (27)

13. Pepper Shakers (29)

14. Sugar/sweetener Packet Dispensers (small table top boxes) (25)

15. Delfield Ice Cream Cabinet N227 inserted in 2010.

16. Delfield Salad/Dessert Display Case, F15MCC48N with 4 adjustable top shelves

EXHIBIT B
Equipment Inventory

17. Stainless Steel Counter /Cabinet 29" x 108" includes: (1.) Soup Well (SS-10TD) – warmer section only, no insert; (2) Roll Warmer, Wells RW-2; (3) glass tray rack storage; (4) Shielded Hand Sink; and (5) Water Dispenser

18. Heat Lamp Hatco GRAH-36

19. Stainless Steel Counter 29" x 50" includes: glass tray rack storage and shelf open storage

20. Soda Fountain Dispenser adjacent to the Fixed Counter installed on the Stainless Service Counter (Pepsi Bottling Group Inventory ID 7977948)

KITCHEN

21. Steam tray/hot table/warmer: with (3) compartment and lower shelf – Supremetal #345-93-E

22. True Sandwich Preparation Table with Refrigerator and (13) 6" deep 1/6 type bins, #TSSU-60-16 with 4 adjustable shelves inside refrigerator

23. Stainless Steel Prep Table 27" x 58" with lower shelf and drawer

24. True Compact Freezer (TWT-27)

25. DCS Gas Range Convection Oven G284-24 THRC2

26. Star-Max Grooved Griddle on table with lower shelf & vertical utensil tree

27. Pitco Frialator Gas Fryer with (4) new baskets

28. Stainless Steel Prep Table Next to Frier with 1 lower shelf 12" x 30" (surface)

29. Stainless Steel Prep Table Next to Frier with 1 lower shelf 18" x 30" (surface)

30. Walk in Freezer/Refrigerator

EXHIBIT B
Equipment Inventory

31. Free Standing Shelving:
    - 72" x 45" x 14" in freezer – 4 shelves each (2)
    - 72" x 58" x 14" in cooler – green with 5 shelves each (2)
    - 72" x 72" x 24" in office – 4 shelves (1)
    - 12" x 6" x 18" on floor - 1 shelf (1)

32. Stainless Steel Preparation Table 27" x 90" with Sink and Drawer

33. Manitowac Ice Machine and bin with scoop

34. Berkel Brand Meat Slicer

35. Large Aluminum Colander

36. Stainless Steel Cake Stand

37. Mixer Table 24" x 24" with lower shelf

38. Mixer - Blakeslee B20T w/Attachments: 13" Bowl/Vegetable Slicer w/ Hopper/Dough Hook/Mixer Paddle

39. Office File 2-Drawer Cabinet

40. Wall Mounted Zenith Air Conditioner Unit in Office

41. Hand Sink (kitchen)

42. Water Softener

43 Hot Water Tank/Heater

44. InSinkerator Commercial Disposer SS-150

45. Jackson Dishwasher with Heater Booster

46. Three-Compartment Sink and Dish table

47. Wall Hanging Pot Rack with 5 Hooks

48. Stainless Wall Flashing

49. Wringer Mop & Bucket

50. Black wire rack and Soda Flavoring Dispensing System (Pepsi Bottling Corporation)

EXHIBIT B
Equipment Inventory

51. Two (2) CO2 air tanks (Pepsi Bottling Company)

PATIO

52. 3-Tier Stone Fountain with Metal Sculpture

53. Concrete Planter/ Trash Bin

54. Patio Furniture:
    - Umbrellas with large concrete bases (3)
    - Square tables with space for four chairs (4)
    - Chairs (20)

EXHIBIT C

Insurance Requirements

1. **General Requirements:**

   1.1 Lessee's insurance coverage must:

   a. Be in a form satisfactory to and from a company acceptable to the City's Risk Manager.

   b. Name the City as an additional insured.

   c. Require thirty days' written notice to the City before modification or termination.

   d. Include contractual liability coverage for the obligation of indemnity assumed in this Agreement.

   e. Policy issuer must possess an A.M. Best Rating of at least A.

   1.2 The City's Risk Manager may determine other requirements necessary for Lessee's operations and insurance requirements are subject to periodic review and adjustment by City.

2. **Commercial General Liability**

   Commercial general liability including broad form contractual, personal injury, property, completed operations and fire legal liability of $2,000,000 per occurrence.

3. **Automobile Liability Insurance**

   Automobile liability insurance for all owned, non-owned or hired vehicles in an amount of not less than $2,000,000 combined single limit per occurrence.

4. **Fire and Extended Casualty Coverage**

   Fire and extended casualty coverage for all improvements and fixtures on the Premises in an amount of not less than the full replacement value thereof, to the extent Lessee has an insurable interest in the Premises.

5. **Worker's Compensation**

   Worker's compensation and employer's liability coverage in the amounts required by law.