

**LEASE OPERATING AGREEMENT FOR FOOD AND
BEVERAGE SERVICE FACILITY AT
GENOVEVA CHAVEZ COMMUNITY CENTER**

THIS LEASE OPERATING AGREEMENT (hereinafter "Agreement") is made and entered into this _____ day of (), by and between What THE Truck, LLC DBA: THE Cafe (hereinafter "Lessee"), and the City of Santa Fe, a municipal corporation (hereinafter referred to as the GCCC "Lessor").

WITNESSETH:

In consideration of the mutual covenants and Leases hereinafter contained, the parties hereto agree as follows:

1. LEASED PROPERTY

Lessor does hereby lease to the Lessee the Concession operations but not limited to providing full service food and beverages (non-alcoholic) to the patrons which includes the kitchen, snack grille, party zone, and general seating area of the GCCC, for birthday parties (cake, pizza, soft drinks, and plastic silverware), and to provide option of healthy vegetarian pizza and beverage options besides soda or sugar/high fructose corn syrup sweetened drinks for birthday parties and other catered, special events and functions located at the Genoveva Chavez Community Center 3221 Rodeo Road Santa Fe NM 87507.

2. SCOPE OF OPERATING SERVICES

A. The Lessee shall provide for the Lessor the following services:

- 1) Operate the Facility that includes snack grille, kitchen, party zone, general seating area and provide catering for special events and functions at the GCCC Santa Fe NM located at 3221 Rodeo Road Santa Fe, NM 87507.
- 2) Provide a varied menu consisting of breakfast, lunch, snacks, dessert, and light evening meals that are priced competitively, healthy and subject to annual review and approval of the Lessor. Provide menu options with 30% of selections meeting the heart health guidelines of 30% fat; less than 500 mg. of sodium; and 30 gm. of carbohydrate per item. Provide at least 2 items per category (snack, breakfast, lunch etc.) made from fresh ingredients. Provide at least 2 beverage items unsweetened by sugar, high fructose corn syrup, or artificial sweeteners. Any juices provided should be 100% juice. Final review of menu and catering menu options to be performed and changes subject to annual review and approval by the GCCC Manager or his/her designee.
- 3) All food, drinks, beverages, and refreshments sold or served shall conform in all aspects to applicable federal, state, and local laws, ordinances and regulations. The Lessor shall comply with all health and safety codes adopted by the New Mexico Health Department. All food and beverage kept for sale or service shall be subject to inspection by the City or appropriate governmental agencies.
- 4) Provide food and beverages to a larger number of patrons when special events require serving everyone at the same time.
- 5) Provide a food truck for large-scale special events that take place on the GCCC property and offer food items consistent with menu submitted.

- 6) Promote the use of the facility for private functions and be able to develop varied menus to accommodate the needs of the client.
- 7) Maintain and post operating hours at the GCCC as agreed upon by the GCCC Manager or his/her designee and cafe, which includes a daily operation of a minimum of eight (8) hours Monday through Saturday and a minimum of six (6) hours on Sunday; along with additional hours as requested for special events and meetings, and closed on holidays. With approval from the Lessor, Lessee can change or modify hours of operation with 72 hour advanced notice.
- 8) Lessee shall be allowed to close the concession for a one week period for the purposes of facility maintenance (painting, cleaning, refurbishing of furniture), during the following dates (and are subject to change based on weather and operational needs):
- August 15-24, 2020.
- 9) Accept several forms of payment from customers including, but not limited to cash, personal checks, debit cards, and credit cards.
- 10) Collaborate with the Lessor on advertising efforts that affect the facility. All advertising, direct mail and other promotional activity must be approved in advance by the GCCC Manager or his/her designee. Advertising and promotional items for the purpose of marketing the cafe must carry both the cafe logo and the GCCC name or logo and be paid for by the Lessee.
- 11) Attend staff meetings as required by the GCCC Manager or his/her designee and include the quarterly Advisory Sub-Committee Board meeting.

- 12) Be responsible for initiating, maintaining and supervising all safety precaution programs in connection with its services.
- 13) Report to the GCCC Manager or his/her designee any unusual condition which has occurred or which the Lessee anticipates, including complaints from patrons, staff changes, legal action and other information which relates to the lessee and its clients of the food and beverage facility.
- 14) Ensure that cafe prices must be posted on permanent displays on all stands and equipment.
- 15) Provide the Lessor with any menu price increase/decrease changes and subject to annual review and approval by Lessor.
- 16) Attend weekly staff meetings as required by the GCCC Manager or his/her designee.

B. PERSONNEL:

- 1) Provide adequate levels of staffing for all for special events and functions that require additional staff.
- 2) Provide staff who have both previous restaurant or concession experience and who have the ability to prepare food consistent with set standards and who have all been trained to provide quality customer service.
- 3) At own expense, provide point of sale training for all cafe staff required to operate the cash register terminals for all sales transactions.

4) Require all staff to wear uniforms with Café logo placed on the uniform shirts. Uniforms shall be of a standard style selected and purchased by the Lessee and approved by the Lessor.

3. LICENSING AND COMPLIANCE:

A. Comply with all rules and regulations of the New Mexico Department of Health, New Mexico Environment Department of the Regulation and Licensing Department, and all applicable laws, statutes and ordinances of the State of New Mexico and the City of Santa Fe, including health and safety codes.

B. Obtain and maintain at Lessee's expense all permits and licenses required by such laws and regulations.

C. Possess a current City Business Registration License and a Gross Receipts Tax Identification (CRS) Number. The Lessee shall provide the Lessor with evidence of its compliance with this requirement as a condition prior to performing services under this lease.

D. At Lessee's expense, ensure that the interior, exterior and all supplies, equipment and funds are adequately secured with security measures.

E. All food and beverages kept for sale shall be subject to inspection by the Lessor and/or appropriate governmental agencies.

F. The Lessee shall not alter, make additions to or post any sign upon any part of the concession, or permit signs to be posted for advertising of good of any nature at the concession without prior by the GCCC Manager or his/her designee. The Lessor shall not remove any property furnished by the GCCC.

G. The City shall not be responsible for any goods, merchandise or equipment stored by the approved provider at the concession. The City shall not be responsible for

damage resulting from any power failure, flood, fire, explosion or other causes beyond the City' control.

H. At the GCCC Manager or his/her designee's request, the Lessee shall remove from the concession all of its property and items of business identification. The Lessee, at its sole expense, shall make all necessary repairs and replacements to the concession for any damage caused by removal of such property.

I. The Lessee shall furnish, at its own expense, all common and skilled labor for the moving, setting up, dismantling and cleaning of concession stands in such location as approved by the GCCC Manager or his/her designee.

J. Lessee shall allow its employees to enter upon and remain at the concession during events for a reasonable time prior to and subsequent to events, only for the purpose of providing the services herein mentioned.

K. City representatives, as authorized by the GCCC Manager or his/her designee, shall have the right to enter upon and have access to all spaces occupied by the Contractor during events and at all other times.

L. The City reserves the right to direct the Lessee to partially or completely suspend sales during any events at which the Lessee's services may be unsatisfactory to the City.

M. The Lessee shall abide by the City's and the GCCC's operating policies and directives.

N. The Lessee shall be expected to attend monthly meetings as required by the GCCC Manager or his/her designee.

O. The Lessee shall be responsible for initiating, maintaining and supervising all safety precaution programs.

P. The Lessee shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to, prevent damage, injury or loss to all persons. In addition, the lessee shall comply with all applicable safety laws, ordinances, rules, regulations, standards and lawful order of any public authority pertaining to the safety of persons or property of their protection from damage, injury or loss.

Q. The Lessee shall manage any unusual condition which as occurred or which the approved provider anticipates, including complaints from patrons, staff charges, legal action and other information which relates to the approved provider and its clients of the concession.

R. The Lessee shall be responsible for cleaning table tops and floors during the operating hours of the concession. The Lessee shall clean any service area after an event. The Lessee is not responsible for table and chair breakdown after an event.

S. The Lessee shall leave the equipment and appurtenances in the concession, or any other areas, in the condition as it was received.

T. The Lessee shall be responsible at its own expense for the following:

- 1) Additional equipment and supplies that are needed for operation of the concession at the GCCC.

- 2) Keep all concession preparation, serving and eating areas at the GCCC in a high level of neatness and cleanliness.

- 3) Provide all cleaning supplies, equipment and staff.

- 4) Ensure that all cleaning supplies, equipment and funds are adequately

secured.

- 5) Provide and utilize appropriate commercial grade soap and drain enzymes along with the proper dispensing systems for concessions.

U. The Lessee agrees that it has inspected the facilities and equipment and thoroughly understands the area and equipment that is being provided by the City. No other verbal indications of additional City facilities, equipment or improvements are authorized or binding.

W. CLEANLINESS STANDARDS:

- 1) Maintain at all times the receiving area where food and beverages are delivered in a clean and orderly manner.
- 2) Keep the kitchen, snack grille, and outside café area clean, orderly and sanitary at all times in strict accordance with all applicable federal, state, and local laws, ordinances, rules and regulations. These areas, inclusive of the tables and benches, shall be cleaned thoroughly each day, and dependent on the amount of usage, shall be cleaned as frequently as deemed necessary.
- 3) At Lessee's own expense, on a quarterly basis, grease trap and hood cleaning shall be scheduled and completed. Proof of hood cleaning and grease trap cleaning service shall be provided to the GCCC Manager or his/her designee on a quarterly basis. Fly traps and parts or services for fly trap installation in the café, shall be at the sole expense of the Lessee. Proof of fly trap installation and monthly service shall be provided to the Lessor by the Lessee on a monthly basis.
- 4) Trash containers shall be emptied by Lessee staff on a daily basis

and at no time may refuse be kept overnight within the kitchen, snack grill area, seating area.

5) Trash receptacles and recycle bins in the area surround the café and café kitchen, shall be emptied and items disposed of in the dumpsters located behind the GCCC. Trash and recycling items including all cardboard boxes shall be broken down and placed in the designated "cardboard only" dumpster. Any litter that is deposited on the ground shall be picked up and placed in the dumpster.

6) Agrees that it has inspected the facilities and equipment and thoroughly understands the area and equipment that is being provided by the Lessor. No other verbal indication of additional City facilities, equipment or improvements are authorized or binding.

X. Acknowledges that the Lessor is not responsible for any financial losses claimed by the Lessee.

Y. Acknowledges that any additional kitchen equipment, in addition to the equipment currently owned by the Lessor, shall be purchased at its own expense.

4. RIGHTS OF THE LESSOR

1) The Lessor reserves the right to inspect and verify equipment inventory on a quarterly basis.

2) Lessor representatives, as authorized by the GCCC Manager or his/her designee, shall have the right to enter upon and have access to all spaces occupied by the Lessee during events and at all other times.

3) The Lessor reserves the right to direct the Lessee to partially or completely suspend sales during any events at which the Lessee's services may be unsatisfactory to the Lessor.

5. STANDARD OF PERFORMANCE; LICENSES

A. The Lessee must possess and maintain the personnel, experience and knowledge necessary to perform the services described under this Agreement.

B. The Lessee shall obtain and maintain throughout the term of this Agreement, all applicable professional and business licenses required by law, for itself, its employees, agents, representatives and subcontractors.

6. COMPENSATION

A. Rent - As rent for the use of the Facility that includes the kitchen, snack grill, and dining area, the Lessee shall pay the Lessor each month the sum of three hundred and fifty dollars (\$350.00) per month or the duration of the lease.

B. The Lessee shall be responsible for payment of gross receipts taxes levied by the State of New Mexico.

7. TERM AND EFFECTIVE DATE

This Agreement shall be effective when signed by the Lessor and the Lessee and shall terminate on March 31, 2021, unless sooner pursuant to Article 8 below.

8. TERMINATION

A. This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party in writing at least upon 60 days prior to the intended date of termination.

B. The Lessee shall render a final report of food and beverage sales up to the date of termination and shall submit this report to the Lessor.

C. The Lessee shall pay the Lessor for the any food and beverage sales rendered through the effective date of such termination, and utilities and for which compensation has not already been paid.

9. CARE OF BUILDING AND EQUIPMENT

A. The Lessee shall be responsible and pay for any and all routine maintenance of the Facility including the kitchen, snack grille and dining area, such as clogged sinks, grease trap, septic system, oven hood, fire suppression system etc., and shall keep all Lessor property in good condition with ordinary wear and tear excepted.

B. In the event of any breakdown of permanent fixtures (HVAC units, Security and/or Fire Alarm Systems, 6-burner stove, walk-in cooler/freezer, ice machine, espresso machine, sandwich bar (servicing or replacement of unit), deep fry cooker, refrigeration units, roof and/or ceiling repair) to the building or malfunction of any Lessor property necessitating repair or replacement, the Lessee shall immediately notify in writing to the Lessor of such conditions. The Lessor shall replace or repair such property within a reasonable time upon receipt of written notification. The Lessee waives its rights to make any repairs at the expense of the Lessor except upon the written approval of the Lessor Manager or his/her designee.

C. Upon written request of the Lessee, the Lessor may furnish without charge to the Lessee, a limited storage and commissary space for stock and equipment where available. The decision whether space is available is within the sole discretion of the GCCC Manager or his/her designee. Locations of storage space requested by the Lessee shall be designated by the GCCC Manager or his/her designee. The Lessee shall acquire no rights to such locations once assigned, and the Lessor reserves the right to require the Lessee to move such storage.

D. The equipment below is provided by the Lessor, should a malfunction occur, it is the responsibility of the Lessee to maintain or replace equipment at your own expense. The equipment is as follows: microwave, storage shelving, table, chairs.

10. CONTENTS INSURANCE

A. The Lessee, at its sole expense, shall insure any contents or

equipment kept by it on the premises and used by it which it desires to have insured; it is understood that the Lessor shall not be required to furnish such insurance.

11. ALTERATIONS AND IMPROVEMENTS

Lessee shall make no alteration, addition or improvement to the premises for the uses described hereinabove without the prior, written consent of Lessor, which consent shall not be unreasonably withheld. Any alteration, addition or improvement made by Lessee after such consent shall have been given, and any fixtures installed as part thereof, shall become the property of the Lessor upon the termination of this Lease, unless Lessee elects to remove them and restore the premises to the condition existing prior to the installation of such fixtures, ordinary wear and use excepted; provided, however, that the Lessor shall have the right to require Lessee to remove such fixtures at Lessee's expense, upon the termination of this Lease.

12. STATUS OF LESSEE; RESPONSIBILITY FOR PAYMENT OF EMPLOYEES AND SUBCONTRACTORS

A. The Lessee and its agents and employees are independent Contractors performing professional services for the Lessor and are not employees of the Lessor. The Lessee, and its agents and employees, shall not accrue leave, retirement, insurance, bonding, use of Lessor vehicles, or any other benefits afforded to employees of the Lessor as a result of this Lease.

B. Lessee shall be solely responsible for payment of wages, salaries and benefits to any and all employees or subcontractors retained by Lessee in the performance of the services under this Lease.

13. CONFIDENTIALITY

Any confidential information provided to or developed by the Lessee in the performance of this Lease shall be kept confidential and shall not be made available to any individual or organization by the Lessee without the prior written approval of the Lessor.

14. CONFLICT OF INTEREST

The Lessee warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Lease. Lessee further agrees that in the performance of this Lease no persons having any such interests shall be employed.

15. ASSIGNMENT; SUBCONTRACTING

The Lessee shall not assign or transfer any rights, privileges, obligations or other interest under this Lease, including any claims for money due, without the prior written consent of the Lessor. The Lessee shall not subcontract any portion of the services to be performed under this Lease without the prior written approval of the Lessor.

16. RELEASE

The Lessee, upon acceptance of final payment of the amount due under this Lease, releases the Lessor, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Lease. The Lessee agrees not to purport to bind the Lessor to any obligation not assumed herein by the Lessor unless the Lessee has express written authority to do so, and then only within the strict limits of that authority.

17. INSURANCE

A. The Lessee shall, at its own cost and expense, be required to carry and maintain in full force and effect comprehensive general liability insurance covering bodily injury and property damage liability, in a form and with an insurance company acceptable to the Lessor, with limits of coverage in the maximum amount which the Lessor could be held liable under the New Mexico Tort Claims Act for each person injured and for each accident resulting in damage to property. Such insurance shall provide that the Lessor is named as an additional insured and the Lessor is notified no less than 30 days in advance of cancellation for any reason. The Lessee will

be required to furnish the Lessor with a copy of the Certificate of Insurance or other evidence of compliance with the provisions of this section prior to performing services under this Lease.

B. The Lessee shall obtain and maintain Workers' Compensation insurance required by law, to provide coverage for Lessee's employees throughout the term of this Lease. The Lessee shall provide the Lessor with evidence of its compliance with such requirement.

C. The Lessee shall maintain professional liability insurance throughout the term of this Agreement providing a minimum coverage the amount required under the New Mexico Tort Claims Act.

18. INDEMNIFICATION

The Lessee shall indemnify, hold harmless and defend the Lessor from all losses, damages, claims or judgments, including payments of all attorneys' fees and costs on account of any suit, judgment, execution, claim, action or demand whatsoever arising from Lessee's performance under this Agreement as well as the performance of Lessee's employees, agents, representatives and subcontractors.

19. NEW MEXICO TORT CLAIMS ACT

Any liability incurred by the Lessor in connection with this Lease is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The Lessor and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Lease modifies or waives any provision of the New Mexico Tort Claims Act.

20. THIRD PARTY BENEFICIARIES

By entering into this Agreement, the parties do not intend to create any right, title or

interest in or for the benefit of any person other than the Lessor and the Lessee. No person shall claim any right, title or interest under this Lease or seek to enforce this Lease as a third party beneficiary of this Lease.

21. RECORDS AND AUDIT

The Lessee shall maintain, throughout the term of this Agreement and for a period of three years thereafter, detailed records that indicate the date, time and nature of services rendered. These records shall be subject to inspection by the Lessor and internal Auditor. The Lessor shall have the right to audit the billing both before and after payment. Payment under this Lease shall not foreclose the right of the Lessor to recover excessive or illegal payments.

22. APPLICABLE LAW; CHOICE OF LAW; VENUE

Lessee shall abide by all applicable federal and state laws and regulations, and all ordinances, rules and regulations of the Lessor. In any action, suit or legal dispute arising from this Lease, the Lessee agrees that the laws of the State of New Mexico shall govern. The parties agree that any action or suit arising from this Lease shall be commenced in a federal or state court of competent jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

23. AMENDMENT

This Agreement shall not be altered, changed or modified except by an amendment in writing executed by the parties hereto.

24. SCOPE OF AGREEMENT

This Agreement incorporates all the Leases, covenants, and understandings between the parties hereto concerning the services to be performed hereunder, and all such Leases, covenants and understandings have been merged into this Lease. This Agreement expresses the entire Agreement and understanding between the parties with respect

to said services. No prior Agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless Agreement throughout embodied in this Lease.

25. NON-DISCRIMINATION

During the term of this Agreement, Lessee shall not discriminate against any employee or applicant for an employment position to be used in the performance of services by Lessee hereunder, on the basis of ethnicity, race, age, religion, creed, color, national origin, ancestry, sex, gender, sexual orientation, physical or mental disability, medical condition, or citizenship status.

26. SEVERABILITY

In case anyone or more of the provisions contained in this Lease or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

27. NOTICE

Any and all notices provided for hereunder shall be in writing and shall be deemed delivered, given and received when (i) personally delivered, or (ii) five (5) days after the same are deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the applicable party at the address indicated below for such party, or at such other address as may be designated by either party in a written notice to the other party:

Any captions to or headings of the paragraphs of this Lease are solely for the convenience of the parties, are not a part of this Lease and shall not be used for the interpretation or determination of validity of this Lease or any provisions hereof.

To Lessor:

City of Santa Fe,
Jerry L. Schilling
GCCC Recreation Section Manager
3221 Rodeo Road
Santa Fe, NM 0909

To Lessee:

Victoria Brunini, Owner
What THE Truck, LLC
dba: THE cafeSanta Fe, NM 87507-
4437 Colores Del Sol
Santa Fe, NM 87507

28. NO WAIVER

No waiver of a breach of any of the covenants contained in this Lease shall be construed to be a waiver of any succeeding breach of the same or any other covenant.

29. ENTIRE AGREEMENT

The foregoing constitutes the entire Agreement between Lessor and Lessee, represents their entire understanding and defines all of their respective rights, title and interest as well as all of their duties, responsibilities and obligations. Any and all prior agreements and understandings between the parties are merged herein.

30. BINDING EFFECT

This Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns and is specifically enforceable.

IN WITNESS WHEREOF, the parties have executed this Lease on the date set forth below.


CITY OF SANTA FE (LESSOR):



Jarel LaPan Hill, City Manager

Date: 2/19/2020

LESSEE:

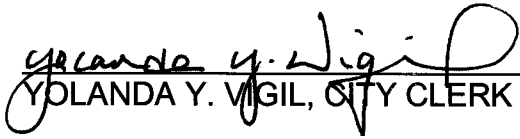



Victoria Bruneni, Owner

Date: 2-20-20

CRS #_03-414189-00-8
City of Santa Fe Business
Registration No. _____

ATTEST:


YOLANDA Y. VIGIL, CITY CLERK 

CITY ATTORNEY'S OFFICE:

 
SENIOR ASSISTANT CITY ATTORNEY

APPROVED:


MARY T. MCCOY, DIRECTOR
FINANCE DEPARTMENT

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ORGANIZATION CODE/LINE ITEM