



Phoenix-Mesa Gateway Airport Authority

SECOND AMENDMENT TO TERMINAL CONCESSION LEASE AGREEMENT

This SECOND AMENDMENT to the FOOD & BEVERAGE SERVICES TERMINAL CONCESSION LEASE AGREEMENT (“AMENDMENT 2”) is executed to be effective as of the FIRST (1ST) day of OCTOBER 2020 by and between the **PHOENIX-MESA GATEWAY AIRPORT AUTHORITY**, a joint powers airport authority authorized and existing under the laws of the State of Arizona, its successors and assigns (“PMGAA”), and **KIND HOSPITALITY, INC.**, a Delaware corporation registered to do business in the State of Arizona (“Concessionaire”). PMGAA and Concessionaire may be referred to jointly as “Parties,” and each separately as a “Party”. This AMENDMENT 2 hereby amends that certain Terminal Concession Agreement between PMGAA and Concessionaire dated and effective the FIRST (1ST) day of OCTOBER 2019 and subsequently amended on January 1, 2020 (collectively, the “Agreement”), with respect to Concessionaire’s operation at the Airport Terminal at 6033 South Sossaman Road.

WITNESSETH:

WHEREAS, PMGAA and Concessionaire desire to enter into this AMENDMENT 2 in order to modify the Agreement;

WHEREAS, on January 31, 2020 Secretary Alex Azar of the United States Department of Health and Human Services declared a public health emergency to address the 2019 novel coronavirus (COVID-19);

WHEREAS, on March 11, 2020 State of Arizona Governor Doug Ducey issued a declaration of Public Health Emergency due to the necessity to prepare for, prevent, respond to, and mitigate the spread of COVID-19;

WHEREAS, the impacts of COVID-19 have significantly disrupted domestic and international travel and resulted in significant declines in passenger traffic at the Airport Terminal;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this AMENDMENT 2 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The provisions of SECTION 2.1 are hereby deleted in their entirety and replaced with the following:

2.1 Initial Term. The Agreement shall commence on the Effective Date. The Term shall commence on the Date of Beneficial Occupancy and terminate TEN (10) years thereafter (the “Term”), unless sooner terminated as provided herein. The Date of Beneficial Occupancy shall mean the earlier of either substantial completion of the Initial Improvements, as defined in SECTION 5.3.1, or October 1, 2021 (“DBO”).

2. The provisions of SECTION 3.1.4 are hereby deleted in their entirety and replaced with the following:

3.1.4 “MAG Rent” means the minimum annual guaranteed rent which shall be: (i) for the First Agreement Year, EIGHTY-FIVE PERCENT (85%) of the Percentage Rent payable by

Concessionaire for the twelve month period immediately preceding the DBO, or (ii) for all subsequent Agreement Years, the greater of: (a) the MAG Rent payable for the immediately preceding Agreement Year, or (b) EIGHTY-FIVE PERCENT (85%) of the Percentage Rent payable by Concessionaire for the immediately preceding Agreement Year.

3. The provisions of SECTION 3.1.5 are hereby deleted in their entirety and replaced with the following:

3.1.5 "Monthly Installment of MAG Rent" means, as applicable, one-twelfth (1/12) of the MAG Rent for such Agreement Year.

4. The provisions of SECTION 3.2.3 are hereby deleted in their entirety and replaced with the following:

3.2.3 Concessionaire shall pay annual rent for storage spaces FS1, FS2, and FS3 in the amount of THIRTY-THREE AND 00/100 DOLLARS (\$33.00) per square foot, payable in equal monthly installments ("Storage Space Rent"). Beginning on the Effective Date through December 31, 2019, Storage Space Rent shall be for locations FS1 and FS2, payable in monthly installments of SIX HUNDRED SIXTY and 00/100 (\$660.00). Commencing on January 1, 2020, storage space rent shall be for locations FS1, FS2, and FS3, payable in monthly installments of NINE HUNDRED NINETY and 00/100 (\$990.00). Storage Space Rent shall increase TWO Percent (2%) on October 1, 2021 and annually on each anniversary of the Effective Date thereafter.

5. The provisions of SECTION 5.3.3 are hereby deleted in their entirety and replaced with the following:

5.3.3 Subject to Section 1.6.2, Concessionaire shall complete construction and installation of the Initial Improvements to the Premises in time to permit business activities to commence fully within said Premises as soon as possible but no later than September 30, 2021. Otherwise, Concessionaire's failure to complete said Initial Improvements and become operational by the aforementioned date may subject Concessionaire to the payment of a late opening penalty equal to ONE HUNDRED and 00/100 DOLLARS (\$100.00) for each day Concessionaire's commencement of business operations is delayed beyond September 30, 2021, which shall become due and payable to PMGAA, in addition to any other rent and fees due, within FIVE (5) business days of PMGAA's written request therefor.

6. The provisions of SECTION 5.4 are hereby deleted in their entirety and replaced with the following:

5.4 Requirements – Mid-Term Refurbishments. Concessionaire shall undertake refurbishment improvements to update and improve the visual appeal and functioning of the Premises during the Term. Such improvements (the "Refurbishment Improvements") shall be valued at no less than approximately ONE HUNDRED FORTY-THREE THOUSAND and 00/100 DOLLARS (\$143,000), receive advance, written PMGAA approval prior to execution, construction and/or permitting and be completed no later than September 30, 2026. Failure to complete said Refurbishment Improvements within such timeframe may subject Concessionaire to the payment of a late opening penalty equal to TWO HUNDRED FIFTY and 00/100 DOLLARS (\$250.00) for each day of delay, which shall become due and payable to PMGAA, in addition to any other rent and fees due, within FIVE (5) business days of PMGAA's written request therefor. The actual completion of said Refurbishment Improvements shall be conducted in accordance with SECTION 5.3.2 herein, and

Concessionaire shall validate its actual expenditures to PMGAA, in writing, within ONE HUNDRED TWENTY (120) calendar days of completion of said Refurbishment Improvements.

7. New SECTION 1.5.3 is hereby added with the following provisions:

1.5.3 Notwithstanding Section 1.1.1 regarding Concessionaire's exclusive right to operate within the F1 space and F3 space, if the Passenger Traffic Trigger (as defined in Section 1.6.1 below) is not achieved prior to October 1, 2022, upon thirty (30) days' prior written notice to Concessionaire ("Recapture Notice"), PMGAA shall have the right to recapture such space(s) and remove the F1 space and/or the F3 space from the Agreement and subsequently use or permit the use of such space(s) for any use in its sole discretion, including, without limitation, a food and beverage concession business. Within thirty (30) days after receipt of a Recapture Notice, Concessionaire shall have the right to waive the Passenger Traffic Trigger and notify PMGAA in writing of its intent to resume operations in such space(s) in the manner set forth in Section 1.6 ("Notice to Resume Operations"), in which case the Re-initiation Period shall commence as of the date of delivery of the Notice to Resume Operations. If PMGAA delivers a Recapture Notice and Concessionaire does not timely deliver a Notice to Resume Operations, the Parties agree to execute an amendment to remove the F1 space and/or the F3 space, as applicable, from the Agreement.

8. New SECTION 1.6 is hereby added with the following provisions:

1.6 Modified Concessionaire Obligations.

1.6.1 Concessionaire's obligation to operate the pre-security space (F3) under Section 7 of this Agreement is waived until such time as monthly enplanements meet or exceed EIGHT-FIVE PERCENT 85% of monthly enplanements for the same month in calendar year 2019 for two consecutive months ("Passenger Traffic Trigger"). PMGAA will notify Concessionaire, in writing, upon achievement of the Passenger Traffic Trigger. Upon notification, Concessionaire will have ONE HUNDRED AND EIGHTY (180) calendar days ("Re-initiation Period") to (i) submit for and receive PMGAA's written approval of a revised concept for F3, (ii) conduct any necessary alterations pursuant to Section 5.2, and (iii) initiate concession operations pursuant to Section 7. Concessionaire's failure to initiate concession operations in the F3 space prior to expiration of the Re-initiation Period will subject Concessionaire to the penalties described in Exhibit E.

1.6.2 Notwithstanding Concessionaire obligation to operate the F1 space pursuant to Section 7, Concessionaire's obligation to re-program and renovate the F1 space pursuant to Section 5 is waived until the Passenger Traffic Trigger is achieved. PMGAA will notify Concessionaire, in writing, upon achievement of the Passenger Traffic Trigger. Upon notification, Concessionaire will have the Re-initiation Period to (i) submit for and receive PMGAA's written approval of a revised concept for F3, (ii) conduct any necessary alterations pursuant to Section 5.2, and (iii) initiate concession operations pursuant to Section 7. Concessionaire's failure to initiate concession operations in the F1 Space prior to expiration of the Re-initiation Period will subject Concessionaire to the penalties described in Exhibit E.

9. Concessionaire warrants and represents to PMGAA that: (i) all necessary actions have been taken to authorize the execution of this AMENDMENT 2 by Concessionaire; (ii) the persons who have executed this AMENDMENT 2 on behalf of Concessionaire are duly authorized to do so; and (iii) this AMENDMENT 2 constitutes a legal, valid and binding obligation of Concessionaire, enforceable against Concessionaire in accordance with its terms and the terms of the Agreement.
10. In all other respects the Food and Beverage Service Terminal Concession Lease Agreement shall remain unchanged and in full force and effect. The Agreement, as amended by this AMENDMENT 2 shall continue to be binding upon PMGAA and Concessionaire and their permitted successors and assigns.
11. All of the Recitals set forth above are incorporated into this AMENDMENT 2 by this reference.
12. Concessionaire recognizes and acknowledges that execution of his AMENDMENT 2 shall in no way constitute a waiver by PMGAA or any other sums which may be due and owing to PMGAA or which may hereafter accrue.

IN WITNESS WHEREOF, the Parties have entered into this AMENDMENT 2 as of the date first set forth above.

FOR PMGAA:

**PHOENIX-MESA GATEWAY AIRPORT
AUTHORITY**, an Arizona joint powers
Authority.

By: _____

Name: J. Brian O'Neill, A.A.E.
Executive Director/CEO

FOR CONCESSIONAIRE:

KIND HOSPITALITY, INC.
a Delaware corporation.

By:  _____

Name: Nava Thuraisingam, CEO
Chief Executive Officer