



Phoenix-Mesa Gateway Airport Authority

TERMINAL CONCESSION LEASE

AGREEMENT

(FOOD & BEVERAGE SERVICES)

with

KIND HOSPITALITY, INC

Effective Date: October 1, 2019

TABLE OF CONTENTS

<u>Section</u>	<u>Title</u>	<u>Page No.</u>
1.	AGREEMENT.....	2
2.	TERM.....	4
3.	RENT AND FEES.....	5
4.	RECORDS AND AUDITING.....	8
5.	IMPROVEMENTS AND ALTERATIONS.....	8
6.	MAINTENANCE, REPAIRS, SERVICES AND INSPECTIONS.....	10
7.	CONCESSIONAIRE'S COMPLIANCE.....	11
8.	AIRPORT SECURITY PLAN.....	13
9.	TAXES, LICENSES AND PERMITS.....	14
10.	INSURANCE.....	14
11.	INDEMNIFICATION.....	15
12.	ASSIGNMENT.....	16
13.	TERMINATION PROVISIONS.....	16
14.	NONWAIVER.....	18
15.	APPLICABLE LAW.....	18
16.	RULES AND REGULATIONS.....	18
17.	CORPORATE AUTHORIZATION.....	18
18.	NOTICES.....	18
19.	PRIOR PERMITS.....	19
20.	ENVIRONMENTAL COMPLIANCE.....	19
21.	ACDBE REQUIREMENTS.....	19
22.	TITLE VI.....	20
23.	MISCELLANEOUS.....	22
24.	INCORPORATION OF RECITALS.....	23

- EXHIBIT A** – Depiction of the Premises
- EXHIBIT B** – Authorized Menu/Product Listing
- EXHIBIT C** – Description of Capital Improvements
- EXHIBIT D** – Airport Rules and Regulations
- EXHIBIT E** – Penalties for Violation of Agreement Operating Standards
- EXHIBIT F** – PMGAA Standard Terms and Conditions
- EXHIBIT G** – Concessionaire's RFP Submittal



Phoenix-Mesa Gateway Airport Authority
TERMINAL CONCESSION LEASE AGREEMENT
 (FOOD & BEVERAGE SERVICES)

This exclusive TERMINAL CONCESSION LEASE AGREEMENT (FOOD & BEVERAGE SERVICES) (the "Agreement") is made and entered into this FIRST (1st) day of October 2019 (the "Effective Date"), 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 ("PMGAA"), and **KIND HOSPITALITY, INC.**, a Delaware corporation authorized to do business in Arizona ("Concessionaire"). PMGAA and Concessionaire may be referred to jointly as "Parties," and each separately as a "Party."

WITNESSETH:

WHEREAS, PMGAA is the owner and operator of the Phoenix-Mesa Gateway Airport, an airport and airfield property generally located at the intersection of Ray Road and Sossaman Road, City of Mesa, Maricopa County, Arizona (the "Airport"); and

WHEREAS, PMGAA has the right to lease, license and grant the use of property and facilities on the Airport and has full power and authority to enter into this Agreement in respect thereof; and

WHEREAS, PMGAA selected Concessionaire through a public Request for Proposal (RFP) process, solicitation number 2019-009-RFP, and desires Concessionaire's services as the operator of a TERMINAL FOOD & BEVERAGE (F&B) CONCESSION business at and within the Airport's airline passenger terminal (the "Terminal"), is willing to make space available for use by Concessionaire in connection therewith, and through a competitive process has deemed Concessionaire qualified to perform said services, and Concessionaire desires to perform and provide said services;

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements herein contained, the Parties do hereby undertake, promise and agree, each for itself and its successors and assigns, as follows:

1. AGREEMENT.

1.1 General.

1.1.1 PMGAA hereby grants to Concessionaire, for the Term and under the conditions herein provided, an exclusive and revocable right to enter upon and use the Airport for the purpose of conducting its business as a TERMINAL FOOD & BEVERAGE CONCESSIONAIRE from certain spaces within the Terminal identified as Suite 119 (F1) and is comprised of approximately One Thousand Nine Hundred Eighty (1980) square feet, Suite 157 (F2) and is comprised of approximately Two Thousand Four Hundred (2400) square feet, Suite 179 (F3) and is comprised of approximately Six Hundred (600) square feet, Suite 161 (F4) and is comprised of approximately Two Thousand One Hundred Seventy (2170) square feet, Suite 125 (FS1) and is comprised of approximately Thirty-Seven (37) square feet of storage space, and Suite 144 (FS2) and is comprised of approximately Two Hundred Three (203) square feet of storage space, as depicted in **EXHIBIT A** (the "Premises") which is attached hereto and made a part hereof. For purposes of this Agreement, the Terminal is that certain building located at 6033 S. Sossaman Road, Mesa, Arizona, as it presently exists or may subsequently be expanded in the future.

1.1.2 Concessionaire shall not engage in any other commercial revenue producing activity at the Airport that is in addition to or materially differs from the activity set forth in SECTION 1.1.1 and SECTION 1.2 herein prior to obtaining such written approval, without waiver or limitation of any other remedies of PMGAA at law or equity, Concessionaire hereby agrees to immediately cease said activity upon notice from PMGAA, and remit to PMGAA the sum equal to TWENTY PERCENT (20%) of gross billings for such unauthorized activity, plus any expenses incurred by PMGAA in the course of any audit conducted for all of Concessionaire's activities.

1.2 Concession Location and Theme. Concessionaire shall operate the following concepts/brands in the assigned locations:

F1	Macayo's	Sit down Mexican food restaurant with full service bar
	Infusion Coffee and Tea	Kiosk serving fresh coffee, tea and pastries
F2	Panera Bread	Quick serve food and coffee
F3	Starbucks	Quick serve coffee and pastries
F4	O.H.S.O. Brewery & Distillery	Full service restaurant and bar

1.3 Concessionaire's Acknowledgement.

1.3.1 Concessionaire acknowledges and agrees that its obligations to pay rental fees and all other charges due and owing under the terms hereof shall, except as otherwise provided herein, be absolute and unconditional, and shall not be affected by any circumstances whatsoever, including, without limitation: (i) any set-off, counterclaim, recoupment, defense or other right which Concessionaire may have against PMGAA or the United States of America or anyone else for any reason whatsoever; (ii) any liens, encumbrances or rights of others with respect to the Premises; (iii) the invalidity or unenforceability or lack of due authorization or other infirmity of this Agreement or any lack of right, power or authority of PMGAA or Concessionaire to enter into this Agreement; (iv) any insolvency, bankruptcy, reorganization or similar proceedings by or against Concessionaire, or any other person; or (v) any other cause, whether similar or dissimilar to the foregoing, any future or present law notwithstanding, it being the intention of the Parties hereto that all rent and fees being payable by Concessionaire hereunder shall continue to be payable in all events and in the manner and at the times provided herein.

1.4 Concessionaire's Rights. So long as Concessionaire shall timely pay the rental fees and other charges required to be paid and is not in default of any obligation hereunder, PMGAA hereby grants to Concessionaire the following rights:

1.4.1 A right to peaceably have and enjoy the use of the Premises without hindrance from PMGAA, and to occupy and use the Premises as a TERMINAL FOOD & BEVERAGE CONCESSIONAIRE while in compliance with the terms and conditions of this Agreement. All other rights granted to Concessionaire under this Agreement are nonexclusive.

1.4.2 A right of ingress and egress to and from the Premises and the Terminal over Airport roadways, including common use roadways, driveways and public areas of the Airport, subject to any and all applicable rules and regulations established from time to time by PMGAA, the United States government, the State of Arizona, the City of Mesa, or other governmental entity, as applicable. Such rights of ingress and egress shall apply to Concessionaire's employees, guests, patrons, invitees, suppliers and other authorized individuals.

1.4.3 A right to install and maintain appropriate signs within and in proximity to the Premises at Concessionaire's own expense; provided, however, that the design, location, installation, modification and maintenance of such signs shall be subject to the prior written approval of PMGAA.

1.4.4 A right to obtain supplies and services at the Premises from suppliers, vendors or contractors of its choosing; provided, however, that all contracts entered into by Concessionaire for provision

of labor and employment services shall require that personnel engaged by Concessionaire at the Premises shall not be disruptive of other personnel or operations at the Airport and that such personnel shall at all times comply with the *Phoenix Mesa Gateway Airport Authority's published Rules and Regulations*, attached as **EXHIBIT D**.

1.5 PMGAA's Rights.

1.5.1 PMGAA reserves the right, in its sole discretion, to limit Concessionaire's sale of food, beverages and related items to those specified in **EXHIBIT B** attached hereto, and to other items as may be specifically approved for sale in writing by PMGAA. In the event any question or dispute arises as to the sale of any specific item on the Premises, Concessionaire may submit a written request to PMGAA to have the matter reviewed. PMGAA shall give a decision in writing and such determination shall be considered as final and binding in the matter. Concessionaire shall abide by and conform to the decision of PMGAA.

1.5.2 In addition to PMGAA's other rights set forth in this Agreement, PMGAA shall have the right (but not the obligation) to substitute Comparable Areas for all or any portion of the Premises, and any additions, alternations or improvements thereon, should PMGAA, in its reasonable discretion, determine that taking of the Premises, any portion thereof or any improvement thereon, is required for other Airport purposes and there exists no appropriate alternative. In the event PMGAA makes the determination to exercise its rights to substitute, all Concessionaire rights to and interest in the portion of the Premises taken shall immediately vest in PMGAA. Furthermore, PMGAA may require Concessionaire to vacate the portion of the Premises taken. For the purposes of this SECTION 1.5.2, the term "Comparable Areas" is defined to mean a space within the Terminal, or any additions or extensions thereof, similar in size to the Premises, brought to the same level of improvement as the Premises and having the same or similar usefulness to Concessionaire as the portion taken. PMGAA shall bear all expenses of bringing the substituted area to the same level of improvement as the Premises. If any of Concessionaire's improvements, equipment, furniture or fixtures cannot be relocated to the substituted premises, PMGAA shall replace, at PMGAA's expense, such non-relocatable improvements and other property with comparable property in the Premises, and PMGAA shall be deemed the owner of the non-relocated improvements and other property, free and clear of all claims of any interest or title therein by Concessionaire, or any other third party. It is the specific intent of this SECTION 1.5.2 that Concessionaire be placed, to the extent possible, in the same position it would have been, had PMGAA not substituted new premises for the Premises; provided, however, that PMGAA shall not be obligated to reimburse Concessionaire for any damages, including lost profits or revenues, due to such substitution. Notwithstanding the foregoing, PMGAA shall use reasonable efforts to avoid disruption to Concessionaire's business.

2. **TERM.**

2.1 Initial Term. This 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, 2020 ("DBO").

2.2 Renewal Term. Provided Concessionaire is not then in default of this Agreement, PMGAA shall have the option, at its sole discretion, of extending the Term for ONE (1) additional period of TWO (2) years ("Extension"). PMGAA may exercise an Extension by giving written notice to Concessionaire of its desire to do so no later than THREE HUNDRED SIXTY-FIVE (365) days prior to the expiration of the Term, as set forth in SECTION 2.1 herein.

2.3 Holding Over – Occupancy of Premises.

2.3.1 If Concessionaire continues to occupy the Premises, or any part thereof, or otherwise continues to operate at, on or from the Airport after the expiration of the Term with PMGAA's written consent,

this Agreement, with all its terms, covenants and conditions, will be deemed extended on a month-to-month basis, which shall then become the current Term of the Agreement. Either Party may terminate this holdover at any time by giving THIRTY (30) calendar days advance written notice of such termination to the other Party.

2.3.2 If Concessionaire continues to occupy the Premises, or any part thereof, or otherwise continues to operate at, on or from the Airport after the expiration of the Term without PMGAA's written consent, such occupancy and/or operation shall be at sufferance in monthly intervals with amounts payable in advance and equal to TWO HUNDRED PERCENT (200%) of the greater of the immediately prior applicable MAG Rent or Percentage Rent and other fees payable by Concessionaire under this Agreement. Concessionaire shall continue to be bound by all terms, covenants and conditions of this Agreement, until the time such holdover is concluded.

2.3.3 Nothing contained in this SECTION 2.3 shall be construed, however, to give any right of holdover and PMGAA may exercise any and all remedies, at law or in equity, to recover possession of the Premises specified herein, together with any damages incurred by PMGAA.

3. RENT AND FEES.

3.1 Definitions.

3.1.1 "Agreement Year" means the successive one-year periods during the Term commencing on the month and day of the DBO and ending on the day immediately preceding the month and day of the DBO.

3.1.2 "First Agreement Year" means the one-year period commencing on the DBO and ending on day immediately preceding the first anniversary of the DBO.

3.1.3 "Gross Revenue" means the gross selling price (whether collected or not) for all final sales made in connection with Concessionaire's business operations under this Agreement, including the full amount of all orders for goods or services accepted by Concessionaire elsewhere, but to be filled or performed in, on, about or from the Premises, excluding: (i) any and all retail sales taxes, excise taxes, transaction privilege taxes or related direct taxes collected by Concessionaire in the course of making such sales; (ii) any fees or costs charged or deducted by third party credit card issuers, including but not limited to MasterCard and Visa; and (iii) receipts from the sale or trade-in value of any equipment used upon the Premises and owned by Concessionaire.

3.1.4 "MAG Rent" means the minimum annual guaranteed rent, which shall be: (i) for the First Agreement Year, THREE HUNDRED SEVENTEEN THOUSAND EIGHT HUNDRED SIXTY-FIVE and 96/100 DOLLARS (\$317,865.96), or (ii) for all subsequent Agreement Years, the greater of: (a) the MAG Rent payable for the immediately preceding Agreement Year, or (b) or EIGHTY-FIVE PERCENT (85%) of the Percentage Rent payable by Concessionaire for the immediately preceding Agreement Year.

3.1.5 "Monthly Installment of MAG Rent" means, as applicable: (i) for the First Agreement Year, one-twelfth (1/12) of MAG Rent, i.e., TWENTY-SIX THOUSAND FOUR HUNDRED EIGHTY-EIGHT 83/100 DOLLARS (\$26,488.83), or (ii) for all subsequent Agreement Years, one-twelfth (1/12) of the MAG Rent for such Agreement Year.

3.1.6 "Percentage Rent" means an amount equal to TEN PERCENT (10%) of Gross Revenue attributable to the applicable period, i.e., Transition Period, Agreement Year, or month.

3.1.8 "Transition Period" means the period commencing October 1, 2019 and ending on the day immediately preceding the DBO.

3.2 Rent. For and in consideration of the privilege and authorization herein granted, Concessionaire shall pay to PMGAA rent for use and occupancy of the Premises as follows, in the manner set forth in SECTION 3.3 below:

3.2.1 During the Transition Period, Concessionaire shall pay to PMGAA Percentage Rent.

3.2.2 During all Agreement Years, Concessionaire shall pay to PMGAA the greater of: (i) MAG Rent, or (ii) Percentage Rent.

3.2.3 Beginning on the Effective Date, Concessionaire shall pay annual rent for storage spaces FS1 and FS2 in the amount of THIRTY-THREE AND 00/100 DOLLARS (\$33.00) per square foot, payable in monthly installments of SIX HUNDRED SIXTY AND 00/100 DOLLARS (\$660.00) ("Storage Space Rent"). Storage Space Rent shall increase TWO PERCENT (2%) annually on each anniversary of the Effective Date.

3.3 Rental Payments.

3.3.1 **MAG Rent.** Concessionaire shall remit its Monthly Installment of MAG Rent to PMGAA, in advance and without any prior demand therefor and without any abatement, deductions or set-offs whatsoever. Such payment shall be due and payable no later than the FIRST (1st) day of each month in which said payment is due (the "MAG Rent Due Date"), plus applicable taxes. MAG Rent payments received TEN (10) or more days after the MAG Rent Due Date shall be subject to finance charges and/or late fees, as provided in SECTION 3.5 herein.

3.3.2 Percentage Rent.

a. *Transition Period.* During the Transition Period, Concessionaire shall pay monthly to PMGAA, on or before the TWENTIETH (20th) day following the last day of the preceding calendar month ("Percentage Rent Due Date"), a sum equal to the Percentage Rent for the preceding month.

b. *Agreement Years.* For all Agreement Years, in addition to the Monthly Installment of MAG Rent, Concessionaire shall pay monthly to PMGAA, on or before the TWENTIETH (20th) day following the Percentage Rent Due Date, a sum equal to the amount in which Percentage Rent for the preceding month exceeds the Monthly Installment of MAG Rent for the preceding month. Such payments, if any, shall include applicable taxes, as required by SECTION 3.6 herein.

c. *Monthly Reports.* Promptly following the end of each calendar month and in no event later than the Percentage Rent Due Date, Concessionaire shall submit to PMGAA via an online Portal (<https://selfreport.gatewayairport.com/pwportal/login.shtml>) a report detailing the Gross Revenues from its operations at, on, about or from the Premises attributable to the preceding month.

3.3.3 **Storage Space Rent.** Storage Space Rent payments shall be paid in monthly installments, in advance, on the first day of each calendar month ("Storage Space Rent Due Date"). On each such date, Concessionaire shall pay the full monthly Storage Space Rent payment.

3.3.4 **No Waiver.** No payment to or receipt by PMGAA of a lesser amount than that which is due and payable under the provisions of this Agreement at the time of such payment shall be deemed to be other than a payment on account of the earliest payment due, nor shall any endorsement or statement on any check or payment prejudice in any way PMGAA's right to recover the balance of such payment or pursue any other remedy provided in this Agreement or by law.

3.4 **Annual Reports.** Within THIRTY (30) calendar days of the end of each Agreement Year, Concessionaire shall provide PMGAA an accounting of its MAG Rent and Percentage Rent payments to PMGAA, including Concessionaire's Gross Revenue attributable to the Agreement Year (as defined in SECTION 3.1). If Concessionaire's required payments to PMGAA under this Agreement differ from amounts Concessionaire has actually paid, an adjustment shall be made as follows: (i) If Concessionaire shall have paid to PMGAA an amount greater than Concessionaire is required to pay for such previous Agreement Year, Concessionaire shall be entitled to a refund or credit against Concessionaire's next payment for the amount of such overpayment, at Concessionaire's discretion; or (ii) if Concessionaire shall have paid an amount less than the amounts required to be paid during the Agreement Year, then Concessionaire shall immediately pay such difference to PMGAA.

3.5 Finance and Late Charges.

3.5.1 If PMGAA shall receive payment for any rent or other fee from Concessionaire TEN (10) or more calendar days after the applicable due date, Concessionaire shall pay interest on the unpaid installment at the rate of EIGHTEEN PERCENT (18%) per annum (a "Finance Charge"), from such due date and continuing until payment is received by PMGAA in full.

3.5.2 In the event any payment is received by PMGAA more than TEN (10) calendar days after the due date, a late penalty of TEN PERCENT (10%) of the amount of such delinquent payment (a "Late Penalty") shall be due and payable in addition thereto.

3.6 Taxes. In the event any governmental authority shall impose a tax or imposition based upon any rental payments or any other sums paid or owing hereunder or the receipt of such payments by PMGAA, then, Concessionaire shall pay such amounts to PMGAA at the same time and in addition to payments hereunder, which amounts may include, but are not limited to, any or all rental, transaction privilege, sales, excise or other similar tax except income taxes. Concessionaire's obligation to pay such amounts together with any interest thereon and/or penalties therefor, shall survive the termination of this Agreement.

3.7 Penalties. A failure of Concessionaire to adhere to the requirements outlined in this Agreement will result in inconvenience to the public and adversely affect the operation of the Airport. Upon written demand by PMGAA, Concessionaire agrees to pay to PMGAA penalties in accordance with this SECTION 3.7 upon the occurrence of the specified breach and in the amounts specified in EXHIBIT E.

3.8 Payments – Rentals and Fees.

3.8.1 All payments of rentals, fees and charges specified in SECTIONS 3.1 through 3.7 herein shall be tendered in lawful currency of the United States, either by check or electronic transfer, and shall be free from all claims or setoffs of any kind against PMGAA. In the event technological advances make point of sale Gross Revenues reporting and payment transfers more economically feasible, PMGAA, after considering the economic impact to both Concessionaire and PMGAA, may revise how payment remittances are made. Any and all equipment and transmission changes necessary to accomplish the change in the reporting and/or remittance process will be the responsibility of Concessionaire.

3.8.2 Except as otherwise provided herein, all payments and reports required by this SECTION 3 shall be remitted to the following address by the due date(s) specified herein:

Phoenix-Mesa Gateway Airport Authority
Attn.: Department of Finance (Accounts Receivable)
5835 S. Sossaman Road
Mesa, Arizona 85212-6014

or such other address specified in writing by PMGAA to Concessionaire.

3.9 Performance Guarantee.

3.9.1 Concessionaire shall, on or before the Effective Date, provide to PMGAA an amount, equal to THREE (3) months' MAG Rent or SEVENTY-NINE THOUSAND FOUR HUNDRED SIXTY-SIX AND 48/100 DOLLARS (\$79,466.49) (the "Performance Guarantee"), in order to guarantee Concessionaire's full and faithful performance of its covenants and obligations hereunder. Concessionaire may provide written authorization for PMGAA to apply the Performance Guarantee from its Kind Hospitality, LLC concession agreement, which expires on September 30, 2019, toward the Performance Guarantee due and owing to this concession agreement.

3.9.2 The Performance Guarantee, at the election of PMGAA, may be applied in reduction of any loss and/or damage sustained by PMGAA by reason of the occurrence of any breach, nonperformance or default by Concessionaire under this Agreement without the waiver of any other right or remedy available to PMGAA at law, in equity or under the terms of this Agreement. If any portion of the Performance Guarantee is so used or applied, Concessionaire shall, within FIVE (5) business days after written notice from

PMGAA, deposit with PMGAA immediately available funds in an amount sufficient to restore the Performance Guarantee to its original amount. Unless this Agreement is terminated as a result of Concessionaire's default whereupon Concessionaire shall immediately forfeit its Performance Guarantee to PMGAA, upon termination, PMGAA shall return to Concessionaire all portions of the Performance Guarantee which were not otherwise applied by PMGAA as permitted above within THIRTY (30) calendar days thereafter. PMGAA shall have no obligation to maintain a separate account for such security deposit and shall have no obligation to pay interest thereon.

3.10 Survival. Concessionaire's obligation to pay all amounts herein stated, together with any interest thereon and/or penalties therefor, shall survive the termination of this Agreement.

4. RECORDS AND AUDITING.

4.1 Concessionaire Records.

4.1.1 With respect to its activities at the Premises and on the Airport, Concessionaire shall keep true and accurate records, books and data which shall show all sales made and services performed for cash or credit or otherwise, whether paid or not. Said records, books and data shall be kept and maintained at Concessionaire's business office in the local Phoenix, Arizona metropolitan area, or upon written PMGAA request, shall be made available for audit at the Airport, within TEN (10) business days after such request. PMGAA and its authorized representatives shall have the right at reasonable times and during business hours to inspect and examine records, books and other data as required to verify sales and billings as described in this Agreement.

4.2 PMGAA Audit Authority. In accordance with SECTION 4.1, PMGAA or its authorized representatives shall have the right to audit Concessionaire's records relating to billings, monthly rental payments reported and paid hereunder, and any other activity by Concessionaire on the Airport during the TWELVE (12) consecutive month period preceding the date of such audit. If PMGAA finds or determines that a discrepancy exists for the period of the audit, Concessionaire shall promptly pay the cost and expense of PMGAA's audit. For purposes of this Agreement, a "discrepancy" shall mean one where audited billings exceed reported billings by TWO PERCENT (2%) or more. The amount of any such deficiency established by such audit shall be conclusive and binding upon the Parties and shall be paid by Concessionaire no later than TEN (10) calendar days from the billing date.

5. IMPROVEMENTS AND ALTERATIONS.

5.1 Concessionaire's Acceptance. Concessionaire agrees to accept the Premises in an "as is" condition and accepts financial responsibility for all improvements specified in SECTION 5.3 herein, and as required to make the Premises suitable for Concessionaire's business operations.

5.2 Authorization. Concessionaire shall make no improvements or alterations to the Premises during the Term of this Agreement without prior notice to and written permission of PMGAA. Concessionaire shall provide PMGAA with electronic, as-built drawings (or their equivalent) upon completion of any approved improvement or alteration.

5.3 Requirements – Initial Occupancy.

5.3.1 Beginning on the Effective Date, Concessionaire shall undertake to design and construct all improvements and install all fixtures, equipment, furniture and related items (collectively, the "Initial Improvements") to transform the Premises in accordance with the concession names and themes specified in SECTION 1.2, and substantially similar to the corresponding renderings and floor plans reflected in EXHIBIT G herein. Construction plans for the Initial Improvements and any material changes thereto shall be submitted to and approved in writing by PMGAA prior to execution, commencement of construction and/or submission to the City of Mesa for permit. Concessionaire's initial investment in said Initial Improvements to the Premises shall not be less than TWO MILLION ONE HUNDRED FORTY-FIVE THOUSAND FOUR HUNDRED and 00/100 DOLLARS (\$2,145,400.00), and Concessionaire shall validate its actual expenditures to PMGAA, in

writing, within SIXTY (60) calendar days of completion of the Initial Improvements; provided, however, if Concessionaire is able to make Initial Improvements in the scope and quality proposed in Exhibit G, but at a lesser investment amount, then Concessionaire shall submit a written request to PMGAA at least sixty (60) days prior to commencing construction of the Initial Improvement requesting approval from PMGAA of the lesser investment amount. PMGAA may approve or deny the written request in its sole and absolute discretion.

5.3.2 Schedules pertinent to the delivery and installation of materials, construction activities and other related work events shall be coordinated in advance with the PMGAA Department of Operations & Maintenance no less than FIVE (5) business days prior to their planned action, whenever possible. Concessionaire shall be responsible for ensuring that ongoing commercial airline and other business activities taking place within the Terminal during construction and installation of Concessionaire's Initial Improvements are not materially disrupted at any time.

5.3.3 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, 2020. Otherwise, Concessionaire's failure to complete said Initial Improvements and become operational by the aforementioned date shall 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, 2020, 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.

5.3.4 During construction of the Initial Improvements the Concessionaire shall provide concession services to passengers through the utilization of temporary concession space as described in EXHIBIT G. Concessionaire's operation of temporary concession space shall, at all times, be in compliance with the terms of this Agreement, as applicable. Prior to initiating the operation of temporary concession space Concessionaire shall obtain PMGAA's written approval of a detailed plan for temporary concession space operations within the Terminal.

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 ONE HUNDRED FORTY-THREE and 00/100 DOLLARS (\$143,000.00), receive advance, written PMGAA approval prior to execution, construction and/or permitting and be completed no later than September 30, 2025. 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 SIXTY (60) days of completion of said Refurbishment Improvements.

5.5 Title to Alterations and Improvements. Title to all fixed improvements and alterations on the Premises, including the Initial Improvements and Refurbishment Improvements shall vest in PMGAA upon the expiration of this Agreement, and Concessionaire agrees to execute and deliver to PMGAA, within TEN (10) business days after PMGAA's request therefor, a quitclaim deed confirming that title to such improvement and alterations is vested in PMGAA. Except as provided for in SECTION 7.5.2, PMGAA shall not have any rights to Concessionaire's personal property and trade fixtures.

5.6 Mechanic's Liens. Concessionaire shall keep the Premises and all improvements thereon free of any mechanic's or materialmen's liens or liens of any kind or nature. In the event that any such lien is filed, Concessionaire shall, at its sole cost, cause such lien to be removed from the Premises within THIRTY (30) calendar days of notice thereof.

5.7 Permit Required. Concessionaire shall be responsible for determining whether it is subject to local building codes or building permit requirements, and for compliance with them to the extent they are

applicable. All structural, electrical, plumbing or mechanical construction or reconstruction shall conform to City of Mesa (hereinafter referred to as the "City") construction and technical codes. No such work shall be commenced without first submitting required plans and obtaining required permits from the City. All such work shall be permitted, inspected and approved by the City prior to concealment and/or use.

5.8 Damage or Destruction.

5.8.1 In the event of damage to or destruction to the Premises, such that other Terminal activities remain unaffected or minimally affected, Concessionaire shall give PMGAA notice thereof, and undertake appropriate repairs or other suitable actions to restore such Premises to their original, usable condition as expeditiously as possible, and, as a minimum, any and all insurance proceeds derived incident thereto shall be applied fully to such restoration. Should Concessionaire fail to complete said restorative actions within ONE HUNDRED TWENTY (120) calendar days after the occurrence of such damage or destruction, subject to any delay for reasons beyond Concessionaire's reasonable control, PMGAA may elect to terminate this Agreement; provided, however, PMGAA may not elect to terminate at any time when restoration, repair or replacement has been commenced and is being pursued with commercially reasonable diligence.

5.8.2 Should greater than FIFTY PERCENT (50%) of the Terminal itself, including the Premises, be rendered untenable by fire or other casualty and PMGAA either cannot or elects to not complete restorative action within a reasonable period of time, Concessionaire shall have the option to terminate this Agreement. Further and during PMGAA's restorative activities, PMGAA shall abate all rental fees and other charges owed in connection with the damaged or destroyed Premises until such time as the Agreement is terminated or Concessionaire is able to recommence business operations therefrom.

6. MAINTENANCE, REPAIRS, SERVICES AND INSPECTIONS.

6.1 Maintenance. Concessionaire shall, at its sole expense, maintain the Premises, including all Initial and Refurbishment Improvements, furnishings and equipment therein, in good and safe repair and in a neat, clean and orderly condition throughout the Term of this Agreement. If Concessionaire installs, as part of its Initial Improvements, new HVAC units within the Premises in a manner that is acceptable to PMGAA then PMGAA may, in its sole and absolute discretion, accept maintenance responsibility for the HVAC units within the Premises.

6.2 Repairs. Any damage caused to the Premises or any PMGAA property by any act, omission or negligence of Concessionaire, its employees, invitees, suppliers or furnishers of service shall be repaired and restored to the condition existing prior to damage by Concessionaire at Concessionaire's sole expense in accordance with plans and specifications provided by Concessionaire to and approved by PMGAA. Should PMGAA find it necessary to make such repairs itself, Concessionaire shall pay PMGAA, as additional fees hereunder, the expenses of all repairs thereby incurred.

6.3 Services.

6.3.1 Concessionaire agrees to provide, at its own expense, such janitorial and cleaning services and supplies as may be necessary or required in the operation and maintenance of the Premises. Concessionaire also agrees to keep and maintain the Premises in a clean, neat and sanitary condition, and attractive in appearance. In the event PMGAA determines, in its sole, reasonable discretion, that Concessionaire's janitorial and cleaning program is not acceptable or sufficient, then, PMGAA may, after reasonable notice to Concessionaire, seek to provide such services by other means. Concessionaire agrees to reimburse PMGAA no later than TWENTY (20) calendar days following written demand by PMGAA for any expenses incurred by PMGAA due to conditions at the Premises.

6.3.2 Concessionaire shall provide for the complete removal, sanitary handling and disposal of all trash, garbage and other refuse resulting from its activities at, on, about or from the Premises to receptacles at locations specified by PMGAA.

6.4 Utilities.

6.4.1 PMGAA shall pay for all water, electric, and wastewater services used in the Concessionaire's operation at the Premises.

6.4.2 Concessionaire shall pay for all other services including, but not limited to, trash removal in accordance with SECTION 6.3.2 and telecommunication services.

6.4.3 Notwithstanding the execution of this Agreement, PMGAA retains the right to the continued use of such utility lines and services as are presently on the Premises and the right to repair the same when necessary in PMGAA's sole discretion, including but not limited to, any utility easements on the Premises. PMGAA shall conduct such repairs in such a manner and at such times as to not unreasonably interfere with Concessionaire's activities thereon.

6.5 Inspections. PMGAA, its authorized employees, agents, contractors, subcontractors and other representatives shall have the right, but not the obligation, at all reasonable times, to enter upon the Premises to:

6.5.1 Inspect the Premises during regular business hours (or at any time in case of an emergency) to ascertain the condition of the Premises and to determine Concessionaire's compliance with the terms of this Agreement and applicable other regulatory requirements. This right of inspection shall not imply or infer any duty of PMGAA to inspect and shall impart no liability upon PMGAA for failure to inspect.

6.5.2 Perform or arrange to perform maintenance and repairs and replacements in any event when Concessionaire is obligated to do so under this Agreement and failed to do so within TEN (10) business days after written notice from PMGAA, or at any time with or without written notice in the event that PMGAA, in its sole discretion, deems that it is necessary or prudent to correct any condition likely to lead to injury or damage. If such maintenance, repairs or replacements are required to be made by Concessionaire under this Agreement, but are performed by PMGAA, then, Concessionaire shall pay PMGAA's entire cost and expense of performing such work as additional rent to PMGAA upon written demand therefor.

6.5.3 Perform any obligation of PMGAA under this Agreement and to make additions, alterations, maintenance and repairs to the Terminal, including its utility systems.

All entries by PMGAA, its authorized employees, agents, contractors, subcontractors and other representatives made pursuant to this SECTION 6.5, shall be without abatement of rent and/or fees, provided that such entries do not cause unreasonable interference with Concessionaire's business operations.

7. CONCESSIONAIRE'S COMPLIANCE.

7.1 Regulatory Compliance and Certification.

7.1.1 Concessionaire, its agents, employees, invitees, subcontractors and independent contractors shall comply with all directions, rules, regulations and operating procedures of PMGAA in effect or hereinafter promulgated and shall observe and obey all ordinances of the City, as well as all federal and state statutes and regulations governing use of the Premises and Airport and Concessionaire's business activities thereon.

7.2 Operating Permits. Concessionaire shall obtain, prior to conducting any business or activities at, on or within the Premises and the Airport, all operating permits required by the City, or any other government entity, if applicable, and maintain copies of said permits at all times.

7.3 Operating and Service Standards. Concessionaire shall operate its business from the Premises as detailed in the Concessionaire's 2019-009-RFP proposal, attached as EXHIBIT G, and as otherwise determined or permitted by PMGAA from time to time. In addition, Concessionaire shall comply with the following:

7.3.1 *Professional Management*. Concessionaire shall designate a local representative experienced in management and supervision who has sufficient authority and responsibility to insure proper operation of the concession, to render decisions and to take all necessary action(s) in connection with this

Agreement. Such person (or his or her authorized and designated representative) shall be available whenever the concession is in operation and be contactable at all other times should emergencies arise.

7.3.2 *Personnel.* Concessionaire shall:

a. Maintain a sufficient number of trained personnel to ensure Concessionaire's customers receive prompt and courteous service at all times. All personnel of Concessionaire, while on or about the Premises, shall be polite, clean, uniformed and present a professional appearance at all times. Concessionaire shall not permit its agents, servants or employees (whether full-time, part-time or contract) to solicit business from the Premises or other Airport locations in any manner whatsoever, except through the use of signs approved by PMGAA.

b. Ensure all Concessionaire employees (whether full-time, part-time or contract) are at all times competent, experienced and properly licensed to perform their duties, as and if required by applicable federal, state and local laws, and obey all traffic laws and regulations. Said employees shall at all times be under the direction of Concessionaire, who will be solely responsible for their conduct and performance and shall conduct themselves with courtesy and dignity with the public interest of primary importance.

c. Promptly respond to and resolve any issue with any employee whose conduct PMGAA or its Executive Director feels is detrimental to the best interests of the Airport and PMGAA.

d. Not, during the Term of this Agreement, hire or employ, on a full-time, part-time or contract basis, any person or persons employed by PMGAA.

e. To the extent applicable under Arizona Revised Statutes (ARS) §41-4401, Concessionaire warrants compliance with all federal immigration laws and regulations that relate to Concessionaire's employees and compliance with the E-verify requirements under ARS §23-214(A). Concessionaire's breach of the above-mentioned warranty shall be deemed a material breach of this Agreement and may result in its termination by PMGAA. PMGAA retains the legal right to randomly inspect the papers and records of any employee who works under this Agreement to ensure Concessionaire is complying with the above-mentioned warranty.

7.3.3 *Intentionally omitted.*

7.3.4 *Public Service.* Concessionaire shall ensure that its business operations at, on and about the Premises are conducted in a professional, first class manner, and that all facilities, services and standards of operation are at least equal to the highest quality of service rendered by other companies of a like nature at other modern airport terminal facilities. The general public shall be given the highest consideration at all times in matters affecting the operation of this concession, and Concessionaire shall emphasize the tenets of "exceptional customer service," "quality products" and "value" in both its products offered for sale and during interaction with its customers.

7.3.5 *Hours of Operation.*

a. *Post-Security.* Concessionaire business hours shall, at a minimum, accommodate all scheduled airline flight activity, from at least NINETY (90) minutes prior to the earliest daily scheduled airline flight departure, until the last daily commercial airline flight arrival.

b. *Pre-Security.* Concessionaire's business hours shall, at a minimum, accommodate all scheduled airline flight activity, from at least NINETY (90) minutes prior to the earliest daily scheduled airline flight departure, until FORTY-FIVE (45) minutes after last daily commercial airline flight arrival.

The PMGAA Executive Director reserves the right to approve and change hours of operation of Concessionaire's business activities permitted hereunder and will do so only when necessary and after advance consultation with Concessionaire.

7.3.6 *Product Pricing.* Concessionaire shall sell all food and beverage items specified in **EXHIBIT B** for no more than average "street plus 10%" prices charged for like-size and -quantity products in

comparable concessions, restaurants, fast food establishments, retail shops, etc. within the Phoenix, Arizona metropolitan area. Should Concessionaire desire to add items to those specified in **EXHIBIT B** or change prices specified therein by more than TEN PERCENT (10%) within a TWELVE (12) month period, Concessionaire shall seek advance written PMGAA approval therefor. PMGAA reserves the right to require Concessionaire to provide comparable "street plus 10%" pricing from not less than THREE (3) locations acceptable to PMGAA when Concessionaire requests changes to **EXHIBIT B**, and at other times at PMGAA's sole and absolute discretion.

7.3.7 *Nondiscrimination.* In furnishing services to the public, Concessionaire shall not discriminate against any person or class of persons by reason of race, color, creed, or national origin, and Concessionaire shall otherwise provide such services on a fair, equal, and not unjustly discriminatory basis to all users thereof.

7.3.8 *Complaints by Public.* In the event Concessionaire receives (or PMGAA receives and forwards to Concessionaire) any written complaint concerning Concessionaire's operation of the concession, Concessionaire shall respond to such complaint in writing within TEN (10) business days of its receipt and make a good-faith attempt to explain, resolve or rectify the cause of such complaint. Repeated complaints by the public concerning Concessionaire's services may be grounds for termination of this Agreement.

7.3.9 *Record-keeping.* Cause to be installed on the Premises, or elsewhere as appropriate, and at all times use such cash registers, invoicing machines, sales slips or other accounting equipment, devices and forms as are reasonably necessary to record properly, accurately and completely all sales from and on the Premises of Concessionaire's goods and services.

7.4 Condition of the Premises. Concessionaire shall keep the Premises, including all product displays and customer areas, organized, neat and clean at all times, so as to present a positive image to Airport patrons. All signage and notices posted within the Premises shall be professionally prepared and affixed in a safe, aesthetically pleasing manner, such that they complement the concession décor. No paper signs shall be taped to walls or structures anywhere on or within the Premises.

7.5 Surrender of Occupancy.

7.5.1 When this Agreement expires or is otherwise terminated in whole or in part as provided elsewhere herein, Concessionaire shall surrender the Premises and fixed improvements and operating facilities therein broom-clean and in a state of good repair, with the exception of reasonable wear and tear and damage by loss or casualty not covered by insurance which Concessionaire is required to maintain pursuant to this Agreement and not otherwise attributable to Concessionaire's fault or negligence.

7.5.2 Concessionaire shall be deemed to have abandoned to PMGAA any personal property and trade fixtures that it has failed to remove from the Premises within FIFTEEN (15) calendar days after the end of the Term of this Agreement, or the effective date of termination thereof, unless PMGAA grants additional time for this purpose in writing. During this period, Concessionaire shall remain responsible for monthly rent and other payment(s) to PMGAA until such time as the Premises are fully available to PMGAA for maintenance, renovation or re-letting to another concessionaire. After the expiration of the aforementioned FIFTEEN (15) calendar day period or any extension thereof granted by PMGAA, PMGAA shall have the right to remove the property of Concessionaire and restore the Premises to a satisfactory condition and hold Concessionaire liable for all costs incident thereto. In the event it is necessary for PMGAA to remove such property, PMGAA shall not sustain or be charged with any liability by reason of the removal or custodial care of same.

8. **AIRPORT SECURITY PLAN.**

8.1 PMGAA maintains an approved Airport Security Plan (the "Security Plan") pursuant to 49 CFR Parts 1540 and 1542, and 14 CFR Part 139. Concessionaire shall at all times comply with PMGAA Operations Department security directives, security bulletins, or verbal notifications existing now or in the future.

8.1.1 Concessionaire is responsible for maintaining security practices, facilities, and perimeter boundaries on their leasehold that meet the security standards set forth by PMGAA.

8.1.2 Concessionaire shall immediately correct physical or procedural deficiencies which are contrary to PMGAA, security directives, security bulletins, or verbal notifications existing now or in the future.

8.1.3 Concessionaire shall, to the fullest extent permitted by law, indemnify, defend and hold PMGAA harmless for, from and against any security violation committed by any agents, employees, invitees, subcontractors, sub-lessees or independent contractors of Concessionaire.

8.1.4 Concessionaire shall conduct and document all self-audits and self-inspections as required by TSA or PMGAA and make such audits available for inspection.

8.1.5 Concessionaire shall designate a primary security coordinator to receive security related briefings, bulletins and sensitive security information.

8.1.6 PMGAA reserves the right to modify the Security Plan from time to time, as necessary or as directed by TSA. PMGAA shall notify the Concessionaire security coordinator regarding modifications that effect Concessionaire.

8.2 Airport Security Badge.

8.2.1 Concessionaire employees/contractors that require a security badge shall be obligated to complete all training and comply with all security requirements and directives issued by PMGAA, Transportation Security Administration or other entity having security jurisdiction at PMGAA. Concessionaire, employees, and contractors will surrender security badges upon request by PMGAA; physical security media (badges and keys) remain the property of PMGAA.

8.2.2 Concessionaire, employees and contractors shall comply with all security related audits, inspections, and screenings conducted by the PMGAA.

8.2.3 Concessionaire will immediately return badges to the Airport Badging office when badge holders' employment is terminated, the badge is no longer needed or the employee/contractor is on extended leave.

8.2.4 Misuse of a badge or security procedures will bring about punitive action including suspension or revocation of one or all badges.

9. TAXES, LICENSES AND PERMITS.

Concessionaire shall pay all taxes and assessments that may be levied or charged upon its property, equipment and activity hereunder, and shall secure and comply with all licenses and permits required by PMGAA or any other governmental authority exercising jurisdiction over its business or activities. Concessionaire shall also pay any taxes or assessments levied upon PMGAA as a result of Concessionaire conducting its business under the authority of this Agreement.

10. INSURANCE.

10.1 Insurance Coverage Required. Concessionaire shall at all times and prior to the Effective Date, at its sole expense, maintain in effect the insurance coverage set forth below, deliver a certificate of insurance for each policy to PMGAA and continue to provide such certificate(s) throughout the Term:

10.1.1 *Comprehensive General Liability* insurance in an amount not less than \$1,000,000 per occurrence and \$2,000,000 aggregate, covering third party bodily injury and property damage, and including coverage for "premises/operations," "products and completed operations," "professional," "host liquor" and "blanket contractual liabilities."

10.1.2 *Business Interruption* insurance covering 12-months' loss of concession income due to fire or other catastrophe. *Extra Expense* coverage also is recommended, but not required, to cover expenses beyond normal operating expenses that will or could prevent Concessionaire's business from shutting down during post-disaster restoration.

10.1.3 *Property* insurance (all risk) for the full value of personal property and improvements to the Premises for their full insurable value on a replacement-cost basis.

10.1.4 *Workers' Compensation* insurance, as required by law, and *Employer's Liability* insurance in the amount of \$1,000,000, covering work-related injuries to employees and others permitted to operate or otherwise conduct business at the Airport on Concessionaire's behalf.

10.1.5 *Builder's Risk* insurance covering the insured's premises and all replacements and/or additions thereto for their full insurable value plus TEN PERCENT (Cost + 10%) on a "replacement cost" basis and requires an ISO Special Causes of Loss form or equivalent required until completion of construction of the improvements upon the Premises.

10.1.6 *Liquor Liability* insurance for liability arising out of the sale of alcoholic beverages in the amount of \$2,000,000 each cause and \$5,000,000 aggregate. Policy to be written on ISO form CG 00 33 04 13 or the equivalent.

10.2 Insurance Form. Each insurance policy obtained pursuant to this SECTION 10, except for *Workers' Compensation* and *Employer's Liability* policies, shall: (i) name PMGAA as an additional named insured; (ii) contain a provision that written notice of cancellation or modification thereof shall be given to PMGAA not less than THIRTY (30) calendar days before such cancellation or modification takes effect (TEN (10) calendar days in the case of nonpayment of premium); and (iii) contain a waiver of subrogation in favor of PMGAA. Concessionaire shall not permit any insurance policy to be canceled or modified without PMGAA's written consent unless equivalent replacement policies are issued with no lapse in coverage. All policies shall be obtained from insurance companies licensed to do business in the State of Arizona and possessing a rating of at least A - VII or higher from the A.M. Best Company, or an equivalent rating approved by PMGAA.

10.3 Higher Insurance Limits. If Concessionaire maintains higher limits than the minimums shown above, PMGAA shall be entitled to coverage for the higher limits maintained by Concessionaire. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to PMGAA.

10.4 Waiver of Subrogation. Concessionaire waives any right to subrogation. Concessionaire shall obtain an endorsement necessary to affect this waiver of subrogation from the insurer for all lines of coverage required by this Agreement, except *Workers' Compensation* and *Professional Liability*, for claims arising out of the Concessionaire's work or service.

10.5 Primary Coverage. For all claims related to this Agreement, all of Concessionaire's insurance policies will be primary and non-contributory. Any insurance or self-insurance maintained by PMGAA, its officers, officials, employees, or volunteers will be in excess of Concessionaire's insurance and will not contribute with it.

10.6 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by PMGAA. The PMGAA may require Concessionaire to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

10.7 Subcontractors. Concessionaire shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Concessionaire shall ensure that PMGAA is an additional insured on insurance required from subcontractors.

10.8 Special Risks or Circumstances. PMGAA reserves the right to modify these requirements, including limits, based on the nature of the risk, scope of services, prior experience, insurer, coverage, or other special circumstances.

10.9 Subleases. Concessionaire shall require and verify that all sub-lessees maintain insurance meeting the requirements stated herein, and Concessionaire shall ensure that PMGAA is an additional insured on insurance provided by the Sub-lessees.

11. INDEMNIFICATION

To the fullest extent permitted by law, Concessionaire hereby agrees to defend, indemnify and hold harmless PMGAA and its members, elected or appointed officials, agents, contractors, subcontractors, boards, commissions and employees (hereinafter referred to collectively as "PMGAA" for purposes of this SECTION 11) for, from and against any and all claims, causes of action, liability, suits, litigation (including reasonable attorney's fees and other costs of investigation and litigation), actions, losses, damages or claims of any nature whatsoever which arise out of or in connection with (i) any accident, injury or damages occurring within the Premises, or (ii) any negligent act or omission of Concessionaire or its agents, employees, contractors, or subcontractors (hereinafter referred to collectively as "Concessionaire" for purposes of this SECTION 11) in connection with Concessionaire's operations hereunder and which result directly or indirectly in the injury to or death of any persons or the damage to or loss of any property, or (iii) the failure of Concessionaire to comply with any provisions of this Agreement. This indemnification shall exclude responsibility for any consequential damages and for claims arising by reason of the negligent or wrongful act of PMGAA or its employees, contractors or agents.

12. ASSIGNMENT.

12.1 Consent. Concessionaire shall not assign, transfer or encumber this Agreement in any manner, or any part hereof, or interest herein or sublease any of the Premises hereunder, except with the prior written permission of PMGAA and subject to whatever reasonable limitations and conditions may be required by PMGAA. Any other transfer, assignment or sublease shall confer no rights upon any third person or party, and such may be deemed by PMGAA, in its sole and absolute discretion, as a breach of this Agreement, rendering it null and void. No assignment or sublease shall relieve Concessionaire of any obligation under this Agreement unless otherwise agreed in advance, in writing by PMGAA. Notwithstanding the foregoing, this SECTION 12 shall not be interpreted to preclude the assignment of this Agreement to a parent, subsidiary or merged company, if such part, subsidiary or merged company assumes all rights and obligations of this Agreement. Written notice of such assumption shall be provided to PMGAA by the parent, subsidiary or merged company not less than THIRTY (30) calendar days prior to the effective date of such assignment.

12.2 Transfer Defined. For the purposes of this Agreement, a "transfer" shall be deemed to include the following: (i) if Concessionaire is a corporation, partnership, limited liability company, or other legal entity, the transfer of any ownership interest in such entity resulting in a change in the present control of such entity by the person or persons owning a majority of the ownership interest thereof as of the date of this Agreement; provided, however, if Concessionaire is a corporation whose stock is traded on a nationally recognized stock exchange, the transfer of Concessionaire's stock shall not constitute a transfer requiring PMGAA's consent; or (ii) the sale of TWENTY-FIVE PERCENT (25%) or more in value of the assets of Concessionaire.

12.3 Non-Disturbance. PMGAA agrees, for the benefit of all subtenants of all or any part of the Premises, that if this Agreement or Concessionaire's right to possession of the Premises is terminated for default or otherwise, all subleases of all or any part of the Premises, except any sublease to an affiliate of Concessionaire, shall continue in full force and effect notwithstanding the termination as direct leases or contracts between PMGAA and the subtenants and contractors, and all such subtenants and contractors upon request shall attorn in writing to PMGAA.

13. TERMINATION PROVISIONS.

13.1 PMGAA's Right of Termination. Except as may be otherwise provided herein, PMGAA shall have the right to terminate this Agreement in its entirety immediately if Concessionaire commits any one or

more of the hereinafter listed events of default. Upon receiving notice of such termination, Concessionaire shall immediately cease its operations within the Premises and on the Airport and remove all of its employees and personal property therefrom:

13.1.1 If Concessionaire shall fail to pay any installment of rent or any other amount due from Concessionaire hereunder, provided that Concessionaire does not cure or initiate demonstrable corrective action for such failure within TEN (10) business days after delivery by PMGAA of a written notice of such failure.

13.1.2 If Concessionaire shall neglect or fail to perform, keep or observe any other terms, covenants or conditions herein contained and if such neglect or failure shall continue for a period of THIRTY (30) calendar days after delivery by PMGAA of a written notice of such default; provided, however, if a cure of the default reasonably requires more than THIRTY (30) calendar days to complete, then the time to cure shall be extended so long as the cure is being diligently pursued.

13.1.3 The taking by a court of competent jurisdiction of Concessionaire and its assets pursuant to proceedings under the provisions of any Federal or State reorganization or bankruptcy code or act.

13.1.4 The occurrence of any act which deprives the Concessionaire of the rights, licenses, permits and authorizations necessary for the proper and lawful conduct of the Concessionaire's business operations at, on, about or from the Airport.

13.1.5 If Concessionaire shall abandon all or any part of the Premises or shall discontinue the conduct of its operations in all or any part of the Premises for a period of THREE (3) consecutive days.

13.1.6 The filing of any mechanic's, materialman's or other lien or any kind against the Premises because of any act or omission of Concessionaire which lien is not discharged, by bonding or otherwise, within THIRTY (30) calendar days of receipt of actual notice thereof by Concessionaire.

13.1.7 Concessionaire receipt of THREE (3) written notices of default for violations of the Security Plan or Phoenix Mesa Gateway Airport Authority's published *Rules and Regulations* from PMGAA within a SIX (6) consecutive calendar month period.

13.1.8 A transfer or assignment occurs without PMGAA's prior written approval.

13.1.9 Concessionaire conducts its operations in such a manner as to threaten public safety, as determined by PMGAA in conformity with the laws and regulations of the State of Arizona and PMGAA.

13.1.10 PMGAA determines that Concessionaire willfully falsified any of its records or figures so as to deprive PMGAA of any of its rights under the terms of this Agreement.

13.2 Concessionaire's Right of Termination. Except as otherwise provided herein and subject to the PMGAA relocation rights set forth in SECTION 1.5.2 of this Agreement, Concessionaire shall have the right to terminate this Agreement in its entirety upon THIRTY (30) calendar days advance written notice to PMGAA if one or more of the following events of default are committed by PMGAA:

13.2.1 The issuance by any court of competent jurisdiction of any injunction preventing or restraining the use of the Airport in such a manner as to substantially restrict Concessionaire from conducting its business activities at, on and within the Premises, which injunction is not caused by any act or omission of Concessionaire and such injunction remains in force for at least SIXTY (60) consecutive calendar days.

13.2.2 If Concessionaire is deprived of the use of all or a major portion of the Premises for THIRTY (30) consecutive calendar days or more, subject to the relocation or other applicable renovation provision provided for herein.

13.2.3 The assumption by the United States Government and the authorized agencies thereof, or any other governmental agency, of the operation, control or use of Airport facilities, including the Premises, or any substantial part or parts thereof in such a manner as to substantially restrict the conduct of Concessionaire's business thereto for a period of THIRTY (30) consecutive calendar days or more.

13.2.4 A breach by PMGAA of any of the terms and covenants or conditions within this Agreement. In the event of such a breach, Concessionaire shall have available all rights and remedies provided at law or in equity, subject to the terms and conditions of this Agreement; provided, however, Concessionaire may not exercise any such right or remedy unless Concessionaire has notified PMGAA by written notice of such alleged default, and PMGAA has not cured such default within a THIRTY (30) calendar day period subsequent to receipt of such notice or, in the event such alleged default is of such a nature that it cannot be reasonably cured within such THIRTY (30) day period, PMGAA has failed to cure such alleged default with all due diligence. Notwithstanding anything to the contrary in this Agreement, in no event shall Concessionaire be entitled to terminate this Agreement or abate or offset any installment of rent or any other payments to be made by Concessionaire hereunder.

13.3 Concessionaire's Additional Right of Termination. In addition to the rights set forth in Section 13.2, Concessionaire shall have the right to terminate this Agreement in its entirety upon one hundred twenty (120) calendar days advance written notice to PMGAA if annual Airport passenger enplanements decreases by fifty percent (50% or more between any twelve (12) month period during the Term of this Agreement as compared to any immediately prior twelve (12) month period.

14. NONWAIVER.

PMGAA's right to revoke this Agreement shall be absolute. Any election by PMGAA to not enforce any provision of this Agreement, or any failure by PMGAA to exercise any of the remedies allowed PMGAA under this Agreement, shall not operate as a waiver by PMGAA of its right.

15. APPLICABLE LAW.

The laws of the State of Arizona, including its conflicts of law provisions, shall govern the matters set forth in this Agreement. Venue of any action brought under this Agreement shall, at the option of PMGAA, lie in Maricopa County, Arizona.

16. RULES AND REGULATIONS.

Concessionaire shall at all times comply with all Federal, State and local laws, ordinances, rules, and regulations which are applicable to its operations, the Premises itself or the operation, management, maintenance, or administration of the Airport, including all laws, ordinances, rules and regulations adopted after the Effective Date. Concessionaire shall at all times comply with the PMGAA's published *Rules and Regulations*, as applicable and as the same may be amended from time to time, attached as **EXHIBIT D**. Concessionaire acknowledges and agrees that PMGAA may amend its *Rules and Regulations* at any time in PMGAA's sole and absolute discretion. Concessionaire also shall display to PMGAA any permits, licenses, or other evidence of compliance with laws upon request.

17. CORPORATE AUTHORIZATION.

In executing this Agreement, Concessionaire represents and warrants to PMGAA that if Concessionaire is a corporation, Concessionaire has obtained and been granted the full right, power and authority to enter into this Agreement.

18. NOTICES.

18.1 Notices required under this Agreement shall be in writing and delivered personally or by registered or certified mail, postage prepaid, addressed as follows:

TO PMGAA:

Phoenix-Mesa Gateway Airport Authority
Attn.: Business Development Department
5835 S. Sossaman Road
Mesa, Arizona 85212-0919
Telephone: (480) 988-7649

TO CONCESSIONAIRE:

Kind Hospitality, Inc.
Attn.: Nava Thuraisingam, CEO
1225 N. Gilbert Road
Mesa, AZ 85203
Telephone: (480) 696-3079

18.2 Notice by certified or registered mail in the manner described above shall be deemed effective the day after its deposit in the mail.

19. PRIOR PERMITS.

Upon execution hereof, this Agreement shall supersede and cancel any prior agreement(s) between PMGAA and Concessionaire with respect to the business activities governed hereby. Concessionaire shall not construe PMGAA's execution of this Agreement as a waiver of any prior indebtedness or obligation to PMGAA under any prior agreement or license, nor does PMGAA waive any claim or cause of action arising therefrom.

20. ENVIRONMENTAL COMPLIANCE.

Concessionaire shall, at Concessionaire's own expense, comply with all present and hereinafter enacted environmental laws, rules and regulations and any amendments thereto, affecting or applying to Concessionaire's operations and activities at, on or within the Premises and the Airport.

21. ACDBE REQUIREMENTS

This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. Concessionaire agrees that it will not discriminate against any business owner because of the owner's race, color, sex, or national origin in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement as a result of this Agreement covered by 49 CFR Part 23.

21.1 PMGAA's Airport Concession Disadvantaged Business Enterprise (ACDBE) Program is race-neutral. PMGAA encourages the use of ACDBEs and other small businesses in the performance of this concession opportunity. In order to be counted as an ACDBE, a small business must be certified as an ACDBE at time of award by a certifying agency within the Arizona Unified Certification Program (UCP), or another certifying agency, in accordance with 49 CFR Part 23. Concessionaire shall make outreach efforts to obtain ACDBE and other small business participation in the performance of this Agreement.

21.1.1 Concessionaire agrees to employ outreach efforts to carry out this policy through award of subcontracts to small businesses and disadvantaged business enterprises to the fullest extent consistent with the sufficient performance of PMGAA's contract, and/or the utilization of ACDBE suppliers where feasible.

21.1.2 PMGAA shall not, nor shall it require its Concessionaires to, award contracts or subcontracts to or to make purchases of materials or equipment from small businesses and/or ACDBEs who are not qualified.

21.2 Record Requirements. Concessionaire is required to track and report all ACDBE and/or small business participation that occurs as a result of a contract, procurements, purchase orders, sublease, joint venture, goods/services or other arrangements involving sub-tier participation.

21.2.1 PMGAA reserves the right to validate the information submitted by Concessionaire with the ACDBE firm listed and/or other certifying entities or licensing agents as part of the verification process.

21.2.2 Concessionaire shall keep sufficient records to track the requirements of PMGAA's ACDBE Program and 49 CFR Part 23 requirements, including, but not limited to subcontract/supplier awards,

specifically awards to ACDBE firms; (ii) specific efforts to identify and award such contracts to ACDBEs; and (iii) submit when requested, copies of executed contracts to establish actual ACDBE participation and ensure contract compliance with FAA requirements.

21.2.3 Concessionaire shall submit periodic reports of subcontract and/or supplier awards to ACDBE firms in such form and manner and at such times as PMGAA shall prescribe and shall provide access to books, records, and accounts to authorized officials of PMGAA, and Federal agencies for the purpose of verifying ACDBE participation and outreach efforts to carry out the ACDBE Policy and Program. See **ATTACHMENT 1** for current report requirement.

21.2.4 Prior to any work commencing by Concessionaire's ACDBE subcontractors/suppliers, Concessionaire shall provide PMGAA copies of all executed contracts with such ACDBEs for review of contract compliance with PMGAA's ACDBE Program.

21.2.5 Audit determination(s) may be considered and have a bearing in the evaluation of a Concessionaire's outreach efforts on future contracts with PMGAA.

21.3 Outreach Efforts. During the performance of this Agreement, Concessionaire must demonstrate it has performed outreach efforts to solicit participation from interested and qualified ACDBEs and other small businesses upon PMGAA's written request. This requires Concessionaire to document the identification of potential business opportunities for ACDBEs, describe what efforts were undertaken to solicit for ACDBE involvement, results of negotiations with potential ACDBEs, and record the communications of Concessionaire's selection or non-selection of ACDBEs.

The actions taken to meet the outreach efforts must be substantiated by written documentation and provided to PMGAA. A declaration that outreach efforts were made will not be sufficient to meet the burden of proof required. PMGAA's decision as to whether or not outreach efforts have been made is final and conclusive.

Failure of Concessionaire to demonstrate such outreach efforts constitutes a material breach of this Agreement subject to termination by PMGAA.

21.4 Approved ACDBE Program. PMGAA's Airport Concession Disadvantaged Business Enterprise Program dated, October 2018 and approved by the FAA, all its terms and conditions is hereby incorporated into and made part of this Agreement by reference.

The approved ACDBE Program can be found at: <http://www.gatewayairport.com>
PMGAA reserves the right to revise the Program as required.

21.5 Amendments. PMGAA's ACDBE program shall also apply to any amendments and/or extensions to this Agreement that require work beyond the scope of services originally required to accomplish the project. Concessionaire shall make outreach efforts to obtain ACDBE participation for additional scope(s) of services.

21.6 Enforcement. This Agreement and all subsequent subcontracts entered into as a result of this Agreement, are subject to the requirements, provisions, and enforcement actions of 49 CFR Part 26, Subpart F, *Compliance and Enforcement*, § 26.101 and 26.105 through 26.109.

The requirements of this SECTION 21 apply to Non-ACDBE prime Concessionaires and ACDBE prime Concessionaires. Failure to comply with the requirements of this SECTION 21 constitutes a breach of this Agreement. Such breach may lead to the termination or cancellation of the Agreement.

22. TITLE VI.

22.1 Civil Rights Act of 1964, Title VI – General

Concessionaire agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color or national origin, sex, age or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision binds the Concessionaire and subcontractors from the bid solicitation period through the completion of this Agreement. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

Concessionaire agrees to include the above statement in any subsequent concession agreement or contract covered by 49 CFR part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

22.2 Civil Rights Act of 1964, Title VI – Assurances

During the performance of this Agreement, Concessionaire, for itself, its assignees and successors in interest agrees as follows:

a. Compliance with Regulations. Concessionaire shall comply with the Title VI List of Pertinent Nondiscrimination Acts And Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.

b. Nondiscrimination. Concessionaire, with regard to the work performed by it during the Term of this Agreement, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Concessionaire will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

c. Solicitations for Subcontracts, including Procurements of Materials and Equipment. In all solicitations, either by competitive bidding, or negotiation made by Concessionaire for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by Concessionaire of the Concessionaire's obligations under this Agreement and the Non-discrimination Acts And Authorities on the grounds of race, color, or national origin.

d. Information and Reports. Concessionaire shall provide all information and reports required by the Acts, the Regulations and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by PMGAA or the FAA to be pertinent to ascertain compliance with such Nondiscrimination Acts And Authorities and instructions. Where any information required of Concessionaire is in the exclusive possession of another who fails or refuses to furnish the information, Concessionaire will so certify to PMGAA or the FAA as appropriate and will set forth what efforts it has made to obtain the information.

e. Sanctions for Noncompliance. In the event of a Concessionaire's noncompliance with the Nondiscrimination provisions of this Agreement, PMGAA will impose such sanctions as it or the FAA may determine to be appropriate, including, but not limited to:

- i) Withholding of payments to Concessionaire under this Agreement until Concessionaire complies, and/or;
- ii) Cancellation, termination, or suspension of this Agreement, in whole or in part.

f. Incorporation of Provisions. Concessionaire shall include the provisions of paragraphs (a) through (e) of this SECTION 22.2 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. Concessionaire

will take action with respect to any subcontract or procurement as PMGAA or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Concessionaire becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, Concessionaire may request PMGAA to enter into any litigation to protect the interests of PMGAA. In addition, Concessionaire may request the United States to enter into the litigation to protect the interests of the United States.

22.3 Civil Rights – Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this Agreement, Concessionaire for itself, its assignees, and successors in interest (hereinafter referred to as the “Concessionaire” for purposes of this SECTION 22.3) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The FAA’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

23. MISCELLANEOUS.

23.1 Personal Liability. No member or employee of either Party shall be charged personally or held contractually liable by or to the other Party under any term or provision of this Agreement because of any breach thereof or because of its execution or attempted execution.

23.2 No Waiver. No provision of this Agreement may be waived or modified except by a written instrument signed by the Party against whom such waiver or modification is sought.

23.3 Non-Waiver of Rights. No waiver or default by PMGAA of any of the terms, conditions, covenants or agreements hereof to be performed, kept or observed by Concessionaire shall be construed or act as a waiver of any subsequent default of any of the terms, covenants, conditions or agreements herein contained to be performed, kept or observed by Concessionaire, and PMGAA shall not be restricted from later enforcing any of the terms and conditions of this Agreement.

23.4 Amendment. This Agreement may be amended only by a written instrument executed by the Parties, except that the product listing at **EXHIBIT B** may be updated at any time, upon mutual agreement of the Parties, without formal amendment but shall, upon said mutual agreement, become a valid **EXHIBIT B** replacement to this Agreement thereafter.

23.5 Cancellation. The Parties hereto acknowledge and agree that this Agreement may be cancelled pursuant to the provisions of ARS § 38-511.

23.6 Invalid Provisions. Should any provision of this Agreement or any application thereof shall be held invalid by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, unless one or both Parties would be substantially and materially prejudiced.

23.7 Litigation Expenses. In the event of litigation between the Parties, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and all costs and expenses of litigation, including witness fees, expert witness fees, and court costs.

23.8 Headings. The headings contained herein are for convenience in reference only and are not intended to define or limit the scope of this Agreement or any term thereof.

23.9 Approvals, Consents and Notices. All approvals, consents and notices called for in this Agreement shall be in writing, signed by the appropriate party, and may not be established solely by oral testimony.

23.10 Entire Agreement. This Agreement, including exhibits and attachments attached hereto at the time of its execution, constitutes the entire Agreement between the Parties hereto and supersedes all prior negotiations, understandings and agreements between the Parties concerning such matters.

24. INCORPORATION OF RECITALS.

The recitals set forth above are acknowledged by the Parties to be true and correct and are incorporated herein by this reference.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

FOR PMGAA:
PHOENIX-MESA GATEWAY AIRPORT
AUTHORITY, an Arizona joint powers airport authority

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

STATE OF ARIZONA)
) ss.
County of Maricopa)

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this 31ST day of July, 2019,
by J. Brian O'Neill, in his capacity as the Executive Director/CEO of the Phoenix-Mesa Gateway Airport
Authority.

Maria Gonzalez
Notary Public

My Commission Expires:
May 21, 2021



FOR CONCESSIONAIRE:
KIND HOSPITALITY, INC., a Delaware Corporation

By: Nava Thuraisingam
Nava Thuraisingam, CEO

STATE OF AZ)
) ss.
County of Maricopa)

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this 3 day of July, 2019,
by Nava Thuraisingam, in his capacity as the CEO of Kind Hospitality Inc.

Brian Durette
Notary Public

My Commission Expires:
10-12-2020

