

HILLSBOROUGH COUNTY AVIATION AUTHORITY

AMENDMENT NO. 1 TO LEASE AND CONCESSIONS CONTRACT

FOR FOOD AND BEVERAGE CONCESSIONS

TAMPA INTERNATIONAL AIRPORT

TPA HOSPITALITY PARTNERS, LLC

PACKAGE 3

HILLSBOROUGH COUNTY AVIATION AUTHORITY
AMENDMENT NO. 1 TO LEASE AND CONCESSIONS CONTRACT FOR
FOOD AND BEVERAGE CONCESSIONS
TAMPA INTERNATIONAL AIRPORT

THIS AMENDMENT No. 1 to that certain Lease and Concessions Contract for Food and Beverage Concessions at Tampa International Airport, dated June 4, 2015, by and between the HILLSBOROUGH COUNTY AVIATION AUTHORITY, a public body corporate existing under the laws of the State of Florida (hereinafter referred to as the "**Authority**"), and TPA Hospitality Partners, LLC, a Delaware Limited Liability Corporation, authorized to conduct business in the State of Florida (hereinafter referred to as "**Concessionaire**") (hereinafter individually and collectively referred to as the "**Party**" or "**Parties**") is made and entered into this 6th day of August, 2020 (hereinafter referred to as "**Amendment No. 1**").

WITNESSETH:

WHEREAS, on June 4, 2015 the Authority and Concessionaire entered into a Lease and Concessions Contract at Tampa International Airport (hereinafter referred to as the "**Contract**");

WHEREAS, the worldwide COVID-19 pandemic has caused significant disruptions to domestic and international air travel;

WHEREAS, the Authority is the owner and operator of Tampa International Airport (the "**Airport**") and is the "airport sponsor" of the Airport under federal law;

WHEREAS, all concessionaires operating at the Airport, including the Concessionaire and other in-terminal concessions providers operating at the Airport, have experienced severe reductions in revenue which have resulted in near-term cash flow challenges for the Concessionaire;

WHEREAS, on March 27, 2020, the President signed the Coronavirus Aid, Relief, and Economic Security Act (the "**CARES Act**") which provides, among other things, aid to U.S. airports consisting of direct grants; however, such CARES Act funds are not available to Concessionaire, other than certain relief for small businesses;

WHEREAS, 49 United States Code (U.S.C.) § 47107(a)(13) requires airport sponsors to be as self-sustaining as possible under the circumstances at that airport (*see also* Grant Assurance 24, *Fee and Rental Structure*);

WHEREAS, the Federal Aviation Administration's (the "**FAA**") *Policy and Procedures Concerning the Use of Airport Revenue*, 64 Fed. Reg. 7696, February 16, 1999, ("**Revenue Use Policy**") requires

airport sponsors, including the Authority, when entering into agreements, to undertake reasonable efforts to be self-sustaining in accordance with 49 U.S.C. § 47107(a)(13);

WHEREAS, the FAA issued guidance dated April 3, 2020, entitled "Information for Airport Sponsors Considering COVID-19 Restrictions or Accommodations" (the "**FAA Guidance**") allows deferral of rental payments or other fees payable by concessionaires but states therein, consistent with the above, that a core goal of airports should be "to keep the airport solvent to ensure that the airport can remain open";

WHEREAS, the Authority has entered into various Trust Agreements under which its revenue bonds are outstanding, in which the Authority has covenanted to fix, revise from time to time when necessary, maintain and collect such fees, rates, rentals and other charges for the use of the products, services and facilities of the Airport System, or concessions granted in connection therewith, that will be sufficient to meet various coverage requirements and deposit requirements;

WHEREAS, after careful analysis and consideration, the Authority has determined that the use of CARES Act funds and abatement of certain concessions revenues as provided in this Amendment No. 1 and certain agreements with other tenants at the Airport, including airlines, concessionaires, rental car operators and others, is the best way to achieve the goals of maintaining the Authority's financial self-sustainability and assisting Concessionaire in maintaining concessions services in continuing operations at the Airport as well as comply with the Authority's obligations under its Trust Agreements, Section 47107(a)(13) of U.S.C. Chapter 49, the Revenue Use Policy, Grant Assurance 24 and the FAA Guidance and to reasonably mitigate its concessionaire partners' need to address near-term cash flow challenges;

WHEREAS, the Authority has offered the terms of this Amendment No. 1 to Concessionaire, Concessionaire is current on its payments to the Authority through March 31, 2020, and Concessionaire has opted to enter into this Amendment No. 1.

NOW, THEREFORE, for and in consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, the Parties do agree that the Contract is further amended as follows:

1. The above recitals are true and correct and are incorporated herein.
2. This Amendment No. 1 is effective as of August 6, 2020.
3. ARTICLE V, RENTALS, FEES, OTHER CHARGES, REPORTING, AND ACCOUNTING RECORDS, Section 5.02, Premises Rent, is amended by adding the following paragraph at the end thereof:

Notwithstanding the foregoing to the contrary, for the period beginning April 1, 2020 and ending September 30, 2020 (the "**Abatement Period**"), Premises Rent shall be abated and no payments

of Premises Rent shall be due to the Authority from Concessionaire, and for the period of October 1, 2020 through September 30, 2021 (the "**Relief Period**"), Premises Rent shall be due in such amount and payable as provided in Section 5.03. Commencing October 1, 2021, Premises Rent, escalated by two percent (2%) per year as provided above for the two (2) preceding Fiscal Years of 2020 and 2021, shall re-commence and be due as provided above.

4. ARTICLE V, RENTALS, FEES, OTHER CHARGES, REPORTING, AND ACCOUNTING RECORDS, Section 5.03, Privilege Fee, is amended by adding the following paragraph at the end of the initial paragraph:

Notwithstanding the foregoing, for the Relief Period, the Privilege Fee shall be equal to the greater of (a) the Percentage Fee payable during the Relief Period or (b) fifty percent (50%) of (a) MAPF plus (b) Premises Rent payable during the Relief Period. During the Relief Period, Concessionaire shall pay Percentage Fees monthly as provided in this Section 5.03; provided, however, that in September 2021, the Authority shall calculate whether fifty percent (50%) of (a) MAPF plus (b) Premises Rent will exceed the amount of Percentage Fees for such Relief Period and, if such amount is greater than Percentage Fees payable during the Relief Period, Concessionaire shall pay to the Authority the difference between Percentage Fees paid during the period of October 1, 2020 through August 31, 2021 and fifty percent (50%) of (a) MAPF plus (b) Premises Rent payable during the Relief Period. The payment for the difference between the Percentage Fees paid and 50% of (a) MAPF plus (b) Premise Rent payable during the Relief Period will be due 15 days from the date of invoice. During the Relief Period, sales tax on 1/12th of 50% of Premise Rent will be due and payable monthly on the 1st, without demand.

5. ARTICLE V, RENTALS, FEES, OTHER CHARGES, REPORTING, AND ACCOUNTING RECORDS, Section 5.03, Privilege Fee, is amended by adding the following paragraph thereto:

D. Notwithstanding the foregoing, for the Abatement Period, the MAPF shall be zero dollars (\$0.00) and no MAPF shall be payable. During the Abatement Period, Percentage Fees shall continue to be due and payable as provided in Section 5.03(B). Commencing October 1, 2021, the MAPF shall revert to the amount that would have been due in Fiscal Year 2021, being the greater of (a) eighty-five percent 85% of the Privilege Fee paid by Concessionaire in Fiscal Year 2020 or (b) the initial MAPF.

6. In exchange for the Authority's entering into this Amendment No. 1, Concessionaire unconditionally and completely releases the Authority, its Board, officers, employees, volunteers, contractors, attorneys, affiliates, agents, and assigns (collectively, the "**Released Parties**") from any and all

claims, liabilities, and obligations, both known and unknown, through the date this Amendment No. 1 was executed that were, or could have been, asserted against the Released Parties or any of them arising out of or in any way related to the Authority's acts or omissions in response to the COVID-19 pandemic, including, but not limited to, its decision to close certain parts of the Airport (the "**Released Claims**"). The Parties agree that Concessionaire's waiver and release of the Released Claims shall survive the termination of the Contract.

7. All previous payments made by Concessionaire to the Authority pursuant to the Contract shall be applied to amounts due currently or credited to future amounts due under the Contract in the Authority's sole discretion.
8. Except as provided herein, all other terms and conditions of the Contract remain in full force and effect and are hereby ratified and confirmed. The Contract and this Amendment No. 1 represent the entire understanding between the Parties on the issues contained therein, either written or oral, and may be amended only by written instrument signed by both Parties.

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IN WITNESS WHEREOF, the Parties hereto have set their hands and corporate seals on this ____ day of August, 2020.

HILLSBOROUGH COUNTY AVIATION AUTHORITY

ATTEST:

Jane Castor, Secretary

Address: PO Box 22287
Tampa, FL 33622

WITNESS:

Signature

Printed Name

BY:

Gary W. Harrod, Chairman

Address: PO Box 22287
Tampa, FL 33622

LEGAL FORM APPROVED:

BY:

David Scott Knight, Assistant General Counsel

HILLSBOROUGH COUNTY AVIATION AUTHORITY

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this ____ day of August, 2020, by Gary W. Harrod, in the capacity of Chairman of the Board of Directors and Jane Castor, in the capacity of Secretary of the Board of Directors, HILLSBOROUGH COUNTY AVIATION AUTHORITY, a public body corporate under the laws of the State of Florida, on its behalf. They are personally known to me and they did not take an oath.

Stamp or Seal of Notary

Signature of Notary

Printed Name

Date Notary Commission Expires (if not on stamp or seal)

TPA Hospitality Partners, LLC

Signed in the Presence of:

Kathy Cody
Witness

Kelly Cody
Printed Name

[Signature]
Witness

Scott Socha
Printed Name

BY:

James Oblatz
Signature

President
Title

James Oblatz
Printed Name

250 Delaware Ave
Printed Address

Buffalo, NY 14202
City/State/Zip

TPA HOSPITALITY PARTNERS, LLC

STATE OF New York
COUNTY OF Erie

The foregoing instrument was acknowledged before me this 21st day of July, 2020, by James Oblatz in the capacity of President
(Individual's Name) (Individual's Title)

At TPA Hospitality Partners, LLC, a corporation, on its behalf _____
(Company Name) (He is / She is)

_____ known to me and has produced _____
(Personally / Not Personally) (Form of Identification)

Stamp or Seal of Notary

Annette M. Balon
Signature of Notary

ANNETTE M. BALON
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 01/31/ 2022 Printed Name

Date Notary Commission Expires (if not on stamp or seal)