

AIRPORT RESTAURANT LICENSE
AMENDMENT No. 2
(COVID-19 Rent Relief)

This Amendment No. 2 is entered into this _____ day of _____, 2020 by and between the City of Flagstaff, a political subdivision of the State of Arizona ("City"), and Air Café, an Arizona corporation ("Licensee"), to amend the Airport Restaurant License Agreement dated February 19, 2013, as previously amended by Amendment I dated March 25, 2015 (hereafter "the License").

WHEREAS, on January 31, 2020 the U.S. Secretary of Health and Human Services declared a public health emergency as a result of the COVID-19 flu pandemic; on March 11, 2020 Arizona Governor Douglas Ducey declared a state public health emergency; and on March 15, 2020 Flagstaff Mayor Coral Evans declared a local public health emergency;

WHEREAS, since April 2020 airline passenger traffic through the Flagstaff Pulliam Airport has practically ceased due to the COVID-19 flu pandemic, and causing an associated decline in flight revenues;

WHEREAS, on April 4, 2020 the Federal Aviation Administration ("FAA") issued "Information for airport sponsors considering COVID-19 restrictions or accommodations" states that "a decision to abate rent... is a local decision" and provides guidance for any abatement;

WHEREAS, Licensee has requested, and City desires to provide financial relief to the Licensee to help continue airport related operations to the extent feasible at the Flagstaff Pulliam Airport;

For valid consideration, the receipt of which is hereby acknowledged, the parties agree that the License is hereby amended to read as follows (additions shown as capitalized text, and deletions shown as stricken).

ARTICLE IV. PAYMENTS FOR LICENSE is amended by adding the following:

I. PAYMENT ABATEMENT

A. DUE TO THE COVID-19 FLU PANDEMIC, FIXED PAYMENT (AS DEFINED IN SECTION IV.A. OF THE AIRPORT RESTAURANT LICENSE AGREEMENT) AND PERCENTAGE PAYMENT (AS DEFINED IN SECTION IV.B. OF AIRPORT RESTAURANT LICENSE AGREEMENT) SHALL BE ABATED COMMENCING APRIL 1, 2020 AND CONTINUING THROUGH SEPTEMBER 30, 2020 ("ABATEMENT PERIOD"), AND NO PAYMENT, LATE PENALTY OR INTEREST SHALL BE OWED OR PAYABLE FOR THIS PERIOD; PROVIDED, HOWEVER:

(a) IN THE EVENT LICENSEE RECEIVES OTHER GOVERNMENTAL RELIEF OR INSURANCE RECOVERY RELATED TO THE COVID-19 PANDEMIC, LICENSEE SHALL PROMPTLY NOTIFY CITY;

(b) IN THE EVENT LICENSEE BECOMES INSOLVENT, OR IS NAMED AS THE DEBTOR IN A VOLUNTARY OR INVOLUNTARY BANKRUPTCY PROCEEDING, THIS SECTION I OF ARTICLE IV IS VOID AND PAYMENT WILL RESUME UNDER ARTICLE IV ON THE FIRST DAY OF THE FOLLOWING MONTH;

(c) LICENSEE IN ITS DISCRETION MAY CONTINUE TO OPERATE ITS FOOD AND BEVERAGE, TAKE-OUT, AND/OR CATERING SERVICES AT AIR CAFÉ DURING THE ABATEMENT PERIOD.

B. MUTUAL WARRANTIES.

EACH PARTY CONFIRMS AND WARRANTS, WITHOUT INVESTIGATION, TO THE OTHER PARTY:

- PAYMENT RELIEF IS NECESSARY DUE TO CHANGED CIRCUMSTANCES CAUSED BY THE PUBLIC HEALTH EMERGENCY;
- IN THE EVENT PAYMENT RELIEF WILL HAVE THE EFFECT OF SHIFTING COSTS BETWEEN AIRPORT TENANTS AND USERS, THE PARTIES WILL MEET TO DISCUSS THE EQUITIES, ENDEAVOR TO REACH A CONSENSUS BETWEEN ALL AIRPORT USERS AND ADJUST PAYMENT OBLIGATIONS ACCORDINGLY;
- THERE IS A REASONABLE BASIS FOR PAYMENT RELIEF BECAUSE UNDERLYING AIRLINE PASSENGER VOLUMES AND, THUS, REVENUES THAT ARE A BASIS FOR THE CURRENT PAYMENT HAVE SIGNIFICANTLY DECLINED.

EACH PARTY UNDERSTANDS THAT THE PAYMENT RELIEF PROVIDED HEREIN MUST NOT HAVE THE AFFECT OF CAUSING ANY VIOLATION OF THE GRANT ASSURANCES 22 AND 24 (AS WELL AS RELATED STATUTES) AND EACH PARTY AGREES THAT IF THE PAYMENT RELIEF CONTEMPLATED IN THIS AGREEMENT DOES VIOLATE GRANT ASSURANCES 22 AND/OR 24 THAT THE PARTIES SHALL MEET TO DISCUSS HOW TO RESOLVE THE VIOLATION.

All other terms and conditions of the License shall remain in full force and effect.

LICENSEE: AIR CAFÉ

By: _____

Its: _____

LICENSOR: CITY OF FLAGSTAFF

By: _____

Mayor Coral Evans

Attest:

By: _____

Stacy Saltzburg, City Clerk

Approved as to form:

By: _____

City Attorney's Office