

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2012

COUNCIL BILL NO. CB12-0161
COMMITTEE OF REFERENCE:
BUSINESS, WORKFORCE, & SUSTAINABILITY

A BILL

For an ordinance approving a proposed Second Amendment to Agreement between the City and County of Denver and Host International, Inc. for the operation of a concession at Denver International Airport.

BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:

Section 1. The proposed Second Amendment to Agreement between the City and County of Denver and Host International, Inc. dba ChopHouse Restaurant and Brewery, in the words and figures contained and set forth in that form of Agreement available in the office and on the web page of City Council, and to be filed in the office of the Clerk and Recorder, Ex-Officio Clerk of the City and County of Denver, under City Clerk's Filing No. 2008-0163-B, is hereby approved.

COMMITTEE APPROVAL DATE: March 2, 2012

MAYOR-COUNCIL DATE: March 6, 2012

PASSED BY THE COUNCIL: _____, 2012

_____ - PRESIDENT

APPROVED: _____ - MAYOR _____, 2012

ATTEST: _____ - CLERK AND RECORDER,
EX-OFFICIO CLERK OF THE
CITY AND COUNTY OF DENVER

NOTICE PUBLISHED IN THE DAILY JOURNAL: _____, 2012; _____, 2012

PREPARED BY: Skip Gray, III, Assistant City Attorney DATE: March 8, 2012

Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed ordinance. The proposed ordinance is submitted to the City Council for approval pursuant to § 3.2.6 of the Charter.

Douglas J. Friednash, City Attorney for the City and County of Denver

BY: _____, Assistant City Attorney DATE: March 8, 2012

SECOND AMENDMENT TO AGREEMENT

THIS SECOND AMENDMENT TO AGREEMENT is made and entered into as of the date stated on the signature page, by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, for and on behalf of the Department of Aviation (the "City"), Party of the First Part, and **HOST INTERNATIONAL, INC.**, a Delaware corporation authorized to conduct business in the State of Colorado ("Concessionaire") dba **Denver ChopHouse & Brewery**, Party of the Second Part.

RECITALS:

A. During the third quarter of 2008 DIA staff, together with consultants retained for this purpose, undertook a new effort to determine whether the City's policy relating to term for casual dining with bar concessions should remain seven years.

B. DIA utilized an analytical process that considered a number of factors including but not limited to investor required return on investment, unique risk factors associated with the DIA environment, annualized sales of existing casual dining with bar concessions, and average construction costs at DIA. In addition, DIA's consultants conducted a review of lease terms of casual dining with bar restaurants at similar airports and learned that the average term was ten years.

C. Because individual results can and do vary depending on location, efficiency of the operator, quality of management, decisions about service levels, food quality, external factors such as changes in airline traffic and capacity, and so on, the airport cannot and does not guarantee any business a return on its investment. Nevertheless, the goal of setting term as a policy is to balance the need for a businessperson to obtain a reasonable return on investment with the traveling public's interest in seeing new and exciting retail concepts at DIA - two principals of any vibrant airport concession program.

D. With that goal in mind and based upon its analysis and research, the City has concluded that a policy of 10 year terms for casual dining with bar concessions better balances these two desired outcomes than a policy of seven year terms. That said, a change in policy is warranted and allowable terms for new casual dining with bar concessions will hereafter be ten years.

E. This change in policy also affects four existing casual dining with bar concessions with leases dated January 1, 2004 or later: Host International, Inc., dba Denver ChopHouse & Brewery (AR87001); Host International, Inc., dba Rock Bottom Restaurant & Brewery (AR78004), Concessions Colorado, LLC, dba New Belgium Hub (AR78002), and Quiz-DIA, LLC, dba Chef Jimmy's Bistro & Spirits (AR48001). Accordingly, the City has offered and each concessionaire has agreed to amend their concession agreements to extend their terms to ten years, subject to certain criteria and economic terms stated below.

F. The purpose of this amendment is to reflect this change in the City's policy concerning term for casual dining with bar concessions.

NOW, THEREFORE, for the foregoing reasons and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties hereby agree to amend the Original Agreement as follows:

AGREEMENT:

1. The City and Concessionaire (the "Parties") entered into a concession agreement (AR87001) dated March 11, 2008 (the "Original Agreement"), for a concession at Denver International Airport ("DIA" or "Airport").

2. The Original Agreement hereby is amended by deleting the Summary Page appended thereto and replacing it with the attached Summary Page, which enlarges the term, states the precise dimensions and square footage of the Concession Space, reflects the Parties' agreement to increase the Percentage Compensation Fee by 1% on the effective date stated on the Summary Page and adds a requirement to additionally renovate the Concession Space in the seventh-year of the Term.

2. The Original Agreement is further amended by appending hereto Appendices 1, 2 and 10 (which were inadvertently omitted) and by replacing Exhibit X with the attached version which has been updated to recognize a change in the City's M/W/BE Ordinance.

3. Section 6.14 of the Original Agreement, (Mid-Term Refurbishment of Concession Space) hereby is amended to add, in addition to the fourth-year Concession Space refurbishment requirement stated on the Summary Page, an additional requirement to invest in and refurbish the Concessionaire Space in the seventh year of this Agreement. This additional seventh year investment and renovation shall be completed and documented in accordance with the provisions of Section 6.14, except that documentation of the seventh year minimum investment also shall not include loss of revenue related to construction. The seventh year refurbishment completion date, minimum refurbish investment and aesthetic refurbishment requirements are also stated on the attached Summary Page. Aesthetic refurbishment shall mean replacement of all furnishings visible to, used by, and/or provides enhanced service to the public including but not limited to: signage, flooring, paint, finishes, fixtures, equipment, lighting, ceiling, and millwork. Life safety and health code upgrades are not considered aesthetic refurbishment unless part of an approved refurbishment plan.

4. Except as modified or revised by this Second Amendment to Agreement, all terms, conditions, covenants and provisions of the Original Agreement shall remain in full force and effect as if fully set forth herein and no alterations, amendments, changes or modifications to the Original Agreement, unless expressly reserved to the Manager herein, shall be valid unless executed by an instrument in writing by all the parties with the same formality as the Original Agreement.

5. This Second Amendment to Agreement, which is expressly subject to and shall not be or become effective or binding on the City until approved by City Council, if required by the City's Charter, and fully executed by all signatories of the City and County of Denver, may be executed in two or more counterparts each of which shall be deemed an original signature page of this Agreement.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties have caused this agreement to be executed at Denver, Colorado as of the date indicated on the city signature page.

Contract Control Number: AR87001

Vendor Name: HOST INTERNATIONAL, INC.

By: 

Name: RICHARD KUNKLE
(please print) Authorized Signatory

Title: _____
(please print)

ATTEST:(if required)

Name: 
(please print) SADYE C. SANDERS

Assistant Secretary
Title: _____
(please print)



Contract Control Number: PLANE-AR87001-02

Vendor Name: Host International, Inc.

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

DOUGLAS J. FRIEDNASH, Attorney
for the City and County of Denver

By _____

By _____

By _____



STANDARD FOOD AND BEVERAGE CONCESSION AGREEMENT

DENVER INTERNATIONAL AIRPORT

SUMMARY PAGE

HOST INTERNATIONAL, INC.

This Summary Page, consisting of three pages, is attached to and made a part of that certain Agreement dated March 11, 2008, between the City and County of Denver and the Concessionaire listed below.

CONCESSIONAIRE: Name	<u>Host International, Inc.</u>
Address for Notice	<u>6905 Rockledge Drive</u>
City, State and Zip	<u>Bethesda, Maryland 20817</u>
Contact	<u>General Counsel and Stephen E. Douglas</u>
Trade Name	<u>Denver ChopHouse & Brewery</u>
State of Incorporation	<u>Delaware</u>

CONCESSION LOCATION and RENT (Initial)						
Loca. Num.	Concourse /Terminal	Address	Square Feet	MAG	Monthly MAG	Gates Related to Hours of Operation
N/A	Concourse A Center Core	R17-2-3-W4-S5-1	3,599.7	\$682,800	\$56,900	All A Gates

PERCENTAGE RENT:

Initial

	\$1M	\$1M-\$2M	Over \$2M
Food and Beverage			
Casual Dining/Bar	10%	12%	14%
Alcoholic Beverages	17%	17%	17%

Effective January 1, 2012

	\$1M	\$1M-\$2M	Over \$2M
Food and Beverage			
Casual Dining/Bar	11%	13%	15%
Alcoholic Beverages	18%	18%	18%

INTERIM RENT AMOUNT:

\$68,750 (based on projected annual sales)

PERFORMANCE SURETY AMOUNT:

\$341,400 or as provided in Section 9.03

MARKETING ASSESMENT:

1% of Gross Revenues as provided in Section 13.01

STORAGE SPACE LEASE:

N/A

PERMITTED USE:	<u>Operation of a high-quality Food and Beverage concession at DIA, offering for sale the following Products: Various breakfast, lunch and dinner items, appetizers and desserts with full bar service including a minimum of six (6) brews on tap.</u>
Concession Category	<u>Food and Beverage</u>
Concept type(s)	<u>Casual Dining/Bar Alcoholic Beverages</u>
Brand	<u>Denver ChopHouse & Brewery</u>
Approved Menus	<u>See approved menu attached hereto as <i>Exhibit E</i></u>
Express Restrictions:	<u>N/A</u>
HOURS OF OPERATION:	<u>6:00 a.m. – 10: 00 p.m. - Not less than 16 hours each day, seven days per week, as provided in Section 7.07</u>
TARGET POSSESSION DATE:	<u>April 1, 2008</u>
REQUIRED OPENING DATE:	<u>November 1, 2008 or as documented in <i>Exhibit D</i></u>
TERM:	<u>Approximately seven (7) years</u>
Effective Date:	<u>May 11, 2008</u>
Rent Commencement Date	<u>April 4, 2009 or as documented in <i>Exhibit D</i></u>
Expiration Date:	<u>April 30, 2019 or as documented in <i>Exhibit D</i></u>
REQUIRED MINIMUM INVESTMENT:	<u>\$2,703,375 (3599.7 s.f. x \$751 psf)</u>
4th YEAR REFURBISHMENT MINIMUM INVESTMENT:	<u>Pursuant to Sec. 6.14 Refurbishment Minimum Investment to be mutually agreed upon by the parties and to include all necessary life/safety and health code upgrades. If no agreement is reached, the Refurbishment Minimum Investment shall be 20% of the Required Minimum Investment (including equipment) or \$540,675</u>
4TH YEAR REFURBISHMENT COMPLETION DATE:	<u>05/1/2013</u>
7TH YEAR REFURBISHMENT MINIMUM INVESTMENT:	<u>Pursuant to Sec. 6.14 7TH Year Refurbishment Minimum Investment to be mutually agreed upon by the parties and to include all necessary life/safety and health code upgrades. If no agreement is reached, the Refurbishment Minimum Investment shall be 10% of the Required Minimum Investment (including equipment) or \$270,337.50, in which case, a minimum of 7% shall be aesthetic refurbishment.</u>
7TH YEAR REFURBISHMENT COMPLETION DATE:	<u>05/1/2016</u>

INSURANCE POLICY AMOUNTS:

Comprehensive General Liability:	<u>\$1,000,000</u>
Automobile/Delivery Vehicle Liability:	<u>\$1,000,000 non-airside; \$10,000,000 airside</u>
Workers Compensation:	<u>Statutory requirements</u>
Alcohol Liability:	<u>Yes</u>

ACDBE GOAL: None

DESCRIPTION OF EXHIBITS AND ADDENDA:

Exhibit A	Concession Space Plan
Exhibit B	Disadvantaged Business Enterprise Participation
Exhibit C	Insurance Certificate
Exhibit D	Confirmation Letter
Exhibit E	Approved Menu
Exhibit H	Street Pricing Comparables
Exhibit N	DIA Environmental Requirements
Exhibit X	Provisions for Design and Construction of Improvements
Appendix 1	Standard Federal Assurances
Appendix 2	Standard Federal Assurances, Nondiscrimination
Appendix 3	Nondiscrimination in Airport Employment Opportunities
Appendix 10	Disadvantaged Business Enterprises – Required Statements

APPENDIX NO. 1

STANDARD FEDERAL ASSURANCES

NOTE: As used below the term "contractor" shall mean and include the "Party of the Second Part," and the term "sponsor" shall mean the "City".

During the term of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. Compliance with Regulations. The contractor shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

2. Nondiscrimination. The contractor, with regard to the work performed by it during the contract, 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. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

3. Solicitations for Subcontractors, Including Procurements of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

4. Information and Reports. The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the sponsor of the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance. In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the sponsor shall impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:

- a. Withholding of payments to the contractor under the contract until the contractor complies, and/or
- b. Cancellation, termination, or suspension of the contract, in whole or in part.

6. Incorporation of Provisions. The contractor shall include the provisions of paragraphs 1 through 5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the sponsor or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is

threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the sponsor to enter into such litigation to protect the interests of the sponsor and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

APPENDIX NO. 2

NONDISCRIMINATION IN AIRPORT EMPLOYMENT OPPORTUNITIES

The Party of the Second Part assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This Provision obligates the Party of the Second Part or its transferee for the period during which Federal assistance is extended to the airport program, except where Federal assistance is to provide or is in the form of personal property or real property or an interest therein or structures or improvements thereon. In these cases, this Provision obligates the Party of the Second Part or any transferee for the longer of the following periods: (a) the period during which the property is used by the sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property. In the case of contractors, this Provision binds the contractors from the bid solicitation period through the completion of the contract.

It is unlawful for airport operators and their lessees, tenants, concessionaires and contractors to discriminate against any person because of race, color, national origin, sex, creed, or handicap in public services and employment opportunities.

APPENDIX NO. 10

DISADVANTAGED BUSINESS ENTERPRISES - REQUIRED STATEMENTS

Policy. It is the policy of the Department of Transportation that disadvantaged business enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this agreement. Consequently, the ACDBE requirements of 49 CFR Part 23 apply to this agreement.

ACDBE Obligation. The recipient or its contractor agrees to ensure that disadvantaged business enterprises as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds provided under this agreement. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, sex, creed or national origin in the award and performance of DOT-assisted contracts.

49 CFR 23.5 defines a DOT-assisted contract as "any contract or modification of a contract between a recipient and a contractor which is paid for in whole or in part with DOT financial assistance or any contract or modification of a contract between a recipient and a lessee." "Contractor" means ... "and includes lessees." The City is the "recipient."

EXHIBIT X

PROVISIONS FOR DESIGN AND CONSTRUCTION OF IMPROVEMENTS

GENERAL PROVISIONS

SECTION 1: GENERAL. Except as the context otherwise requires and unless otherwise expressly provided herein, the capitalized terms in this Exhibit X to the Agreement shall have the same meaning as any similarly capitalized terms defined in the Agreement or any exhibit thereto. Reference to Denver International Airport (DIA), Department of Aviation or Manager of Aviation shall mean that entity specifically, or that division or individual authorized to represent that entity. As used below the term "Tenant" shall mean and include the "Party of the Second Part.

SECTION 2: IMPROVEMENTS. "Improvements," which may also be known as "Concession Improvements" or "Tenant Improvements," shall mean any new construction, equipment, finishes, fixtures, systems, furnishings and furniture installed by Tenant, as well as modifications or alterations to existing construction, equipment, finishes, fixtures, systems, furnishings and furniture which conform to drawings and specifications approved in writing by the Manager of Aviation. Such drawings and specifications must provide for the necessary and proper operation of the business contemplated under this Agreement.

SECTION 3: COMPLIANCE WITH LAWS AND REGULATIONS. Tenant agrees to comply with and require its contractors to comply with all applicable federal, state and local laws and all general rules and regulations applicable to construction at DIA, including but not limited to payment of prevailing wages and sales and use taxes, compliance with the Americans with Disabilities Act, 42 USC 12,000 et seq. and its regulations.

In addition to the above, the Tenant and its contractors shall comply with all DIA specific rules and regulations regarding site access, use of site, safety, security, design and construction and shall obtain and pay for all related permits. Failure to comply will be grounds for denial of access and/or suspension of construction activities. Regulations in force specific to DIA include but are not limited to the following:

The Denver Municipal Airport System Rules and Regulations

DIA Design Standards

DIA Tenant Development Guidelines

SECTION 4: PAYMENT OF PREVAILING WAGE RATES. Tenant shall require its contractor and all of its subcontractors to pay every worker, laborer or mechanic employed by them in the performance of the construction of the Improvements prevailing wages, including fringe benefits or their cash equivalent, for the same class and kind of work in the City and County of Denver, as determined by the Career Service Board under the provisions of Section 20-76 of the Denver Revised Municipal Code. The wages shall be those prevailing at the time of the contractor's final bid, and the Tenant shall require the contractor to submit with its bid the wage schedule applicable. The contractor shall post in a prominent and easily accessible place at the site of the Improvements the scale of wages to be paid by the contractor and all subcontractors at any tier working under the contractor. The contractor shall furnish to the Mayor's Office of Contract Compliance and to the Auditor, or the Manager's authorized representative, each week during which work is in progress, a true and correct copy of the payroll records of all workers employed to perform the work. All payroll records shall include information showing the number of hours worked by each worker, the hourly pay of such worker, any deductions made from pay, and the net amount of pay received by such worker for the period covered by the payroll. The payroll record shall be accompanied by a sworn statement of the contractor that the copy is a true and

correct copy of the payroll records of all workers performing the work, either for the contractors or subcontractors, that payments were made to the workers as set forth in the payroll records, that no deductions were made other than those set forth in such records, and that all workers were paid the prevailing wages as of the contractor's final bid for the work. Compliance with above requirements shall be deemed a work "specification" as such word is used in Section 5-18(d), Denver Revised Municipal Code. Violation of the prevailing wage requirement and its documentation, hereinabove set forth, shall result in an order from the Manager of Aviation for the work to cease until there is satisfactory evidence that the violation has been remedied and will not reoccur. The issuance of a stop-work order shall not relieve contractor's surety of any liability on contractor's bond or bonds, but such a stop-work order shall be deemed a default by the contractor insofar as said surety's obligation is concerned.

SECTION 5: SBE AND MBE/WBE PARTICIPATION. This Agreement is subject to the requirements of Articles III and VII of the Denver Revised Municipal Code.

Tenant agrees that it shall provide for participation of Small Business Enterprises (SBEs) in the design and construction of Improvements, in compliance with Article VII, Division 1 of Chapter 28, Denver Revised Municipal Code (D.R.M.C.), or any successor ordinance effective at the time of any design and construction which Tenant may carry out during the life of this Agreement. The goal for percentage of design and construction work to be performed by SBE firms is set forth on the Construction Summary Page, and Tenant shall make a good faith effort to meet such goals as have been set in accordance with the ordinance. Further, the City and County of Denver encourages Tenants to utilize SBEs and to divide the design and construction work into economically feasible units or segments to allow the most opportunity for subcontracting.

Tenant agrees that it shall provide for participation of Minority Business Enterprises ("MBE") and Women Business Enterprises ("WBE") in the design and construction of Improvements, in compliance with the requirements of Article III, Divisions 1 and 3 of Chapter 28, of the Denver Revised Municipal Code ("MBE/WBE Ordinance"), or applicable successor ordinance, during the life of this Agreement. Tenant agrees to comply with rules and regulations issued by the Director of the Division of Small Business Opportunity ("DSBO"), a division of the Mayor's Office of Economic Development. The goal for percentage of design and construction work to be performed by MBE/WBE firms is set forth on the Construction Summary Page, and Tenant shall meet, or make a good faith effort to meet, such goals as have been set in accordance with the ordinance. Further, the City and County of Denver encourages Tenants to utilize MBE/WBE firms and to divide the design and construction work into economically feasible units or segments to allow the most opportunity for subcontracting.

SECTION 6: INSURANCE REQUIREMENTS. Refer to Appendix B of Manual 1 of the DIA Tenant Development Guidelines for insurance requirements for Tenant, Tenant's Design Consultants and Tenant's Contractors for required insurance coverage for design and construction of Improvements and completed Improvements, including requirements for submittal of certificates and renewals of insurance.

SECTION 7: EVIDENCE OF INSURANCE. Certified copies of required insurance policies, or certificates, in the standard form required, evidencing the existence thereof, or binders, shall be delivered to the DIA Division of Planning and Development at least 15 days prior to the commencement of any design work to be performed by Tenant's consultants and any construction work for Improvements. If a binder is delivered, it shall be replaced within 30 days by a certified copy of the policy or the required certificate. Policies shall be in a form and of a company acceptable to and approved by the City, and certificates shall be on standard City and County of Denver Certificate of Insurance forms.

Each such policy or certificate shall contain a valid provision or endorsement that the policy may not be canceled, terminated, changed or modified without 45 days prior written notice (10 days for nonpayment of premium) given by certified mail, return receipt requested, to the Manager of Aviation, 8500 Peña Boulevard, Denver, Colorado 80249-6340.

Each such policy or certificate shall further provide that any coverage afforded the City and County of Denver as an additional insured under the policy shall apply as primary insurance and any other insurance issued to the City and County of Denver shall apply as excess and noncontributing insurance.

Any renewal certificate shall be delivered to the Manager of Aviation at least 10 days prior to the expiration of each expiring policy. If at any time any of the insurance policies shall be or become unsatisfactory to the Manager of Aviation as to form or substance, or if any of the carriers issuing such policies shall be or become unsatisfactory to the Manager of Aviation, Tenant shall promptly obtain a new and satisfactory replacement policy.

SECTION 8: LIMITATION ON LIABILITY. Tenant agrees that no liability shall attach to the City for any damages or losses incurred or claimed by Tenant or any other person or party on account of the construction or installation of the Improvements or other Improvements to the Tenant's site made by the Tenant. Tenant agrees that no liability shall attach to the City for any interference or delay caused by construction in adjacent areas, travelers, other businesses or airport operations, including without limitation damages or losses in the nature of delay damages, lost labor productivity, and impact damages. Tenant agrees to indemnify, defend and hold harmless the City from any loss, cost, damage or expense incurred, claimed, asserted or arising in connection with Tenant's or its contractors' or agents', construction or installation of the Improvements or other Improvements to the site made by the Tenant.

DESIGN PROVISIONS

SECTION 9: DESIGN PROCEDURES. Refer to Manual 1 of the DIA Tenant Development Guidelines for procedures and requirements regarding design, including but not limited to design process and schedule, submittal requirements, review and approval process, design modifications and project coordination.

Approval of the Manager of Aviation extends to and includes consideration of architectural, structural, mechanical, electrical, specialty systems, site, signage, landscaping and aesthetic matters, and DIA reserves the right to reject any design submitted and to require Tenant to resubmit designs and layout proposals until they meet with the approval of the Manager of Aviation. No substantial changes or alterations shall be made in said drawings or specifications after approval by the Manager of Aviation, and no alterations or improvements shall be made to or upon the Tenant's site without prior approval.

Tenant CADD Submittal Requirements: All issue for construction and project record drawings shall be provided by the Tenant to DIA in AutoCAD Rel. 2007 .dwg file format in accordance with DIA CADD standards set forth in Design Standards Manual 1. All design drawings submitted by the Tenant to the DIA shall be provided in the latest release of AutoCAD format in accordance with the DIA's Design Standards Manual.

Concession CADD Submittal Requirements: AutoCAD 2007 .dwg format CADD files that match the Tenant's hardcopy drawings must be submitted via: CD-ROM or DVD-ROM in MS-Windows format. All drawings must represent precision input and follow industry standard CADD practices. The drawings must reflect true design dimensioning and must NOT be graphic representations of the design. All site, civil and utility drawings MUST be produced using units in feet and the DIA Grid Coordinate System. The DIA Project Manager must approve submittal and may require adherence to the requirements set forth in DIA design standards. In addition to the above,

Tenant is responsible for coordination with the Denver Building Inspection Division, Zoning, Fire Department, Wastewater Management, Consumer Protection, Health and Hospitals, etc. as may be required to comply with submittal, review and approval requirements in order to obtain all required permits. Prior to the issuance of a Notice to Proceed with Improvements from the Manager of Aviation, the Tenant shall obtain and pay for all approvals, licenses and permits required for the Improvements. Whenever a conflict arises between state or local law, ordinances or regulations and federal law or regulations, the most stringent law or regulations applicable to this Agreement shall control.

SECTION 10: DESIGN STANDARDS. First-class standards of design and construction are required, and all Improvements shall conform to applicable statutes, ordinances, building codes, and regulations as well as the DIA Design Standards and DIA Tenant Development Guidelines, as they may be amended from time to time and any other applicable design, construction and maintenance standards.

Approval of the Manager of Aviation shall extend to and include consideration of architectural and aesthetic matters and the City reserves the right to reject any designs submitted and to require the Tenant to resubmit designs and layout proposals until they meet with the City's approval. If any portion of the plans and specifications is disapproved by the City, the Tenant shall promptly submit necessary modifications and revisions thereof. The approval given by the Manager of Aviation shall not constitute a representation or warranty as to such conformity; therefore, responsibility remains with the Tenant at all times.

CONSTRUCTION PROVISIONS

SECTION 11: CONSTRUCTION PROCEDURES. Refer to Manual 1 of the DIA Tenant Development Guidelines for procedures and requirements regarding construction, including but not limited to construction schedule, submittal requirements, review and approval process, construction inspections, construction modifications and project coordination.

Compliance with standards: All construction work shall comply with the requirements of and standards established by the City and all other appropriate governmental agencies and entities. The City shall at all times have the right to monitor and inspect any construction to assure that the Improvements are constructed and installed in full compliance with the plans and specifications.

Standard of Performance: All work done by the Tenant or its contractors shall be done in a first-class workmanlike manner using only good grades of materials and shall comply with all insurance requirements and all applicable laws and ordinances and rules and regulations of governmental departments or agencies. Whenever a conflict arises between State or local law, ordinances or regulations and Federal law or regulations, Federal law or regulations applicable to this Agreement shall control.

City Inspection: All construction work, materials and installations involved in or incidental to the construction of the improvements undertaken by the Tenant throughout the term hereof shall be subject at all times to inspection and approval by the City. DIA shall at all times have the right of access to the construction site and to monitor and inspect the construction of all Improvements to insure that all Improvements are constructed and installed in compliance with approved drawings and specifications.

DIA shall have the right to halt construction of the Improvements or deny access to the site at any time if construction is at material variance from the approved drawings and specifications until such variance is corrected, or if such construction poses an immediate safety hazard at the Airport, until such safety hazard is eliminated. The City shall cooperate and use its best efforts

to alleviate and resolve any such variance or impediment to the safe operation of the Airport so as to permit continued construction as expeditiously as possible.

In order to assist DIA in monitoring and inspecting construction, the Tenant shall submit, or cause to be submitted for information and record, copies of all field test reports, certificates of insurance, waivers of liens, material certificates, shop drawings and submittals for review for compliance with DIA design and construction standards, contractor application for payment requests, construction progress reports, notification of substantial completion of Improvements and final acceptance, two copies of maintenance and operation manuals in connection with building systems and all updates thereof, as-built documents, and any other documents related to the construction of the Improvements which may be reasonably requested by DIA.

No change order or other contract modification that materially changes the scope of the Improvements shall be executed without prior approval of the Manager of Aviation, whose approval shall not be unreasonably withheld. The City will approve, conditionally approve or disapprove submissions of change orders that materially change the scope of the work within a reasonable period of time following receipt thereof. Any conditional approval or disapproval shall be accompanied by an explanation as to the reason for the condition.

The Building Inspection Division of the City and County of Denver shall also receive copies of all change orders. Any conditional approval or disapproval shall be accompanied by an explanation of the reasons.

Tenant is responsible for all temporary utilities required during construction. Tenant, at its sole cost and expense, shall obtain and make utility connections, hook-ups or taps as necessary or as stipulated in this Agreement, securing all necessary applications or permits and paying all associated fees. Tenant, at its sole cost and expense, shall provide meters, calibrated by the utility company, and maintain equipment as required to provide accurate measurement of usage and consumption. DIA makes no warranty as to the location of structures, wiring, fixtures or systems, and Tenant accepts them on an "as is" basis without further recourse against DIA as to their location, number or suitability for the particular purposes of the Tenant.

Tenant is responsible for maintaining a clean, orderly and safe construction site, free of accumulated construction debris and waste materials and shall be responsible for legal removal of same. Construction shall be accomplished without interfering with travelers, airport operations or other businesses, providing barricades and/or construction enclosures as required.

SECTION 12: CONSTRUCTION BONDS AND PERMITS. Prior to Notice to Proceed with construction Improvements, Tenant and its contractor shall deliver to the Manager of Aviation performance and payment bonds and copies of all required permits, licenses and all other documents as required by Manual 1 of the DIA Tenant Development Guidelines.

SECTION 13: MODIFICATIONS AND ALTERATIONS. Modifications and alterations to existing Tenant improvements are subject to the same requirements and provisions as new tenant improvements as itemized in this Exhibit X and this Agreement.

Advance Notice of Modification: The Tenant shall give or cause to be given to the City advance notice before performing any material modification to the improvements.

Expense of Alterations. Any work necessary to make any alterations, improvements, or additions to the facility throughout the term of this Agreement shall be done at the Tenant's cost and expense, in accordance with and subject to all of the required approvals, submittals, and procedures, and all other requirements of whatsoever nature, as set forth herein.

SECTION 14: AS-BUILT DOCUMENTS. Not later than 60 days after completion of all work for the Improvements, Tenant shall provide DIA two complete sets of as-built documents prepared in accordance with DIA requirements. If Tenant fails to provide as-built documents after written notice from DIA, DIA may elect to have the documents completed and charge the Tenant for the costs associated therewith. Tenant agrees that, upon the request of DIA, Tenant will inspect the Improvements jointly with DIA to verify as-built documents.

