

PVC PARTICIPATION AGREEMENT

(FIRST AMENDMENT TO NON-DISTURBANCE AND ATTORNMENT AGREEMENT)

THIS PVC PARTICIPATION AGREEMENT (FIRST AMENDMENT TO NON-DISTURBANCE AND ATTORNMENT AGREEMENT) (referred to hereinafter as the "PVC Participation Agreement") is made and entered into as of the date stated on the signature page, by and among the **CITY AND COUNTY OF DENVER**, a municipal corporation formed under the laws of the State of Colorado ("City"), **SKYPORT DEVELOPMENT COMPANY, LLC**, a Colorado LIMITED LIABILITY COMPANY ("Tenant") and **MILE HIGH HARLEY DAVIDSON, LLC** a Colorado LIMITED LIABILITY COMPANY ("Subtenant") (collectively, referred to herein as the "Parties") d/b/a **Harley Davidson**.

RECITALS:

WHEREAS, the City and Tenant have entered into an Amended and Restated Mezzanine Lease Agreement (Sixth Amendment to Agreement), dated June 17, 1997 (the "Lease"), which governs Tenant's rights to develop, sublease, use and permit subtenants to use portions of the mezzanine area of Concourse B at Denver International Airport (the "Lease Premises"); and

WHEREAS, Tenant and Subtenant have entered into an agreement, dated May 9, 2008 (the "Sublease"), under which Subtenant subleases from Tenant certain premises within the Airport as described in the Sublease (the "Subtenant Space"); and

WHEREAS, City, Tenant and Subtenant entered into this Non-Disturbance and Attornment Agreement October 21, 2008, to provide for the non-disturbance and conditional transfer of the Sublease in the event of default by Tenant (the "Attornment Agreement");

WHEREAS, the Department of Aviation has created the "Premium Value Concessions Program" ("PVC Program") described in Airport Rule and Regulation 45 (the "PVC Rules") to reward certain categories of subtenants that operate first-class concessions and achieve the high performance standards defined in the PVC Rules. To subtenants that achieve the high performance standards defined in the PVC Rules at the time their existing agreements terminate, the City will offer a new concession agreement that is consistent with the concession policy then in effect for either (i) the same particular merchandise category as the terminating concession, or (ii) if the Manager, in her sole discretion, deems it advisable to change from that particular merchandise category, the City will offer the right to change their concept to one that is consistent with DIA's goals; and

WHEREAS, the Subtenant wishes to participate in the PVC Program and is willing to accept the requirements of the PVC Rules; and

WHEREAS, the Tenant has exercised the option to extend the term of the Sublease to October 31, 2017 and has otherwise given its permission to Subtenant to directly participate in the PVC Program; and

NOW THEREFORE, for and in consideration of the terms and conditions hereinafter set forth, the Parties agree as follows:

1. As provided in its letter to the City giving permission for eligible subtenants to participate in the PVC Program, effective as of the date this PVC Participation Agreement is executed, which date is set out on the signature page, the Tenant hereby grants Subtenant the right to participate in the PVC Program, subject to the following:

A. For purposes of the PVC Program only, Tenant and Subtenant agree and each gives its consent to the following actions: (i) Tenant shall promptly deliver to the City a copy of any written notice of default or breach of Tenant's Lease or the Subtenant's Sublease issued by Tenant to Subtenant; and (ii) The City shall promptly deliver said notices to the Third Party Administrator for its use in the PVC Program as provided in the PVC Rules.

B. Notwithstanding any provision herein to the contrary, nothing in this Agreement shall effect or alter the rights of the Tenant and Subtenant under the Sublease, including Tenant's rights to cancel, alter or terminate the Sublease pursuant to its terms;

C. Subtenant understands and agrees that as a matter of law, upon the termination of Tenant's Lease on October 31, 2017, neither Tenant nor Subtenant will have any rights with respect to the Sublease or the Subtenant Space subject to the Sublease, provided, however, that any rights and obligations arising before the effective date of any such termination shall not be affected by the provisions of this amendment; and

D. Tenant and Subtenant acknowledge that all of the provisions, terms and conditions of the Sublease remain in full force and effect and are hereby ratified and reaffirmed.

2. Effective as of the date this PVC Participation Agreement is executed, which date is set out on the signature page, Subtenant agrees to participate in the PVC Program and abide by the requirements of the PVC Rules, Airport Rule and Regulation 45.

3. The Attachment Agreement hereby is amended by adding the following paragraph entitled: Premium Value Concessions Program.

A. Subtenant agrees to participate in the City's "Premium Value Concessions Program" or "PVC Program" as more particularly described in Aviation Rule and Regulation 45 (the "PVC Rules").

B. For Subtenant's participation in the PVC Program, the Parties agree that Subtenant's major and minor categories and square footage shall be as follows: Major Category: Retail, Minor Category: Specialty Retail, Square Footage: 949

C. Subtenant acknowledges that at least 20 concessions eligible for the PVC Program must agree to participate via an executed amendment to their concession agreements before the PVC Program can begin.

D. Upon written notice from the Manager, Subtenant agrees that it shall contribute Subtenant's prorated share of the cost of administering the PVC Program as

described in section 3 (Third Party Administrator) of the PVC Rules, which shall be payable to the City in advance, without setoff, deduction, prior notice or abatement on the first day of every month following notification.

E. The City shall not be obligated to expend more for the PVC Program than is actually collected from participating concessions pursuant to section 7 (Cost of the Premium Value Concessions Program) of the PVC Rules. All services and personnel related to the PVC Program, including the Third Party Administrator as defined in section 3 (Third Party Administrator) of the PVC Rules, shall be under the exclusive control and supervision of DIA.

F. Subtenant may withdraw from the PVC Program only if its annual obligation in any location to the airport exceeds \$15,000 per concession location. Inflation adjustments shall be calculated using the Consumer Price Index for all Urban Consumers (CPI-U) for the Denver-Boulder-Greeley MSA.

G. The Manager, in her sole and absolute discretion, may terminate the PVC Program if the number of participating concessions falls below 20, or for any other reason, upon 30 days notice to Subtenant. Return to Subtenant of any portion of its Participation Fees shall be in accordance with the procedures stated in the PVC Rules.

H. In the event of a conflict between any provision of the PVC Rules and the Attornment Agreement or the Sublease, the Attornment Agreement and the Sublease shall govern.

4. Except as provided herein, all of the provisions, terms and conditions of the Attornment Agreement shall remain in full force and effect as if fully set forth herein, and are hereby ratified and reaffirmed.

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

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties have hereunto set their hands and affixed their seals at Denver, Colorado as of the date stated on the signature page.

Contract Control Number: AR8A009 (1)

Vendor Name: MILE HIGH HARLEY DAVIDSON, LLC

By: _____

Name: _____

Title: _____

ATTEST: [if required]

By _____

Name: _____

(please print)

Title: _____

(please print)

Contract Control Number: AC69004

Tenant Name: SKYPORT DEVELOPMENT, LLC

By: _____

Name: _____

Title: _____

IN WITNESS WHEREOF, the Parties have hereunto set their hands and affixed their seals at Denver, Colorado as of the date stated on the signature page.

Contract Control Number: AR8A009 (1)

Vendor Name: MILE HIGH HARLEY DAVIDSON, LLC

By: Ray Cooper
Name: Ray Cooper
Title: owner

ATTEST: [if required]

By: N/A
Name: _____

(please print)

Title: _____

(please print)

Contract Control Number: AC69004

Tenant Name: SKYPORT DEVELOPMENT, LLC

By: David Masteller
Name: David Masteller
Title: Member

