

SECOND ENROLLMENT PVC PARTICIPATION AGREEMENT

(FIRST AMENDMENT TO NON-DISTURBANCE AND ATTORNMENT AGREEMENT)

THIS SECOND ENROLLMENT 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 of the State of Colorado acting for and on behalf of the Department of Aviation ("City"), **SKYPORT DEVELOPMENT COMPANY, LLC**, A Colorado limited liability company ("Tenant") and **DIA TOY STORE, LLC** a Colorado limited liability company ("Subtenant") d/b/a **Kazoo & Company** (collectively, referred to herein as the "Parties").

WITNESSETH:

WHEREAS, the City and Tenant entered into an Amended and Restated Mezzanine Lease Agreement (Sixth Amendment to Agreement), dated April 11, 2007 and an Seventh Amendment dated October 15, 2008, collectively, 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; (together with subsequent amendments, collectively, the "Lease"); and

WHEREAS, Tenant and Subtenant have entered into an agreement, dated November 29, 2011 (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 (AR85014) dated March 1, 2009, to provide for the non-disturbance and conditional transfer of the Sublease in the event of default by Tenant (the "Attornment Agreement");

WHEREAS, the City has created the "Premium Value Concessions Program" ("PVC Program") described in Rule 45 of the Airport Rules and Regulation, as amended, ("PVC Rules") to reward certain categories of Concessionaires that operate first-class concessions at the Airport and achieve the high performance standards defined in the PVC Rules. To Concessionaires 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 minor merchandise category as the terminating concession, or (ii) if in the Manager's sole discretion, it is deemed advisable to change from that particular minor merchandise category, the City will offer the right to change the concept to one that is consistent with the Airport's goals; and

WHEREAS, at the inception of the PVC Program, concessionaires meeting the eligibility criteria were extended an offer to join the program with the stipulation that failure to exercise that option or to decline it would bar the concessionaire from the PVC Program, except through a new concession agreement obtained from the Airport through its contracting process; and

WHEREAS, twenty-five eligible concessionaires accepted the City's offer and enrolled seventy locations for participation in the PVC Program. Accordingly, as more than twenty concessions eligible for the PVC Program agreed to participate via executed amendments to their concession agreements, the primary condition was met that allowed the PVC Program to commence March 1, 2012; and

WHEREAS, upon reflection and discussion with the Airport concession community the Airport has decided to offer a second enrollment opportunity for eligible concessionaires under the following conditions:

- a) Concessions with agreement terms expiring through July 31, 2013 (PVC Phase 1, see Section 6) are not eligible for enrollment;
- b) Companies who elect to enroll in the PVC Program must enroll all eligible concession locations under that company's ownership or control at DIA;
- c) All PVC Program decisions made prior to enrollment date are considered final and not eligible for re-negotiation and/or appeal;
- d) New PVC Program participants will pay a pro-rata share of the monthly PVC Program fees, in arrears from March 1, 2012 going forward based on the total number of participating locations and the estimated yearly Program costs;
- e) Existing PVC Program participants will receive a one-time credit on their monthly bill to reflect the payment of fees collected in accordance with Item "d" above;
 - (i) The exact amount of the one-time credit will be determined by DIA Commercial Division based upon the total number of participating locations and the estimated yearly Program costs;
- f) Existing PVC Program participants will receive a pro-rata reduction in subsequent monthly fees commensurate with a larger participant pool;
- g) New PVC Program participants will pay a processing fee of 10 percent of the total amount collected in accordance with Item "d" above;
- h) New PVC Program participants are solely responsible for understanding all aspects, terms, and requirements of Rule 45 Premium Value Concession Program;
- i) The PVC Program's Third Party Administrator will provide new PVC Program participants with all previously distributed Program materials;
- j) The second enrollment offer will be for a limited two week time period, and concessionaires that reject, or fail to respond in a timely fashion to the offer shall be ineligible and have no future opportunity to join the PVC Program, unless through a new agreement obtained from the Airport through its contracting process; and

WHEREAS, Subtenant is willing to accept and meet the conditions of this second enrollment offer and desires to participate in the PVC Program; 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;

NOW, THEREFORE, for and in consideration of the premises and other good and valuable consideration, and as a condition precedent to Subtenant's acceptance of the City's Second Enrollment offer, 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.

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

A. Subtenant represents that the Sublease does not expire on or before July 31, 2013.

B. Subtenant agrees to amend all eligible concession agreements under Subtenant's ownership or control at the Airport in order to cause each of those concession locations to be enrolled into the PVC Program. Final determination of the eligibility of any of Subtenant's locations will be made by the City.

C. Subtenant accepts all PVC Program decisions made prior to the date this PVC Participation Agreement is executed as final and Subtenant shall neither re-negotiate nor appeal any such decisions.

D. Subtenant agrees that it shall contribute Subtenant's pro-rata share of the PVC Program Costs as described in Section 8 (Cost of Premium Value Concessions Programs) of the PVC Rules. PVC Program Costs shall be payable to the City in advance, without setoff,

deduction, prior notice or abatement on the first day of every month following the execution of this PVC Participation Agreement. In addition, Subtenant agrees to pay a pro-rata share of the monthly PVC Program fees, in arrears from March 1, 2012 going forward to and including the date this PVC Participation Agreement is executed based on the total number of participating locations and the estimated yearly PVC Program costs (hereinafter, "Payments in Arrears"). Said Payments in Arrears represent Subtenant's pro-rated share of the cost of administering the PVC Program that Subtenant would have paid if Subtenant's locations had been enrolled in the PVC Program, when the PVC Program Costs were first pro-rated among the total number of participating locations on March 1, 2012. Subtenant also agrees to pay to the City a one-time processing fee of ten percent (10%) of the Payments in Arrears at the time this PVC Participation Agreement is executed. These Payments in Arrears shall be paid to the City in twelve equal installments, in advance, without setoff, deduction, prior notice or abatement, on the first day of each month following the execution of this PVC Participation Agreement. Subtenant agrees that these Payments in Arrears and the processing fee are obligations that remain due and owing until paid regardless of whether Subtenant remains in the PVC Program.

E. Subtenant understands and acknowledges that existing PVC Program participants will receive a one-time credit on their monthly bill to reflect the payment of fees collected from concessionaire in accordance with paragraph 4 above. The exact amount and the timing of the one-time credit will be determined by DIA's Commercial Division based upon the total number of participating locations and the estimated yearly PVC Program costs. In addition, Subtenant acknowledges that existing PVC Program participants will receive a pro-rata reduction in subsequent monthly fees commensurate with a larger participant pool.

F. Subtenant is solely responsible for understanding all aspects, terms, and requirements of the PVC Rules.

G. The PVC Program's Third Party Administrator will provide Subtenant with all previously distributed Program materials.

H. Subtenant understands and acknowledges that this second enrollment offer will be for a limited two week time period, and concessionaires that reject, or fail to respond in a timely fashion to the offer shall be ineligible and have no future opportunity to join the PVC Program, unless through a new agreement obtained from the Airport through its contracting process.

4. Therefore having met the required conditions and otherwise being deemed eligible to accept this second enrollment offer, effective as of the date this PVC Participation Agreement is executed, and subject to the following, Subtenant agrees to participate in the PVC Program and abide by the requirements of the PVC Rules.

A. For Subtenant's participation in the PVC Program, the Parties agree that Subtenant's major and minor merchandise categories, as described in the PVC Rules, and the PVC Square footage shall be as follows:

Major Merchandise Category: Retail

Minor Merchandise Category: Specialty Retail

Square Footage: 1763.0

B. 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 the Airport.

C. Subtenant may withdraw from the PVC Program only if its annual obligation for the PVC Program for any location exceeds \$15,000 per concession location. Inflation adjustments shall be calculated using the Consumer Price Index for all Urban consumers (CPI-U) for the West urban Region.

D. In the sole and absolute discretion of the Manager, this PVC Program may be terminated if the number of participating concession locations falls below 20, or for any other reason, upon 30 days' written notice to Subtenant. Return to Subtenant of any of its participation fees shall be in accordance with the procedures stated in the PVC Rules.

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

5. Except as modified or revised herein, all terms, conditions, covenants, and provisions of this Attornment Agreement shall remain in full force and effect as if fully set forth herein.

6. This PVC Participation Agreement 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 by the City's Charter, and fully executed by all signatories of the City and County of Denver. This PVC Participation Agreement may be signed in two or more counterparts, each of which shall be deemed to be an original signature page, and it may be signed electronically by the Parties in the manner specified by the City.

[SIGNATURE PAGES FOLLOW]

Contract Control Number: PLANE-AR85014-01

Contractor Name: DIA Toy Store, LLC

By: A. Waters

Name: Amanda Waters
(please print)

Title: Member
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



Contract Control Number:

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:

By _____

By _____

By _____

