

## CONDITIONAL ASSIGNMENT OF CONCESSION AGREEMENT

THIS CONDITIONAL ASSIGNMENT OF CONCESSION AGREEMENT is made and entered into as of the date stated on the City's signature page by and among AVILA RETAIL DEVELOPMENT & MANAGEMENT, LLC, a New Mexico limited liability company authorized to conduct business in the State of Colorado (hereinafter called "BORROWER"), d/b/a as Out West, the CITY AND COUNTY OF DENVER (hereinafter called "CITY") and BOKF NA dba Bank of Albuquerque (hereinafter called "LENDER").

### WITNESSETH:

WHEREAS, BORROWER has heretofore entered into A Standard Specialty Retail Concession Space Agreement with CITY dated December 4, 2013, for the operation of a retail concession at Denver International Airport, filed in the City Clerk's Office for the City as Agreement No. 201311250 (hereinafter called "Concession Agreement"); and

WHEREAS, LENDER has loaned or has authorized the making of a loan to BORROWER in the amount of \$284,906.00 due and payable on or before November 11, 2019; (Loan Date: 06/11/2014; Maturity 11/11/2019; Loan No. 3544346); and

WHEREAS, such loan is for the benefit of BORROWER and the loan funds are to be used for the benefit of the business conducted on the Concession Space.

NOW, THEREFORE, for and in consideration of the premises and of the disbursement of said loan, or any part thereof, BORROWER, CITY, and LENDER covenant and agree:

1. BORROWER is not now in default in the performance of the Concession Agreement, and BORROWER and CITY will each perform the covenants and conditions required of them by the Concession Agreement for the term of said loan and any extensions or renewal of it.
2. Except as otherwise herein permitted, BORROWER and CITY will not, alone or by agreement between them, modify or terminate the Concession Agreement without the consent of LENDER.
3. In the event of default by BORROWER under the terms of the Concession Agreement, CITY shall have the right to terminate said Agreement in accordance with its terms; provided, however, CITY shall first give LENDER 30 days written notice of such default and the right, at the option of LENDER, during such period, to cure such default; and during such period CITY will take no action to enforce its claim arising from such default without LENDER's consent.
4. In the event of any default by BORROWER in the performance of any of the obligations of the note to LENDER evidencing the aforesaid loan, any renewal or extension thereof, or any other agreement made in connection therewith, including the agreements



Denver, Colorado 80249-6340  
Attn: Neil Maxfield

**BORROWER:** Avila Retail Development & Management, LLC  
Attn: John or Kathleen Avila  
5001 Ellison NE  
Albuquerque, NM 87109

**LENDER:** Bank of Albuquerque  
Attn: Marcia Hembree  
201 3<sup>rd</sup> St NW, Suite 1400  
Albuquerque, NM 87102

Any party hereto may designate in writing from time to time the address of substitute or supplementary persons within the State of Colorado to receive such notices. The effective date of service of any such notice shall be the date such notice is mailed or delivered.

10. This Conditional Assignment shall terminate upon satisfaction in full of the note to LENDER evidencing the aforesaid loan, and BORROWER shall notify CITY of the satisfaction of the note.

11. This Conditional Assignment may be executed in two or more counterparts. Each counterpart will be deemed an original signature page to this Conditional Assignment. This Conditional Assignment is expressly subject to and shall not be or become effective or binding on the City until approved by the City Council, if so required by the City's Charter, and fully executed by all signatories of the City and County of Denver. This Conditional Assignment may be signed electronically by the Parties in the manner specified by the City.

[SIGNATURE PAGES FOLLOW]

DATED this 26<sup>th</sup> day of SEPTEMBER, 2014.

**BORROWER**

By [Signature]

Title [Signature]

**LENDER**

By Marcia Hembree

Title SVP

**ATTEST:**

By \_\_\_\_\_

\_\_\_\_\_, Clerk and

Recorder, Ex-Officio Clerk of the

City and County of Denver

**APPROVED AS TO FORM:**

\_\_\_\_\_, Attorney for

the City and County of Denver

By \_\_\_\_\_

Assistant City Attorney

**CITY AND COUNTY OF DENVER:**

By \_\_\_\_\_

Mayor

**RECOMMENDED AND APPROVED:**

By \_\_\_\_\_

Manager of Finance

**COUNTERSIGNED AND REGISTERED:**

By \_\_\_\_\_

Auditor



**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 \_\_\_\_\_

