

## TENTH AMENDMENT TO AGREEMENT

**THIS TENTH AMENDMENT TO AGREEMENT** ("Amendment") is made and entered into as of the date set forth on the City's signature page, by and between **the CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, for and on behalf of its Department of Aviation ("City") and **SKYPORT DEVELOPMENT COMPANY, LLC**, a Colorado limited liability company ("Tenant").

### RECITALS

**WHEREAS**, City owns and operates Denver International Airport ("DEN") located in the City and County of Denver, Colorado; and

**WHEREAS**, following a competitive proposal process, the Parties entered into an Agreement (AC-69004) dated June 17, 1997, which has been amended by a First Amendment dated September 1, 1998, a Second Amendment dated July 11, 2003, a Third Amendment dated May 17, 2004, a Fourth Amendment dated July 6, 2006, a Fifth Amendment dated February 13, 2007, an Amended and Restated Mezzanine Lease Amendment (Sixth Amendment to Agreement) dated April 11, 2007, a Seventh Amendment dated October 31, 2008, an Eighth Amendment ("Eighth Amendment") dated October 29, 2013, and a Ninth Amendment ("Ninth Amendment") dated April 13, 2015 (collectively, hereinafter, "Lease"), implementing Tenant's B Mezzanine Development Project, by granting Tenant the right to develop, operate, sublease and manage various retail and food & beverage establishments on the Mezzanine level of Concourse B ("B Mezzanine") and granting Tenant a license to use the Mezzanine Commons Area of Concourse B ("Mezzanine Commons Area") at DEN for specified purposes in support of the foregoing; and

**WHEREAS**, as required by the Eighth Amendment, on or before December 31, 2013, Tenant entered into a sublease with the DFASS Partnership Group ("DFASS Sublease" and "DFASS" respectively) concerning five (5) concepts and on December 31, 2013, Tenant requested that the City provide its consent to the DFASS Sublease; and

**WHEREAS**, in the Eighth Amendment Tenant agreed to pay guaranteed rent ("Guaranteed Rent") to the City rather than continuing to pay City base rent plus a percentage for a portion of the Premises ("Guaranteed Rent Premises"), the date Guaranteed Rent was to start was changed to November 2015 by the Ninth Amendment; and

**WHEREAS**, Tenant, DFASS, and City, after discussions, were not able to agree on an amendment to the DFASS Sublease until after the Ninth Amendment was executed and delivered; and

**WHEREAS**, pursuant to the Ninth Amendment, Guaranteed Rent was based on Tenant having all five (5) concepts open and contemplated all five (5) concepts being open prior to Guaranteed Rent commencing; and

**WHEREAS**, after the Ninth Amendment, several unanticipated events adversely affected Tenant's ability to pay the Guaranteed Rent, including, but not limited to: (i) the amendment to the DFASS Sublease removed one location from the sublease so that only four (4) locations were subleased rather than the five (5) locations described in the Ninth Amendment, (ii) the decision to delay development of the B Mezzanine until DEN completed its updated concessions plan, and

(iii) the decision of DEN, DFASS and Tenant to not open one of the four locations pending completion of DEN's updated concessions plan; and

**WHEREAS**, Tenant has been paying the City base rent and percentage rent in lieu of the Guaranteed Rent, for all the Guaranteed Rent Premises; and

**WHEREAS**, the changes in circumstances and the delays described above prevented both Parties from obtaining the benefits contemplated in the Eighth and Ninth Amendments; and

**WHEREAS**, the Parties agree, based on the delay and change in circumstance described above, the Lease must be amended;

**NOW THEREFORE**, in consideration of the foregoing, the terms and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to amend the Lease, as follows:

1. **Completion of Ninth Amendment Requirements.** The Parties acknowledge the remaining requirements of the Eighth and Ninth Amendment have been completed to the satisfaction of the Parties.

2. **Implementation of Tenant's Amended Development Plan.** Tenant shall take commercially reasonable steps to implement Tenant's Amended Development Plan ("Plan"), which has been approved by City and is attached hereto as **Exhibit A**, and incorporated herein by reference, including using a procurement process agreed to between the Parties to accommodate the requirements of the Plan. Tenant has agreed to pay the costs of buying out any subleases required for the redevelopment. To assist Tenant in implementing the Plan, City has agreed to: (A) relocate the prep kitchen currently subleased to DIA Steakhouse, LLC, and (B) re-concept the Concession Agreement with Skyport Holdings, LLC for the space currently operating as Woody Creek Bakery and Café, in accordance with **Exhibit A**. Additionally, the Parties agree that to obtain the full benefit of the Plan, Tenant shall install power and wiring to each of the tables located in the common areas of the B Mezzanine (except where such installation is impractical) sufficient to support electronic tablet ordering and delivery of foods, beverages, and goods by DIA Tech Services, LLC to patrons using the common areas of B Mezzanine. The tablet ordering system will be required to permit interfacing with any airport-wide tablet ordering system, if implemented by DEN.

3. **Lease Clarifications and Modifications.** The Parties agree to the following clarifications and modifications to the Lease:

a. **Sublease Incentive Costs.** The Sublease Incentives described in the Eighth Amendment shall continue to be provided. Instead of sharing the cost of Subtenant Incentives based on the amount of rent to be received by the Tenant and the amount of the rent to be received by City, Subtenants will receive Sublease Incentives as a result of entering into a Concession Agreement with the City, in accordance with the Plan and each Subtenant's Concession Agreement.

b. **Tenant Incentive Payments.** The Tenant Incentive Payments described in the Eighth Amendment shall continue. Except with respect to Spaces BM-2E, 2F, , 4F-3 ("Existing Subtenants"), Tenant Incentive Payments shall commence on upon the date that the occupant commences its operations on the Mezzanine Level of the B Concourse. Tenant Incentive Payments concerning the Existing Subtenants shall commence on June 1, 2019. Tenant Incentive

Payments shall continue through the term of occupancy for corresponding Concession Agreements issued concerning such operations (even if such commencement is after the date Tenant's Lease ends), including any renewals, replacements or extensions.

c. Tenant Participation in any Subtenant. The Parties agree, the Chief Executive Officer of the Department of Aviation ("CEO"), in their sole and absolute discretion, may waive the Lease's restriction on Tenant's ability to participate in ownership of any subtenant, in writing without requiring further amendment to the Lease.

d. Adjustment to Compensation. Commencing on the first date a Concession Space, as contemplated in **Exhibit A**, is delivered to a Subtenant to commence construction, Tenant's obligation to pay Minimum Monthly Rent for all spaces covered by the Lease shall end. However, Tenant shall continue to pay Percentage Rent with respect to all spaces described in the Lease. Percentage Rent for all spaces described in the Lease shall be eleven and six tenths percent (11.6%), commencing on the first date a Concession Space is delivered to a Subtenant to commence construction.

e. Liquidated Damages for Vacant Space. Liquidated damages payable for vacant space under the Lease, shall be eliminated, if such space is the subject of Sublease executed by Tenant and Subtenant and has been delivered to Subtenant for construction consistent with **Exhibit A**.

f. Reclaiming of Portions of the Leased Premises. Each of the Subtenant's subleases shall terminate on the Package Completion Date, set forth in the Notice To Proceed issued by City to that Subtenant under its Concession Agreement with City, executed in accordance with **Exhibit A**. Tenant shall be deemed to have returned each affected space, in its "as is" condition, as of the Package Completion Date for each Subtenant's Concession Agreement with City. Thereafter, the Parties agree, Tenant rights and obligations under the Lease with respect to the space returned shall end.

g. Rent for Space BM-4A (East). The percentage rent payable by Tenant to DEN applicable to Space BM-4A (East) shall be eleven and one-tenth percent (11.1%) commencing November 1, 2015, thru May 31, 2019.

h. Guaranteed Rent. Effective as of the Eighth Amendment, the Guaranteed Rent obligation under the Lease is hereby removed from the Lease. Tenant shall continue to pay MMG and Percentage Rent with respect to the Guaranteed Rent Spaces, except as provided herein.

i. CEO. All references in the Lease to "Manager" or Manager of Aviation" are hereby deleted and replaced with CEO. "CEO" means the Chief Executive Officer of the City's Department of Aviation having jurisdiction over the management, operation, and control of DEN. Whenever reference is made to the "CEO or the CEO's authorized representative," or words of similar import are used such reference shall mean the officer or employee of the City designed in writing by the CEO as the CEO's delegated authorized representative.

j. Not in Default. City acknowledges Tenant is not in default under the terms of the Lease and Tenant acknowledges City is not in default under the terms of the Lease.

k. ACDBE Participation. Under the Lease, the City has set an Airport Concession Disadvantage Business Enterprise ("ACDBE") participation goal of twenty seven percent (27%) for all locations on the B Mezzanine. The Parties agree, in accordance with **Exhibit A**, to increase the current ACDBE participation goal under the Lease to thirty-three percent (33%). Additionally, the Parties agree, this ACDBE participation goal of thirty-three percent (33%) shall apply in the aggregate to all the Concession Agreements executed between Tenant's Subtenants and the City, in accordance with **Exhibit A**.

4. **Rent Credits to Tenant**. The City agrees to compensate Tenant in the form of Rent Credits, a dollar amount of One Million Three Hundred Forty-Two Thousand Thirty-Six Dollars (\$1,342,036).

5. **Effect of Amendment**. Except as modified or revised herein, all terms, conditions, covenants and provisions of the Lease shall remain in full force and effect as if fully set forth herein.

6. **Effectiveness of Amendment**. This Amendment is expressly subject to and shall not be or become effective or binding on City until approved by City Council, if required by City's Charter, and fully executed by all signatories of the City and County of Denver. This Amendment may be executed in two or more counterparts, each of which will be deemed an original signature page to this Amendment and either Party in the manner specified by City may sign it electronically.

**[SIGNATURE PAGES AND EXHIBITS FOLLOW]**

**Contract Control Number:** PLANE-AC69004-11

**Contractor Name:** Skyport Development Company LLC

By:  \_\_\_\_\_

Name: David Mosteller  
(please print)

Title: Manager  
(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 \_\_\_\_\_



