

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2012

COUNCIL BILL NO. CB12-0416
COMMITTEE OF REFERENCE:
BUSINESS, WORKFORCE, & SUSTAINABILITY

A BILL

For an ordinance approving a proposed Fourth Amendment to Agreement between the City and County of Denver and Quiz-DIA, LLC 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 Fourth Amendment to Agreement between the City and County of Denver and Quiz-DIA, LLC dba Mesa Verde (AC4A005) 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. 2004-0739-D, is hereby approved.

COMMITTEE APPROVAL DATE: May 24, 2012

MAYOR-COUNCIL DATE: May 29, 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 *KAC* DATE: May 31, 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: May 31, 2012

FOURTH AMENDMENT TO AGREEMENT

THIS FOURTH 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 **QUIZ-DIA, LLC**, a Colorado limited liability company (the "Concessionaire") dba **Mesa Verde Lounge**, Party of the Second Part.

WITNESSETH:

WHEREAS, the Parties hereto entered into a Concession Agreement (AC-4A005) dated November 30, 2004; a First Amendment dated June 27, 2006; a Second Amendment dated January 23, 2007 and a Third Amendment dated October 31, 2011 (collectively, the "Original Agreement"), for a smoking lounge and full service restaurant concession at Denver International Airport ("DIA" or "Airport"); and

WHEREAS, the City desires to eliminate smoking in the Airport; and

WHEREAS, Concessionaire is willing to relinquish its right under the Original Agreement to offer smoking and therefore agrees to reconfigure and remodel its Concession Space to eliminate smoking and remove the smoking lounge; and

WHEREAS, reconfiguring and remodeling the Concession Space will necessitate an enlargement of the space and will require significant capital investment by Concessionaire for architectural design, engineering fees and new and additional tenant finish for the space; and

WHEREAS, in exchange for Concessionaire's continued leadership in developing its Concession Space in furtherance of the Airport's Sense of Place concepts, and in recognition of the rights Concessionaire agrees to relinquish and the capital investment Concessionaire has agreed to make, the City has agreed to enlarge the term of the Agreement;

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:

1. The Original Agreement hereby is amended to enlarge the Term by three years to expire August 31, 2019. Notwithstanding the foregoing, upon written notice to the Manager, Concessionaire may exercise an option, which becomes effective June 1, 2015 and expires August 31, 2015, to terminate the Agreement, in which event, the Agreement shall terminate August 31, 2016 and both the City and the Concessionaire shall be released from any liability or further obligation under the Agreement; provided that those terms and conditions of this Agreement, (such as the indemnity agreement set forth herein) which by reasonable implication contemplate continued performance or compliance beyond the termination of this Agreement shall survive the expiration or earlier termination of this Agreement and shall continue to be fully enforceable as provided herein.

2. The Original Agreement hereby is amended to enlarge the Concession Space to 4,706.2 square feet by deleting Exhibit A attached to the Original Agreement entirely and substituting therefor, the Exhibit A appended hereto, which is incorporated herein by this reference.

3. Concessionaire agrees to remodel its Concession Space within a construction period of 120 days from the City's Notice to Proceed in accordance with plans proposed by Concessionaire and approved by the City that are designed to eliminate and remove the effects of smoking from the Concession Space. Therefore Section 5.01 of the Original Agreement hereby is amended to permit the Parties to reduce the Minimum Monthly Guarantee by fifty percent (50%) during the referenced construction period and for six months after the construction period and for such additional time as the Manager may approve in writing. Thereafter the Minimum Monthly Guarantee payable to the City will be the amount stated on the Summary Page.

4. Concessionaire guarantees that it shall remodel and construct the improvements, furnish and equip the Concession Space at a minimum capital investment of Nine Hundred Thirty Thousand Dollars (\$930,000.00), which shall not include financial costs, interest, inventory, pre-opening expenses or intra-company charges, but may include architectural and engineering fees not exceeding 20% of the total. Within 90 days after completion of construction, Concessionaire agrees to document the referenced capital investment in the manner described in Section 6.17 of the Original Agreement.

5. Concessionaire has placed signage near the east central core escalator. Concessionaire is hereby authorized to place identical signage near the west central core escalator or Concessionaire may submit a redesigned sign concept to the City and once approved Concessionaire may install identical signage in both locations.

6. Section 6.17 of the Original Agreement (Renovation of the Concession Space) hereby is amended to change the Renovation Completion Date to August 31, 2016.

7. The Original Agreement is further amended by deleting the Summary Page attached to the Original Agreement entirely and substituting therefor the Summary Page appended hereto, which conforms the term, concession space, permitted use and renovation requirements to this Fourth Amendment.

8. Except as modified or revised by this Fourth Amendment, all terms, conditions, covenants and provisions of the Original Agreement shall remain in full force and effect as if fully set forth herein.

9. This Fourth Amendment, which is expressly subject to, and shall not be or become effective or binding on the City until approved by the City Council, and fully executed by all signatories of the City and County of Denver, may be executed in two or more counterparts, each of which will be deemed an original signature page to this Agreement and the Parties consent to the use of electronic signatures.

[SIGNATURE PAGES FOLLOW]

STANDARD AGREEMENT FOR CONCESSION SPACE – DENVER INTERNATIONAL AIRPORT

SUMMARY PAGE

QUIZ-DIA, LLC

This Summary Page, consisting of two pages, is attached to and made a part of that certain First Amendment to Agreement dated _____, 2006, between the City and County of Denver and the Concessionaire listed below.

CONCESSIONAIRE:

Name: Quiz-DIA, LLC
Address: 1001 17th St. suite S175
Denver, CO 80202
Contact: Patrick E. Meyers

CONCESSION LOCATION:

Concourse/Terminal: Concourse A, Center Core, Southeast Quadrant
Mezzanine Level

Address: R17-2-4-E4-S6-1

Square Feet: 4706.2

STORAGE SPACE LEASE: Yes

PERMITTED USES: "Colorado-themed" restaurant and bar serving
breakfast, lunch, dinner and "grab-n-go" food items as
well as the sale of alcoholic beverages for on-premise
consumption only.

ESPRESS RESTRICTIONS Smoking and the sale of cigarettes.

CONCESSION OPENING DATE: October 1, 2006

HOURS OF OPERATION: Not less than 16 hours each day, seven days per
week, as provided in Section 6.05

Gates whose schedules determine opening hours per Section 6.05: A40 through A47

TERM EXPIRATION DATE: August 31, 2019

MAJOR CONCESSION CATEGORY Food and Beverage

MINOR CONCESSION CATEGORY Casual Dining Bar

COMPENSATION:

Minimum Annual Guarantee -- Initial: \$194,124.00 or as provided in Section 5.03A

Minimum Annual Guarantee:
Effective January 1, 2012: \$670,953.00 or as provided in Section 5.01

Minimum Monthly Guarantee:
Effective January 1, 2012: \$55,913.00 or as provided in Section 5.03A

Percentage Compensation Fee: Food and Beverages 17%
Alcohol (to be separately reported) 17%

PERFORMANCE GUARANTEE:

Effective January 1, 2012 \$321,934.00 or as provided in Section 8.03

REQUIRED MINIMUM INVESTMENT: \$843,220 (4,216.1 s.f. x \$200)

RENOVATION MINIMUM INVESTMENT: Pursuant to Sec. 6.17 Renovation Minimum Investment to be mutually agreed upon by the Parties. If no such agreement is reached, the Renovation Minimum Investment shall be 10% of the Required Minimum Investment (including equipment) or \$84,322, of which 50% will be directed to esthetic refurbishment that is visible to the public.

RENOVATION COMPLETION DATE: August 31, 2016

ACDBE GOAL 0%

SBE GOALS: 30%

INSURANCE POLICY AMOUNTS:

Comprehensive General Liability: \$1,000,000

Automobile/Delivery Vehicle Liability: \$1,000,000 non-airside; \$10,000,000 airside

Alcohol General Liability: \$2,000,000 each occurrence

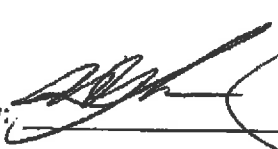
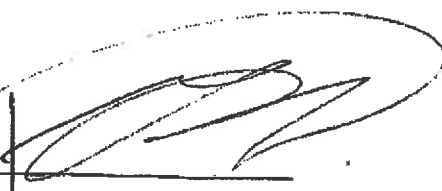
Workers Compensation: Statutory requirements

DESCRIPTION OF EXHIBITS AND ADDENDA:


- Exhibit A Concession Space Plan
- Exhibit B Disadvantaged Business Enterprise Participation
- Exhibit C Insurance Certificate
- 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

Contract Control Number: PLANE-AC4A005-04

Contractor Name: Quiz-DIA, LLC

By: 	
Name: <u>Michael S. Roper</u> (please print)	<u>Greg macdonald</u>
Title: <u>C.O.O.</u> (please print)	<u>CEO</u>

ATTEST: [if required]

By: 	<u>Terri Winter</u>
Name: <u>Terri Winter</u> (please print)	<u>Terri Winter</u>
Title: <u>Assoc. Gen. Counsel</u> (please print)	<u>Assoc. General Counsel</u>



T&W

Contract Control Number: PLANE-AC4A005-04

Contractor Name: Quiz-DIA, LLC

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 _____

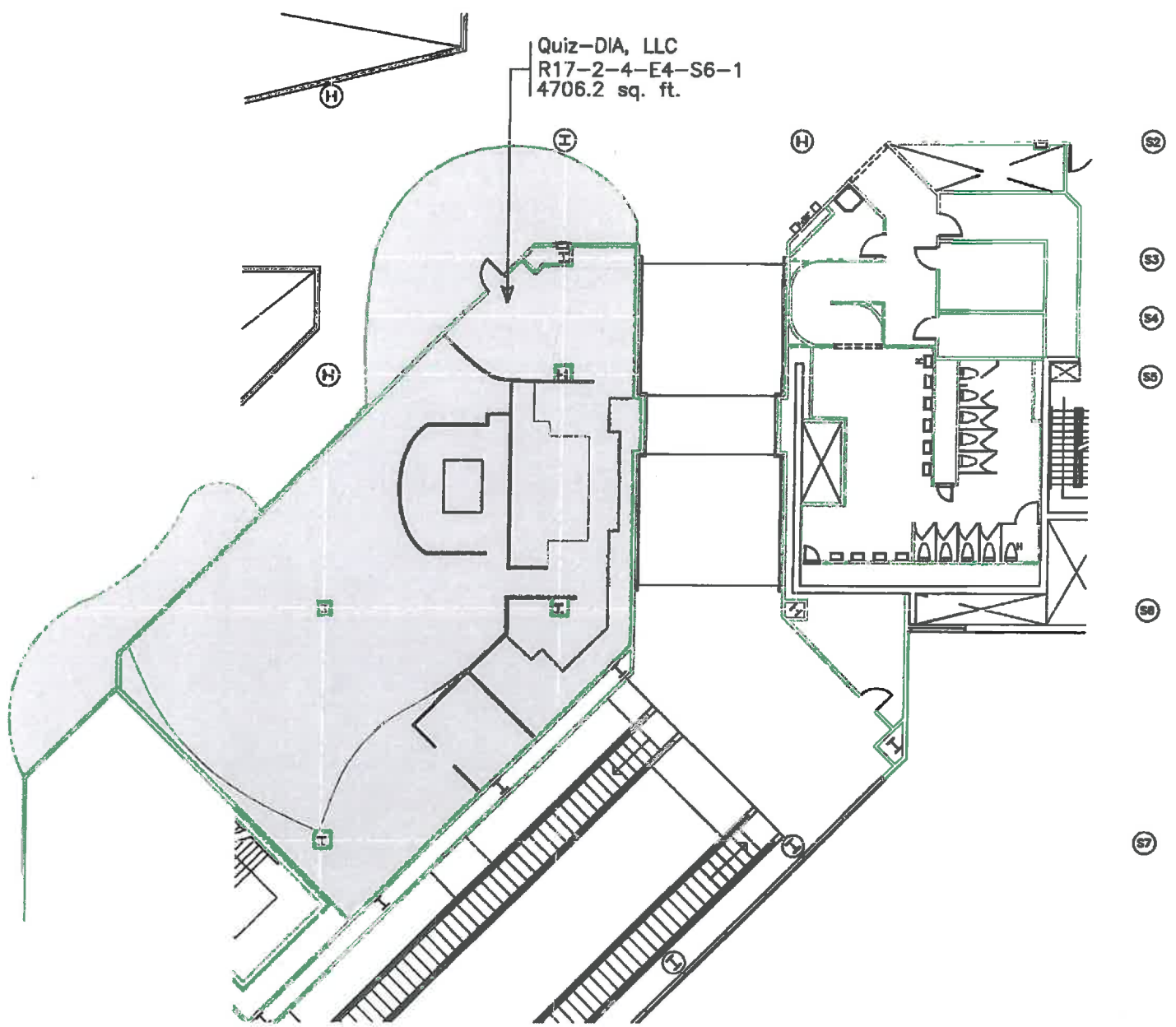
By _____

By _____



Tenant Initials

Quiz-DIA, LLC
R17-2-4-E4-S6-1
4706.2 sq. ft.



- CONC. WALL (BY CITY)
- STUD/GYPSUM WALL (BY CITY)
- GLASS WALL (BY CITY)
- TENANT LEASE LINE

(H) (I) COLUMNS
NIC = Not Included
(In Lease or Sq. Ft. Calc.)



SCALE 1" = 20.00'



NOTE:
This exhibit depicts only approximate dimensions and square footage of leased area based upon planning data and is not intended to show dimensions for construction details.

Ronald Horn
MANAGER OF DESIGN

 KEY PLAN CONCOURSE A		REVISED 3/28/12	DENVER INTERNATIONAL AIRPORT	
			EXHIBIT A Concourse A Mezz. Level Quiz-DIA, LLC	
		CC#: quiz	DATE: 5/10/04	