

SECOND AMENDMENT TO AGREEMENT

THIS SECOND AMENDMENT TO AGREEMENT 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 acting for and on behalf of the Department of Aviation ("City"), Party of the Second Part, and **CAC-HILL PARTNERSHIP JV** ("Concessionaire"), d/b/a **Schlotzsky's**, a Colorado joint venture between **CA CONCESSIONS OF COLORADO** ("CAC") and **BIG COUNTRY'S BAR B-Q**, Inc., Party of the Second Part.

WITNESSETH:

WHEREAS, the Parties hereto entered into an Agreement dated February 13, 2007 for the operation of a concession at Denver International Airport ("DEN" or "Airport") and a First Amendment to Agreement dated November 1, 2013 (collectively, the "Original Agreement"); and

WHEREAS, the "Original Agreement" expired by its terms on November 30, 2014 and thereafter, the City exercised its option under Section 4.03 of the Original Agreement to allow Concessionaire to hold over under this Agreement on a month-to-month basis at the same rental as was in effect immediately prior to the Expiration Date.

WHEREAS, on or about May 1, 2015, the Commercial Division of Denver International Airport ("Airport") received Concessionaire's financial hardship request for a waiver of the monthly Minimum Annual Guarantee ("MAG") required by the Agreement; and

WHEREAS, based on financials submitted by Concessionaire, the Commercial Division's analysis, various conversations with Concessionaire, and documentation revealing that since the departure of Republic Airlines on the A-Concourse South Sub core, the numbers of departing and enplaning passengers at the Regional Jet area had declined for an extended period of time since 2013 have caused Concessionaire's business to decline significantly; and

WHEREAS, the Commercial Division found that a catastrophic condition existed that warranted favorable consideration of Concessionaire's request; and

WHEREAS, the Parties having agreed to modify the rent structure in order stabilize Concessionaire's operation, allow it to generate sufficient operating capital to remain a viable DEN concession; and allow a valued member of DIA's concession community to continue to serve the traveling public, the Parties desire to revive the Original Agreement to adjust the rent.

NOW, THEREFORE, for and in consideration of the premises and other good and valuable consideration, the Parties hereto agree to revive and amend the Original Agreement as follows:

1. Effective as of June 1, 2015, the Minimum Annual Guarantee and Minimum Monthly Guarantee are hereby waived through December 31, 2016. The Percentage Compensation Fee and Performance Surety shall remain unchanged.

2. The Minimum Annual Guarantee and Minimum Monthly Guarantee will be reinstated effective January 1, 2017, unless a continued waiver is warranted. The Parties agree that a continued waiver of the Minimum Annual Guarantee and Minimum Monthly Guarantee is warranted if a catastrophic condition continues to exist. If a continued waiver is warranted, the

Minimum Annual Guarantee and Minimum Monthly Guarantee will be waived until after the City shall have entered into a binding agreement to deliver possession of the Concession Space to another concessionaire and Concessionaire receives notice that a construction wall will be erected for the Concession Space or after thirty (30) days' prior written notice to vacate and surrender the Concession Space has been given by the City.

3. The foregoing notwithstanding, the Manager or her authorized representative, in her sole and absolute discretion, may reinstitute the Minimum Annual Guarantee and Minimum Monthly Guarantee, starting at the contractual rate of \$16,284.73 per month, whenever conditions warranting this waiver no longer exist.

4. Concessionaire agrees that it shall remain current with its rent and other charges and continue to observe and perform all other terms, covenants, and conditions of the Agreement.

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

6. This Second Amendment to Agreement is expressly subject to and shall not be or become effective or binding on the City until it is approved by the Denver City Council, if required by the City Charter and fully executed by all signatories of the City. This Second Amendment to Agreement may be signed in two or more counterparts, each of which will be deemed an original signature page to this Second Amendment; and, it may be signed electronically by the Parties in the manner specified by the City.

[SIGNATURE PAGES FOLLOW]

Contract Control Number: AR78005-2

Contractor Name: CAC-HILL PARTNERSHIP JV

Name: CA CONCESSIONS OF COLORADO
(please print)

By: Nicholas D. Liberto

Name: Nicholas D. Liberto
(please print)

Title: Vice President - Finance & Treasurer
(please print)

ATTEST: [if required]

By: Annette M. Balon

Name: Annette M. Balon
(please print)

Title: Notary Public
(please print)

ANNETTE M. BALON
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 01/31/2018



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 _____

