

THIRD AMENDMENT TO AGREEMENT

THIS THIRD AMENDMENT TO AGREEMENT ("Third Amendment") is made and entered into as of the date stated on the City's signature page below, 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 **CANTINA GRILL JOINT VENTURE, LLC**, a Colorado limited liability company ("Concessionaire") f/k/a Cantina Grill, J.V., and d/b/a **Cantina Grill**, Party of the Second Part (collectively, the "Parties").

WITNESSETH:

WHEREAS, the Parties hereto entered into a concession agreement (AC-8Y006) dated April 28, 1998, which expired April 30, 2014 and holds over with permission of the City. The Agreement for the operation of a food and beverage concession at Denver International Airport was amended by a First Amendment dated January 23, 2003 a Second Amendment dated July 11, 2003 and supplemented by Conditional Assignments dated July 31, 2003 and June 21, 2005 (collectively the "Original Agreement"); and

WHEREAS, through a series of transfers approved by the City, Cantina Grill Joint Venture, LLC, is a fully owned subsidiary of Skyport Holdings, LLC; and

WHEREAS, plans for the redesign of the Jeppesen Terminal (the "Terminal") are still under consideration; and

WHEREAS, as part of the re-stabilization of the Terminal, the City has asked current Concessionaires to refurbish their concession locations in exchange for additional term; and

WHEREAS, the Parties agree that it is in the best interest of the City and the traveling public to provide full services to the traveling public without interruption. Accordingly, uniform terms for concessions in the Terminal are necessary to accomplish this purpose and the Parties have agreed to adjust the term of the Original Agreement so that it expires at the same time as the agreements of other Terminal concessions; and

WHEREAS, as consideration for this adjustment, Concessionaire agrees to invest necessary capital to refurbish the Concession Space;

NOW THEREFORE, for the foregoing reasons and for other good and valuable consideration, the sufficiency of which is acknowledged, the Parties hereby agree to revive and amend the Original Agreement as follows:

1. **Exhibit A.** *Exhibit A* attached to the Original Agreement hereby is amended by deleting said exhibit entirely and replacing it with the **Exhibit A** appended hereto and incorporated herein by this reference, which reflects a change from the initial 1053.2 square feet to 1612.3 square feet.

2. **Extended Term.** Section 4.01 ("**Term**") of the Original agreement is hereby revived and amended to extend the Expiration Date to June 30, 2016.

3. **Terminal Stabilization Refurbishment.** At its sole cost and expense, Concessionaire agrees to refurbish the Concession Space and install new signage in accordance with the new Airport signage criteria ("Terminal Stabilization Refurbishment"). The scope of the Terminal Stabilization Refurbishment, must be first approved by the City, shall, at a minimum, include those items listed on the attached, **Minimum Refurbishment Investment List**, which is incorporated herein by this reference. Before such work commences, Concessionaire shall submit to the City for its written approval, full and complete specifications for all work and improvements related to Terminal Stabilization Refurbishment along with a statement of the time required to complete such work. Prior to commencement of the work, Concessionaire shall give electronic copies of plans for such work to Airport Engineering for its review and written approval. No later than three months from the date of execution of this Third Amendment, Concessionaire shall begin, diligently perform, and complete Terminal Stabilization Refurbishment. Concessionaire shall complete Terminal Stabilization Refurbishment in strict conformity with final plans and specifications marked "approved" by the City.

4. **Minimum Terminal Stabilization Investment.** The amount to be spent for Terminal Stabilization Refurbishment shall be no less than Twenty Thousand Dollars (\$20,000.00) including the amount spent for signage (the "Minimum Terminal Stabilization Investment"). The Minimum Terminal Stabilization Investment is a material part of the consideration to the City to adjust the Term so that it expires when the terms of the other Terminal concessions expire.

5. **Actual Investment.** This Minimum Terminal Stabilization Investment shall not include financial costs, interest, inventory, pre-opening expenses, or intra-company charges but may include architectural and engineering fees not to exceed 15% of the total. Within 90 days after completing Terminal Stabilization Refurbishment, Concessionaire shall file with the Manager lien releases for the above expenditures and a statement certified by an officer of the Concessionaire setting forth the total costs of the Terminal Stabilization Refurbishment with appropriate detail itemizing design fees, original construction contract amount, total change orders, decorations, furnishings, fixtures, and equipment ("Actual Investment"). At the City's request, Concessionaire shall also submit copies of invoices supporting such costs. No credit will be given for expenditures without receipts. If the total amount of the Actual Investment is less than the Minimum Terminal Stabilization Investment, Concessionaire shall pay to the City the difference between the Actual Investment (as detailed by the certified receipts) and the Minimum Terminal Stabilization Investment within 30 days after the City provides written notice to Concessionaire. The Manager's Authorized Representative, however, will waive this requirement to pay the difference if Concessionaire completed the Terminal Stabilization Refurbishment in strict conformity with approved final plans and specifications as described above.

6. **Holding Over.** The Parties agree to amend Section 4.03, Holding Over, of the Original Agreement by deleting it entirely and replacing it with the following:

4.03 HOLDING OVER

A. Tenancy at Sufferance. Concessionaire's tenancy shall be at sufferance if Concessionaire remains in possession of the Concession Space without the City's express permission (as described below in §4.04B) to hold over after expiration of the Term or any extension of the Term, or after earlier

termination of this Agreement as provided herein. Tenancy at sufferance shall be at a monthly compensation, payable in advance, equal to one hundred and fifty percent (150%) of the monthly Compensation provided for in §5.01, together with all other fees, rates and charges payable to the City under this Agreement. Concessionaire shall otherwise remain bound by all other terms, conditions, and covenants of this Agreement. The City will notify Concessionaire in writing that Concessionaire holds over without the express permission of the City and therefore, Concessionaire's tenancy is at sufferance. Thereafter, and without further notice, the City may exercise all remedies to recover possession of the Concession Space as provided in this Agreement, at law, or in equity. Concessionaire shall be liable to the City for all loss or damages incurred by the City because of any such holding over.

B. Permitted Holding Over. The foregoing notwithstanding, the City may at its option give Concessionaire written permission to remain in possession of the Concession Space after expiration of the Term on a month-to-month basis. A month-to-month tenancy by Concessionaire shall be deemed permitted until either Party gives the other Party a thirty (30) day prior written notice of termination at which time, this Agreement shall terminate and the City's permission to hold over shall be withdrawn. It is agreed and understood that any holding over of Tenant with the City's consent shall not renew or extend the Term. Concessionaire agrees to continue to pay to the City in advance the monthly Compensation required by this Agreement together with all other rates, fees, and charges payable hereunder. Concessionaire agrees to remain bound by the terms, conditions, and covenants of this Agreement.

C. No Right to Hold Over. Nothing herein shall be construed to give Concessionaire a right to hold over at any time. After expiration or termination of this Agreement, or after withdrawal of the City's permission to hold over, as the case may be, the City may exercise any and all remedies to recover possession of the Concession Space, as provided in this Agreement, at law, or in equity, as well as recover all loss or damages incurred by the City on account of such holding over.

7. Agreement Remains in Full Force and Effect. Except as otherwise modified or amended by this Third Amendment, all terms and conditions of the Original Agreement shall remain in full force and effect as though set out in full herein and the Original Agreement hereby is revived, confirmed and ratified in all respects.

8. Effective, Counterparts, Electronic Signatures. This Third Amendment is expressly subject to and shall not be or become effective or binding on the City until it has been 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. The Parties may execute this Third Amendment in two or more counterparts, each of which will be deemed an original signature page to this Third Amendment. Either Party may sign this Third Amendment electronically in the manner specified by the City.

[SIGNATURE PAGES FOLLOW]

Contract Control Number: PLANE-AC8Y006-05

Contractor Name: Cantina Grill Joint Venture, LLC

By: 

Name: David Mosteller
(please print)

Title: Member
(please print)

ATTEST: [if required]

By: N/A

Name:
(please print)

Title: _____
(please print)



Contract Control Number: PLANE-AC8Y006-05

Contractor Name: Cantina Grill Joint Venture, 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:

D. Scott Martinez, Attorney for the
City and County of Denver

By _____

By _____

By _____



EXHIBIT A
SPACE PLAN

E2

E2.5

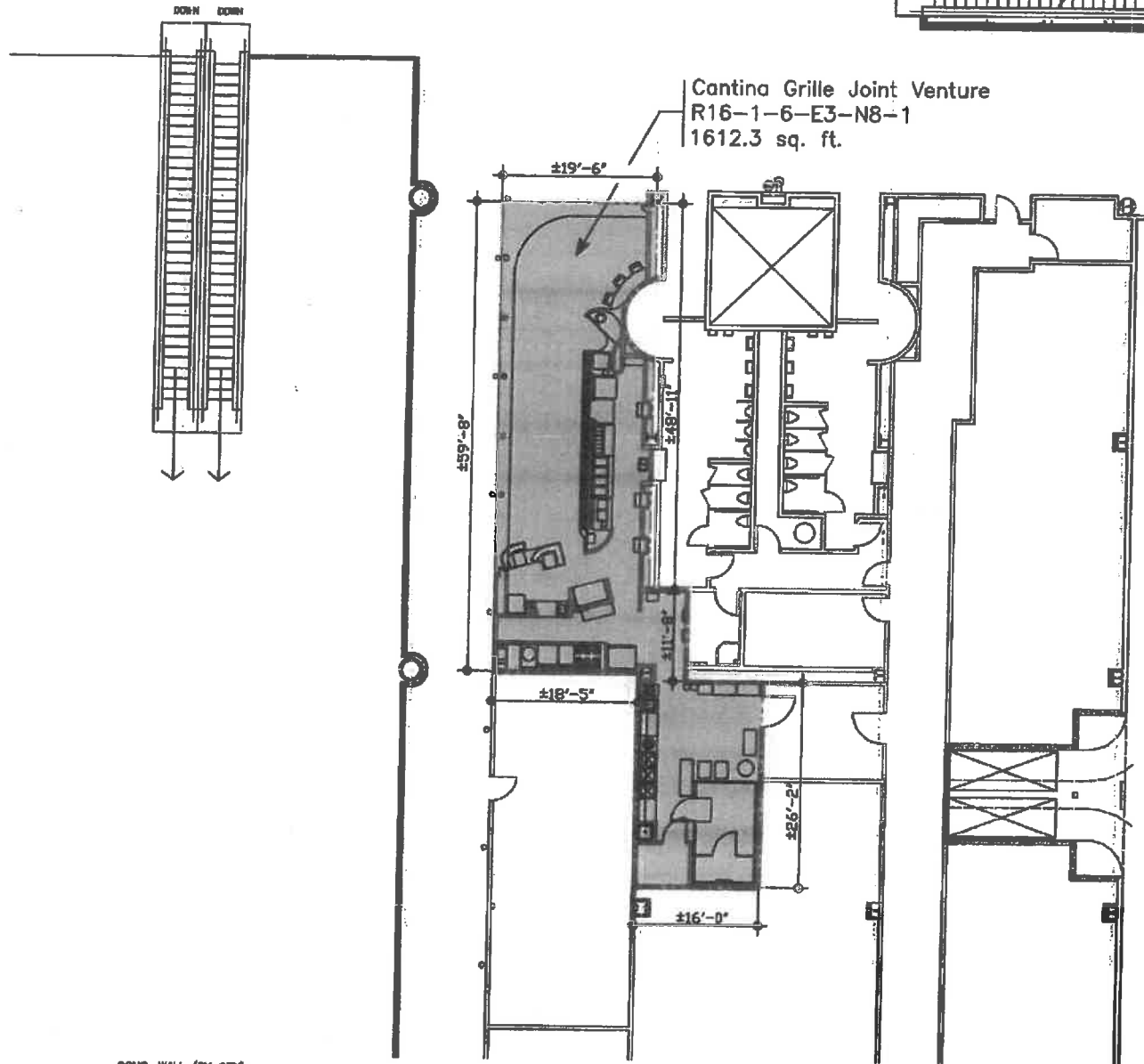
E3

E4

E5

E6

N11



Cantina Grille Joint Venture
 R16-1-6-E3-N8-1
 1612.3 sq. ft.

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

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

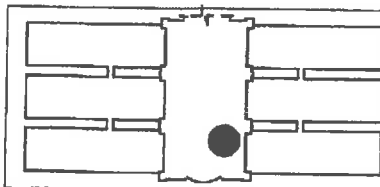
SCALE 1" = 20.00'



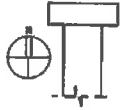
NOTE:

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.

Richard M. [Signature]
 MANAGER OF DESIGN



KEY PLAN
 TERMINAL AREA



REVISED

DENVER INTERNATIONAL AIRPORT	
EXHIBIT A	
Terminal Level 6	
Cantina Grille Joint Venture	
CC#: cagr	DATE: 04/25/14

MINIMUM REFURBISHMENT INVESTMENT LIST

MINIMUM REFURBISHMENT INVESTMENT LIST
CANTINA GRILLE JOINT VENTURE, LLC
PARTIAL LIST OF REPAIRS AND REFURBISHMENT

PUBLIC AREAS

- Repair and replace as needed broken blue wall tiles at gate and in interior where chairs have scratched and cracked the tiles
- Repair or replace floor tiles where caulking and sealing has eroded and tiles have broken
- Replace cabinet near beverage dispenser with a style befitting the Mexican Grill theme of the restaurant
- Include dusting of the overhead duct work as part of regular closing activities
- Install missing electrical cover on the Heat Pump above the seating area.
- Replace or recover orange pillars so dings and scratches are not visible
- Freshen all surfaces visible to traveling public-paint where needed, deep clean where needed
- Supply new "temporary" signage, such as 'thank you' sign affixed to counter near POS and assure that any and all signage in use is professional, in good condition (no tears, no peeling or separating, no stains, etc.), and not attached to walls or counters with visible tape
- Update restaurant sign as approved by the City

KITCHEN AND PREP AREAS

- Re-caulk or replace and properly caulk all sinks
- Replace dirty and stained ceiling tiles
- Create or build space so that shelving and storage does not block access to water heater
- Replace rusting ice maker
- Strip, Clean and re-seal floor tiles
- Replace or repair foyer transition flooring from kitchen to back 'hallway' belonging to City