

FIFTH AMENDMENT TO AGREEMENT

THIS FIFTH AMENDMENT TO AGREEMENT (“Fifth Amendment”) is 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 its Department of Aviation (the “City”), Party of the First Part, and **QUIZ-DIA LLC**, a Delaware limited liability company authorized to conduct business in the State of Colorado (“Concessionaire”), d/b/a **Mesa Verde Lounge**, Party of the Second Part (collectively, the “Parties”).

RECITALS

- A.** The Parties entered into an agreement dated November 30, 2004 (AR4A005) for the operation of a concession at Denver International Airport (“Airport” “DIA” or “DEN”) and a First Amendment dated June 27, 2006, a Second Amendment dated January 23, 2007, a Third Amendment dated October 31, 2011 and a Fourth Amendment dated June 18, 2012 (collectively, the “Original Agreement”).
- B.** On or about July 24, 2015, the Commercial Division of the Airport received Concessionaire’s Financial Hardship Relief Request asking the Airport to consider waiving the Monthly Guarantee required by the Original Agreement. Based on financials submitted by Concessionaire, the Concession Division’s analysis, various conversations with Concessionaire, and documentation revealing a greater than 60% decline in the numbers of departing and enplaning passengers at the Regional Jet area the Commercial Division found that a catastrophic condition existed and granted Concessionaire’s request.
- C.** The Airport was in discussions with both Frontier and Spirit Airlines in an effort to relocate some passenger enplanements to this area of the concourse and reduce air carrier operating costs, so the potential for passengers to return to this area was possible. However, further investigation shows as a result of fleet and scheduling changes made by both Republic/Frontier and Great Lakes Airlines, passenger enplanements on the Concourse A, Regional Jet Facility (A-RJF), have dropped significantly over the past 24 months. Even with the introduction of Boutique Air, no projected lift in these passenger enplanements is forecasted. Due to continued decline in passenger enplanements and the recent Gate Optimization Program direction, no additional passenger enplanements are forecasted for this area.
- D.** After performing an analysis, which included reviewing the degradation of the overall return on the owner’s investments in the combined locations, the City agreed to adjust Concessionaire’s rent by waiving the Monthly Guarantee and reducing the Percentage Compensation Fee by 50% from July 1, 2015 through January 31, 2016.
- E.** Concessionaire has agreed to continue its operation for the City’s benefit, the Parties have agreed to revise the holding over provision of the Original Agreement to recognize the month-to-month tenancy of a permitted holdover, eliminate the 150% holdover fee otherwise due under the holdover provision and provide that the Parties will give each other no less than thirty (30) days’ notice before terminating Concessionaire’s tenancy and vacating the space.

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. Section 2.08, *Manager*; hereby is amended by deleting the provision entirely and substituting therefor, the following:

2.08 CHIEF EXECUTIVE OFFICER:

“Chief Executive Officer” or “CEO” means the Chief Executive Officer of the City’s Department of Aviation having jurisdiction over the management, operation, and control of the Airport. All references in the Original Agreement to “Manager” or “Manager of Aviation” are hereby deleted and replaced with “Chief Executive Officer” or “CEO” as the context may require.

2. Section 2.09, *Manager’s Authorized Representative*; hereby is amended by deleting the provision entirely and substituting therefor, the following:

2.09 CHIEF EXECUTIVE OFFICER’S AUTHORIZED REPRESENTATIVE:

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 designated in writing by the CEO as the CEO’s delegated authorized representative.

3. Effective as of July 1, 2015, the Monthly Guarantee is hereby waived through January 31, 2016. The Percentage Compensation Fee is hereby reduced from 17% to 8.5% through January 31, 2016 and the Performance Surety shall remain unchanged.
4. The foregoing notwithstanding, the CEO or her authorized representative, in her sole and absolute discretion, may reinstitute the Monthly Guarantee, starting at the contractual rate of \$36,031.49 per month, effective February 1, 2016.
5. The Renovation Minimum Investment is waived as the renovation scope of work has been mutually agreed upon by the Parties. The renovation will be completed on or before the Renovation Completion Date stated on the Summary Page.
6. 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 Original Agreement.
7. Effective as of the date of execution, Section 4.03, *Holding Over*, of the Original Agreement hereby is amended by deleting it entirely and replacing it with the following:

Section 4.03 HOLDING OVER

A. Tenancy at Sufferance. Concessionaire's tenancy shall be at sufferance if Concessionaire remains in possession of the Concession Space after the Expiration Date, any extension of the Term, or earlier termination of this Agreement, and the City and Concessionaire have not otherwise agreed in writing (as described below in §4.04B). 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 payable hereunder of 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 the tenancy is at sufferance. Thereafter, and without further notice, the City may exercise all remedies provided in this Agreement, at law, or in equity, to recover possession of the Concession Space. Tenant shall be liable to the City for all loss or damage incurred by the City on account 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. It is agreed and understood that any holding over of Tenant after the expiration of this Agreement with the City's consent shall not renew or extend the Term. Concessionaire agrees to pay to the City in advance the monthly Compensation in effect at the end of the regular Term of the Agreement together with all other fees payable hereunder. Concessionaire agrees to remain bound by the terms, conditions, and covenants of this Agreement. Nothing herein shall be construed to give Concessionaire the right to hold over at any time, and the City (after expiration or termination of this Agreement, as the case may be) may exercise any and all remedies provided in this Agreement, at law, or in equity, to recover possession of the Concession Space, as well as any damages incurred by the City on account of such holding over

8. Except as provided herein, all of the provisions, terms and conditions of the Original Agreement are hereby revised and ratified and shall remain in full force and effect as if fully set forth herein.
9. This Fifth Amendment shall not be or become effective or binding on the City until 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. This Fifth Amendment may be signed in two or more counterparts, each of which shall be deemed to be an original signature page. This Fifth Amendment may be signed electronically by the Parties in the manner specified by the City.

[SIGNATURE PAGES FOLLOW]

Contract Control Number: PLANE-AC4A005-05

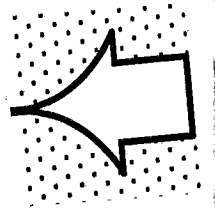
Contractor Name:
CONCESSIONAIRE

QUIZ-DIA LLC

By: Christina Maxwell

Name: Christina Maxwell
(please print)

Title: CFO of The Quizno's Master LLC
(please print) managing member



SIGN
HERE

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 _____

