

**SECOND AMENDMENT TO THE  
NON-DISTURBANCE, ATTORNMENT AND CONCESSION AGREEMENT**

**THIS SECOND AMENDMENT TO THE NON-DISTURBANCE, ATTORNMENT AND CONCESSION AGREEMENT** ("Amendment"), is made and entered into as of the date indicated on the City's signature page and is by and among the **CITY AND COUNTY OF DENVER**, a municipal corporation formed under the laws of the State of Colorado ("City"), **SKYPORT DEVELOPMENT COMPANY, LLC**, a Colorado limited liability company ("Tenant") and **FM JUICE COMPANY, LLC**, a Colorado limited liability company ("Subtenant") dba **Jamba Juice**.

**RECITALS:**

**WHEREAS**, the City and Tenant entered into an Amended and Restated Mezzanine Lease Agreement (Sixth Amendment to Agreement), dated June 17, 1997, a Seventh Amendment to Agreement dated October 21, 2008, an Eighth Amendment to Agreement dated as of October 29, 2013, and a Ninth Amendment to Agreement dated as of April 13, 2015, (collectively, the "Tenant's Lease"), which, subject to all of the terms, conditions, covenants and provisions of Tenant's Lease, governs Tenant's rights to develop, sublease, use and permit subtenants to use portions of the mezzanine area of Concourse B at Denver International Airport (the "Lease Premises"), for retail, services and food and beverage purposes to meet the needs and requirements of the Airport and which, pursuant to the Ninth Amendment, expires May 31, 2019; and

**WHEREAS**, Tenant and Subtenant entered into a Standard Mezzanine Sublease, dated May 8, 2008, and an Amendment Number One to the Standard Mezzanine Sublease dated on or about January 2017 (collectively, the "Sublease") (attached hereto), under which, subject to Tenant's Lease, Subtenant subleased from Tenant certain premises identified as BM-5A, 1 ("Subtenant's Concession Space"), and has the right to occupy Subtenant's Concession Space until Tenant's Lease expires and thereafter pursuant to the Attornment Agreement; and

**WHEREAS**, the City, Tenant and Subtenant entered into a Non-Disturbance, Attornment and Concession Agreement dated October 21, 2008 and a PVC Participation Amendment (First Amendment to Non-Disturbance and Attornment Agreement) dated October 31, 2011 (collectively, the "Attornment Agreement"), through which the City granted Subtenant permission to continue operating its sub concession after Tenant's Lease expires; and

**WHEREAS**, having modified the term in Amendment Number One to the Standard Mezzanine Sublease so that Subtenant's Sublease will expire December 31, 2018, the parties now desire to further amend the Attornment Agreement to revoke the concession and extended term granted by the City;

**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 is hereby acknowledged, the parties have agreed to amend the Attornment Agreement, as follows:

1. ***Grant of Concession Revoked.*** For the reasons recited above, the parties agree that circumstances have changed and the need no longer exists for the City to grant a concession and extended term beyond the expiration of the Tenant's Lease through the Attornment Agreement. Accordingly, Section 4 (Grant of Concession) of the Attornment Agreement is hereby deleted.

2. **DEN's Concession Promotions Program.** The Promotions Program may include, but is not limited to, the costs of Premium Value Concessions Programs, as described below, and activities with direct application to promoting and monitoring the concessions at DEN such as food, services, and retail merchandise advertising, marketing, public relations, media production and placements, special events, brochures, videos, directories, catalogues, customer service training, mystery shopper programs, and concession surveys relating to consumer satisfaction and market research, as well as the costs of administration of the Promotions Program and Premium Value Concessions Program.

3, **Joint Marketing Fund.** City shall provide or cause to be provided a Joint Marketing Fund to fund DEN's Concession Promotions Program. Subtenant shall pay, or cause to be paid, the Joint Marketing Fee, as reflected on the Summary Page, for the Joint Marketing Fund for every month during the Term. City shall not be obligated to expend more for promotions and advertising than is actually collected from Concessionaires. Any promotional services and personnel so provided shall be under the exclusive control and supervision of City. City reserves the right at any time to terminate the Joint Marketing Fund and thereafter, continue to provide marketing and promotional services until the balances remaining in the fund are exhausted.

4. **Joint Marketing Fund Payment.** In addition to other rents, fees, and charges due Tenant under this Sub Concession Agreement, commencing on the date that Subtenant elected to participate in the PVC Program, Subtenant agrees to pay to Tenant for transfer to the City, within ten (10) days of the first day of each month during the Term, a Joint Marketing Fee of 1% of Subtenant's Gross Revenues for DEN's Concessions Promotions Program.

5. **Chief Executive Officer.** All references in the Sublease and Attornment Agreement to "Manager" or "Manager of Aviation" are hereby deleted and replaced with "Chief Executive Officer" or "CEO" as the context may require. "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. 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.

6. **Effect of Amendment.** The provisions contained in this Amendment are intended to amend the provisions of the Attornment Agreement. To the extent the provisions of this Amendment modify, amend or supplement the terms and conditions of the Attornment Agreement, the terms and conditions contained herein shall prevail and control. All other terms and conditions of the Attornment Agreement are hereby ratified and confirmed.

**[SIGNATURE PAGES FOLLOW]**

**Contract Control Number:** PLANE-AR8A010-02

**Contractor Name:** SKYPORT DEVELOPMENT COMPANY LLC and  
FM JUICE COMPANY LLC

Skyport Development Company 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-AR8A010-02

Contractor Name: SKYPORT DEVELOPMENT COMPANY LLC and  
FM JUICE COMPANY LLC

FM Juice company LLC  
By: Dennis M. Deslongchamps

Name: Dennis Deslongchamps  
(please print)

Title: Member of FM Juice LLC.  
(please print)

ATTEST: [if required]

By: N/A

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 \_\_\_\_\_



**AMENDMENT NUMBER ONE  
TO THE  
STANDARD MEZZANINE SUBLEASE**

**THIS AMENDMENT NUMBER ONE TO THE STANDARD MEZZANINE SUBLEASE, (“Sublease Amendment”)** is made and entered into this \_\_\_\_ day of October, 2016 to be effective as of April 13, 2015, and is by and between **SKYPORT DEVELOPMENT COMPANY, LLC**, a Colorado limited liability company, (“Tenant”) and **FM JUICE, LLC**, a Colorado limited liability company (“Subtenant”) dba “**Jamba Juice**”.

**RECITALS**

**WHEREAS**, the City and Tenant entered into an Amended and Restated Mezzanine Lease Agreement (Sixth Amendment to Agreement), dated June 17, 1997, a Seventh Amendment to Agreement dated October 21, 2008, an Eighth Amendment to Agreement dated as of October 29, 2013, and a Ninth Amendment to Agreement dated as of April 13, 2015, (collectively, the “Tenant’s Lease”), which, subject to all of the terms, conditions, covenants and provisions of the Lease, governs Tenant’s rights to develop, sublease, use and permit subtenants to use portions of the mezzanine area of Concourse B at Denver International Airport (the “Lease Premises”), for retail, services and food and beverage purposes to meet the needs and requirements of the Airport and which, pursuant to the Ninth Amendment, expires May 31, 2019; and

**WHEREAS**, Tenant and Subtenant entered into a Standard Mezzanine Sublease, dated May 8, 2008, (“Sublease”) under which, subject to Tenant’s Lease, Subtenant subleased from Tenant certain premises identified as BM-5A, (“Subtenant’s Concession Space”), and has the right to occupy Subtenant’s Concession Space until Tenant’s Lease expires and thereafter pursuant to the Attornment Agreement; and

**WHEREAS**, the City, Tenant and Subtenant entered into a Non-Disturbance, Attornment and Concession Agreement dated October 21, 2008 and a PVC Participation Amendment (First Amendment to Non-Disturbance and Attornment Agreement) dated October 31, 2011 (collectively, the “Attornment Agreement”), through which the City granted Subtenant permission to operate its sub concession after the Tenant’s Lease expired; and

**WHEREAS**, the City established a Promotions Program to promote and monitor DEN concessions and a Joint Marketing Fund to fund the Premium Value Concessions Program and these additional promotional activities; and

**WHEREAS**, upon entering the Premium Value Concessions Program, Subtenant agreed to pay the required Joint Marketing Fund fee; and

**WHEREAS**, Tenant and Subtenant desire to modify the term of the Sublease so that it expires December 31, 2018 and to reflect the modified term, Tenant, Subtenant and the City will amend the Attornment Agreement to revoke the concession and extended term granted to Subtenant by the City; and

**WHEREAS**, Tenant and Subtenant have agreed to amend the Sublease and to memorialize those changes in this Sublease Amendment;

**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 is hereby acknowledged, the parties have agreed to amend the Sublease, as follows:

1. **Amendments to Sublease.** The Sublease is amended as provided below:

a. **Summary Pages.**

i. The Sublease Term Expiration Date shall be December 31, 2018.

b. **City Consent.** The City's Consent is amended to substitute the words "Non-Disturbance, Attornment and Concession Agreement" for the words "Non-Disturbance and Attornment Agreement" in two places.

c. **Chief Executive Officer.** All references in the Sublease and Attornment Agreement to "Manager" or "Manager of Aviation" are hereby deleted and replaced with "Chief Executive Officer" or "CEO" as the context may require. "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. 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.

d. **Airport.** Section 2.01 of the Sublease is amended to provide that "Airport" or "DEN" shall mean Denver International Airport. Unless the context otherwise clearly indicates to the contrary, all references in the Sublease and Attornment Agreement referencing DIA are hereby deleted and replaced by DEN.

e. **DEN's Concession Promotions Program.** The Promotions Program may include, but is not limited to, the costs of Premium Value Concessions Programs, as described below, and activities with direct application to promoting and monitoring the concessions at DEN such as food, services, and retail merchandise advertising, marketing, public relations, media production and placements, special events, brochures, videos, directories, catalogues, customer service training, mystery shopper programs, and concession surveys relating to consumer satisfaction and market research, as well as the costs of administration of the Promotions Program and Premium Value Concessions Program.

f. **Joint Marketing Fund.** City shall provide or cause to be provided a Joint Marketing Fund to fund DEN's Concession Promotions Program. Subtenant shall pay, or cause to be paid, the Joint Marketing Fund Payment set forth below from the commencement date set forth therein through the end of Subtenant's right to occupy Subtenant's Concession Space. City shall not be obligated to expend more for promotions and advertising than is actually collected from Concessionaires. Any promotional services and personnel so provided shall be under the exclusive control and supervision of City. City reserves the right at any time to terminate the Joint Marketing Fund and thereafter, continue to provide marketing and promotional services until the balances remaining in the fund are exhausted.

g. **Joint Marketing Fund Payment.** In addition to other rents, fees, and charges due Tenant under this Sub Concession Agreement, commencing on October 31, 2011 (the date Subtenant and Tenant executed the PVC Participation Amendment (First Amendment to Non-Disturbance and Attornment Agreement)), Concessionaire agrees to pay to Tenant for transfer to the City, within ten (10) days of the first day of each month during the Term, a Joint Marketing Fee of 1% of Subtenant's Gross Revenues for DEN's Concessions Promotions Program.

2. **Effect of Amendment.** To the extent that the provisions contained in this Sublease Amendment conflict with or add to the terms of the Sublease, the terms contained herein shall prevail and control. In all other respects the terms of the Sublease are hereby ratified and confirmed.


**[SIGNATURE PAGE FOLLOWS]**




IN WITNESS WHEREOF, the parties hereto have executed this Sublease Amendment as of the day and year first above written.

**"TENANT"**  
SKYPORT DEVELOPMENT COMPANY, LLC

**"SUBTENANT"**  
FM JUICE, LLC

By   
Title Member

By   
Title Member

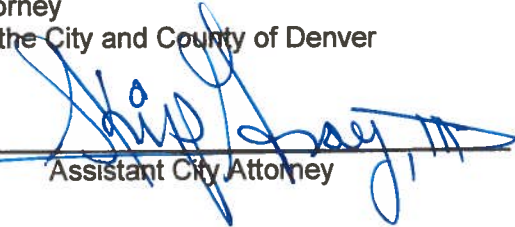
Pursuant to Tenant's Lease between the Tenant and the City, the Chief Executive Officer, Denver International Airport, hereby gives her consent to this Sublease.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**APPROVED AS TO FORM:**

**"CITY"**  
**CITY AND COUNTY OF DENVER**

Attorney  
for the City and County of Denver

By   
Assistant City Attorney

By \_\_\_\_\_  
Chief Executive Officer, Denver  
International Airport

Non Disturbance, Attornment and Concession  
Agreement Contract Control No. **AR 8A010**