

## SIXTH AMENDMENT TO CONCESSION AGREEMENT

**THIS SIXTH AMENDMENT TO CONCESSION AGREEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (“Effective Date”), 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 **DENVER AIRPORT ENTERPRISES, LLC**, (“Concessionaire”), a Colorado limited liability company d/b/a **Peak Concepts**, Party of the Second Part.

### RECITALS

A. The City entered into this Agreement (AC-38037) dated May 4, 1993 with Concessionaire, and a First Amendment dated June 26, 1995, Second Amendment dated September 1995, Third Amendment dated July 17, 2003, Fourth Amendment dated May 17, 2004, and a Fifth Amendment dated February 25, 2011, (collectively, the “Original Agreement”) to operate a Newsstand in the Jeppesen Terminal Level 5. The Original Agreement expired August 31, 2014.

B. Pending Terminal redevelopment and issuance of Request for Proposals, holdover terms of the Airport's Jeppesen Terminal's vendors are being adjusted as a result of Terminal stabilization.

C. Accordingly, because it is in the City's best interest to avoid interrupting services to the traveling public, the City has authorized and Concessionaire has agreed, if necessary, to continue to operate its concession under the holdover provision after the Original Agreement expires while the City completes the process of installing a successor tenant in this location.

**NOW THEREFORE**, for the premises set forth in these recitals, which are made a part of this Agreement, for the reasons stated above and for other good and valuable consideration the sufficiency of which hereby is acknowledged, the City and Concessionaire intending to be legally bound, agree as follows:

### AGREEMENT

1. Effective as of August 31, 2014, Section 4.03, Holding Over, of the Original Agreement hereby is amended 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 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. Concessionaire 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.

2. The Parties acknowledge and agree that except as amended herein, the provisions contained in the Original Agreement, which constitute the entire agreement between the Parties, shall remain in full force and effect as if fully set forth herein and that no alterations, amendments, changes or modifications to this Agreement shall be valid unless they are contained in an instrument which is executed by all the parties with the same formality as this Agreement.

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

**[SIGNATURE PAGES FOLLOW]**

**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 \_\_\_\_\_

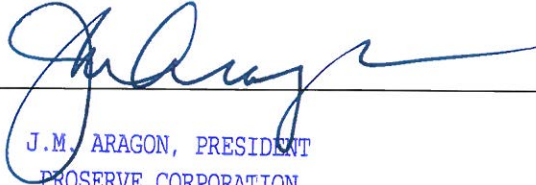
By \_\_\_\_\_

By \_\_\_\_\_



**Contract Control Number:** PLANE-AC38037-06

**Contractor Name:** Denver Airport Enterprises, LLC

By: \_\_\_\_\_  
  
J.M. ARAGON, PRESIDENT  
PROSERVE CORPORATION  
Name: \_\_\_\_\_  
MANAGER / MEMBER  
(please print)

Title: \_\_\_\_\_  
(please print)

**ATTEST: [if required]**

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)

