

**BY AUTHORITY**

ORDINANCE NO.  
SERIES OF 2013

COUNCIL BILL NO. CB13-0353  
COMMITTEE OF REFERENCE:  
BUSINESS, WORKFORCE, & SUSTAINABILITY

**A BILL**

**For an ordinance approving a proposed Eighth Amendment to Agreement and Consent to Assignment between the City and County of Denver and Moran Pizza, Inc. concerning a concession at Denver International Airport.**

**BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:**

**Section 1.** The proposed Eighth Amendment to Agreement and Consent to Assignment between the City and County of Denver and Moran Pizza, Inc. (AC38010) in the words and figures contained and set forth in that form of Agreement available in the office and on the web page of City Council, and to be filed in the office of the Clerk and Recorder, Ex-Officio Clerk of the City and County of Denver, under City Clerk's Filing No. 1993-0274-H, is hereby approved.

COMMITTEE APPROVAL DATE: June 13, 2013

MAYOR-COUNCIL DATE: June 18, 2013

PASSED BY THE COUNCIL: \_\_\_\_\_, 2013

\_\_\_\_\_ - PRESIDENT

APPROVED: \_\_\_\_\_ - MAYOR \_\_\_\_\_, 2013

ATTEST: \_\_\_\_\_ - CLERK AND RECORDER,  
EX-OFFICIO CLERK OF THE  
CITY AND COUNTY OF DENVER

NOTICE PUBLISHED IN THE DAILY JOURNAL: \_\_\_\_\_, 2013; \_\_\_\_\_, 2013

PREPARED BY: Skip Gray, III, Assistant City Attorney      DATE: June 20, 2013

Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed ordinance. The proposed ordinance is submitted to the City Council for approval pursuant to § 3.2.6 of the Charter.

Douglas J. Friednash, City Attorney for the City and County of Denver

BY: \_\_\_\_\_, Assistant City Attorney      DATE: June 20, 2013

## EIGHTH AMENDMENT TO AGREEMENT AND CONSENT TO ASSIGNMENT

**THIS EIGHTH AMENDMENT TO AGREEMENT AND CONSENT TO ASSIGNMENT** ("Eighth Amendment") is made on the date stated on the signature page below, by and among the **CITY & COUNTY OF DENVER**, Denver International Airport ("DIA"), a municipal corporation of the State of Colorado ("City"), **MORAN PIZZA, INC.** a Colorado corporation under contract with the City, ("Assignor"), and **MISSION YOGURT, INC.** ("Assignee") a Colorado corporation dba *Einstein Bros. Bagels*.

### RECITALS:

A. The City and Dick and Jane Pizza, Inc. entered into a Food Court Agreement (AC38010) dated April 29, 1993 for the operation of a concession at Denver International Airport ("the Concession Space"). The Agreement has been amended several times; the last time being a 7th Amendment dated January 26, 2011 (collectively the "Agreement"). The City consented to Dick and Jane Pizza, Inc. assigning the Agreement to Assignor on January 24, 2005. The Agreement expired on October 31, 2012; and because DIA's Commercial Division reorganized its approach to issuing invitations to solicit competitive proposals for new concession opportunities, the City asked and Assignor agreed to remain in the Concession Space to continue to serve the traveling public during the process of selecting a new tenant for the space. Accordingly, Assignor's tenancy is deemed to be month-to-month.

B. Soon thereafter, Assignor indicated to the City that the concession was beginning to experience a downturn in its ability to generate sufficient revenue to continue to stay at DIA. In the last quarter of 2012, Assignor voluntarily shared certain financial documents with the City, which led the City to offer to adjust the rent to allow a valued member of DIA's concession community to continue to serve the traveling public in the Concession Space.

C. However before the Agreement could be amended to adjust the rent, the City and Assignor separately had several inquiries from interested parties during the first quarter of 2013 proposing to convert the Concession Space to a different concept. Ultimately, Assignor reached an agreement in principal with Assignee who discussed converting the Concession Space from Domino's Pizza to an Einstein Bros. Bagels, a franchise Assignee operates on Concourse C in its Smokin' Bear restaurant. Shortly thereafter, Assignee and Assignor contacted the City about steps necessary to implement their agreement and obtain the City's consent to assignment.

D. Assignee offered to accept an assignment of the Agreement from Assignor with the City's consent, and to take possession of the Concession Space on a date certain and convert the concession to Einstein Bros. Bagels expeditiously and operate in the Concession Space during an extended lease term until December 31, 2016, which lease extension is granted by this Eighth Amendment. For its part, Assignor offered to continue to operate as a Domino's Pizza, paying its rent and CAM fees until an assignment and amendment could be executed and cooperate in transferring existing City business licenses to Assignee. Once the City received Assignee's proposal, the Commercial team met to evaluate it and other proposals the City received concerning this concession opportunity. The City performed its due diligence to evaluate Assignee's current financial health, resources to execute this Eighth Amendment, performance at SJC/SAN, progress on Root Down/Udi's build out and operation respectively, status of Mission's PVC administrative review, keeping in mind all the while three very important

factors: (i) Einstein Bros. Bagels is a strong brand and is an exceptionally successful concession at DIA, (ii) for this particular opportunity, the City requires significant capital investment from any proposer to operate a different brand in the Concession Space with insufficient term to realize a typical market return on its investment, and (iii) a closed Concession Space without replacement would be detrimental to DIA, its customers and the traveling public. The City evaluated all of the "offers" related to this concession opportunity, and it became clear that significant investment requirements coupled with limited term were economic factors that would make it unfavorable and impractical for the City to formally advertise this concession opportunity through the normal request for proposal process. Instead, the City chose to proceed informally with notice calculated to inform previous self-identified proposers in a manner designed to achieve maximum competition and maximum economy to the City without advertising.

E. Further discussion and collaborative work was needed to accomplish the objectives of Assignor, Assignee and the City on the many issues to be resolved including: (i) a requirement for Assignor to continue to serve the public and pay its rent and CAM fees until an amendment is executed; (ii) revising the rent structure to recognize Assignee's need to realize a reasonable return on its investment during the remaining term of the Agreement provided by this Eighth Amendment; (iii) deciding what use of the Concession Space would be permitted; (iv) discussing Assignee's covenant to remain in compliance with any DBE obligations required by the Agreement; (v) anticipating the date for conveyance of the Concession Space from Assignor, (vi) obtaining an agreement from the City to expedite the design review process; (vii) setting a deadline for completing design, construction contracting, and obtaining permits, (viii) crafting an expeditious process for completing remodeling of the Concession Space; and (ix) setting a definitive deadline for taking down the construction wall and opening the Einstein Bros. Bagels concession for business to the public.

F. Accordingly, Assignee has or will acquire the ownership interest and assets the Assignor has in this Agreement and Assignee has agreed to accept and assume all of the terms, covenants and conditions in said Agreement as particularly described below. Further, Assignor agrees to make all lease and common area maintenance payments to the City for April and May, 2013, and Assignee agrees to reimburse Assignor for such payments.

G. Assignor and Assignee have submitted a request to City through the Manager of Aviation, Department of Aviation, hereinafter referred to as Manager, requesting the Manager consent to said assignment and assumption.

H. The Manager has determined that Assignor is not delinquent in performing and satisfying the terms of the Agreement with the City, Department of Aviation, and the Manager further finds that Assignee appears to have adequate capital, personnel and financial resources to maintain and perform under the Agreement.

**NOW THEREFORE**, it is agreed as follows:

### **CONSENT TO ASSIGNMENT**

1. Assignor has given notice to City that it intends to sell, or has sold, and convey to Assignee any interest it may have or has in the Agreement with the City at DIA, as evidenced by the Preliminary Assignment Agreement attached to this Eighth Amendment.

2. Assignor hereby represents and warrants that it has power and authority to convey, transfer and assign its interests in and to the Agreement to Assignee and it has not transferred any interest in said Agreement to any other person, entity or otherwise, and has full power to enter into this Eighth Amendment.

3. By executing this Eighth Amendment, Assignee affirmatively states that it agrees to assume and perform all of the duties, terms and obligations of Assignor arising from and after the consummation of transfer of ownership from Assignor to Assignee, as if Assignee had been an original party to the Agreement, and Assignee expressly assumes all of the indemnity and insurance obligations under said Agreement.

4. By executing this Eighth Amendment, except as expressly provided herein, City shall not be deemed to have modified, waived, or amended any terms or rights under the Agreement, except as provided and agreed to by Assignee in this Eighth Amendment, nor shall this be construed as a waiver of City's right to consent to any further assignments that may be subject to the Agreement.

5. To the extent required pursuant to the "Assignment" provision in the Agreement the Manager hereby consents to the acquisition and assignment of the Agreement by Assignee, subject to the following terms and conditions:

A. That on or before the date this Eighth Amendment is approved by the Manager, Assignor shall provide the Manager or her Authorized Representative with (i) evidence of payment in full for any outstanding compensation and miscellaneous charges due the City, which are required of Assignor by the Agreement and (ii) evidence in the form of the City's Certificate of Taxes Due of full and complete payment to the City of all sales taxes, occupational taxes, personal property taxes and use taxes due and owing by Assignor, if any.

B. Assignor also agrees that it will continue to operate the Concession Space in a first class manner, pay the City all rent and CAM fees due during April and May of 2013.

C. Within fourteen (14) days from the date Assignee signs this Eighth Amendment, Assignee shall provide the Manager of Aviation with a corporate resolution agreeing to accept and abide by all of the terms, covenants and conditions of the Agreement, this Eighth Amendment and any subsequent amendments thereto, which resolution shall include a covenant that Assignee shall remain in compliance with any DBE percentages required therein.

D. Assignee shall cause any certificates of insurance issued to Assignor to be replaced by an accepted insurance provider to City and new certificates of insurance be issued insuring Assignee with the City as an additional insured, consistent with the insurance requirements of the Agreement.

E. Within fourteen (14) days from the date Assignee signs this Eighth Amendment, Assignee will provide an executed franchise agreement to operate an Einstein Bros. Bagels in the Concession Space.

F. Assignee, with agreement from the City to expedite the design review process; will complete design, construction contracting, and permitting prior to the date this Eighth Amendment is executed, which is projected to be June 1, 2013.

G. This Eighth Amendment must be fully executed by all the signatories of the City.

H. By execution of this Eighth Amendment and to minimize the amount of time Assignor's location is closed, Assignee shall guarantee City, that Assignor's location will remain open, fully operational as a Domino's Pizza store and pays rent and other required fees until Assignee assumes possession of the Concession Space, which is projected to be June 1, 2013.

I. Assignee will assume possession of the Concession Space on the date this Eighth Amendment is fully executed (now projected to be June 1, 2013), at which time Assignee will erect a construction wall, and immediately commence refurbishing the Concession Space for an Einstein Bros. Bagels concept.

J. Assignee will complete construction and pre-opening training and activities to the City's satisfaction; and, with the City's prior written permission, Assignee will remove the construction wall, open for business immediately thereafter and commence generating revenue as an Einstein Bros. Bagels concept no later than July 1, 2013.

K. The requirement to open for business on or before July 1, 2013 and Assignee's expertise as an experienced operator of several concessions at DIA are considerations that have induced the City to enter into this Agreement. Therefore, notwithstanding Assignee's best efforts or any offer by the City to expedite the design review process or to assist Assignee in any other way, the Parties agree that it is Assignee that must meet all terms and conditions listed in A through K above as conditions precedent to the City's consent to assignment of this Agreement. Failure to do so means, and the Parties agree, that by operation of this Eighth Amendment, the City's consent is withdrawn and this Agreement is hereby terminated.

## 8<sup>TH</sup> AMENDMENT TO THE AGREEMENT

1. **Domino's Pizza.** The Parties acknowledge that the assignment of this Agreement by operation of this Eighth Amendment is contingent on the City's consent to the assignment. The City's consent is contingent on certain terms and conditions described above being met. Accordingly, Assignor agrees to continue to operate its Domino's Pizza concession in full compliance with the Agreement, including payment of compensation and all other fees and charges required by the Agreement as they come due, until the above described conditions are met, the City's consent is given and Assignee takes possession of the Concession Space or this Agreement is terminated as provided above, at which point in time, Assignor shall be released from any of its obligations hereunder.

2. **Einstein Bros. Bagels.** Assignee has proposed certain concept changes in the use of the Concession Space. The Agreement hereby is revived and amended by deleting the Summary Page attached to the Agreement and replacing it with the Summary Page attached hereto, which is incorporated herein by this reference and revised to reflect the addition of

Einstein Bros. Bagels, a nationally branded quick serve concept (and no other brand or use) described in the Permitted Use section of the attached Summary Page and other revisions made to the term, compensation and performance bond.

3. **Administration of Agreement.** Sections 2.13 and 2.14, of the Agreement are hereby updated by deleting these sections entirely and replacing them with the following:

### **2.13 MANAGER**

The City's Manager of Aviation or the Manager's successor in function under the Denver Charter ("Manager"), exercises the City's authority and discretion under this Agreement.

### **2.13 MANAGER'S AUTHORIZED REPRESENTATIVE**

Whenever reference is made herein to the "Manager or the Manager's Authorized Representative," or words of similar import are used, the City's Deputy Manager of Aviation/Commercial shall be such authorized representative of the Manager, unless written notice is otherwise given to Assignee by the Manager. The Deputy Manager's Authorized Representative is the Airport's Concessions Director who designates the Airport's Concessions Administration Manager for day-to-day administration of this Agreement. Assignee shall submit its reports, memoranda, correspondence, and submittals to the Concessions Administration Manager, except as otherwise provided herein. The Manager and the Deputy Manager may rescind or amend any such designation of representatives or delegation of City authority upon written notice to Assignee.

4. **Use of Space.** Section 3.02, Use of Space, of the Agreement hereby is amended by deleting said section entirely and replacing it with the following:

### **3.02 USE OF SPACE**

A. **A First-Class Food and Beverage Concession.** Assignee may use the Concession Space only to operate a first-class food and beverage concession offering for sale all of the items set forth in the Permitted Use clause of the Summary Page attached to this Eighth Amendment. Assignee covenants and agrees to operate its concession in strict conformance with the Permitted Use, the provisions of the Agreement, and for no other purpose unless otherwise authorized in writing by the Manager or the Manager's Authorized Representative. Assignee understands and agrees that the use of the Concession Space is restricted by all applicable rules, regulations, statutes, or ordinances promulgated by any federal, state, or municipality having jurisdiction over the Airport.

B. **No Unilateral Change to Permitted Use.** Assignee represents that it has forwarded for the Manager's review and approval franchise or other such documents giving Assignee the right to operate the brand(s) listed on the Summary Page ("Brand"). Assignee acknowledges that the Brand is material to and consideration for the City's decision to approve or disapprove Assignee's

proposed concept change, which having been approved, may not be unilaterally discontinued or changed by Assignee and then only with the prior written consent of the Manager, which may be given or withheld at the sole and absolute discretion of the Manager.

5. **Term.** Section 4.01, Term, of the Agreement hereby is amended by deleting said section entirely and replacing it with the following:

**4.01 TERM**

“Term” shall mean the period commencing at noon April 29, 1993 and expiring at noon December 31, 2016.

6. **Compensation.** Section 5, Compensation-Food Court, of the Agreement is hereby amended as follows: Commencing upon the date Assignee takes possession of the Concession Space:

A. The requirement to pay the required Monthly Guarantee for the months of July 2013 through July 2014 hereby is abated.

B. For the month of June 2013 through the month of July 2014, Assignee agrees to pay the City as follows: (i) for the month of June 2013, Assignee agrees to pay the City Ten Thousand Dollars (\$10,000) on the date this Eighth Amendment is executed; and (ii) for the months of July 2013 through June 2014; Assignee agrees to pay to the City on the 10th day of each month a Percentage Compensation Fee of 10% of Gross Revenue.

C. A Monthly Guarantee will then be established by calculating 85% of the Gross Revenue payable to the City for the months of July 2013 through June 2014. For each year thereafter the Monthly Guarantee will be reset at 85% of the Gross Revenue payable to the City for the previous year.

D. Commencing on the first day of July 2014 and through the remainder of the Term, Assignee will pay compensation to the City as provided in Section 5 of the Agreement, which is the greater of the Monthly Guarantee, as it is reset each year, or the Percentage Compensation Fee calculated at the rate established by this Eighth Amendment.

7. **Other Fees and Charges.** Assignee will pay all other fees and charges required by the Agreement as they become due.

8. **Exhibit E.** Section 6.02, Menu, of the Agreement hereby is amended by adding the following as the first sentence of the first paragraph:

Assignee’s proposed list of items to be offered for sale and prices to be charged for each item is attached hereto as **Exhibit E, Initial Menu and Approved Pricing List**. Assignee’s items and pricing shall strictly conform to Assignee’s proposal unless and until otherwise authorized in writing by the City.

9. Section 6 – Operation and Use. – of the Agreement hereby is amended by adding the following new Section 6.19.

## 6.19 Construction Obligations of Assignee.

A. Assignee will assume possession of the Concession Space on the date this Eighth Amendment is fully executed. Assignee expects that the refurbishment to convert the existing concept into an Einstein Bros. Bagels store will be completed by July 1, 2013; however, Assignee will use its best efforts in cooperation with the City to open the Concession Space sooner than that date. The amount of investment and scope of refurbishment may be determined by mutual agreement of the Parties with the understanding that refurbishment of the Concession Space will be completed as a fully functioning Einstein Bros. Bagels to the City's satisfaction. During the refurbishment period, Assignee may close the Concession Space to the public. Assignee also agrees to design and install a sign in accordance with the new DIA Food Court signage criteria.

B. Time is of the essence, and Assignee agrees that by no later than July 1, 2013, "Required Opening Date," Assignee will bear the sole cost and expense incurred to refurbish the Concession Space completely, provide all work of whatsoever nature ("Assignee's Work"), obtain all necessary and required approvals and permissions, and Open for Business to the public. Assignee agrees that "Open for Business" shall mean the date on or before the Required Opening Date that Assignee has (i) delivered documentation to the City that construction of the Concession Space has been completed to the City's satisfaction; (ii) removed the construction wall surrounding the Concession Space after first obtaining prior written permission from the Manager or the Manager's Authorized Representative; and (iii) commenced generating Gross Revenue from the Concession Space.

C. In order to timely open the Einstein Bros. Bagels concession the Parties have established a goal for Assignee to complete all necessary requirements (e.g. having final approved plans, an executed construction contract, and all permits necessary to refurbish the Concession Space) to obtain a City issued notice to proceed on or before this Eighth Amendment is executed, which is projected to be June 1, 2013. In order to ensure prompt commencement and timely completion of Assignee's Einstein Bros. Bagels refurbishment plans, Assignee agrees to start the design process immediately after it signs this Eighth Amendment. Assignee will then submit its preliminary design, submit a proposed design, construction progress, and a completion schedule, in such detail as the City may reasonably require and in accordance with the design standards and criteria described in **Exhibit X**. Assignee shall thereafter prepare for City approval of final plans and detailed specifications that incorporate an Einstein Bros. Bagels design approved by the City and are prepared by an architect or engineer licensed to practice in the State of Colorado ("Final Plans"). All design and construction drawings shall be submitted by Assignee to DIA with sufficient lead time to ensure DIA's approval on or before the date this Eighth Amendment is executed. Such design and construction drawings are to be provided in the latest release of AutoCAD format in accordance with the DIA's Design Standards Manual. For lead time the City generally needs two weeks to review each set of NTP Documents submitted or



resubmitted by Assignee, return comments or approve the NTP Documents, and notify Assignee of approval by issuing the NTP.

D. Assignee's Work shall be subject to approval in writing by the City, and Assignee acknowledges that Assignee's design plans will be reviewed by DIA's architectural consultant, also known as the Airport's Retail Architect Consultant. The fee for this review is estimated to range from Five Thousand Dollars (\$5,000) to Ten Thousand Dollars (\$10,000) depending on the amount of work required by the project. Assignee is obligated to pay this fee, and Assignee agrees to reimburse the City within thirty (30) business days after the City demands an amount not to exceed Ten Thousand Dollars (\$10,000) for the Airport's Retail Architect Consultant's actual costs for design review of Assignee's Work in connection with the refurbishment of the Concession Space.

E. In addition to the above, Assignee is responsible for coordinating with the Denver Building Inspection Division, Zoning, Fire Department, Wastewater Management, Consumer Protection, and Health and Hospitals, etc. as may be required to comply with submittal, review, and approval requirements in order to obtain all required permits. Prior to the date this Eighth Amendment is executed, Assignee or Assignee's contractor shall deliver to the Manager of Aviation copies of all required permits, licenses, and all other documents as required by Manual 1 of the DIA Assignee Development Guidelines.

F. Assignee may not construct or install the Improvements without City approved Final Plans and a City issued Notice to Proceed ("NTP"). Before beginning any construction work on the Concession Space, Assignee must obtain at Assignee's expense, a NTP as described in the DIA Development Guidelines. Prior to the issuance of an NTP, Assignee shall obtain and pay for all approvals, licenses, and permits required for the Improvements. Whenever a conflict arises between state or local law, ordinances or regulations, and federal law or regulations, the most stringent law or regulations applicable to the Agreement shall control.

G. In order to obtain an NTP, Assignee shall submit the NTP Documents, a list of which is provided below, to DIA. A detailed description of all the requirements can be found in the Tenant Development Guidelines. Required NTP Documents are as follows:

1. An electronic copy of the Approved drawings and specifications;
2. Either an electronic or hard copy of the construction contract;
3. A sworn statement listing contractors and subcontractors at all tiers, a description of work and the contract amounts, and approval from the Auditor's Office that the documents are acceptable;
4. An electronic copy of the fully executed Agreement between the City and Assignee;

5. An electronic copy of contractor's insurance documentation as set forth in TDGs, Volume 3, Appendix B;
6. Assignee's Contractor's original Performance Bond, Payment Bond, and dual obligee rider on the DIA approved form;
7. Original Assignee Payment Bond on the DIA approved form;
8. An electronic copy of the Building Permit;
9. An electronic copy of the detailed bar chart schedule of construction;
10. An electronic copy of all CADD and Word file construction documents;
11. An electronic copy of the contractor's safety plan;
12. An electronic copy of the DSBO/ MOCC/ SBOD forms and an approval from such agencies indicating that the minimum required participation has been met;
13. An electronic copy of the contractor's acceptance; and
14. A sworn statement from Assignee certifying that the contractor has submitted their qualifications. Assignee certifies that it has investigated the qualifications of its proposed subcontractors and has identified the existence of any of the following items or certified to the best of their knowledge and belief that the problems listed below do not exist:
  - a. Default on a contract within the last 3 years;
  - b. Default on a contract which required that a surety complete the contract under payment or performance bonds issued by the surety;
  - c. Debarment within the last 5 years by a public entity or any organization which has formal debarment proceedings;
  - d. Significant or repeated violations of federal Occupational Safety and Health Act ("OSHA") safety requirements ;
  - e. Failure to have the required City or Colorado licenses to perform the work described in the contract; and
  - f. Conviction within the last 5 years by the contractor, its principal owners, or its officers of an offense involving fraud or racketeering.

The City reserves the right to promptly reject any submission that is not in material compliance with the TDGs.

H. Assignee's contractor shall maintain in effect throughout the construction period, a construction performance and payment bond in a sum not less than 100% of the construction contract price. Said bond shall guarantee prompt and faithful performance of the contract and prompt payment by Assignee to its contractors and by Assignee's contractors to all persons supplying labor, materials, team hire, sustenance, provisions, provender, supplies, rental machinery, tools, and equipment used directly or indirectly by the said contractor, subcontractor(s), and suppliers in the prosecution of the work provided for in said construction contract. Said bonds shall also protect the City from any liability, losses, or damages arising therefrom.

I. First-Class Standards of Design Required. Assignee shall begin the Work, shall diligently perform its design and construction obligations, and shall complete its work prior to the Required Opening Date. First-class standards of design and construction will be required in connection with all construction performed by Assignee, including construction and installation of all Improvements. Construction shall conform in all material respects with the criteria established at DIA for tenants and Assignees for design, construction, installation, signage, and related matters; as such criteria may hereafter be amended. Further, construction shall conform to applicable statutes, ordinances, building codes, fire codes, State and federal Occupational Safety and Health Act safety requirements, and Airport Rules and Regulations. Additionally, construction shall conform to other general requirements of the City and the City's tenant construction permit requirements, including compliance with the requirements of **Exhibit X**, DIA Design Standards, DIA Development Guidelines, procurement of general liability and builder's risk insurance, and performance and payment bonds. Construction must also comply with worker's compensation requirements, the City's prevailing wage ordinance, Denver Revised Municipal Code ("D.R.M.C."), §20-76, the City's MBE/WBE participation requirements, D.R.M.C. Articles III and VII, and the Americans with Disabilities Act, 42 U.S.C. 12,000 et seq., and its regulations. The approval given by the City shall not constitute a representation or warranty as to such conformity; responsibility therefor shall at all times remain with Assignee. Approval by the City shall extend to and include consideration of architectural and aesthetic matters. The City expressly reserves the right to reject any designs submitted and to require Assignee to resubmit designs and layout proposals until they meet the City's approval.

J. Liens and Encumbrances. Assignee will not create, permit to be created, or permit to remain any lien, encumbrance, or charge upon fixtures, equipment, or personal property located within the Concession Space. Within fifteen (15) calendar days after Assignee receives notice of the filing of such lien or encumbrance, Assignee shall discharge and cause any such lien to be released of record by payment, bond, or order of a court of competent jurisdiction.

10. **Agreement Remains in Force.** Except as modified or revised by this Eighth Amendment, all terms, conditions, covenants and provisions of the Agreement are hereby revived and shall remain in full force and effect as if fully set forth herein and no alterations,

amendments, changes or modifications to the Agreement, unless expressly reserved to the Manager herein, shall be valid unless executed by an instrument in writing by all the parties with the same formality as the Agreement.

11. ***Agreement Binding only after City Execution.*** This Eighth Amendment is expressly subject to and shall not be or become effective or binding on the City until approved by City Council, if so required by the City's Charter, and fully executed by all signatories of the City and County of Denver. This Eighth Amendment may be executed in two or more counterparts. Each counterpart will be deemed an original signature page to this Amendment. This Amendment may be signed electronically by the Parties in the manner specified by the City.

**[SIGNATURE PAGES FOLLOW].**

Contract Control Number: AC38010-8

Contractor Name: Moran Pizza, Inc.

Moran Pizza, Inc.

by: Ruth Moran  
Ruth Moran, President

Mission Yogurt, Inc.

by: \_\_\_\_\_



*Faded text, possibly a signature or name.*



**Contract Control Number:** PLANE-AC38010-08

**Contractor Name:** Moran Pizza, Inc.;Mission Yogurt, Inc.

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:

DOUGLAS J. FRIEDNASH, Attorney  
for the City and County of Denver

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_







**COMPENSATION**

**Initial Monthly guarantee (based on square feet of Concession Space plus pro rata share of common Area**

\$6,793.51

**8<sup>th</sup> Amendment Monthly Guarantee**

As provided for in the 8<sup>th</sup> Amendment

**Initial Percentage Compensation Fee**

12%

**8<sup>th</sup> Amendment Percentage Compensation Fee**

10%

**PERFORMANCE BOND AMOUNTS**

**Anchor: ½ Annual total of Monthly Guarantees**

N/A

**Non-Anchor: Annual total of Monthly Guarantees (may be reduced to ½ annual total, or \$40,761.06, Effective as of January 1, 1997)**

\$81,522.12

**Initial REQUIRED MINIMUM INVESTMENT**

\$206,309.51

**Initial RENOVATION COMPLETION DATE**

As provided in the 5<sup>th</sup> Amendment to the Agreement

**8<sup>th</sup> Amendment RENOVATION COMPLETION DATE**

June 30, 2013

**INSURANCE POLICY AMOUNT**

See Exhibit C

**DESCRIPTION OF EXHIBITS AND ADDENDA:**

Exhibit A	Concession Space Plan and Food Court Area
Exhibit B	Provisions for Construction of Concession Improvements
Exhibit C	Insurance Certificate
Exhibit D	Disadvantaged Business Enterprise Participation
Exhibit E	Initial Menu and Approved Pricing List
Appendix 1	Standard Federal Assurances
Appendix 2	Standard Federal Assurance, Nondiscrimination
Appendix 3	Nondiscrimination in Airport Employment Opportunities

Exhibits attached to and made Part of the Agreement Remain in effect, unless expressly superseded by this Eighth Amendment.

## PRELIMINARY ASSIGNMENT AGREEMENT

THIS ASSIGNMENT ("Assignment") is agreed to this first day of April, 2013, between MORAN PIZZA, INC., a Colorado corporation dba DOMINO'S PIZZA, ("Assignor"), whose address is 105 S. Lincoln Street, Casper, Wyoming 82601 and MISSION YOGURT, INC, a Colorado corporation ("Assignee"), whose address is 10943 Meade Court, Westminster, Colorado 80031.

1. **ASSIGNMENT.** Effective as of June 1, 2013 (the "Closing Date") as that term is defined in Paragraph 6, the Assignor, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby assign, transfer, set over, grant, bargain, sell and deliver unto the Assignee all right, title and interest which the Assignor may have in that certain Concession Agreement (AC38010) (the "Agreement") which was assigned to Assignor by Dick and Jane Pizza, Inc., and consented to by the City and County of Denver ("City") on January 24, 2005 for a concession space located in the Terminal, level 6 with address of Level 6, E3-N15-1 at Denver International Airport (the "Concession Space"). A true, accurate and complete copy of the Agreement is attached hereto as Exhibit A. Capitalized terms used herein and not otherwise defined shall have the meanings given those terms in the Agreement.

2. **ASSUMPTION OF AGREEMENT.** As of the Closing Date, Assignee accepts and assumes all of the terms, covenants and conditions in the Agreement and agrees to indemnify, defend and hold Assignor harmless against any claims arising under the Agreement as a result of Assignee's failure to perform its obligations accruing after the Closing Date. The assignment hereunder is made "as is" with no representations in regards to the fitness or condition of the Agreement or Concession Space. Assignee has the opportunity to examine and inspect the Agreement, Concession Space and any other related matters.

3. **PAYMENT.** In consideration of the assignment by Assignor and assumption by Assignee, Assignee agrees to reimburse Assignor for rent payments and Common Area Charges paid to the City in April and May, 2013, within seven days after such payments are made, upon Assignor showing written proof to Assignee that such payments have been paid to the City.

4. **REPRESENTATIONS, WARRANTIES AND AGREEMENTS OF ASSIGNOR.** Assignor represents and warrants to Assignee the following facts, and makes the following agreements with Assignee, with the knowledge that Assignee is purchasing Assignor's right, title and interest in the Agreement in reliance thereon:

(a) **Assignor's Existence and Authority.** Assignor is a corporation duly organized, validly existing and in good standing under the laws of the State of Colorado. Assignor has by all necessary corporate proceedings duly authorized the execution of this Assignment by the party signing below and the consummation of the transactions described herein.

(b) **No Prior Assignments.** Assignor has not previously assigned, transferred or otherwise conveyed any of its interests under the Agreement and has the full right and ability to make this Assignment.

(c) No Claims. There are no claims, liens (including without limitation mechanics', materialmen's or similar liens), encumbrances, charges and pledges of any kind and nature whatsoever on the improvements located in the Concession Space.

(d) No Litigation. There are no defaults under the Agreement and there is no litigation, action, suit or proceeding that is pending or, to the best of Assignor's knowledge after diligent inquiry, threatened against Assignor regarding the Agreement.

(e) No Defaults. The execution and delivery of this Assignment and the documents required hereunder and the consummation of the transactions contemplated by this Assignment will not: (i) conflict with or be in contravention of any law, order, rule, regulation, writ, judgment, injunction, decree, determination or award of any court, government or governmental agency or instrumentality applicable to Assignor, or the Concession Space; (ii) result in any breach of any of the terms or provisions of, or constitute a default under, any agreement, lease or other instrument to which Assignor is a party or by which it or any portion of the Concession Space may be bound or affected; (iii) permit any party to terminate any such agreement or instrument or to accelerate the maturity of any indebtedness or other obligation of Assignor; or (iv) result in any lien, charge or encumbrance of any nature on the Concession Space.

(f) Tax Returns. Within the times and in the manner prescribed by law, Assignor has filed all federal, state, and local tax returns required by law pertaining to the Concession Space and has paid all taxes, assessments and penalties due and payable. To the best of Assignor's knowledge, there are no present disputes as to taxes of any nature payable by Assignor pertaining to the Concession Space.

(g) Assignor Bound by Agreement. This Agreement shall be binding upon Assignor and enforceable against Assignor in accordance with its terms.

(h) Assignor agrees that during April and May, 2013, Assignor will continue to operate the Domino's Pizza now existing in the Concession Space consistent with current operations and in good faith.

5. REPRESENTATIONS, WARRANTIES AND AGREEMENTS OF ASSIGNEE. Assignee represents and warrants to Assignor the following facts, and makes the following agreements with Assignor, with the knowledge that Assignor is selling Assignor's right, title and interest in the Agreement in reliance thereon;

(a) Assignee's Existence and Authority. Assignee is a corporation duly organized, validly existing and in good standing under the laws of the State of Colorado. Assignee has by all necessary corporate proceedings duly authorized the execution of this Assignment by the party signing below and the consummation of the transactions described herein.

(b) Assignee Bound by Agreement. This Agreement shall be binding upon Assignee and enforceable against Assignee in accordance with its terms.

(c) Broker's Fees. Assignee has no liability or obligation to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement for which the Assignor could become liable or obligated.

6. EFFECTIVENESS. This Agreement shall be conditioned upon the consent and approval by the City's Manager of Aviation ("Closing Date") and such approval must occur prior to June 1, 2013. Should such consent fail to occur by June 1, 2013 for any reason, Assignee may terminate this Assignment in its sole and absolute discretion and will be of no further force or effect and the parties hereto shall have no further obligations to each other. However, Assignor will retain all monies paid by Assignee prior to the time of termination.

7. COUNTERPARTS. This Agreement may be executed in counterparts, each of which shall constitute one and the same instrument. Additionally, this Agreement may contain more than one counterpart of the signature page and this Agreement may be executed by affixing counterpart signature page(s) containing the signatures of the parties hereto. All of such counterpart signature pages shall be read as though one and they shall have the same force and effect as though all of the signors had signed a single signature page.

8. DISPUTES. In the event any dispute arises hereunder, the prevailing party in such dispute shall be entitled to all costs and expenses incurred, including without limitation, attorney's fees as a part of its award. Should a dispute arise, the law to be applied will be Colorado law and any disputes will be initiated and litigated in the Denver State District Court.

9. ENTIRE AGREEMENT. This Assignment constitutes the entire agreement between the parties with regard to the subject matter hereof. This Assignment supersedes all previous agreements between or among the parties. Except for the Eighth Amendment to Agreement and Consent to Assignment to be executed by Assignor, Assignee and the City on or before June 1, 2013, there are no agreements, representations, or warranties, verbal or written, between or among the parties which are being relied upon by either of the parties other than those expressly set forth in this Assignment.

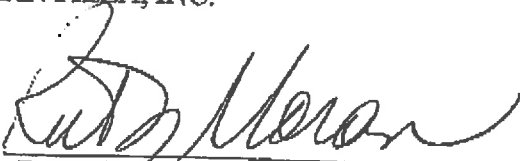
TO INDICATE THEIR CONSENT TO THIS ASSIGNMENT, the Parties execute this Assignment on the date first above written.

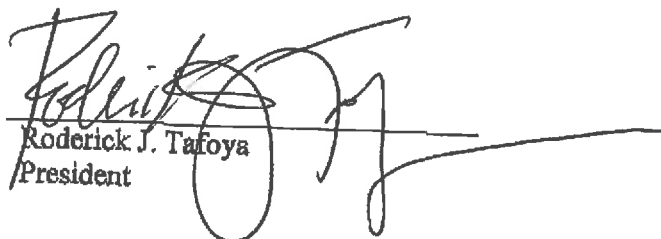
ASSIGNOR:

ASSIGNEE:

MORAN PIZZA, INC.

MISSION YOGURT, INC

By:   
Ruth Moran  
President

By:   
Roderick J. Tafoya  
President