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REINSTATEMENT AND SIXTH AMENDMENT OF AGREEMENT

THIS REINSTATEMENT AND SIXTH AMENDMENT OF AGREEMENT (“Amendment”) is made and entered into 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**"), and **SMOKIN' BEAR, LLC**, (the “**Concessionaire**”) (collectively, the “**Parties**”).

WITNESSETH:

WHEREAS, the Parties entered into Concession Agreement No. AC43012 (the “**Agreement**”) for the operation of a concession at Denver International Airport (“**DEN**”);

WHEREAS, the Agreement’s Term subsequently expired and Concessionaire has continued operating as a month-to-month holdover tenant by the mutual consent of the Parties and subject to all terms and conditions of the Agreement;

WHEREAS, the COVID-19 pandemic caused significant disruptions to air travel and precipitous drops in concession sales at DEN, thereby causing significant harm to Concessionaire’s business and employees;

WHEREAS, to support and stabilize Concessionaire’s business and employees, and to ensure that essential goods and services remain available to passengers and employees at DEN, the City wants to allow Concessionaire to continue its operations for up to three additional years; and

WHEREAS, to add a defined Term to Concessionaire’s obligations and privileges under the terms and conditions of the Agreement, the Parties agree to formally reinstate and amend the terms and conditions of the Agreement via this Amendment for a limited time as stated herein.

NOW, THEREFORE, for and in consideration of the privileges granted by the Agreement and other good and valuable consideration, the sufficiency of which is acknowledged, the Parties hereto agree as follows:

1. All terms and conditions of the Agreement in effect immediately prior to its expiration and by which the Concessionaire has been operating as a holdover tenant shall be in effect and binding on the Parties for a new Term of three (3) years, beginning on September 1, 2021 (the “**New Term**”), subject to the conditions herein. The Expiration Date of the New Term is September 1, 2024; thereafter, Concessionaire’s rights and privileges under the Agreement and this Amendment shall terminate unless Concessionaire is permitted to continue to operate as a holdover tenant under the Agreement’s holdover provisions.

2. Concessionaire must maintain strict compliance with Airport Concession Disadvantaged Business Enterprise (“**ACDBE**”) regulations, including full and timely compliance with the City’s reviews, inquiries, investigations, and orders related to ACDBE requirements. If the City finds at any time that the Concessionaire is in violation of ACDBE regulations or requirements and the Concessionaire fails to cure such violation(s) within reasonable time after

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notice, the City may, upon written notice executed by DEN's Chief Executive Officer ("**CEO**") and in accordance with ACDBE regulations, terminate the New Term and all of Concessionaire's rights and privileges to operate the concession. This remedy is in addition to all remedies available to the City.

3. The City may terminate the New Term and Concessionaire's rights and privileges hereunder at any time and without cause if the City determines that DEN's development, safety, or business needs necessitate reclaiming the concession premises.

4. Concessionaire shall maintain, refurbish, and repair the concession premises as needed and as reasonably directed by the City to ensure the concession continuously appears and operates as a first-class concession during the New Term. Failure by the Concessionaire to so maintain, refurbish, or repair the premises shall give the City cause for termination of the New Term. This remedy is in addition to all remedies available to the City.

5. In the event of an early termination of the New Term, the City will not be liable for – nor will Concessionaire be entitled to nor claim or assert against City – any direct, consequential, or other damages of any kind.

6. Concessionaire shall make good faith efforts to support the wellbeing of current and prior employees, including but not limited to rights of first refusal to laid off and furloughed personnel for any open employment positions which they are qualified.

7. Except as provided herein, all provisions, terms and conditions in the Agreement shall remain in full force and effect as if fully set forth herein.

8. This Amendment shall not be effective or binding on the City until approved and fully executed by all signatories of the City and County of Denver.

END OF AGREEMENT
SIGNATURE PAGES AND EXHIBITS TO FOLLOW

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Contract Control Number: PLANE-202159800 / Alfresco-AC43012-06
Contractor Name: SMOKIN BEAR 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:

Attorney for the City and County of Denver

By: _____

REGISTERED AND COUNTERSIGNED:

By: _____

By: _____

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Contract Control Number: PLANE-202159800 / Alfresco-AC43012-06
Contractor Name: SMOKIN BEAR LLC

By: DocuSigned by: Rod Tafoya BE479F263CF4419...

Name: Rod Tafoya
(please print)

Title: President
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)