

## FIFTH AMENDMENT TO AGREEMENT

**THIS FIFTH AMENDMENT TO AGREEMENT** is made and entered into as of the date set forth on the City's signature page, by and between the **CITY AND COUNTY OF DENVER**, a Colorado municipal corporation, for and on behalf of its Department of Aviation ("City"), Party of the First Part, and **CA CONCESSIONS OF COLORADO, INC.** ("Concessionaire"), d/b/a **Red Rocks Bar**, Party of the Second Part.

### WITNESSETH

WHEREAS, the parties hereto entered into a concession agreement (AC-39029) dated December 29, 1993, as amended, and a First Amendment dated December 14, 1994, Second Amendment dated December 1, 1995, Third Amendment dated January 23, 2003, and Fourth Amendment dated July 11, 2003 (collectively, the "Original Agreement") for the operation of a concession at Denver International Airport ("Airport"); and

**WHEREAS**, 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; and

**WHEREAS**, as 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 sufficiency of which is acknowledged, the Parties hereby agree to amend the Original Agreement as follows:

1. Section 4.03 (Holding Over) of the Original Agreement is hereby 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.

7. Except as otherwise modified or amended herein, all terms and conditions of the Original Agreement shall remain in full force and effect as though set out in full herein.

8. This Fifth 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 Fifth 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-AC39029-05

**Contractor Name:**

By: Nicholas A. Liberto

Name: NICHOLAS A. LIBERTO  
(please print)

Title: VP - FINANCE -  
(please print)

**ATTEST: [if required]**

By: Lori E. Caballero

Name: Lori E. Caballero  
(please print)

Title: Administrative Assistant  
(please print)

