

1 BY AUTHORITY

2 ORDINANCE NO. \_\_\_\_\_

COUNCIL BILL NO. \_\_\_\_\_

3 SERIES OF 2011

COMMITTEE OF REFERENCE:

4 BUSINESS, WORKFORCE & SUSTAINABILITY

5 A BILL

6 For an ordinance approving a proposed Fifth Amendment to Agreement between the  
7 City and County of Denver and Yaz Jewelry & Gifts Inc., concerning a concession at  
8 Denver International Airport.

9  
10 **BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:**

11 **Section 1.** The proposed Fifth Amendment to Agreement between the City and County of  
12 Denver and Yaz Jewelry & Gifts Inc., in the words and figures contained and set forth in that form  
13 of the Agreement filed in the office of the Clerk and Recorder, Ex-Officio Clerk of the City and  
14 County of Denver, on the 28th day of April, 2011, City Clerk's Filing No. 96-1106-E is  
15 hereby approved.

16  
17 COMMITTEE APPROVAL DATE: April 22, 2011

18 MAYOR-COUNCIL DATE: April 26, 2011


19 PASSED BY THE COUNCIL \_\_\_\_\_ 2011

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

21 APPROVED: \_\_\_\_\_ - MAYOR \_\_\_\_\_ 2011

22 ATTEST: \_\_\_\_\_ - CLERK AND RECORDER,  
23 EX-OFFICIO CLERK OF THE  
24 CITY AND COUNTY OF DENVER  
25

26 NOTICE PUBLISHED IN THE DAILY JOURNAL \_\_\_\_\_ 2011 \_\_\_\_\_ 2011

27 PREPARED BY: George "Skip" Gray, III;  DATE: April 28, 2011

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

32  
33 David W. Broadwell, City Attorney

34 BY: \_\_\_\_\_, \_\_\_\_\_ City Attorney

35 DATE: April 28, 2011

## FIFTH AMENDMENT TO AGREEMENT

THIS FIFTH AMENDMENT TO AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2011, by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, acting for and on behalf of the Department of Aviation ("City"), and **YAZ JEWELRY & GIFTS INC.**, a Colorado corporation ("Concessionaire").

### WITNESSETH:

**WHEREAS**, the Parties hereto entered into an Agreement (AC 68002) dated November 14, 1996; a First Amendment dated September 17, 1997, a Second Amendment dated January 28, 2003 and a Third Amendment dated July 11, 2003 and a Fourth Amendment dated February 25, 2011 (collectively the "Original Agreement") for the operation of a concession at Denver International Airport ("Airport" or "DIA"); and

**WHEREAS**, the Parties wish to amend the Original Agreement to add the Alternative Surety provisions stated below;

**NOW, THEREFORE**, for and in consideration of the premises and other good and valuable consideration, the Parties agree to amend the Original Agreement as follows:

1. Section 8.03 of the Original Agreement (Performance Bond) hereby is amended by adding the following subsection:

**B. Alternative Surety.**

1. Upon the Concessionaire's request, the Manager may, in her sole discretion, permit a Concessionaire to provide an "Alternative Surety" as defined below instead of the surety required in Section 8.03 of this Agreement. Payment of the Alternative Surety is due in advance upon notification by the Airport of the amount due.

a. Base Fee. The Alternative Surety shall be a Base Fee paid to the City of two percent (2%) of the annual rent due by Concessionaire in the prior calendar year, or if a full year is unavailable, 2% of the annualized rent due, as calculated by the City. If no rent payment history is available, or if the Manager, in her sole discretion, determines the existing rent payment history is insufficient, the Base Fee shall be two percent (2%) of the MAG agreed to in this Agreement.

2. No reduction in Amounts Due. Payment of the Base Fee as surety in no way reduces or offsets the compensation or amounts due from the Concessionaire to the Airport under this Agreement.

AC-1106-E

3. Term of Alternative Surety; Extension.

- a. The Alternative Surety will apply for one year after all of the following have occurred (Alternative Surety Term):
  - i. Full execution of this amendment.
  - ii. Issuance of notice of Base Fee and Additional Fee (described below) under the terms of this subsection.
  - iii. Receipt of payment due of Base Fee and Additional Fee (described below) under the terms of this section.
- b. At the end of the Alternative Surety Term, the surety requirements of Section 8.03 of this Section shall automatically apply for the remainder of the term of the Concession Agreement unless the Alternative Surety is extended by the Manager.
  - i. The Alternative Surety may be extended by the Manager of Aviation, in the Manager's sole discretion, for additional one-year periods through the Term of this Agreement.
  - ii. The Base Fee shall be recalculated at the end of each Surety Term. The Base Fee may be adjusted by the Manager to account for the following:
    - a. For every late rent notice issued to Concessionaire, the Manager may, in her discretion, increase the Base Fee by  $\frac{1}{2}$  percent of the annual rent due in the prior calendar year ("Additional Fee"); however, if no late rent notices were issued to Concessionaire in the prior calendar year then the Manager may reduce any existing Additional Fee by  $\frac{1}{2}$  percent of annual rent due.
    - b. A factor consisting of some or all of the following: The airport's general risk due to local or national changes to the aviation industry, the Airport's cost for administering the alternative surety, and the market cost of Letters of Credit, Revenue Surety instruments, or similar instruments.
    - c. In no event shall the recalculated Base Fee be less than 2% of the greater of the following: the annual rent due by Concessionaire in the prior calendar year; or if a full year is unavailable, the annualized rent due, as calculated by the City; or if no rent payment history is available or the Manager, in her sole discretion, determines the existing rent payment history is insufficient, the MAG agreed to in this Agreement.
  - iii. Concessionaire shall be notified of any recalculated Base Fee and Additional Fee in writing by the City at the time the Alternative Surety is extended.

c. If the Alternative Surety is extended and recalculated by the Manager, but Concessionaire no longer desires to comply with the Alternate Surety, Concessionaire may instead submit the surety required in Section 8.03.

4. Termination of Alternative Surety. The Alternative Surety may be terminated at any time at the discretion of the Manager or the Concessionaire upon 30 days written notice to the other party. Upon such termination, the surety requirements of Section 8.03 of this agreement shall apply. Any unamortized portion of the Base Fee and Additional Fee for the Alternative Surety shall be refunded to the Concessionaire upon Concessionaire's compliance with Section 8.03.

2. Except as provided herein, all of the provisions, terms and conditions of the Original Agreement shall remain in full force and effect as if fully set forth herein, and are hereby ratified and reaffirmed.

3. This Fifth Amendment to Agreement is expressly subject to and shall not become effective or binding on the City until it is approved by the City Council, if required, and fully executed by all signatories of the City and County of Denver.

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, the Parties hereto have caused this Fifth Amendment to Agreement to be executed as of the day and year first above written.


ATTEST:

CITY AND COUNTY OF DENVER

STEPHANIE Y. O'MALLEY, Clerk and Recorder, Ex-officio Clerk of the City and County of Denver

By \_\_\_\_\_ Mayor

RECOMMENDED AND APPROVED:

By  \_\_\_\_\_ Manager of Aviation

APPROVED AS TO FORM:

DAVID R. FINE, Attorney for the City and County of Denver

REGISTERED AND COUNTERSIGNED:  
Contract Control Number AC68002-5

By \_\_\_\_\_ Assistant City Attorney

By \_\_\_\_\_ Manager of Finance

By \_\_\_\_\_ Auditor

"CITY"  
PARTY OF THE FIRST PART

ATTEST:

YAZ JEWELRY & GIFTS, INC.

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

By: 

\_\_\_\_\_  
(Title)

Title: SEC'Y AND TREASURER

"CONCESSIONAIRE"  
PARTY OF THE SECOND PART