

PVC PARTICIPATION AGREEMENT

(FOURTH AMENDMENT)

THIS PVC PARTICIPATION AGREEMENT (FOURTH AMENDMENT) (referred to hereinafter as the "PVC Participation Agreement") is made and entered into as of the date stated on the signature page, 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 **SMOKIN' BEAR, LLC**, a LIMITED LIABILITY COMPANY formed under the laws of the State of Colorado ("Concessionaire") d/b/a **Timberline SteakHouse / Einstein's Bagels**.

WITNESSETH:

WHEREAS, the Parties hereto entered into an agreement (AC-43012) dated November 9, 2004, which together with amendments to the agreement is hereafter referred to as the "Original Agreement," for the operation of a concession at Denver International Airport ("Airport" or "DIA"); and

WHEREAS, the Department of Aviation has created the "Premium Value Concessions Program" ("PVC Program") described in Airport Rule and Regulation 45 (the "PVC Rules") to reward certain categories of concessionaires that operate first-class concessions and achieve the high performance standards defined in the PVC Rules. To concessionaires that achieve the high performance standards defined in the PVC Rules at the time their existing agreements terminate, the City will offer a new concession agreement that is consistent with the concession policy then in effect for either (i) the same particular merchandise category as the terminating concession, or (ii) if the Manager, in her sole discretion, deems it advisable to change from that particular merchandise category, the City will offer the right to change their concept to one that is consistent with DIA's goals; and

WHEREAS, the Concessionaire wishes to participate in the PVC Program and is willing to accept the requirements of the PVC Rules;

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. Effective as of the date this PVC Participation Agreement is executed, which date is set out on the signature page, Concessionaire agrees to participate in the PVC Program and abide by the requirements of the PVC Rules, Airport Rule and Regulation 45.

2. The Original Agreement hereby is amended by adding the following paragraph:

SECTION 11.02 Premium Value Concessions Program.

- A. Concessionaire agrees to participate in the City's "Premium Value Concessions Program" or "PVC Program" as more particularly described in Aviation Rule and Regulation 45 (the "PVC Rules").
- B. For Concessionaire's participation in the PVC Program, the Parties agree that Concessionaire's major and minor categories and square footage shall be as follows: Major Category: Food/Beverage, Minor Category: Casual Dining Bar, Square Footage: 5,833.3.

- C. Concessionaire acknowledges that at least 20 concessions eligible for the PVC Program must agree to participate via an executed amendment to their concession agreements before the PVC Program can begin.
- D. Upon written notice from the Manager, Concessionaire agrees that it shall contribute Concessionaire's prorated share of the cost of administering the Earned Value Program as described in section 3 (Third Party Administrator) of the PVC Rules, which shall be payable to the City in advance, without setoff, deduction, prior notice or abatement on the first day of every month following notification.
- E. The City shall not be obligated to expend more for the PVC Program than is actually collected from concessionaires pursuant to section 7 (Cost of the Premium Value Concessions Program) of the PVC Rules. All services and personnel related to the PVC Program, including the Third Party Administrator as defined in section 3 (Third Party Administrator) of the PVC Rules, shall be under the exclusive control and supervision of DIA.
- F. Concessionaire may withdraw from the PVC Program only if its annual obligation in any location to the airport exceeds \$15,000 per concession location. Inflation adjustments shall be calculated using the Consumer Price Index for all Urban Consumers (CPI-U) for the Denver-Boulder-Greeley MSA.
- G. The Manager, in her sole and absolute discretion, may terminate the PVC Program if the number of participating concessions falls below 20, or for any other reason, upon 30 days notice to Concessionaire. Return to Concessionaire of any portion of its Participation Fees shall be in accordance with the procedures stated in the PVC Rules.
- H. In the event of a conflict between any provision of the PVC Rules and the Original Agreement, the Original Agreement shall govern.

3. 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.

4. This PVC Participation Agreement, which is expressly subject to and shall not be or 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, may be signed in two or more counterparts, each of which shall be deemed to be an original signature page of this Amendment.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties have hereunto set their hands and affixed their seals at Denver, Colorado as of the day stated on the signature page.

Contract Control Number: AC-43012 (4)

Vendor Name: Smokin' Bear, LLC

By: [Signature]

Name: ROBERT J. TAFORA

Title: MANAGER MEMBER

ATTEST: [if required]

By: [Signature]

Name: ROBERT TAFORA
(please print)

Title: - WITNESS
(please print)

Contract Control Number:

Vendor Name:

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 _____

