

**BY AUTHORITY**

ORDINANCE NO. \_\_\_\_\_  
SERIES OF 2012

COUNCIL BILL NO. CB12-0418  
COMMITTEE OF REFERENCE:  
BUSINESS, WORKFORCE, & SUSTAINABILITY

**A BILL**

**For an ordinance approving a proposed Fifth Amendment and Termination of Agreement between the City and County of Denver and The Airport Lounges, LLC for the operation of a concession at Denver International Airport.**

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

**Section 1.** The proposed Fifth Amendment and Termination of Agreement between the City and County of Denver and The Airport Lounges, LLC dba The Airport Lounge (AC49004) 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. 1994-0294-G, is hereby approved.

COMMITTEE APPROVAL DATE: May 24, 2012

MAYOR-COUNCIL DATE: May 29, 2012

PASSED BY THE COUNCIL: \_\_\_\_\_, 2012  
\_\_\_\_\_ - PRESIDENT

APPROVED: \_\_\_\_\_ - MAYOR \_\_\_\_\_, 2012

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

NOTICE PUBLISHED IN THE DAILY JOURNAL: \_\_\_\_\_, 2012; \_\_\_\_\_, 2012

PREPARED BY: Skip Gray, III, Assistant City Attorney *KAC for SG* DATE: May 31, 2012

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: May 31, 2012

## FIFTH AMENDMENT AND TERMINATION OF AGREEMENT

**THIS FIFTH AMENDMENT AND TERMINATION OF AGREEMENT** ("Fifth Amendment") 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, for and on behalf of the Department of Aviation (the "City"), Party of the First Part, and **THE AIRPORT LOUNGES, LLC**, a Colorado limited liability company ("Concessionaire"), dba **The Airport Lounge**, Party of the Second Part.

### WITNESSETH:

**WHEREAS**, the Parties hereto entered into an Agreement dated May 16, 1994 (AC49004), which Agreement was amended several times, the last being a 4<sup>th</sup> Amendment dated August 26, 2006 (collectively, the "Original Agreement") for the operation of a smoking lounge concession on Concourse B at Denver International Airport; and

**WHEREAS**, the City desires to eliminate smoking in the Airport; and

**WHEREAS**, Concessionaire is willing to relinquish its right under the Original Agreement to offer smoking and therefore agrees to reconfigure and remodel its Concession Space to eliminate smoking and remove the smoking lounge; and

**WHEREAS**, reconfiguring and remodeling the Concession Space will require significant capital investment by Concessionaire for architectural design, engineering fees and new and additional tenant finish for the space; and

**WHEREAS**, in exchange for Concessionaire's continued leadership in developing its Concession Space in furtherance of the Airport's Sense of Place concepts, and in recognition of the rights Concessionaire agrees to relinquish and the capital investment Concessionaire has agreed to make, the City consents to the early termination of the Original Agreement and agrees to offer Concessionaire new agreements, Plane 201205662-00 and Plane 201205652, that divide the Concession Space and concepts (Aviator's Club and Woody Creek Bakery and Café, respectively) and recognize and amortize the capital investment Concessionaire will make in order to eliminate smoking in the Concession Space;

**NOW, THEREFORE**, for the foregoing reasons and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties hereby agree to amend the Original Agreement as follows:

1. The Original Agreement hereby is amended to terminate the Original Agreement on December 31, 2012 and both the City and the Concessionaire shall be released from any liability or further obligation under the Original Agreement; provided that those terms and conditions of the Original Agreement, (such as the indemnity agreement set forth herein), which by reasonable implication contemplate continued performance or compliance beyond the termination of this Original Agreement, shall survive the expiration or earlier termination hereof and shall continue to be fully enforceable as provided herein.

2. Except as modified or revised by this Fifth Amendment, all terms, conditions, covenants and provisions of the Original Agreement shall remain in full force and effect as if fully set forth herein.

3. This Fifth Amendment, which is expressly subject to, and shall not be or become effective or binding on the City until approved by the City Council, and fully executed by all signatories of the City and County of Denver, may be executed in two or more counterparts, each of which will be deemed an original signature page to this Agreement and the Parties consent to the use of electronic signatures in the manner approved by the City.

**[SIGNATURE PAGES FOLLOW]**

**Contract Control Number:** PLANE-AC49004-05

**Contractor Name:** The Airport Lounges, LLC

By: 

Name: David S. Mosteller  
(please print)

Title: Member  
(please print)

**ATTEST: [if required]**

By: N/A

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)



**Contract Control Number:** PLANE-AC49004-05

**Contractor Name:** The Airport Lounges, 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:

REGISTERED AND COUNTERSIGNED:

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

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_

