

1 BY AUTHORITY

2 ORDINANCE NO. _____
3 SERIES OF 2011

COUNCIL BILL NO. _____

COMMITTEE OF REFERENCE:

4 BUSINESS, WORKFORCE & SUSTAINABILITY

5 A BILL

6 For an ordinance approving a proposed Supplemental Agreement between the City and
7 County of Denver and McDonald's Corporation, concerning renovation and upgrade for
8 the shared commons area for the food courts at Denver International Airport.

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

11 **Section 1.** The proposed Supplemental Agreement between the City and County of
12 Denver and McDonald's Corporation, (Concourse A) in the words and figures contained and set
13 forth in that form of the Supplemental Agreement filed in the office of the Clerk and Recorder, Ex-
14 Officio Clerk of the City and County of Denver, on the 7th day of April, 2011, City Clerk's Filing
15 No. 93-273-E is hereby approved.

16
17 COMMITTEE APPROVAL DATE: April 1, 2011

18 MAYOR-COUNCIL DATE: April 5, 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, ~~III~~ DATE: April 7, 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 R. Fine, City Attorney

34 BY: _____, _____ City Attorney

35 DATE: April 7, 2011

SUPPLEMENTAL AGREEMENT

THIS SUPPLEMENTAL AGREEMENT is made and entered into this _____ day of _____, _____, ("**Effective Date**") by and among the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, for and on behalf of its Department of Aviation (the "**City**"), Party of the First Part and **MCDONALD'S CORPORATION**, a Delaware corporation, authorized to do business in the State of Colorado ("**Concessionaire**") d/b/a *McDonald's*, Party of the Second Part.

RECITALS

A. In 1993, to establish and provide for the necessary and proper operation of several food courts to be located within the terminal complex at Denver International Airport Concessions International/Panda Express J.V., McDonald's Corporation and Rosmik, Inc. (together, the "**Anchor Concessionaires**") entered into individual food court concession agreements with the City. Pursuant to their responsibilities under their individual food court concession agreements, at their own cost and expense (recovering a pro rata share of the original costs from each other food court tenant (collectively, the "**Non-Anchor Concessionaires**"), the Anchor Concessionaires installed the finishes, fixtures, furnishings and furniture ("**Commons Area Capital Improvements**") in the food courts' commons areas described in each concession agreement (collectively, the "**Commons Areas**").

B. Anchor Concessionaires retain title to those Commons Area Capital Improvements that are not affixed to the realty until expiration or earlier termination of their individual food court concession agreements, after which title shall automatically vest in the City without any further consideration. For seventeen years, the Anchor Concessionaires (with the Non-Anchor Concessionaires contributing their pro rata share of the Commons Areas Expenses) have operated, managed and maintained the Commons Areas as needed.

C. Recently, certain food court tenants were required by their individual food court concession agreements to renovate their individual concession spaces. Because of this requirement, the City broached the subject with the food court tenants of when and by whom the Commons Areas should be remodeled and renovated. After several months of discussion, the City and the food court tenants recognize that after seventeen years of maintenance, repair, replacement and refurbishing, the Commons Areas are sorely in need of a face-lift, the nature of which can only be accomplished by renovating or remodeling the Commons Areas. The food court tenants agree that such a face-lift may improve the potential for increased revenue generation among all food court tenants. As importantly, because their individual food court concession agreements are silent on this subject, the individual food court tenants and the City agree that it is in their best interests to cooperate and the City undertake the much needed remodeling and renovation of the Commons Areas, thereby avoiding the cost and expense of having a third-party tribunal decide the issue of when and by whom the Commons Areas should be renovated. Further, the City plans to address this issue with the individual food court tenants whenever their individual food court concession agreements are next amended.

D. Accordingly, the City has offered to remodel and renovate the Commons Areas and the food court tenants agreed to individually supplement their individual food court concession agreements to accomplish this purpose.

93-273-E

NOW THEREFORE, for consideration of the premises and for other good and valuable consideration, the sufficiency of which hereby is acknowledged, Concessionaire and the City (the "Parties") agree as follows:

AGREEMENT

1. The Parties hereto entered into a concession agreement dated April 20, 1993, as amended (the "**Original Agreement**"), for the operation of a food court concession at Denver International Airport.
2. Concessionaire acknowledges that the City reserved the right of entry in and to the Commons Area for any purpose necessary under the Original Agreement, and therefore, the City may enter, remodel and renovate the Commons Area ("**Remodel Work**") at the City's own cost and expense and at the City's sole and absolute discretion, including, but not limited to, the timetable for and the demolition, removal and destruction of the Commons Area Capital Improvements affixed to the realty, and the construction and installation of new commons area capital improvements ("**New Commons Area Capital Improvements**") affixed to the realty, as well as the design, cost, quality, aesthetics, layout and seating in numbers and in a manner the City deems appropriate for all food court tenants.
3. Concessionaire agrees that such entry by the City for this purpose will not in any manner affecting Concessionaire's obligations under the Original Agreement, except as provided in paragraph 8 below. No such entry by or on behalf of the City upon the Commons Area subject to the Original Agreement shall constitute or cause a termination of the Original Agreement, nor shall such entry be deemed to constitute an interference with the use thereof by Concessionaire.
4. Concessionaire acknowledges that in meetings open to all food court tenants, the City has shared design plans and specifications of the proposed renovations of the Commons Area and received their input and comments prior to undertaking such renovations. The plans included appropriate detail relating to the elements of design and decorations, seating layout and all construction and trade fixtures, including furniture, fixtures and equipment, along with a statement of the time required to complete such renovations. Concessionaire agrees that it shall have no right to reject any designs for renovation and that the City's decisions concerning the Commons Area are final and its discretion is absolute.
5. Concessionaire agrees and hereby gives the City permission to exercise its discretion to remove and/or demolish any Commons Area Capital Improvements belonging to Concessionaire without being liable for damages therefor and title shall pass to the City upon such removal. Such Commons Area Capital Improvements are generally described on but not limited to **Attachment 1**, which is incorporated herein by this reference.
6. Concessionaire recognizes that as it may be necessary for the City to remodel and renovate the Commons Area, such remodeling and renovation may inconvenience Concessionaire in its operations at the airport. Nevertheless, Concessionaire agrees that no liability shall attach to the City, its officers, agents, employees, contractors, subcontractors or representatives by way of such inconveniences, and Concessionaire hereby expressly waives any right to claim damages or other consideration from the City including but not limited to loss of profits as a result of any interruption to Concessionaire's business during the Remodel Work.

CONCOURSE A

7. Concessionaire acknowledges that title to any New Commons Area Capital Improvements shall remain in the City.

8. City has informed Concessionaire that the Remodel Work will be performed in phases. Therefore, portions of the Commons Areas will still be accessible to visitors of the airport. During the Remodel Work, Concessionaire's obligation to clean, maintain, stock and insure the Commons Areas, as specified in Section 5, 6, and 8 of the Original Agreement, will be limited to only those portions of the Commons Areas accessible to visitors of the airport. Otherwise, Concessionaire agrees that it shall continue to perform its obligations under the Original Agreement including, but not limited to, the obligations concerning the operation, management, repair and maintenance of the Commons Areas, subject to and set forth in Sections 5, 6 and 8 thereof. Concessionaire agrees that it shall perform its obligations in the same manner as Concessionaire would have performed had Concessionaire itself remodeled the Commons Areas and installed and retained title to the New Commons Area Capital Improvements. Nothing herein contained shall be deemed to impose upon the City any obligation, responsibility, or liability whatsoever, for any care, maintenance, or repair of the Commons Areas, except as otherwise expressly provided for in the Original Agreement and this Supplemental Agreement.

9. If any of the New Commons Area Capital Improvements have a warranty, City will provide Concessionaire with a copy of the warrants upon completion of the Remodel Work. If a situation warrants the enforcement of a warranty, upon request by Concessionaire, City agrees to enforce such warranty.

10. City covenants and warrants that the general contractor who will perform the Remodel Work will warrant the Remodel Work for at least one year after the Remodel Work is completed. If a situation warrants the enforcement of the general contractor's warranty, upon request by Concessionaire, City agrees to enforce such warranty.

11. The Parties each warrant and represent to each other that this Supplemental Agreement constitutes their legal, valid and binding obligation and that the provisions herein contain the entire agreement between the Parties as to the subject matter of this Supplemental Agreement.

12. This Supplemental Agreement is expressly subject to, and shall not be or become effective or binding on the City until approved by City Council, if required by law, and fully executed by all signatories of the City and County of Denver.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Supplemental Agreement as of the day and year first above written.

CITY AND COUNTY OF DENVER

ATTEST:

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

By _____
Mayor

RECOMMENDED AND APPROVED:

APPROVED AS TO FORM:

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

By  _____
Manager of Aviation

REGISTERED AND COUNTERSIGNED:

By _____
Assistant City Attorney

By: _____
Manager of Finance

Contract Control No. AC38004-5

By _____
Auditor

ATTEST:

By:  _____

Title: Counsel

"CITY"
Party of the First Part

MCDONALD'S CORPORATION 
By: _____

Title: Senior Counsel

"CONCESSIONAIRE"
Party of the Second Part

CONCOURSE A

ATTACHMENT 1: SAMPLE FOOD COURT COMMONS AREA

CAPITAL IMPROVEMENTS INVENTORY

Concourse A

- 12 permanently affixed tables
- 23 freestanding tables
- 29 permanently affixed stool seats
- 58 lineal feet of booth seating
- 92 freestanding chairs
- 6 trash cans

Concourse B

- 19 permanently affixed tables
- 31 freestanding tables
- 24 lineal feet of booth seating
- 134 freestanding chairs
- 7 trash cans

Concourse C

- 12 permanently affixed tables
- 31 freestanding tables
- 52 lineal feet of booth seating
- 101 freestanding chairs
- 6 trash cans

