

**LEASE AND CONCESSION AGREEMENT FOR ROMANCING  
THE BEAN TO OPERATE A CONCESSION AT THE  
HISTORIC DENVER AND RIO GRANDE TRAIN DEPOT**

This Lease and Concession Agreement (the "Agreement"), entered into on the      day of October 2017, by and between the City of Littleton, a municipal corporation of the State of Colorado, hereinafter called the "City", and Terry McElhaney and Jeannie Pershin of Romancing the Bean, hereinafter called "Concessionaire", witnessed:

**WHEREAS**, the City is owner of a historic Denver and Rio Grande Train Depot, located at 5790 South Prince Street; and

**WHEREAS**, the building is being used as a station for a light rail commuter line; and

**WHEREAS**, the Concessionaire is desirous in continuing leasing a portion of said building to operate a concession on such leased premises;

**NOW THEREFORE**, in consideration of the promises, covenants, terms and conditions herein contained, the parties mutually agree:

1. The premises: 5790 South Prince Street, Littleton, Colorado 80120 is a City of Littleton historic landmark.

Term of Agreement. The term of this Agreement shall be for a period of three (3) years, commencing on November 1, 2017 and terminating on October 31, 2020, unless sooner terminated as hereinafter provided. Concessionaire shall have the exclusive right to renew for two (2) successive one (1) year terms. The Concessionaire shall give written notice to the city within sixty days of its intent to renew this Lease and Concession Agreement. In the event the Concessionaire fails to give such written notice, the Agreement shall be deemed terminated upon its expiration date.

2. Rental. Concessionaire shall pay as rental feet for 400 ft. of space:

(a) The basic monthly rental of \$400.00.

3. Lease payments shall be paid at the office of the City's Director of Finance in the following manner:

(a) All checks shall be made payable to the City of Littleton and any overdue rentals shall bear interest at the rate of one percent (1%) per month.

(b) Failure to pay the rental when due shall constitute a breach of the Agreement and shall be grounds for termination of the Agreement by the City.

4. Performance Security. Concessionaire has deposited with the Director of Finance during previous rental periods an amount equal to two months' basic rental as security for the full and faithful performance of this Agreement by Concessionaire. This is held without interest through the term of the lease.

(a) These funds may be used by the City for the purpose of remedying any default in the performance of any of the terms of this Agreement.

5. Scope of Concession.

(a) Concessionaire shall provide food services and dry goods to the general public. Sales may include, but are not limited to, coffee, tea, soft drinks, pastries, candies, shaved ice, light lunches, sandwiches, popcorn, peanuts, ice cream products and similar items. The concessionaire operates as a food cart under the regulations of Tri-County Health and the State of Colorado.

(b) In accordance with Federal and Colorado civil rights laws and regulations Concessionaire, its officers and employees are prohibited from discriminated based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, and age. Any customer of Concessionaire who believes that this provision has been violated by Concessionaire is entitled to file a complaint with the City's Director of Public Works.

(c) At no time shall Concessionaire sell or give away any alcoholic beverages, or allow any alcoholic beverages to be consumed on the premises.

(d) Concessionaire shall not give permission for any person to live or sleep on the premises, nor shall they permit disorderly persons to remain upon or loiter within premises.

(e) Concessionaire shall not use or permit the premises to be used for any other purpose, or for any unlawful, immoral or indecent activity. Concessionaire shall confine his activities to the area rented by him under the terms of this Agreement.

6. Alteration, Repairs or Improvements. Requests to make any alterations, repairs or improvements shall be in writing. Concessionaire shall not make any alterations, repairs, or improvements to the concession area without obtaining the prior written consent of the

Public Works Director and Community Development Department staff responsible for historic preservation.

(a) Any such permitted alterations, repairs or improvements shall be made at the expense of the Concessionaire and shall become the property of the City.

(b) Concessionaire shall not post any signs attached to the building without obtaining the prior written consent of the Public Works Director.

7. Maintenance of Concession Area. Concessionaire shall be responsible for the reasonable and proper care of the Depot building and surrounding area (within ten (10) feet of the building proper).

(a) Concessionaire shall repair, or cause to be repaired, any damages to said property caused by its employees, agents, guests or patrons after approval of the repair in consultation with the Public Works Director and the Community Development Department staff responsible for historic preservation.

(b) Concessionaire shall keep and maintain the concession areas in a clean and sanitary condition and shall comply with the rules and regulations of the Tri-County Health Department. Concessionaire shall provide adequate garbage and refuse containers.

(c) The City of Littleton Building Maintenance Division will be responsible for preventive maintenance and normal maintenance to the building as necessary:

- Repair, seal and paint the historic signage related to the structure
- Maintain the H.V.A.C. system
- Repair and replace electrical service to the building
- Replace broken windows and maintain doors and security with locks and distribute keys

8. Utilities will be provided by either the City or the Regional Transportation District. The City shall provide all utilities without charge to Concessionaire, for the sole purpose of operating said concession.

9. Taxes and Other Charges. Concessionaire shall contract for and pay for all income taxes, employment taxes or sales taxes, or other charges incurred or assessed against the operation of the concession herein granted.

10. Compliance with Laws. Concessionaire shall observe and comply with all laws, statutes, ordinances, rules and regulations of the United States, the State of Colorado, the County of Arapahoe, the City of Littleton, and the Regional Transportation District, or any department or agency of the above.
11. Equipment. Concessionaire shall furnish and install at his own expense any equipment, materials, furniture, supplies, etc., required by him for the proper operation of the concession. Concessionaire's equipment shall be placed and installed only upon the written approval of the building maintenance supervisor in the Public Works Department.
12. Hours of Operation. Concessionaire may operate said concession from 6:00 a.m. and 6:00 p.m., seven days a week. The Concessionaire may host a small number of private events throughout the year. The Concessionaire may seek to alter hours upon written approval of the Director of Public Works. The city expects the Concessionaire to operate an average of 45 hours per week on a consistent scheduled basis.
13. Destruction of Premises. If, during the term of the Agreement, the subject premises are destroyed or damaged by acts of God, war, or other catastrophe, so that the same is unfit for occupancy or use, the rentals shall abate until such time that said premises shall have been duly repaired and restored by the City; whereupon the Lessee at his option may terminate this lease or continue there under pursuant to the terms and conditions of this Agreement. A prorated portion of any rental prepaid, prior to such destruction or damage as is contemplated by this paragraph, shall be refunded for the period Concessionaire was not allowed the use of the premises.
14. Subletting and Assignments. Concessionaire shall not sublet the whole or any part of the premises, nor assign, hypothecate, or mortgage the lease and concession agreement, or any or all of its rights hereunder without the prior written consent of the City Manager or his designee. If the Concessionaire seeks to transfer or sell ownership of the business to another party, the Concessionaire shall make this notice to the City, through the Public Works Director, no less than 60 days prior to the proposed change in ownership. The city at its sole discretion may require additional vetting of financial information, onsite meetings or other due diligence prior to allowing or rejecting the transfer.
15. Indemnity. Concessionaire shall conduct his activities upon the premises so as not to endanger any person lawfully thereon; and shall indemnify, save and hold harmless the City and all of its officers, agents and employees from any and all claims for losses, injuries, damages, and liabilities to persons or property occasioned wholly or in part by the acts or omissions of Concessionaire, his agents, officers, employees, guests, patrons, or any person

or persons admitted to said premises while said premises are used by or under the control of the Concessionaire.

16. Insurance. Concessionaire shall purchase and maintain the following insurance during the term of the Agreement:

- (a) Public liability insurance in an amount not less \$250,000.00 for injury to one person in one accident and \$1,000,000.00 for injury to more than one person in one accident.
- (b) Property damage insurance in an amount not less than \$1,000,000.00 as evidenced by a Certificate of Insurance.
- (c) Fire insurance in an amount equal to the replacement value of the concession building and the improvements thereon, as approved by the City's Division of Risk Management.
- (d) All insurance required herein shall be secured from an insurance company or companies, which shall have been approved by the City's Division of Risk Management, and shall name the City as an additional assured thereon as evidenced by a Certificate of Insurance.
- (e) All insurance premiums shall be the obligation of, and shall be paid by, the Concessionaire. All insurance policies and evidence of the initial payments made thereunder shall be delivered to the Public Works Director at the signing of this Agreement, and shall be held by the City for the term of this Agreement.
- (f) During the term of this Agreement, Concessionaire shall also deposit with the City all evidence of additional premium payments made under said policies. Each insurance policy shall contain a clause whereby the insurance company shall agree to give written notice to the Public Works Director and the Division of Risk Management 30 days prior to any cancellation, modification, amendment, alteration or reduction of coverage amount of said policy.

17. Breach of Contract. In the event of any breach of any of the terms or provisions of this Agreement, the City shall have, in addition to any other recourse, the right to terminate this Agreement, to enter and obtain possession of the entire premises, to remove and exclude any and all persons from the premises, and to remove and exclude all property of Concessionaire therefrom, all without service of notice or resort to legal process and without any legal liability on its part.

18. Inspection by the City. The City and a representative of the city's Property and Liability insurance carrier shall have the right to make inspections at any reasonable time to insure

compliance with the agreement and compliance with the insurance carriers' loss prevention standard.

19. Surrender of Premises upon Termination. Upon the termination of this Agreement, Concessionaire shall peaceably surrender and deliver up possession to the City of the demised premises, including all improvements or additions on them, in good order and condition, reasonable wear and tear expected. At the termination of this lease, for any reason, the Concessionaire would have the right to remove all fixtures, furniture, signs, equipment and other property pertaining to the direct operations of the concession which are not permanently (i.e. using bolts, screws or otherwise physically connected) attached to the building structure (i.e. including but not limited to sinks, cabinetry, table, etc.).

Executed this      day of October, 2017.

CITY OF LITTLETON

CONCESSIONAIRE

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Bruce O. Beckman, Mayor

APPROVED AS TO FORM

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Steve Kemp, City Attorney