

1 BY AUTHORITY

2 ORDINANCE NO. _____
3 SERIES OF 2010

COUNCIL BILL NO. _____

COMMITTEE OF REFERENCE:

4 BUSINESS, WORKFORCE & SUSTAINABILITY

5 A BILL

6 For an ordinance approving a proposed Amended and Restated Lease Agreement
7 between the City and County of Denver and Convenience Retailers LLC concerning a
8 gas station, convenience store and auto repair shop at Denver International Airport.
9

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

11 **Section 1.** The proposed Amended and Restated Lease Agreement between the City and
12 County of Denver and Convenience Retailers LLC in the words and figures contained and set forth
13 in that form of the Agreement filed in the office of the Clerk and Recorder, Ex-Officio Clerk of the
14 City and County of Denver, on the 2nd day of December, 2010, City Clerk's Filing
15 No. 95-796-C is hereby approved.

16
17 COMMITTEE APPROVAL DATE: November 26, 2010

18 MAYOR-COUNCIL DATE: November 30, 2010

19 PASSED BY THE COUNCIL _____ 2010

20 _____ - PRESIDENT

21 APPROVED: _____ - MAYOR _____ 2010

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 _____ 2010 _____ 2010

27 PREPARED BY: Debra Overn, DATE: December 2, 2010

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: December 2, 2010

AMENDED AND RESTATED LEASE AGREEMENT

THIS AMENDED AND RESTATED LEASE AGREEMENT (the "Restated Lease"), is made and entered into this _____ day of _____, 2010, by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado ("**City**"), and **CONVENIENCE RETAILERS LLC**, a Delaware limited liability company authorized to do business in Colorado ("**Tenant**").

RECITALS

WHEREAS, the City owns and operates Denver International Airport ("DIA" or "Airport") through its Department of Aviation ("Aviation"); and

WHEREAS, the City and Conoco, Inc., a Delaware corporation, the predecessor to ConocoPhillips Company, a Delaware corporation ("Conoco"), entered into that certain Lease Agreement, dated December 6, 1995, which was amended by a First Amendment to Agreement dated May 13, 1997, and a Second Amendment to Lease Agreement dated June 24, 2003 (collectively the "Original Lease"), leasing land on DIA property near Peña Boulevard and Gun Club Road to Conoco for the purposes of constructing and operating a public gas station, auto repair service, and convenience store; and

WHEREAS, the Manager of Aviation consented to a transfer of the rights and interest of Conoco in the Original Lease to Tenant on January 29, 2009, and all rights in the Original Lease were assigned to Tenant on or about February 1, 2009; and

WHEREAS, many changes affecting the terms of the Original Lease have occurred over the intervening years, and in addition the Parties wish to add terms which do not appear in the Original Lease, so the Parties wish to amend and restate the Original Lease to better reflect the current and expected conditions;

NOW THEREFORE, for and in consideration of the promises made below and other good and valuable consideration, the parties agree as follows:

SECTION 1 GENERAL

1.01 CONSIDERATION. City enters into this Restated Lease for and in consideration of the payment by Tenant as herein provided and of the performance and observance by Tenant of the covenants and agreements herein. Effective as of the Rent Commencement Date, this Lease amends, restates and supersedes the Original Lease in its entirety, and, accordingly, all amounts payable and paid under the Original Lease shall be prorated through the date immediately preceding the Rent Commencement Date.

The City and Tenant acknowledge and agree the City previously executed a Consent to Sublease dated August 21, 2002 (the "Sublease Consent"), wherein the City consented to a Sublease Agreement between Conoco, as sublessor, and DIA Auto Services, LLC, a Colorado limited liability company, as sublessee, dated October 2, 2001, which Sublease Agreement was amended by Amendment I to Sublease, dated October 2, 2001, Amendment II to Sublease,

dated October 18, 2006, and Amendment III to Sublease, dated August 10, 2007 (collectively, the "Sublease"). The Sublease Consent, and the City's approval of the Sublease, shall remain in effect, and shall also apply in connection with this Restated Lease.

1.02 INCORPORATION OF ATTACHED EXHIBITS AND ADDENDA. The Exhibits and Addenda attached to this Restated Lease shall be deemed incorporated in this Restated Lease by reference.

SECTION 2 DEFINITIONS

2.01 AIRPORT. "Airport" shall mean Denver International Airport.

2.02 AUDITOR. "Auditor" shall mean the City's Auditor and her authorized representative.

2.03 DIA DESIGN STANDARDS. "DIA Design Standards" shall mean the design standards and criteria for Denver International Airport, and as hereafter amended.

2.04 DIA ENVIRONMENTAL GUIDELINES. "DIA Environmental Guidelines" shall mean Aviation Rules and Regulations Part 180 – Environmental Management, and the environmental compliance guidelines adopted by the Department of Aviation and that are available at www.flydenver.com/environmental or upon request at the DIA Environmental Services Office, which office may charge a reasonable fee for copies.

2.05 DIA TENANT DEVELOPMENT GUIDELINES. "DIA Tenant Development Guidelines" shall mean the tenant development guidelines and criteria established at DIA for tenants and concessionaires for design, construction, installation, signage, and related matters, as currently in force or hereafter promulgated or amended.

2.06 LAND. "Land" shall mean the parcels of real property legally described on **Exhibit A** and **A-1**. Exhibit A is the "Station Lease Area (3.8638 AC.)" and Exhibit A-1 is the "Signs Lease Areas (combined 169.9 S.F.)". The City expressly reserves from the Land all oil, gas, and other mineral rights, and all water rights.

2.07 LEASE IMPROVEMENTS. "Lease Improvements" shall mean all buildings, facilities, improvements, structures and landscaping to be constructed on the Lease Premises for the operation of the uses authorized by this Restated Lease which conform to plans and specifications approved in writing by the Manager or her authorized representative pursuant to the terms of this Restated Lease.

2.08 LEASE PREMISES. "Lease Premises" shall mean the Land together with the Lease Improvements.

2.09 MANAGER. "Manager" shall mean the City's Manager of Aviation.

2.10 MONUMENT SIGNS. "Monument Signs" shall mean those signs installed and maintained by Tenant on the Land shown in Exhibit A-1.

2.11 PAST DUE INTEREST RATE. "Past Due Interest Rate" shall mean interest accruing at eighteen percent (18%) per annum commencing on the fifth (5th) calendar day after the date such amount is due and owing until paid to City.

2.12 RENT COMMENCEMENT DATE. "Rent Commencement Date" shall mean May 1, 2010.

2.13 TENANT'S EQUIPMENT. "Tenant's Equipment" shall mean all equipment, apparatus, machinery, signs, furnishings, trade fixtures, fuel storage tanks, fuel pumps, and fuel lines, and personal property installed by Tenant and used in the operation of the business of Tenant (as distinguished from the use and operation of the Lease Premises) which is listed on an annual inventory list submitted by Tenant and approved by the City and maintained in the DIA Properties Management Office

2.14 TERMINAL. "Terminal" shall mean the Jeppesen Terminal Building located at the Airport.

SECTION 3 LEASE OF PREMISES

3.01 LEASE RIGHTS GRANTED. City grants to Tenant the right to construct upon, occupy and use the Lease Premises consistent with and subject to all of the terms and provisions of this Restated Lease. The rights and privileges granted herein are subject to prior easements, rights of way, and other matters affecting title to the Land. The Land is expressly subject to an avigation easement hereby reserved to the City and the Airport for the flight of aircraft over the Lease Premises.

3.02 USE OF LEASE PREMISES. Tenant shall have the right to construct upon and use the Lease Premises solely for any or all of the following purposes:

- i. operation of a public gas station for the sale of all grades of unleaded gasoline and diesel fuel for motor vehicles;
- ii. the sale of propane and/or such other alternative fuels as approved by the Manager;
- iii. the performance of lubrication, automotive repairs, and automotive washing services;
- iv. the sale of automotive accessories, and the operation of a convenience store with food service;
- v. sale of tobacco products;
- vi. sale of alcoholic beverages;
- vii. placement of Monument Signs, except that such Monument Signs may be located solely on the portion of the Land described and depicted in Exhibit A-1.

Any leasing or renting of vehicles to the public must be incidental to providing automotive services on the Lease Premises. Any storage charges to the public for vehicle storage must be incidental to providing automotive services on the Lease Premises.

The Lease Premises shall be utilized for no other purposes, unless otherwise authorized in writing by the Manager.

3.03 RIGHTS NOT EXCLUSIVE. Subject to Sections 3.09 and 11.23, City reserves the right to grant to other tenants the right to operate a gas station, auto repair service, and convenience store and the right to provide the same or similar services as performed on the Lease Premises in other locations in the Airport. Tenant expressly understands and agrees that its right to operate its station, repair service, and convenience store and provide its services is not exclusive.

3.04 CITY RESERVATION. City reserves for itself the right to install utilities upon areas of the Lease Premises as necessary or convenient for the operation of the Airport, and the City further shall have the right to grant easements in areas of the Land for the installation of utilities, provided that the use of such areas or the grant of such easements does not unreasonably interfere with the Tenant's operations and use of the Lease Premises. The Tenant shall not be entitled to any compensation or abatement of rent if the use of such areas or the grant of such easements does not interfere substantially with the Tenant's operations or use of the Lease Premises.

3.05 MEANS OF ACCESS. Tenant, its agents and employees, have a non-exclusive right of ingress to and egress from the Lease Premises by a means of access located outside the Land as specified by City. In any non-public areas, access shall be restricted under the Airport's security requirements as described in the section below entitled "Security". The City may, at any time, temporarily or permanently, close or consent to or request the closing of any roadway or other right-of-way for such access, ingress, and egress, and any other area at the Airport or in its environs presently or hereafter used as such, so long as there is reasonable access, ingress, and egress available to the Lease Premises. Tenant hereby releases and discharges the City of and from any and all claims, demands, or causes of action which the Tenant may at any time have against the City arising or alleged to arise out of the closing of any roadway or other right-of-way for such access, ingress, and egress or other area at the Airport or in its environs used as such, so long as reasonable access, ingress, and egress is available after any such modification.

Nothing in this Restated Lease shall be construed to prevent the City from charging the operators of vehicles carrying passengers and property a fee for the privilege of entering upon the Airport or using the roadways in or on the Airport, or soliciting passengers upon the Airport, or otherwise operating on the Airport; and City reserves the right to make such charges provided that they do not discriminate unreasonably against the operators of vehicles used for carrying officers, employees, passengers or property of Tenant.

3.06 ACCESS ROADWAY IMPROVEMENTS. Tenant shall at its own expense be responsible for maintaining such access road improvements in a good and safe condition, including the removal of snow and ice therefrom. With respect to any access road improvements from the Lease Premises to Gun Club Road, the parties specifically acknowledge and agree that City may require Tenant at any time and at Tenant's sole expense to close such

roadway or require the relocation of such roadway. City, however, agrees that it shall require third party owners or lessors of adjacent property utilizing such roadway to pay its pro rata share of any maintenance or relocation expenses based on the specific benefits from such Gun Club Road received by applicable third party owners or lessors. Any such access improvements shall be constructed according to conditions, plans, and specifications approved by the Manager.

3.07 RIGHT OF INSPECTION. City retains the full right of entry upon the Land and to the Lease Premises for any purpose necessary, incidental to or in connection with its obligations hereunder, or in the exercise of its governmental functions, or for the purpose of making any inspection or conducting any testing it reasonably deems necessary. No such entry by or on behalf of the City upon the Lease Premises shall constitute or cause a termination of the Restated Lease nor shall such entry be deemed to constitute an interference with the possession thereof by the Tenant.

3.08 PARKING REVENUE CONTROL SYSTEM. Tenant covenants and agrees to take all reasonable and lawful steps necessary to insure that operations on the Lease Premises do not result in the circumvention or avoidance of the Airport's Parking Revenue Control System.

SECTION 4 TERM

4.01 TERM. "Term" shall mean the period commencing on December 6, 1995, and expiring December 31, 2022, unless sooner cancelled or terminated as hereinafter provided.

4.02 SURRENDER OF LEASE PREMISES. Upon the expiration or earlier termination of this Restated Lease or on the date specified in any demand for possession by City after any Default by Tenant, Tenant covenants and agrees that, at the City's sole option, Tenant shall either (i) surrender possession of the Lease Premises to City in good and safe condition or (ii) at Tenant's expense, Tenant shall remove the entire Lease Improvements, Tenant's Equipment, and Additional Site Improvements or such portion thereof as is specified by the Manager, within sixty (60) days of such expiration or termination or within such additional time as is granted by the Manager. If all or any portion of the Lease Improvements or Additional Site Improvements are removed as requested by City, Tenant shall at its expense restore the Land or property to conditions existing prior to the installation of such improvements or applicable portions thereof, and upon failure to do so the City may cause such removal and restoration to be done at Tenant's expense.

4.03 HOLDING OVER. If Tenant holds over after termination of this Restated Lease, thereafter Tenant's occupancy shall be at sufferance at a monthly rental, payable in advance, equal to one hundred fifty percent (150%) of the monthly compensation provided in Sections 5.01(i) and 5.01(iii) herein, but otherwise Tenant shall be bound by all terms and conditions as herein provided in the absence of a written agreement to the contrary. Nothing herein shall be construed to give Tenant the right to hold over at any time, and City may exercise any and all remedies at law or in equity to recover possession of the Lease Premises, as well as any damages incurred by City.

**SECTION 5
COMPENSATION**

5.01 COMPENSATION. Tenant covenants and agrees, without offset, deduction, or abatement, except as set forth in this Restated Lease, to pay the City as compensation for the lease and exclusive use of the Lease Premises and rights and privileges granted by the City the following:

- (i) ground rent in the amount of \$11,856.10 per month, to be paid in twelve (12) equal monthly amounts beginning on the Rent Commencement Date ("Monthly Ground Rent"); plus
- (ii) the greater of (A) a minimum monthly guarantee of \$31,000 per month (the "Monthly Guarantee"), or (B) a sum equal to (i) ten percent (10%) of the monthly Gross Revenues, as herein defined, received by the Tenant for the calendar month in question from the sale by Tenant to the general public from the Lease Premises of all food, beverages, services, merchandise, and products, other than those set forth in the following subsection (ii), and other than gasoline and fuel, plus (ii) fifteen percent (15%) of the monthly Gross Revenues derived by Tenant from the sale by Tenant to the general public from the Lease Premises of all alcohol, and fast food from any Quizno's subway sandwich shop operated by Tenant on the Lease Premises (but only specifically a Quizno's subway sandwich shop and not any other type of fast food or other food and/or beverage shop) ("Percentage Compensation Fee"); provided, however, notwithstanding the foregoing, no amounts relating to gasoline shall be payable under this subsection (ii), and gasoline and fuel sales shall not be considered in determining amounts owing under this subsection (ii). In January of each calendar year during the Term, commencing January 1, 2012, the annual Monthly Guarantee shall be adjusted to be the higher amount of either (i) 85% of the Percentage Compensation Fee paid to the Airport for the prior calendar year under this subsection (ii), or (ii) the prior calendar year's Monthly Guarantee; plus
- (iii) a utility fee ("Utility Fee") of Seven Hundred Seventy-Four and 91/100 Dollars (\$774.91), to be paid on a monthly basis throughout the Lease Term, commencing on the Rent Commencement Date; plus
- (iv) a fee to be paid on a monthly basis for the sale of gasoline by Tenant from the Lease Premises ("Fuel Sales Fee"), which fee shall be determined based upon the thresholds set forth as follows for amounts received by Tenant for sales by Tenant from the Lease Premises over a twelve (12) month period commencing on the Rent Commencement Date:

<u>Annual Gas Sales by Gallons</u>	<u>Fee Due and Payable to the City</u>
0 - 3,000,000	3 cents per gallon on every gallon in this tier
3,000,001 - 3,500,000	3.5 cents per gallon on every gallon in this tier
3,500,001 - 4,500,000	4 cents per gallon on every gallon in this tier
4,500,001 and above	6 cents per gallon on every gallon in this tier

For example, the Fuel Sales Fee would equal \$267,499.87 for a particular year in the event annual gas sales were equal to 6,500,000 gallons in such year. The obligation to pay the Fuel Sales Fee from the sale of gas fuel shall commence upon meeting the above referenced threshold tiers throughout the applicable twelve (12) month period.

Subject to the terms and conditions of this Restated Lease, the obligation to pay the compensation provided herein shall commence upon the Rent Commencement Date and continue through the Term. Amounts payable for partial periods shall be prorated based on the number of days in the applicable period.

5.02 GROSS REVENUES. As used herein, the term "Gross Revenues" shall mean all of Tenant's cash and cash and cash equivalent (including credit card) receipts from Tenant's sales or services or Tenant's doing business from the Lease Premises, whether from sales or services rendered by Tenant, whether for cash or credit, and whether for retail or wholesale. It shall include all transactions, whether placed by telephone, in person or by mail, and regardless of place of actual payment. When properly recorded and accounted for, a reduction from Gross Revenues shall be allowed for bona fide returns, sales taxes, other taxes, governmental or quasi-governmental assessments, purchases by employees at the Lease Premises, the transfer or exchange of merchandise between the Lease Premises and any other store of Tenant or any affiliate of Tenant, receipts from sales or other disposition of fixtures, furnishings, equipment or supplies not constituting stock in trade for sale to the general public or the bulk sale or transfer of Tenant's inventory, fixtures or personal property, uncollected credit accounts, insurance proceeds, interest, and finance charges. There shall not be allowed from Gross Revenues any reduction for bad debts, loss from theft or any deduction except as outlined above.

5.03 PAYMENT OF COMPENSATION.

A. Monthly Ground Rent. Monthly Ground Rent shall be payable by Tenant to City in advance and without demand beginning the Rent Commencement Date and continuing on the first (1st) day of each month thereafter. The Monthly Ground Rent for any partial month during the Term of this Restated Lease shall be prorated on a per diem basis.

B. Monthly Guarantee. The Monthly Guarantee shall be payable by Tenant to City in advance and without demand beginning on the Rent Commencement Date, and continuing on the first (1st) day of each month thereafter. The Monthly Guarantee for any partial month during the Term of this Restated Lease shall be prorated on a per diem basis.

C. Percentage Compensation Fee. By the tenth (10th) day of each month following the month in which the Rent Commencement Date occurs, Tenant shall furnish to the Manager in a form acceptable to City a true and accurate verified statement signed by an officer of Tenant of its Gross Revenues with respect to the amounts payable pursuant to Section 5.01 above, including for alcohol and restaurant sales, and, if applicable, shall pay to City a sum of money which represents the positive difference, if any, between the Percentage Compensation Fee and the Monthly Guarantee for the previous month.

D. Utility Fee. The Utility Fee shall be payable by Tenant to City in advance and without demand beginning on the Rent Commencement Date, and continuing on the first (1st) day of each month thereafter through the Term of this Restated Lease.

E. Fuel Sales Fee. By the tenth (10th) day of each month following the Rent Commencement Date, Tenant shall furnish to the Manager in a form acceptable to City a true and accurate verified statement signed by an officer of Tenant of its total sales of gasoline and fuel by gallon for the preceding month and when required by this Restated Lease shall pay to City a sum of money based upon the schedule set forth in Section 5.01(iv) hereof.

5.04 TITLE TO CITY'S COMPENSATION. Immediately upon Tenant's receipt of monies from the sales of articles which it is authorized to sell under the terms of this Restated Lease, the percentages of said monies belonging to City shall immediately vest in and become the property of the City. Tenant shall be responsible as trustee for said monies until the same are delivered to City.

5.05 INTEREST ON PAST DUE AMOUNTS. Any payments not made to City when due shall accrue interest at the Past Due Interest Rate, as herein defined.

5.06 PLACE AND MANNER OF PAYMENTS. All sums payable to City hereunder shall be made without notice at the following:

Airport Revenue Fund
Denver International Airport
P. O. Box 492065
Denver, Colorado 80249-2065

or at such other place as the Manager or her authorized representative may hereafter designate by notice in writing to Tenant. All sums shall be made in legal tender of the United States. Any check given to the City shall be received by it subject to collection, and Tenant agrees to pay any charges, fees or costs incurred by the City for such collection, including reasonable attorney's fees.

AGREEMENT CONTINUES WITH SECTION 5.07 ON NEXT PAGE

5.07 BOOKS OF ACCOUNT AND AUDITING. Tenant shall keep or make available upon request true and complete records and accounts of all Gross Revenues and business transacted, including daily bank deposits. Not later than April 15 of each and every year during the Term, Tenant shall furnish to City a true and accurate statement of the total of all revenues and business transacted during the preceding calendar year (listing the authorized deductions or exclusions in computing the amount of such Gross Revenues and business transactions, and including a breakdown of Gross Revenues on a month-by-month basis). Such statement shall be prepared and certified to be true and correct by an independent certified public accountant who has audited the Gross Revenues in accordance with generally accepted accounting procedures for special reports, except that if Tenant is a participant in the Airport's daily revenue reporting program and complies with the conditions of the program as set forth above, such statement, starting with the statement due April 15, 2011, may be signed by an officer of the Tenant. Such statement shall be furnished for every calendar year in which business was transacted under this Restated Lease during the whole or any part of the year. The above-requirements for the annual statement may be modified by the Manager, in her sole discretion, if such modification is in the best interest of the City.

Tenant agrees to establish and maintain a system of bookkeeping satisfactory to the City's Auditor. Such system shall be kept in a manner as to allow each location of the Tenant's operations hereunder to be distinguished from all other locations or operations of Tenant. Tenant shall keep and preserve for at least three years, or until sooner audited by City, all sales slips, cash register tapes, sales books, bank books, or duplicate deposit slips, and all other evidence of Gross Revenues and business transacted for such period. The City's Auditor and Manager and their respective authorized representatives shall have the right at any time to inspect or audit all of the books of account, bank statements, documents, records, returns, papers, and files of Tenant relating to the Gross Revenues and business transacted.

Tenant, upon written request, shall make all such documents available for examination within the Denver metropolitan area; or shall pay in full, in advance, travel and related expenses of a City representative to travel to any location outside the Denver area for such examination. Following the travel, expenses shall be reconciled, and any difference between the advance payment and the actual expenses shall be paid to or refunded by the Tenant, as appropriate. Such documents shall be available to the City representative within fourteen (14) calendar days of the date of the written request. The parties agree that, after execution of this Restated Lease, any delay in furnishing such records to the City will cause damages to the City which the parties agree are liquidated in the amount of Three Hundred Fifty Dollars (\$350.00) per day for each day the records are unavailable beyond the date established by the City's notice.

If City determines after an audit for any year that the Gross Revenues and business transacted shown by Tenant's statement for such year was understated, Tenant shall pay the amount of the deficiency plus interest at the Past Due Interest Rate. If the Gross Revenues were understated by more than three percent (3%), Tenant shall pay to City the cost of the audit, in addition to the deficiency and interest. The City's right to perform such an audit shall expire three years after Tenant's statement for that year has been delivered to the City.

Tenant expressly agrees that the Manager, the Auditor of the City, or an authorized representative of the Auditor may inspect any documents, returns, data, or reports filed pursuant to Chapter 53 of the Revised Municipal Code by Tenant with the City's Manager of Revenue,

and any related reports, documents, data or other information generated by the City's Manager of Revenue or employees under the control of the Manager of Revenue in connection with any investigation or audit of Tenant by the City's Department of Revenue. Tenant authorizes and permits the inspection of such documents, data, returns, reports, and information by the Manager, Auditor, or an authorized representative of the Auditor, and, further, waives any claim of confidentiality that it may have in connection with such documents, returns, data, reports, and information.

5.08 REESTABLISHMENT OF RENTALS, FEES, AND CHARGES. The City, through its Manager, may from time to time at the Manager's sole discretion, and subject to the requirements of any outstanding bond ordinance pertaining to the Airport, reestablish the rentals, fees and charges provided for herein. City agrees that such reestablished schedule of rentals, fees and charges shall be reasonable in relation to the cost of providing, operating and maintaining property, services, and facilities of the airport system.

Any such changes to ground rent generally will be made annually. By December 31 of each year, the City shall send a "sample invoice" to Tenant showing proposed changes to ground rent for the next calendar year. Should the proposed rentals, fees, and charges result in an increase of more than 5% in the dollar amount of compensation paid by Tenant under Section 5.01 for the prior calendar year, then Tenant may promptly (but in no event later than 60 days after such sample invoice is sent) advise the Manager of its intention to cancel and terminate this Restated Lease. Upon such notice of intent to cancel and terminate, Tenant shall surrender the Lease Premises upon a date specified by the Manager, but in no event in less than 120 days. Should Tenant fail to give timely notice of cancellation and termination, then it shall be deemed to have accepted the new Monthly Ground Rent as promulgated (not to exceed 5% of the Monthly Ground Rent under Section 5.01 for the prior calendar year).

No failure by the City to reestablish the Monthly Ground Rent shall constitute a waiver of the City's right to reestablish the Monthly Ground Rent at any time thereafter.

SECTION 6 OPERATION AND USE OF LEASE PREMISES

6.01 OPERATIONS. Tenant agrees to conduct its business to accommodate the public using the Airport and to operate the convenience store, gas station, and service garage in the following manner:

A. Tenant shall operate its facilities in a first-class manner satisfactory to the Manager or her authorized representative consistent with a service and merchandising plan, which has the prior written approval of the Manager.

B. Tenant shall supply sufficient goods and products to fully stock its convenience store, gas station and service garage. All foodstuff must be new, fresh and of top quality. Tenant shall charge only fair and reasonable prices for its goods, products and services, subject to the following:

1. Without exception, prices shall not be greater than one hundred ten percent (110%) of "street prices" charged in non-airport service stations, garages and convenience stores offering similar products and services in the Denver metropolitan area, and shall be subject to the approval of the Manager or her authorized representative. Comparable service stations, garages, and convenience stores shall be those set forth in Tenant's List as approved by City and maintained in the City's Properties Management Office.
2. All product or service advertising shall conform to all applicable laws and regulations respecting truth-in-advertising. Tenant shall not in any manner misrepresent to its customers the quality or grade of products sold, the point of origin, or the size, weight or portion of food or beverage, or utilize false or deceptive merchandising terms or advertising.
3. Where an item has a pre-marked price by the manufacturer or distributor, Tenant shall not charge a price to the public higher than such pre-marked price without notice to and prior written approval of the Manager or her authorized representative.

C. Tenant shall at all times retain at the Lease Premises an experienced manager of similar, high quality service center and convenience facilities fully authorized to represent and act for it in the operation on the Lease Premises and to accept service of all notices provided for herein. At times when this manager is not present at the Airport, Tenant shall assign, or cause to be assigned, a qualified subordinate to be in charge of the Lease Premises, services and facilities and to be available at the Lease Premises to act for such manager.

D. During the required hours of operation, Tenant shall provide personnel in sufficient number and quality necessary to conveniently and efficiently serve the public. Such personnel shall be thoroughly qualified, familiar with the business, courteous, informative and helpful to the public. The attire of such personnel shall be of the highest character and in keeping with that worn by personnel in similar first-class businesses in the Denver metropolitan area. Personnel shall be attired in identifiable dress and at all times possess visible identification as to their name and employer.

E. Tenant shall allow duly authorized representatives of governmental entities access to the Lease Premises for inspection purposes. Tenant agrees to obtain at its own expense, and maintain at all times, all licenses and certificates necessary for its operations on the Lease Premises.

F. The Manager or her authorized representative shall have the right to make reasonable objections to the quality of merchandise or products sold, the character of the service rendered the public, and the appearance and condition of the Lease Premises. Tenant agrees to promptly discontinue or remedy any objectionable practice or condition within five (5) days after written notice by the Manager or her authorized representative.

6.02 MERCHANDISE PLAN. Tenant shall prepare a merchandise plan indicating items to be offered for sale and prices to be charged for each item. This merchandise plan shall be subject to approval by the Manager or her authorized representative. Tenant shall display and

sell merchandise only in accordance with the merchandise plan and the terms of this Restated Lease. Tenant may provide such additional items as the Manager or her authorized representative may authorize in writing. City, from time to time, and at its sole discretion, may require Tenant to offer for sale, at a fair profit, other items that City determines are necessary to serve the traveling public. If Tenant adds items to its merchandise plan, Tenant shall submit the new merchandise plan and prices to the Manager or her authorized representative for written approval. Tenant shall not offer for sale any merchandise or engage in any activity not specifically provided for under the terms of this Restated Lease, unless otherwise authorized in writing by the Manager or her authorized representative.

6.03 HOURS OF OPERATION. Tenant agrees to keep its facilities open for business to the public twenty-five (24) hours per day, seven (7) days per week, except for automotive service as hereafter provided, unless otherwise authorized beforehand in writing by the Manager or her authorized representative. In the event Tenant is operating automotive services on the Leased Premises, Tenant agrees to keep such automotive services open for business to the public for a minimum of ten (10) hours per day seven (7) days per week unless otherwise authorized beforehand as hereinabove provided.

6.04 CARE OF AREA. Tenant agrees that it will keep the Lease Premises in a neat, clean, safe, sanitary and orderly condition at all times, and further agrees that it will keep such area free at all times of all paper, rubbish, spills, and debris. Tenant, at its own expense, shall collect and deposit all trash and refuse at frequent intervals from the Lease Premises. Accumulation of boxes, cartons, barrels or other similar items shall not be permitted outside enclosed areas on the Lease Premises.

6.05 VENDING MACHINES. No amusement or vending machines or other machines operated by coins, tokens shall be installed or maintained in or upon the Lease Premises except with the written permission of the Manager or her authorized representative. This prohibition includes, but not by way of limitation, sales from vending machines of such items as cigarettes, candy, maps, coffee, soft drinks, newspapers, stamps and insurance policies; money orders and checks; and operation of mechanical or electronic game devices, electronic video games, and entertainment devices. Tenant may install pay phones and ATM machines on the Lease Premises.

6.06 COMPLIANCE WITH ALL LAWS AND REGULATIONS. Tenant agrees not to use or permit the Lease Premises to be used for any purpose prohibited by the laws of the United States or the State of Colorado or the ordinances or Charter of the City and County of Denver, or not authorized hereunder, and it further agrees that it will use the Lease Premises in accordance with all applicable federal, state and local laws and all general rules and regulations adopted by the City or the Manager for the management, operation and control of the Airport, either promulgated by the City on its own initiative or in compliance with regulations, requirements or actions of the Federal Aviation Administration or other authorized federal agency. Tenant further agrees to submit any report or reports or information which the City is required by law or regulation to obtain from Tenant or which the Manager may request relating to Tenant's operations.

6.07 COMPLIANCE WITH ENVIRONMENTAL REQUIREMENTS. Tenant is required to comply with all federal, state, and local environmental rules, regulations, and requirements.

This includes compliance with DIA Rule and Regulation 180. Tenant shall acquire all necessary federal, state, local and airport permits and comply with all permit requirements. Any hazardous materials not normally used in Tenant's operations hereunder are barred from the Lease Premises. Tenant shall identify to the City all hazardous materials to be used at the Lease Premises.

Tenant hereby specifically agrees to indemnify and hold City harmless from and against any and all claims, losses, liability, remedial action requirements, enforcement actions of any kind, or costs and expenses, including attorney fees, incurred in connection with or arising from the presence of any hazardous materials or release of any hazardous materials on, under or emanating from the Lease Premises relating to use or occupation of the Lease Premises, or any activity undertaken on or off the Lease Premises in connection with cleanup, handling, treatment, transport or disposal of any hazardous materials on or emanating from the Lease Premises relating to Tenant's use or occupation of the Lease Premises in violation of applicable federal, state and local environmental laws, rules and regulations.

6.08 SPILL/RELEASE RESPONSE AND CLEANUP.

A. In the event of a suspected or confirmed spill or release or threat of a spill or release of any substance or material relating to or arising out of the Tenant's use or occupancy of the Lease Premises, Tenant shall immediately notify the DIA Communications Center (303-342-4200). In the event any claim, demand, action, or notice is made against the City or the Tenant with regard to the Tenant's failure or alleged failure to comply with any legal requirement, Tenant shall provide the City with copies of any written claims, demands, notices or actions so made.

B. Tenant shall undertake all actions necessary to remediate any spill/release discovered on or under the Lease Premises introduced by or affected by Tenant as is necessary to restore the Lease Premises to either its condition immediately prior to the initiation of the Original Lease or to a condition in compliance with all applicable local, state, federal or Airport laws, rules, regulations or orders, including Aviation Rule and Regulation 180, at the City's sole discretion. This work shall be performed at Tenant's expense and the City shall have the right to review and inspect all such work at any time using consultants and representatives of the City's choice. Tenant shall further conduct all necessary and prudent surface and subsurface monitoring pertaining to Tenant's activities hereunder to ensure compliance with applicable laws, rules, regulations, and permits. Tenant shall make available to the City copies of all correspondence to and from any regulatory agency regarding a suspected or confirmed spill or release including any records documenting verbal spill notifications.

C. Assessment and/or remediation of spills/releases from Tenant's activities that will require intrusive work deeper than six inches (6") below ground surface or use of mechanized equipment are specifically not included in the rights granted by this Lease. An access agreement will be required for such activities. Tenant shall request an access agreement through Airport Legal Services.

D. The City shall have a right of access to the Lease Premises without prior notice to inspect the same to confirm that Tenant is using the Lease Premises in accordance with this Restated Lease. At the City's request, Tenant shall conduct any further testing and analysis as is necessary to ascertain whether the Tenant is in compliance with this Restated Lease.

6.09 WASTE OR IMPAIRMENT OF VALUE. Tenant agrees that nothing shall be done or kept on the Lease Premises which might impair the value of the City's property or which would constitute waste or a public or private nuisance. Notwithstanding the foregoing or anything to the contrary in this Restated Lease, the parties acknowledge that the Lease Premises is currently being used as a public gas station and automotive service station and convenience store, and related uses, and that such use is permitted under this Restated Lease.

6.10 STRUCTURAL OR ELECTRICAL OVERLOADING. Tenant agrees that nothing shall be done or kept on the Lease Premises and no improvements, changes, alterations, additions, maintenance or repairs shall be made to the Lease Improvements which might result in an overload of utility lines serving the Airport or interfere with electric, electronic or other equipment at the Airport. In the event of violations hereof, Tenant agrees to immediately remedy the violation at Tenant's expense.

6.11 NOISE, ODORS, VIBRATIONS AND OTHER ANNOYANCES. Tenant shall conduct its operations in an orderly and proper manner so as not to commit any nuisance on the Lease Premises or annoy, disturb or be offensive to others at the Airport and shall take all reasonable measures, using the latest known and practicable devices and means, to eliminate any unusual, nauseous or objectionable noise, vapors, odors, lights and vibrations.

6.12 ACCESSIBILITY. Tenant shall not do or permit to be done anything, which might interfere with or hinder police, firefighting or other emergency personnel in the discharge of their duties.

6.13 NO AUCTION. Tenant agrees not to allow or permit any sale by auction or hawking on the Lease Premises.

6.14 NO ANIMALS. Tenant agrees that no animals shall be kept on the Lease Premises.

6.15 RESTRICTION ON CHANGES AND ALTERATIONS. Except as stated in Section 6.16 below, Tenant agrees not to improve, change, alter, add to, renovate, move, or demolish all or any of the Lease Improvements or Additional Site Improvements without the prior written consent of the Manager or her authorized representative, not to be unreasonably withheld or delayed. Tenant must comply with all conditions which may be imposed by the Manager. Full and complete specifications for all work and improvements, along with a statement of the time required to complete such work shall be submitted to and approved in writing by the Manager or her authorized representative before construction work commences. Four (4) copies of plans for all changes or alterations shall be given to the Director, Airport Engineering for review and written approval prior to commencement of construction. After City's final approval, City shall return to Tenant one approved copy for its records and shall retain one approved copy as an official record thereof.

First-class standards of design and construction will be required in connection with all such work, facilities and improvements, and all improvements shall conform with applicable statutes, ordinances, building codes, regulations and other general requirements of City, including but not limited to compliance with DIA Design Standards and DIA Tenant

Development Guidelines, procurement of general liability and builder's risk insurance and performance and payment bonds, and compliance with worker's compensation, prevailing wage pursuant to Denver Revised Municipal Code Section 20-76 *et seq.*, federal DBE participation requirements, and compliance with the Americans with Disabilities Act, 42 U.S.C. 12,000 *et seq.*, and its regulations. The approval given by City shall not constitute a representation or warranty as to such conformity; responsibility therefore shall at all times remain with Tenant.

Approval of the City shall extend to and include consideration of architectural and aesthetic matters, and City expressly reserves the right to reject any designs submitted and to require Tenant to resubmit designs and layout proposals until they meet with City's approval, which approval shall not be unreasonably withheld. City agrees to act promptly upon a request for approval of such plans and/or revisions thereto.

6.16 RENOVATION OF LEASED PREMISES.

A. Notwithstanding Section 6.15 above, Tenant shall, at its sole cost and expense, during the period from the Rent Commencement Date to a time no later than May 31, 2011 (the "Renovation Completion Date"), substantially complete renovating and refurbishing certain improvements, as generally described below in this Section 6.16(A) (collectively the "Lease Improvements"), at a minimum investment of One Million Six Hundred Seventy-Three Thousand Dollars (\$1,673,000.00) ("Renovation Minimum Investment"). Notwithstanding the foregoing, the Renovation Completion Date shall be extended one (1) day for each day of delay in substantial completion resulting from force majeure (or any events otherwise beyond the reasonable control of Tenant) or the acts or omissions of the City or its agents, representatives or employees (including, without limitation, any failure by the City to comply with its obligations under this Restated Lease). The Renovation Minimum Investment shall not include financing costs, interest, inventory or intra company charges related to construction, but may include architectural and engineering charges not exceeding fifteen percent (15%) of the total Renovation Minimum Investment. These certain Lease Improvements shall at a minimum include the following:

1. Interior and exterior remodel of building in accordance with approvals granted by the Manager;
2. With the permission of the Manager regarding choice of service provided, building and commencing business from an on-site fast-food service area (such as a Quizno's);
3. A building extension to accommodate a drive through for the fast food service area, in accordance with approvals granted by the Manager in pursuant to Airport Rules and Regulations and the DIA Tenant Development Guidelines;
4. Upgrade of all existing fuel dispensers;
5. Addition of four fuel dispensers;
6. Additional diesel fuel dispenser;

7. Commencement of beer sales, after all appropriate license have been obtained; and
8. Demolition of one car wash and upgrade of remaining car wash in accordance with approvals granted by the Manager in pursuant to Airport Rules and Regulations and the DIA Tenant Development Guidelines.

B. Intentionally Omitted.

C. Tenant shall provide design plans and specifications of the proposed renovations of the described Lease Improvements for the approval of the Manager or her authorized representative no later than four (4) months prior to the Renovation Completion Date, or such lesser time as is agreed to in writing by the Manager or her authorized representative. Full and complete specifications for all work and improvements, along with a statement of the time required to complete such renovations, shall be submitted to and approved in writing by the Manager or her authorized representative before renovation and/or construction work commences. Four copies of plans for all renovations shall be given to the Director, Airport Engineering for review and written approval prior to commencement of construction. In connection with construction and/or the Lease Improvements, the Manager, on behalf of itself and the City, shall approve or reasonably disapprove all requests by Tenant within a reasonable amount of time as determined by the Manager.

D. First-class standards of design and construction will be required in connection with all such renovation work, and all renovation improvements shall conform with applicable statutes, ordinances, building codes, regulations and other general requirements of City, including but not limited to compliance with DIA Design Standards and DIA Tenant Development Guidelines, procurement of general liability and builder's risk insurance and performance and payments bonds, and compliance with worker's compensation, prevailing wage, MBE/WBE participation requirements, and compliance with the Americans with Disabilities Act, 42 U.S.C. 12,000 *et seq.*, and its regulations. The approval given by City shall not constitute a representation or warranty as to such conformity; responsibility therefore shall at all times remain with Tenant.

E. Approval of the City shall extend to and include consideration of architectural and aesthetic matters, and City expressly reserves the right to reject any designs for renovation submitted and to require Tenant to resubmit designs and layout proposals until they meet with City's approval.

F. As soon as practicable after construction of a renovation, but in no event later than ninety (90) days after substantial completion of the renovations, Tenant shall file with the Manager a statement certified by its architect setting forth the total renovation costs, with appropriate detail. Tenant shall make available to City, at City's request, receipted invoices for labor and materials covering all construction and fixtures, including furniture, and fixtures.

6.17 TITLE TO IMPROVEMENTS. Tenant agrees that all improvements to the Lease Premises or Airport property, including approved changes and renovations, which are affixed to the realty, shall become the property of the City upon their completion and acceptance by City. Notwithstanding the foregoing, title to the fuel system storage tanks and fueling lines shall remain the property of Tenant and shall be Tenant's Equipment as herein defined. City expressly denies any ownership, operation, responsibility, or liability for the installation,

operation, maintenance or removal of the tanks at any time during or after the termination of this Restated Lease.

6.18 REMOVAL OF TENANT'S EQUIPMENT. Tenant shall retain title to and shall remove, at its sole cost, prior to the expiration or termination of this Restated Lease, all of Tenant's Equipment. If such removal shall injure or damage the Lease Premises, Tenant agrees, at its sole cost, at or prior to the expiration or termination of this Restated Lease, to repair such injury or damage in good and workmanlike fashion and to place the Lease Premises in the same condition as the Lease Premises would have been if such Tenant's Equipment had not been installed. If Tenant fails to remove any of Tenant's Equipment by the expiration or termination of this Restated Lease, City may, at its option, keep and retain any such Tenant's Equipment or dispose of the same and retain any proceeds therefrom, and City shall be entitled to recover from Tenant any costs of City in removing the same and in restoring the Lease Premises in excess of the actual proceeds, if any, received by City from disposition thereof. In addition, if City removes any of Tenant's Equipment, Tenant hereby specifically agrees to indemnify and hold City harmless from all costs, losses, expenses or damages incurred in relation to the removal of Tenant's Equipment, including without limitation all costs of associated remedial actions, fines or penalties, reasonable attorney fees, engineering fees and other professional expert fees.

6.19 FINANCING

A. Tenant shall have the right to mortgage this Agreement and the leasehold estate hereby created. Tenant shall not enter into any such leasehold mortgage without City's prior written consent, which shall not be unreasonably withheld, as to the original leasehold mortgagee. City's consent to the leasehold mortgagee shall be deemed given if City does not consent or object to the proposed leasehold mortgagee within fifteen (15) business days after City's receipt of request for such consent. The execution and delivery of any such instrument of mortgage shall not be deemed to constitute an assignment or transfer of this Agreement, nor shall any leasehold mortgagee under a leasehold mortgage be deemed an assignee or transferee of this Agreement so as to require the leasehold mortgagee to assume the performance of any of the terms, covenants or conditions the part of Tenant to be performed hereunder. No notice of default as provided in this Agreement shall be valid, binding, and effective until the notice is served on all leasehold mortgagees of which the City has been notified in the manner set forth in this Agreement, at the address the leasehold mortgagee provides to City.

B. City agrees that Tenant alone shall be entitled to all of the proceeds from any leasehold mortgage, or note or other financing arising therefrom, at any time and from time to time effected pursuant to this Agreement, and City shall not be entitled to, and shall have no interest in, such proceeds or any part thereof. City further agrees to cooperate reasonably with the execution of any documents which may be required by the leasehold mortgagee to pay the aforesaid proceeds directly to Tenant, or to effectuate the leasehold mortgage, including, without limitation, joinder agreements. Within fifteen (15) business days after City's receipt of a request by Tenant, City shall execute estoppel certificates confirming (1) that this Agreement is in full force and effect, (2) that neither City nor Tenant is in default hereunder, and (3) such other matters as may be reasonably requested by Tenant's lender; the City shall have the right, however, to state in any such estoppel certificate the extent to which such statements are not true.

C. Any leasehold mortgagee shall be entitled to request any reasonable amendment, alteration or modification of this Agreement provided such amendment, alteration or modification (1) does not materially affect the rights or benefits which accrue or the obligations or liabilities owing to either City or Tenant hereunder, and (2) is reasonably necessary to adequately protect the rights of such leasehold mortgagee. City shall not unreasonably withhold its consent to any such amendment, alteration or modification so requested and any such amendment, alteration or modification agreed to by the City shall be made at no expense to City. This Agreement shall not be modified, amended, or terminated by Tenant without the prior written consent of any leasehold mortgagee, except that the City and Tenant shall each have the right, without the consent of any leasehold mortgagee, to exercise any termination rights expressly set forth in this Lease.

6.20 COMPLIANCE WITH DBE REQUIREMENTS. Tenant shall at all times comply with the requirements of the U.S. Department of Transportation Disadvantaged Business Enterprise Program requirements, including as stated in 40 CFR Part 23, Subpart F, and the Exhibit B attached to this Restated Lease.

SECTION 7 UTILITIES, DRAINAGE, MAINTENANCE AND SERVICES

7.01 UTILITIES. Tenant, at its sole cost and expense, shall make and obtain all utility connections, hook-ups or taps as necessary for the operation of the improvements on the Lease Premises and shall secure all necessary applications and permits and shall pay all application and permit fees, hook-up or tap fees. Tenant further agrees at its sole cost and expense to provide meters adequate to measure the amount of utilities and water used or consumed and to maintain said equipment in such a manner as to supply accurate measurements of such usage and consumption. Tenant shall be responsible for the payment of all utilities required for operations on the Lease Premises.

7.02 DRAINAGE. Tenant shall either be responsible for detaining on the Lease Premises the developed flow from its improvements and discharging such flow at its historic rate or constructing offsite detention ponds at a location acceptable to the Manager. Tenant shall maintain such drainage facilities, including any pond required for the site, and shall be responsible for "MS4" permit requirements.

Tenant agrees to insure that an agreement for drainage crossing or slope created by Tenant's construction and any discharge point from the Land shall be constructed with capacity to pass storm from the 100-year developed flow with adequate freeboard in accordance with the requirements of Urban Drainage and Flood Control District and the City. Tenant shall keep such drainageways clear of debris and obstructions and maintain them in good condition for the passage of the required flow and avoid erosion degradation. If Tenant does not so maintain the system, the City will notify Tenant, and if Tenant does not perform the needed maintenance within thirty (30) days of the notice, then Tenant agrees that the City will have the right to do so and Tenant will reimburse all reasonable costs invoiced to Tenant by the City for such maintenance.

7.03 MAINTENANCE. The cost of maintenance, care and any necessary replacement of the Lease Improvements and/or Lease Premises and Additional Site Improvements shall be borne by Tenant. Tenant agrees, at its expense and without cost or expense to the City, during

the Term hereof that:

A. Tenant shall keep the Lease Improvements and Additional Site Improvements in good order and condition and will make all necessary and appropriate repairs and replacements thereof promptly and in a good and workmanlike fashion without diminishing the original quality of such improvements;

B. Tenant shall not permit rubbish, debris, waste materials or anything unsightly or detrimental to health, or likely to create a fire hazard, or conducive to deterioration, to remain on any part of the Lease Premises or to be disposed of improperly;

C. Tenant shall provide and maintain obstruction lights and all similar equipment or devices now or at any time required by any applicable law, ordinance or municipal, state or federal regulation;

D. Tenant shall be responsible for the removal of snow and ice on the Lease Premises and on access road improvements;

E. Tenant shall be responsible for the maintenance, replacement and upkeep of the grass, shrubs, trees and all landscaped areas on the Land;

F. Tenant shall appropriately light, maintain and repair all access roadways and circulation and pedestrian areas located on the Lease Premises; and

G. The Manager or her authorized representative shall have the right to make reasonable objections regarding the maintenance and appearance of the Lease Premises. Tenant agrees to promptly commence to discontinue or remedy any objectionable condition within five (5) days after written notice by the Manager or her authorized representative.

7.04 COMMON USE SERVICES. The Manager may establish common use services at the Airport, including but not limited to trash and refuse removal, deliveries, industrial waste handling, recycling, and security guards. The Manager reserves the right to establish charges for common use services based upon documented actual costs. Trash, sewer, and deliveries will be common use services which Tenant may be required to use and pay its pro rata actual share; however, other common use services may be utilized at Tenant's option. Tenant agrees to pay the charges for those common use services which are utilized by Tenant.

7.05 STREET IMPROVEMENT AND DRAINAGE DISTRICT. The Manager may establish street improvement or drainage districts for the construction or maintenance of common street improvements and drainage improvements respectively. Tenant may be required to participate in and pay its pro rata share based upon Tenant's specific benefits for the construction and maintenance of such common improvements.

7.06 INTERRUPTION OF SERVICES. Tenant agrees that City shall not be liable for failure to supply any utility services. City reserves the right to temporarily discontinue utility services at such time as may be necessary by reason of accident, unavailability of employees, repairs, alterations or improvements or whenever by reason of strikes, lockouts, riots, acts of God or any other happenings beyond the control of the City. The City shall not be liable for

damages to persons or property for any such discontinuance, nor shall such discontinuance in any way be construed as cause for abatement of rent or operate to release the Tenant from any of its obligations hereunder, except as otherwise provided in the section entitled "Damage, Destruction or Loss."

SECTION 8 INDEMNITY, INSURANCE AND BONDS

8.01 INDEMNITY. Tenant hereby agrees to release and indemnify and save harmless the City, its officers, agents and employees from and against any and all loss of or damage to property, or injuries to or death of any person or persons, including property and employees or agents of the City, and shall defend, indemnify and save harmless the City, its officers, agents and employees from any and all claims, damages, suits, costs, expense, liability, actions, penalties or proceedings of any kind or nature whatsoever, including worker's compensation claims, of or by anyone whomsoever, in any way resulting from, or arising out of, directly or indirectly, its construction and/or operations in connection herewith, or its use or occupancy of any portion of the Airport and including acts and omissions of officers, employees, representatives, suppliers, contractors and agents of the Tenant; provided, that the Tenant need not release, indemnify or save harmless the City, its officers, agents and employees from damages resulting from the sole negligence of the City's officers, agents and employees. The minimum insurance requirements prescribed herein shall not be deemed to limit or define the obligations of Tenant hereunder.

8.02 INSURANCE.

A. Required Insurance. Tenant agrees to secure at its own expense and to keep in force at all times during the Term hereof, the types and amounts of insurance coverage specified in the attached **Exhibit C**. Insurance requirements set forth on **Exhibit C** do not limit in any way the amount or scope of liability of Tenant under this Lease. The amounts listed indicate only the minimum amounts of insurance coverage that the City is willing to accept to help insure full performance of all terms and conditions of this Restated Lease. All insurance required by Tenant under this Restated Lease shall meet the following minimum requirements.

B. City as Additional Insured. The City shall be named as an additional insured in each general liability policy and as an additional insured and loss payee in each property insurance policy. Such insurance shall provide cross-liability coverage equivalent to the standard Separation of Insureds clause published by the Insurance Services Offices or a successor organization. Tenant shall supply the City with certification from the insurance carrier that the City is so named. Each such policy or certificate shall further provide that any coverage afforded the City as additional insured shall apply as primary insurance and other insurance issued to the City shall apply as excess and non-contributing insurance, and will not require any contribution from any insurance or self-insurance carried by the City.

C. Waiver of Subrogation. Tenant and the City waive any right of action that they and/or their insurance carriers might have against each other (including their respective employees, officers, commissioners, or agents) or against other tenants of the Airport for any loss, cost, damage, or expense (collectively "Loss") to the extent that such loss or damage is covered by any property insurance policy or property insurance policies (which shall include,

without limitation, any City self-insurance, City retention fund, and other similar self-insurance or quasi self-insurance mechanisms) maintained or required to be maintained pursuant to this Restated Lease and to the extent that such proceeds (which proceeds are free and clear of any interest of third parties) are received by the party claiming the Loss. If any of Tenant's or City's applicable insurance policies do not allow the insured to waive the insurer's rights of subrogation prior to a Loss, Tenant or City, as applicable, shall cause it to be endorsed with a waiver of subrogation that allows the waivers of subrogation required by this Section.

D. Company Ratings. Policies of insurance must be written by companies having an A.M. Best rating of "A-" or better or equivalent.

E. Forty-Five Day Cancellation. Each such policy or certificate shall contain a valid provision or endorsement that "This policy will not be canceled, or materially changed or altered, without first giving 45 days prior written notice, or 10 days notice for nonpayment of premium, to the City's Manager of Aviation, Denver International Airport, 8500 Peña Boulevard, Denver, Colorado 80249-6340, sent by certified mail, return receipt requested."

F. Certificates; 45-Day Cancellation. On or before the execution of this Restated Lease and throughout this Restated Lease term, Tenant shall provide the City with current certificates of insurance establishing the existence of all insurance policies required under this **Section**. The City shall be given no less than forty-five (45) days prior written notice of cancellation, non-renewal or material change in any policy. Insurance must be maintained without any lapse in coverage during the entire term of this Restated Lease. The City shall also be given certified copies of Tenant's policies of insurance, upon request. Failure of the City to demand such certificate or other evidence of full compliance with these insurance requirements, or failure of the City to identify a deficiency from the evidence provided, shall not be construed as a waiver of Tenant's obligations to maintain the insurance required by this Restated Lease.

G. Deductibles and Retentions. Any deductible or self-insured retention exceeding fifteen percent (15%) of the per-occurrence or per-accident limit of a required general liability policy is subject to approval by the City. A renewal certificate shall be delivered to the Airport Concessions Management Section at least 10 days prior to a policy's Expiration Date, except for any policy expiring after the Expiration Date of this Restated Lease or any extension thereof. Certificates evidencing the existence of the policies, in such form as the Manager may reasonably require, shall be delivered to the Airport Property Management Section prior to the Rent Commencement Date. Upon request by the Manager, Tenant agrees to furnish to Airport Concessions Management Section at any time thereafter during the Term of this Restated Lease a certified copy of said policy or policies.

H. Tenant's Risk. Tenant shall be responsible for obtaining any insurance it deems necessary to cover its own risks. Except to the extent of City's negligence or willful misconduct, in no event shall the City be liable for any: (a) business interruption or other consequential damages sustained by Tenant; (b) damage, theft or destruction of Tenant's inventory, Improvements, or property of any kind; or (c) damage, theft or destruction of an automobile, whether or not insured. If at any time any of the insurance policies shall be or become reasonably unsatisfactory to the City as to form or substance, or if any of the carriers issuing such policies shall be or become reasonably unsatisfactory to the City, Tenant shall promptly obtain a new and reasonably satisfactory replacement policy and give the City an updated

certificate of insurance that complies with any such reasonable new insurance requirements of the City.

I. Governmental Immunity. The parties hereto understand and agree that the City and County of Denver, its officers, officials and employees, are relying on, and do not waive or intend to waive by any provisions of this Restated Lease, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101 to 120, C.R.S., or otherwise available to the City and County of Denver, its officers, officials and employees.

8.03 PERFORMANCE BOND. Upon execution of this Restated Lease, Tenant shall deliver to the Manager, and maintain in effect at all times throughout the Term, a valid corporate performance bond, or such other acceptable surety as first approved in writing by City, in the amount of Three Hundred Forty-Six Thousand One Hundred Twenty-One Dollars (\$346,121.00), which amount is subject to adjustment by the Manager. In the event of a default by Tenant under this restated Lease beyond all applicable notice and cure periods, such bond shall be payable without condition to the City and guarantee to the City full and faithful performance of all of the terms and provisions of this Restated Lease by Tenant, as may be amended, supplemented or extended.

All bonds shall be issued by a surety company licensed to transact business in the State of Colorado and satisfactory to and approved by the City. If a bond is executed by an attorney-in-fact of the surety, a power of attorney must be attached to the bond.

8.04 NO PERSONAL LIABILITY. No employee of the City shall be held personally liable under this Restated Lease or because of its execution or attempted execution.

8.05 TAXES, LICENSES, LIENS AND FEES. Tenant agrees to promptly pay all taxes, excises, license fees and permit fees of whatever nature applicable to its operations hereunder and to take out and keep current all municipal, state or federal licenses required for the conduct of its business at and upon the Lease Premises and further agrees not to permit any of said taxes, excises, license fees or permit fees to become delinquent. Tenant also agrees not to permit any mechanic's or materialman's or any other lien to become attached or be foreclosed upon the Land, the Lease Premises or improvements thereto, or any part thereof, by reason of any construction work or labor performed or materials furnished by any mechanic or materialman. Tenant agrees to furnish to the Manager, upon request, duplicate receipts or other satisfactory evidence showing the prompt payment by it of Social Security, unemployment insurance and worker's compensation insurance, and all required licenses and all taxes. Tenant further agrees to promptly pay when due all bills, debts and obligations incurred by it in connection with its operations hereunder and not to permit the same to become delinquent and to suffer no lien, encumbrance, judgment or execution to be filed against the Lease Premises or improvements thereon which will in any way impair the rights of the City under this Lease.

**SECTION 9
DEFAULT AND REMEDIES**

9.01 DEFAULT. Tenant shall be in default under this Restated Lease if Tenant:

- A. Fails to timely pay to City, within five (5) days after the date due, the compensation, rent or any other payment required hereunder; or
- B. Becomes insolvent, or takes the benefit of any present or future insolvency or bankruptcy statute, or makes a general assignment for the benefit of creditors, or consents to the appointment of a receiver, trustee or liquidator of any or substantially all of its property; or
- C. Transfers its interest under this Restated Lease, without the prior written approval of the City, by reason of death, operation of law, assignment, sublease or otherwise, to any other person, entity or corporation with the exception of an Affiliate as defined in Section 11.05; or
- D. Abandons, deserts or vacates the Lease Premises; or
- E. Suffers any lien or attachment to be filed against the Lease Premises, the Airport or City's property because of any act or omission of Tenant, and such lien or attachment is not discharged or bonded or contested by Tenant in good faith by proper legal proceedings within thirty (30) days after receipt of written notice thereof by Tenant; or
- F. Fails to keep, perform and observe any other promise, covenant or agreement set forth in this Restated Lease and such failure continues for a period of more than thirty (30) days after delivery by Manager of a written notice of such breach or default, except where a shorter period is specified herein, or where fulfillment of its obligation requires activity over a period of time and Tenant within such 30-day period commences in good faith to perform whatever may be required to correct its failure to perform and continues such performance without interruption except for causes beyond its control; or
- G. Knowingly gives its permission to any person to use for any purpose known by Tenant to be illegal any portion of the Airport made available to Tenant for its use under this Restated Lease.

9.02 REMEDIES. If Tenant defaults in any of the covenants, terms and conditions herein beyond the applicable notice and cure periods set forth in Section 9.01 above, the City may exercise any one (1) or more of the following remedies:

- A. The City may elect to allow this Restated Lease to continue in full force and effect and to enforce all of City's rights and remedies hereunder, including without limitation the right to collect rent as it becomes due together with Past Due Interest; or
- B. The City may cancel and terminate this Restated Lease and repossess the Lease Premises, with process of law, and without liability for so doing, upon giving thirty (30) days written notice to Tenant of its intention to terminate, at the end of which time all the rights

hereunder of the Tenant shall terminate, unless the default, which shall have been stated in such notice, shall have been cured within such thirty (30) days. Notwithstanding the foregoing, Tenant shall be allowed only two notices of default hereunder which it may cure within the thirty (30) day time specified in this section. The third and any additional notice thereafter shall be cured by Tenant within fifteen (15) days and if Tenant fails to cure within such time frame, then City at its sole option may (1) cancel and terminate all of the rights hereunder of the Tenant, and the City may, upon the date specified in such notice, reenter the Lease Premises and remove therefrom all property of the Tenant and store the same at the expense of the Tenant, or (2) elect to proceed under subparagraph C. below.

If City elects to terminate, Tenant shall be liable to City for all amounts owing at the time of termination, including but not limited to rent due plus interest thereon at the Past Due Interest Rate together with any other amount to fully compensate City for all loss of rent, damages, and costs, including attorney's fees, caused by Tenant's failure to perform its obligations hereunder, or which in the ordinary course would likely result therefrom.

C. The City may elect to reenter and take possession of the Lease Premises and expel Tenant or any person claiming under Tenant subject to the time period set forth in Section 9.01(F), and remove all effects as may be necessary, without prejudice to any remedies for damages or breach. Such reentry shall not be construed as termination of this Restated Lease unless a written notice specifically so states; however, the City reserves the right to terminate the Restated Lease at any time after reentry. Following reentry, the City may relet the Lease Premises, or any portion thereof, for the account of Tenant, on such terms and conditions as the City may choose, and may make such repairs or improvements as it deems appropriate to accomplish the reletting. The City shall not be responsible for any failure to relet or any failure to collect rent due for such reletting.

Tenant shall be liable to City for all costs of reletting, including attorney's fees and repairs or improvements. Notwithstanding re-entry by the City, Tenant shall continue to be liable for all amounts due as rent under this Restated Lease, on the dates specified and in such amounts as would be payable if default had not occurred. Upon expiration of the Term, or any earlier termination of the Restated Lease by the City, the City, having credited to the account of Tenant any amounts recovered through reletting, shall refund, without interest, any amount which exceeds the rent, damages, and costs payable by Tenant under this Restated Lease.

9.03 REMEDIES CUMULATIVE. The remedies provided in this Restated Lease shall be cumulative and shall in no way affect any other remedy available to City under law or equity.

9.04 ADMINISTRATIVE HEARING. Disputes arising out of this Restated Lease shall be resolved by administrative hearing before the Manager following the procedures outlined in Denver Revised Municipal Code Section 5-17; provided, that City shall retain its right to obtain an order of eviction in accordance with applicable state law. It is further agreed that no cause of action shall be brought against the City until there has been full compliance with the terms of this paragraph.

9.05 WAIVERS. No failure of City to insist upon the strict performance of a term, covenant or agreement contained in this Restated Lease, no failure by City to exercise any right or remedy under this Restated Lease, and no acceptance of full or partial payment during the continuance of any default by Tenant shall constitute a waiver of any such term, covenant or agreement or a waiver of any such right or remedy or a waiver of any default by Tenant.

SECTION 10 DAMAGE, DESTRUCTION OR LOSS

10.01 DAMAGE TO OR DESTRUCTION OF LEASE PREMISES. If the Lease Improvements, or any portion thereof, are destroyed or damaged by fire or other casualty, Tenant shall promptly remove all debris resulting from such damage to the Lease Improvements and/or Additional Site Improvements and shall at its sole cost and expense repair and/or reconstruct the Lease Improvements and/or Additional Site Improvements with due diligence in accordance with the plans and specifications for the Lease Premises as they existed prior to such damage or according to the current needs of the Tenant as approved by the Manager.

10.02 LOSS OR DAMAGE TO PROPERTY. City shall not be liable for any loss of property by theft or burglary from the Airport or for any damage to person or property on the Airport resulting from electric lighting, or water, rain or snow, which may come into or issue or flow from any part of the Airport or Airport Site, or from the pipes thereof, or that may be caused by the City's employees or any other cause, and Tenant agrees to make no claim for any such loss or damage at any time.

10.03 RELEASE OF CITY. The parties hereto agree that the City shall not be liable to Tenant for any injury to or death of any of the Tenant's agents, representatives or employees or of any other person or for any damage to any of Tenant's property or loss of revenue caused by any third person in the maintenance, construction, or operation of facilities at the Airport, or caused by any third person using the Airport, or caused by any third person navigating any aircraft on or over the Airport, whether such injury, death or damage is due to negligence or otherwise.

SECTION 11 MISCELLANEOUS PROVISIONS

11.01 ADVERTISING AND PUBLIC DISPLAYS. Except for signs located as permitted by Exhibit A-1, Tenant shall not install or have installed or allow to be installed upon or within the Lease Premises, without the prior written approval of the Manager or her authorized representative, any sign on the Land which is visible to the exterior of the buildings or on the Land, either lighted or unlighted, static or animated, poster, banners or other display of advertising media, including material supplied by manufacturers of merchandise offered for sale, as well as other types of display specified in the DIA Design Standards. Permission will not be granted for any advertising which fails to comply with DIA Design Standards or DIA Tenant Development Guidelines, or any advertising material, fixture or equipment which extends beyond the Lease Premises.

11.02 AGREEMENT BINDING UPON SUCCESSORS. This Restated Lease, subject to the provisions of the section entitled "Assignment", shall be binding upon and extend to the heirs, personal representatives, successors and assigns of the respective parties hereto.

11.03 AGREEMENT MADE IN COLORADO. This Restated Lease shall be deemed to have been made in and shall be construed in accordance with the laws of the State of Colorado.

11.04 AGREEMENT SUBORDINATE TO AGREEMENTS WITH UNITED STATES. This Restated Lease is subject and subordinate to the terms, reservations, restrictions and conditions of any existing or future agreements between the City and the United States, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to the City for Airport purposes and the expenditure of federal funds for the development of the Airport or airport system. The provisions of the attached Appendices 1, 2 and 3 are incorporated herein by reference.

11.05 ASSIGNMENT. Subject to the Sublease and Section 6.19 above, Tenant covenants and agrees not to assign, transfer or sublet its rights in this Restated Lease, in whole or in part, nor grant any license or concession hereunder, except as otherwise provided herein, without the prior written consent of the Manager, which shall not be unreasonably withheld or delayed. Notwithstanding any provisions to the contrary in this Restated Lease, an assignment or transfer of Tenant's right in this Restated Lease to any entity which controls, is controlled by or is under common control with Tenant or which purchases all or substantially all of the assets or stock of Tenant ("Affiliate Assignment") shall not be deemed an assignment for purposes of this Section 11.05; provided, however, that any such Affiliate Assignment shall not release the Tenant from its obligations under this Restated Lease. The City shall promptly execute any estoppel certificate reasonably requested by Tenant in connection with any assignment, sublease, transfer, financing or similar transaction.

11.06 BOND ORDINANCES. This Restated Lease is in all respects subject and subordinate to any and all City bond ordinances applicable to the Airport and airport system and to any other bond ordinances which should amend, supplement or replace such bond ordinances. The parties to this Restated Lease acknowledge and agree that all property subject to this Restated Lease which was financed by the net proceeds of tax-exempt bonds is owned by the City, and Tenant agrees not to take any action that would impair, or omit to take any action required to confirm, the treatment of such property as owned by the City for purposes of Section 142(b) of the Internal Revenue Code of 1986, as amended. In particular, the Tenant agrees to make, and hereby makes, an irrevocable election (binding on itself and all successors in interest under this Restated Lease) not to claim depreciation or an investment credit with respect to any property subject to this Restated Lease which was financed by the net proceeds of tax-exempt bonds and shall execute such forms and take such other action as the City may request in order to implement such election.

11.07 FORCE MAJEURE. Neither party hereto shall be liable to the other for any failure, delay or interruption in the performance of any of the terms, covenants or conditions of this Restated Lease due to causes which were not reasonably foreseeable and beyond the control of that party, including without limitation strikes, boycotts, labor disputes, embargoes, shortages of materials, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellion, sabotage or any other circumstance for

which such party is not responsible or which is not in its power to control, but in no event shall this paragraph be construed so as to allow Tenant to reduce or abate its obligation to pay the rent or compensation as provided herein.

11.08 MASTER PLAN-TERMINATION AND RELOCATION. The City reserves the right and Tenant agrees that the City acting by and through its Manager, at its sole option and without any liability to the City whatsoever, may cancel and terminate this Restated Lease for the purpose of implementing any present or future master plan for the development of a hotel, the development or expansion of the Airport, including, but not by way of limitation, runway or taxiway relocation, clear zone changes, roadways, or more suitable land use needs; provided, that the City shall give Tenant not less than 180 days prior written notice of termination for this purpose.

In the event of such termination as provided in this Section 11.08, the City shall provide to Tenant at least two (2) suitable alternate premises locations at Denver International Airport for the conduct of its business. Such substitute facilities shall be to the extent possible similar to the Lease Premises as to size and general location. Tenant reserves the right to terminate this Lease if the City's determination of suitable substitute facilities is not adequate for Tenant's operations, upon 60 days written notice after City notifies Tenant of the substitute facilities.

11.09 INCONVENIENCES DURING CONSTRUCTION. Tenant recognizes that from time to time during the Term of this Restated Lease, it may be necessary for City to commence or complete extensive programs of construction, expansion, relocation, maintenance and repair in order that the Airport and its facilities may be completed and operated in accordance with any present or future master layout plan, and that such construction, expansion, relocation, maintenance and repair may inconvenience the Tenant in its operation at the Airport. Tenant agrees that no liability shall attach to City, its officers, agents, employees, contractors, subcontractors and representatives by way of such inconveniences, and Tenant waives any right to claim damages or other consideration therefrom.

11.10 MASTER LAYOUT PLAN. Tenant agrees that no liability shall attach to the City, its officers, agents and employees by reason of any efforts or action toward implementation of any present or future master layout plan for the Airport, or by reason of any delay in opening of the Airport, and waives any right to claim damages or other consideration arising therefrom.

11.11 INDEPENDENT CONTRACTOR. Tenant shall at all times have the status of an independent contractor without the right or authority to impose tort or contractual liability upon the City.

11.12 NOTICES. All notices required to be given to the City or Tenant hereunder shall be in writing and sent by certified mail, return receipt requested, to:

City:	Manager of Aviation Denver International Airport 8500 Peña Boulevard, Suite 9880 Denver, Colorado 80249-6340
-------	---

with a copy to:

Properties Management Office
Denver International Airport
8500 Peña Boulevard, Suite 9870
Denver, Colorado 80249-6340

Tenant: Convenience Retailers LLC
2603 Camino Ramon, Suite 300
San Ramon, California 94583
Attn: Mr. Sam Hirbod, President

Either party hereto may designate in writing from time to time the address of substitute or supplementary persons within the United States to receive such notices. The effective date of service of any such notice shall be the date such notice is mailed or delivered to Tenant or Manager.

11.13 PARAGRAPH HEADINGS. The paragraph headings herein are for convenience in reference only and are not intended to define or limit the scope of any provision of this Restated Lease.

11.14 PATENTS AND TRADEMARKS. Tenant represents that it is the owner of or fully authorized to use any and all services, processes, machines, articles, marks, names or slogans used by it in its operations under this Restated Lease. Tenant agrees to save and hold harmless the City, its officers, employees, agents and representatives from any loss, liability, expense, suit or claim for damages in connection with any actual or alleged infringement of any patent, trademark or copyright arising from any alleged or actual unfair competition or other similar claim arising out of the operations of Tenant under this Restated Lease.

11.15 SECURITY. Tenant shall cause its officers, contractors, agents, and employees to comply with any and all existing and future security regulations adopted by the City or the Transportation Security Administration ("TSA"), including 49 CFR Subtitle B, Chapter XII, as amended from time to time. Tenant understands and acknowledges that its ability to remain open and sell the products it is authorized to sell under this Agreement is subject to changes in alert status as determined by TSA. Failure by Tenant to adhere to security regulations affecting the Airport shall constitute a material breach of this Agreement. Tenant will reimburse the City, in full, for any fines or penalties levied against the City for security violations as a result of any actions on the part of the Tenant, its agents, contractors, suppliers or employees and for any reasonable attorney fees or related costs paid by the City as a result of any such violation.

11.16 SEVERABILITY. If any provision in this Restated Lease is held by a court to be invalid, the validity of other provisions herein which are severable shall be unaffected.

11.17 THIRD PARTIES. This Restated Lease shall not be deemed to confer upon any third party or parties (except parties to whom the Tenant may assign this Restated Lease in accordance with the terms hereof, and except any successor to the City) any right to claim damages or to bring any action or proceeding against either the City or the Tenant because of any breach hereof or because of any of the terms, covenants, agreements and conditions herein.

11.18 USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS. Tenant, its officers, agents and employees shall cooperate and comply with the provisions of the Federal Drug-Free Workplace Act of 1988 and Denver Executive Order No. 94, or any successor thereto, concerning the use, possession, or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with the policy can result in the City's barring Tenant from City facilities or participating in City operations.

11.19 CITY SMOKING POLICY.

- A. Tenant acknowledges that smoking is not permitted in Airport buildings and facilities except for designated Airport Smoking Concessions, and so agrees that it will prohibit smoking by its employees and the public in indoor areas and within fifteen feet (15') of entryways of the Lease Premises, except as may otherwise be permitted by the Colorado Clean Indoor Air Act, C.R.S. §§ 25-14-201 to 209.
- B. Tenant and its officers, agents, and employees shall cooperate and comply with the provisions of the Denver Revised Municipal Code, §§ 24-301 to 317 *et seq.*, the Colorado Clean Indoor Air Act, C.R.S. §§ 25-14-201 to 209, City's Executive Order No. 99, and Executive Order No. 13.

11.20 NONDISCRIMINATION. In connection with the performance of work under this Restated Lease, Tenant agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and Tenant further agrees to insert the foregoing provision in all subcontracts hereunder.

11.21 ENTIRE AGREEMENT. The parties agree that the provisions herein constitute the entire agreement and that all representations made by any officer, agent or employee of the respective parties unless included herein are null and void and of no effect. No amendments, unless expressly reserved to the Manager herein, shall be valid unless executed by an instrument in writing by all the parties with the same formality as this Restated Lease. Tenant may record a memorandum of this Restated Lease in the public records, and the City shall execute and acknowledge same promptly after written request by Tenant.

11.22 FINAL APPROVAL. This Restated Lease 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.

END OF PAGE

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto have caused this Amended and Restated Lease Agreement to be executed as of the day and year first above written.

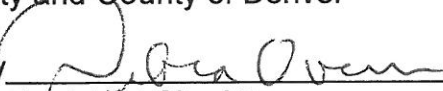
CITY AND COUNTY OF DENVER

ATTEST:

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

APPROVED AS TO FORM:

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

By  _____
Assistant City Attorney

By _____
Mayor

RECOMMENDED AND APPROVED:

By  _____
Manager of Aviation

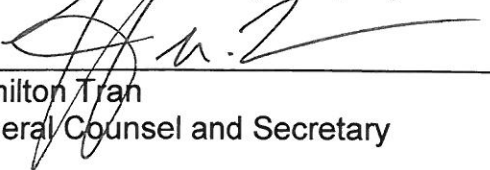
REGISTERED AND COUNTERSIGNED:

By _____
Manager of Finance
Contract Control Number AC59013(3)

By _____
Auditor

"CITY"
"PARTY OF THE FIRST PART"

CONVENIENCE RETAILERS LLC, a Delaware limited liability company

By:  _____
Hamilton Tran
General Counsel and Secretary

"TENANT"
"PARTY OF THE SECOND PART"

EXHIBIT A

LEGAL DESCRIPTION OF STATION LEASE AREA

BEGINNING at the East 1/4 corner of Section 36;
thence, North 54° 29' 04" West, a distance of 1,311.93 feet, more or less, to the TRUE POINT OF BEGINNING, said point having Denver International Airport Coordinates of 50948.0000 for a Northing and 77319.0000 for an Easting;
thence, South 00° 00' 00" East, a distance of 275.76 feet;
thence, South 68° 00' 05" West, a distance of 221.10 feet;
thence, South 00° 00' 00" East, a distance of 253.45 feet to a point of curve;
thence, along a curve to the left, having a central angle of 86° 19' 28", a radius of 95.00 feet, an arc distance of 143.13 feet to a point of tangent;
thence, South 86° 19' 28" East, along said tangent, a distance of 317.65 feet;
thence, South 82° 30' 38" East, a distance of 180.40 feet;
thence, South 3° 40' 32" West, a distance of 5.00 feet;
thence, North 86° 19' 28" West, a distance of 1,169.21 feet;
thence, North 3° 40' 32" East, a distance of 5.00 feet;
thence, North 87° 01' 16" East, a distance of 181.23 feet;
thence, South 86° 19' 28" East, a distance of 260.50 feet to a point of curve;
thence, along a curve to the left, having a central angle of 93° 40' 32", a radius of 95.00 feet, an arc distance of 155.32 feet to a point of tangent;
thence, North 00° 00' 00" East, along said tangent, a distance of 221.57 feet;
thence, North 90° 00' 00" West, a distance of 225.00 feet;
thence, North 00° 00' 00" East, a distance of 134.20 feet;
thence, North 90° 00' 00" West, a distance of 11.00 feet;
thence, North 00° 00' 00" East, a distance of 200.80 feet;
thence, North 90° 00' 00" East, a distance of 141.00 feet;
thence, North 00° 00' 00" East, a distance of 31.66 feet;
thence, North 90° 00' 00" East, a distance of 99.00 feet;
thence, North 00° 00' 00" East, a distance of 137.51 feet to a point of curve;
thence, along a curve to the left, having a central angle of 37° 50' 50", a radius of 15.00 feet, an arc distance of 9.91 feet to a point of tangent;
thence, North 37° 50' 50" West, along said tangent, a distance of 36.20 Feet to a point of curve;
thence, along a curve to the left, having a central angle of 86° 38' 21", a radius of 45.00 feet, an arc distance of 68.05 feet to a point of non-tangent;
thence, North 34° 29' 11" West, a distance of 5.00 feet;
thence, North 57° 18' 19" East, a distance of 138.70 feet;
thence, South 30° 52' 22" East, a distance of 5.00 feet to a point of radial curvature;
thence, along a curve to the left, having a central angle of 96° 58' 28", a radius of 45.00 feet, an arc distance of 76.16 feet to a point of tangent;
thence, South 37° 50' 50" East, along said tangent, a distance of 19.65 feet to a point of curve;
thence, along a curve to the right, having a central angle of 37° 50' 50", a radius of 49.00 feet, an arc distance of 32.27 feet to a point of tangent;

thence, South 00° 00' 00" East, along said tangent, a distance of 147.71 feet;
thence, North 90° 00' 00" East, a distance of 201.00 feet to the POINT OF BEGINNING,

City and County of Denver, State of Colorado.

SITE NO. 2706546
7680 PENA BLVD
DENVER, CO

EXHIBIT B
DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION
(CONVENIENCE RETAILERS, LLC)

SECTION 1 GENERAL. Except as the context otherwise requires and unless otherwise expressly provided herein, the capitalized terms in this Exhibit to the Restated Lease shall have the same meaning as any similarly capitalized terms defined in the Restated Lease or in any exhibit thereto.

SECTION 2 DBE OBLIGATION. This Restated Lease is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23, Subpart F. The Tenant agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession Restated Lease covered by 49 CFR Part 23, Subpart F.

SECTION 3 OTHER RESTATED LEASES. The Tenant agrees to include the above statements in any subsequent concession Restated Leases that it enters into and cause those businesses to similarly include the statements in further Restated Leases.

SECTION 4 DBE PARTICIPATION IN THIS RESTATED LEASE. Tenant agrees that it shall provide for at least 2 % participation by certified Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR Part 23, said participation being measured as a percentage of total annual gross revenues obtained by Tenant in its operations under this Restated Lease.

The Tenant identified in its Proposal DBEs which it would retain as subtenants, joint venture partners, suppliers, or service providers to participate in the operations to be carried out under this Restated Lease. After this Restated Lease is executed, Tenant agrees to use its best efforts to enter into Restated Leases with the DBE firms it identified in its Proposal. Throughout the term of this Restated Lease, Tenant agrees that it shall continue to utilize qualified and available DBE firms which have been and continue to be certified by the City to the fullest extent which is reasonably possible to achieve and to an extent necessary to comply with the above-stated goals, including the goals related to purchases as applicable. Tenant shall make a good faith effort to meet each of the said goals throughout the term of this Restated Lease. If a DBE subtenant, joint venturer, supplier or service provider must be replaced for any reason during the term of this Restated Lease, Tenant agrees that it shall replace the subtenant, joint venturer, supplier or service provider with another DBE, or if it cannot, then Tenant shall demonstrate that it made good faith efforts to do so.

PLEASE GIVE THIS FORM TO YOUR INSURANCE AGENT FOR COMPLETION. THIS IS THE ONLY CERTIFICATE FORM THAT WILL BE ACCEPTED BY THE CITY AND COUNTY OF DENVER.

CITY AND COUNTY OF DENVER
 CERTIFICATE OF INSURANCE FOR DEPARTMENT OF AVIATION

Original COI

Advice of Renewal

Change

Party to Whom this Certificate is Issued:

Name and Address of Insured:

CITY AND COUNTY OF DENVER
 Manager of Aviation
 Denver International Airport
 8500 Peña Boulevard, Room 8810
 Denver CO 80249

CONTRACT NAME & NUMBER TO WHICH THIS INSURANCE APPLIES:

I. MANDATORY COVERAGE

WC-1 Colorado Workers' Compensation and Employer Liability Coverage

Coverage	Minimum Limits of Liability (In Thousands)	Policy No. & Company	Policy Period
COLORADO Workers' Compensation and Employer's Liability	WC Limits: Statutory Limits Limits: \$1,000,000		

Any Policy issued under this section must contain, include or provide for the following:

1. All States Coverage or Colorado listed as a covered state for the Workers' Compensation
2. Waiver of Subrogation and Rights of Recovery against the City and County of Denver (the "City"), its officers, officials and employees.

CGL-1 Commercial General Liability Coverage

Coverage	Minimum Limits of Liability (In Thousands)	Policy No. & Company	Policy Period
Commercial General Liability (coverage at least as broad as that provided by ISO form CG0001 or equivalent)	Each Occurrence: \$1,000 General Aggregate Limit: \$2,000 Products-Completed Operations Aggregate Limit: \$2,000 Personal & Advertising Injury: \$1,000 Fire Damage Legal - Any one fire 1,000		

Any Policy issued under this section must contain, include or provide for the following:

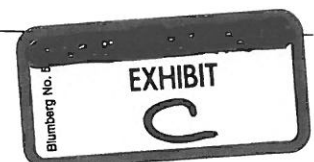
1. City, its officers, officials and employees as additional insureds, per ISO form CG2010 and CG 2037 or equivalents.
2. Coverage for defense costs of additional insureds outside the limits of insurance, per CG0001.
3. Liability assumed under an Insured Contract (Contractual Liability).
4. The full limits of coverage must be dedicated to apply to this project/location, per ISO form CG2503 or equivalent.
5. Waiver of Subrogation and Rights of Recovery, per ISO form CG2404 or equivalent.
6. Separation of Insureds Provision required

Garagekeepers Liability

Coverage	Minimum Limits of Liability	Policy No. & Company	Policy Period
Garagekeepers Liability	\$2,000 per occurrence \$4,000 aggregate.		

Any Policy issued under this section must contain, include or provide for the following:

1. Garagkeepers shall be written on a direct, primary basis for this contract.



2. This coverage shall include broadened pollution endorsement at least as broad as CA 9955 or equivalent.

BAL-1. Business Automobile Liability Coverage

Coverage	Minimum Limits of Liability (In Thousands)	Policy No. & Company	Policy Period
Business Automobile Liability (coverage at least as broad as ISO form CA 0001)	Combined Single Limit \$2,000		

Any Policy issued under this section must contain, include or provide for the following:

1. Symbol 1, coverage for any auto. If no autos are owned, Symbols 8 & 9, (Hired and Non-owned) auto liability.
2. If this contract involves the transport of hazardous cargo such as fuel, solvents or other hazardous materials may occur, then Broadened Pollution Endorsement, per ISO form CA 9948 or equivalent and MCS 90 are required.

II. ADDITIONAL COVERAGE

EIP-1. Environmental Impairment

Coverage	Minimum Limits of Liability (In Thousands)	Policy No. & Company	Policy Period
Environmental Impairment / Contractors Pollution Liability	Limit \$2,000 per occurrence \$2,000 aggregate		

Any Policy issued under this section must contain, include or provide for the following:

1. Coverage shall cover the Insured's completed operations
2. City, its officers, officials and employees as additional insureds And shall including liability and defense of suits arising out of the activities performed by, or on behalf of the Insured.
3. Full limits of coverage dedicated to apply to this project/location.
4. Waiver of Subrogation and Rights of Recovery against the City and County of Denver, its officers, officials and employees.
5. Coverage shall apply to sudden and gradual pollution conditions resulting from the escape of release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, natural gas, waste materials, or other irritants, contaminants, or pollutants (including asbestos). If the coverage is written on a claims-made basis, the Insured warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning from the time that work under this contract is completed

PI-1. Property Insurance/Special Cause of Loss Form, Replacement Cost

Coverage	Minimum Limits of Liability	Policy No. & Company	Policy Period
<input type="checkbox"/> PL-1-A. Property Insurance on the tenant/contractor's real and/or personal property, Special Cause of Loss Form <input checked="" type="checkbox"/> PL-1-B. Property Insurance on City real and personal property in tenant/contractor's care, custody or control.	Amount of the Replacement Cost on Tenant/Contractor's real and/or personal Property Replacement costs of the City property in tenant or contractor's care, custody, control. Or at a minimum, \$ <u>2,280,000</u>		

Any policy issued under this section must contain, include or provide for the following:

1. Replacement Cost, Agreed Value endorsements.
2. City and County of Denver as Loss Payee/Mortgagee, as applicable on the policy.
3. Waiver of Subrogation and Rights of Recovery against the City and County of Denver.

III. ADDITIONAL CONDITIONS

It is understood and agreed, for the benefit of the City, that the following additional conditions shall apply to all coverage specified herein:

1. All coverage provided herein shall be primary and any insurance maintained by the City shall be considered excess.
2. With the exception of professional liability and auto liability, a Waiver of Subrogation and Rights of Recovery against the City, its officers, officials and employees is required for each coverage period.
3. The City shall have the right to verify or confirm, at any time, all coverage, information or representations contained herein, and the insured and its undersigned agent shall promptly and fully cooperate in any such audit the City may elect to undertake.
4. Advice of renewal is required
5. All insurance companies issuing policies hereunder must carry at least an A-VI rating from A.M. Best Company or obtain a written waiver of this requirement from the City's Risk Administrator.
6. Compliance with coverage requirement by equivalent herein must be approved in writing by the City's Risk Administrator prior to contract execution.
7. No changes, modifications or interlineations on this Certificate of Insurance shall be allowed without the review and approval of the Risk Administrator prior to contract execution.

IV. NOTICE OF CANCELLATION

It is understood and agreed that should any Policy issued hereunder be cancelled or non-renewed before the expiration date thereof, the issuing company or its authorized Agent shall mail to the address shown above, by mail, return receipt requested, thirty (30) days prior written notice ten (10) days for non-payment of premium, referencing the contract/project number set forth herein.

