

FIRST AMENDMENT TO CONCESSION AGREEMENT

THIS FIRST AMENDMENT TO CONCESSION AGREEMENT AND TERMINAL BUILDING PREMISES LEASE is made and entered into on the date indicated on the City signature page below, by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, on behalf of its Department of Aviation (“**City**”), and **ADVANTAGE OPCO, LLC**, d/b/a Advantage Rent A Car, a Delaware limited liability company authorized to transact business in the State of Colorado (“**Company**”).

WITNESSETH

WHEREAS, the Parties have entered into two agreements: a “Car Rental Facilities and Ground Lease” dated November 10, 2014, Contract No. 201314187-00 (the “**Existing Ground Lease**”), and a “Concession Agreement and Terminal Building Premises Lease” dated November 10, 2014, Contract No. 201314186-00 (the “**Existing Concession Agreement**”), both related to operation of a car rental concession at Denver International Airport (“**Airport**”); and

WHEREAS, the Parties desire to amend the Existing Concession Agreement;

NOW, THEREFORE, for the reasons and consideration stated herein, the Existing Concession Agreement is hereby amended to read as follows:

1. Section 1.4, “Manager,” is deleted, and replaced with the following:

1.4 Chief Executive Officer or “CEO”. “Chief Executive Officer” or “CEO” means the Chief Executive Officer of the City’s Department of Aviation having jurisdiction over the management, operation, and control of the Airport. “CEO’s authorized representative” or words of similar import shall mean the officer or employee of the City designated in writing by the CEO as the CEO’s delegated authorized representative.

All references in the Existing Concession Agreement to “Manager” or “Manager of Aviation” are hereby deleted and replaced by “CEO.”

2. All references to Terminal Building Premises and the associated Lease are hereby deleted, as such space will no longer be provided in the Terminal. This includes deletion of the following Sections in their entirety, to be replaced with “[Reserved]”: 1.6, 1.7, 2.2.C, 3.1, 4.2, 4.3, 4.5, all of Section 5, 6.1, 7.5, 8.1, 8.6, 8.7, 8.8, 8.9, 8.10, 8.12, 8.17, 8.18.K, and 11.2.C.

3. Section 4.1 of the Existing Concession Agreement is amended and restated to read as follows:

4.1. Term of the Agreement.

- A. Term. The term of this Agreement shall commence on January 1, 2014 and shall terminate the earlier of (a) December 31, 2020, or (b) the termination of the Existing Ground Lease, unless terminated earlier in accordance with this Agreement, *excepting that* the changes made in the First Amendment to Concession Agreement will take effect January 1, 2016.
- B. Aviation Purposes. In the event the CEO determines that aviation purposes require termination of this Agreement is required due to planning or policy changes affecting the car rental program, the City shall have the right to require termination of this Agreement upon six months prior written notice to the Company. In the event of termination under this Section, and provided Company is not in default hereunder, City shall compensate Company for the unamortized value of the leasehold estate, pursuant to the Existing Ground Lease.

4. All references to “Gross Revenues” are hereby replaced with the phrase “**Gross Receipts.**”

5. Section 6.2. of the Existing Concession Agreement, “Concession Fees,” is amended and restated to read as follows:

A. [NO CHANGE MADE; shall read as in Existing Concession Agreement]

B. [NO CHANGE MADE; shall read as in Existing Concession Agreement]

C. **Gross Receipts.** As used in this Section, the term "**Gross Receipts**" shall mean, for all purposes in the Concession Agreement, the total amount of monies paid to or earned by Company, or due or received from Airport Customers after discounts and coupons deducted at the time of rental', in its performance of its business at the Airport, including.

- (i) All charges including but not limited to time and mileage charges, whether for cash or credit, for rentals of motor vehicles and all other authorized items or services from each customer of the Company who has arrived at the Airport within 24 hours previous to entering into a motor vehicle rental agreement within a 20 mile radius of the Terminal Building at the Airport with the Company or taking delivery within a 20 mile radius of the Terminal Building at the Airport of a rental motor vehicle regardless of where the

motor vehicles or services are returned, and shall include customers obtained through discount arrangements whereby the Company provides discounts to airlines, charters, cruise lines, or any other person, firm, or entity. This includes rentals of Airport based "fleet" motor vehicles and motor vehicles which are not assigned to the Company's Airport fleet. Motor vehicles shall include only those vehicles commonly classified as sedans, coupes, convertibles, station wagons, 4-wheel drive vehicles, recreational vehicles, pickup trucks, passenger vans, and such other vehicles as may be approved from time to time by the CEO. Motor vehicles shall not include trucks rated one ton or more other than pickup trucks; and

- (ii) Any charges for insurance offered incidental to such motor vehicle rentals including but not limited to accident and personal effects insurance; and
- (iii) Any charges for motor vehicles leased or delivered within a 20 mile radius of the Terminal Building at the Airport but later exchanged at any point other than within 20 miles of the Terminal Building at the Airport where exchanges of motor vehicles originally rented or delivered within such distance of the Airport are permitted by the Company; and
- (iv) All proceeds from the long-term lease of vehicles from any location on the Airport; and
- (v) The amount charged to the Company's Airport Customers which is separately stated on the rental agreement as an optional charge for waiver by the Company of its right to recover from the Airport Customer for damage to or loss of the vehicle rented; and
- (vi) The amount charged to the Company's Airport Customers at the commencement or the conclusion of the rental transaction for the cost of furnishing and/or replacing fuel provided by the Company; and
- (vii) The amount charged by the Company as a pass through to its Airport Customers of the Concession Fee; and
- (viii) All additional charges not expressly excluded under this provision, such as add-ons for GPS, child carriers, ski or bicycle roof-top carriers, travel accessories or conveniences, and services charges.

Only the following shall be excluded from the term "Gross Receipts":

- 1) Any Federal, State, County, or City sales or other similar taxes or surcharges separately stated to and collected from Airport Customers of the Company;
- 2) Any amounts received as insurance proceeds or otherwise for damage to vehicles or other property of the Company, or for loss, conversion, or abandonment of such vehicle;
- 3) Revenue from the disposal of salvage vehicles or the wholesale disposal or transfer of fleet vehicles;
- 4) Amounts received as payment for and administration on behalf of customers of red light tickets, parking tickets, tolls, tows, and impound fees;
- 5) All non-revenue rentals to employees of the Company; and
- 6) The Customer Facility Charge.

Gross Receipts shall be determined by the total of charges on the face of the Airport Customer's receipt, less any charges specifically excluded in the definition of the term "Gross Receipts" above. Credits given to the Company's customers, including without limitation credits for out-of-pocket purchases of gas, oil, chains, tires, or emergency services, regardless of where made, may not be deducted by the Company from its Gross Receipts.

D. [NO CHANGE MADE; shall read as in Existing Concession Agreement]

E. **MAG.** An amount equal to one-twelfth of the minimum annual guaranteed amount shall be payable by the Company commencing upon January 1, 2014 and thereafter on the first day of each succeeding month, in advance, during the term of this Agreement. In the event that 10% of the Company's Gross Receipts derived from its operations under this Agreement for any month during the term of this Agreement exceeds the portion of the minimum annual guaranteed amount for such month, an amount equal to such excess shall be payable by the Company on the 20th day of the next succeeding month. The Company agrees to furnish a true and correct statement of its Gross Receipts for the preceding month, signed by an authorized representative of the Company, to the CEO in a form acceptable to the City no later than the 20th day of the month immediately succeeding the date of occupancy as determined in this Section, and for each succeeding month during the term of this Agreement and the month immediately succeeding the expiration or termination of this Agreement. The reporting form shall generally be in the form attached as **Exhibit Y**, though it may be modified from time to time by the City.

F. [NO CHANGE MADE; shall read as in Existing Concession Agreement]

G. **Record Keeping, Reports, Annual Audit.**

1. The Company shall make available within the City true and complete records and accounts of all Gross Receipts, including daily bank deposits, and not later than April 15th of each year shall furnish a true and accurate statement for the preceding year of the total of all such revenues and business transacted during such preceding calendar year showing the authorized deductions or exclusions in computing the amount of such Gross Receipts and business transactions, and including a breakdown of Gross Receipts on a month-by-month basis, which statement shall be certified by an authorized representative of the Company to be correct.
2. The Company agrees to establish and maintain a system of bookkeeping satisfactory to the City's Auditor and to give the City's authorized representatives access during reasonable hours to such books and records related to Gross Receipts. Such system shall be kept in a manner as to allow the Airport operations hereunder to be distinguished from all other locations or operations of the Company. The Company agrees that it will keep and preserve for at least three years all sales slips, rental agreements, cash register tapes, electronic records, sales books, credit card invoices, bank books or duplicate deposit slips, and other evidence of Gross Receipts and business transacted which is routinely prepared, collected or compiled by the Company in the course of its business.
3. Generally Accepted Accounting Principles. Company covenants to prepare and maintain, in accordance with Generally Accepted Accounting Principles, complete and accurate books and records that include all financial transactions in the performance of this Agreement.
4. Auditor. The Auditor of the City, the CEO, and their respective authorized representatives shall have the right at any time and from time to time, upon 24 hours' notice to Company, to audit all of the books of account, bank statements, documents, records, returns, papers, and files of the Company relating to its Gross Receipts and the performance by the Company of any other covenant and provision of this Agreement and the Company, upon the request by the Auditor or the CEO, shall make all such matters available for

such examination within the Denver metropolitan area. If the City determines after an audit for any year that the Gross Receipts and business transacted shown by the Company's statement for such year was understated by more than three percent (3%), the Company shall pay to the City the amount of any deficiency, plus interest on such amount at the rate of 18% per annum from the date due.

5. The City's right to have such an audit made with respect to any year and the Company's obligation to retain the records described herein shall expire three years after the Company's annual statement for any year shall have been delivered to the City.

H. **Customer Agreement Form.** The Company's motor vehicle rental agreements shall be printed in such form as to allow its customers to designate on each agreement whether they have arrived at the Airport within a 24 hour period prior to signing the rental agreement or taking delivery of a rental motor vehicle and to allow its customer to sign verifying whether such arrival has taken place. The Company agrees it will require each of its customers to sign this portion of the rental agreement and further agrees any rental agreement which does not have a space upon it designating whether the customer so arrived at the Airport or which is not so signed by the customer shall be treated hereunder as though such customer arrived at the Airport within the previous 24 hours for purposes of computing compensation due to the City hereunder. A customer's designation on the form that he or she did not arrive at the Airport within the past 24 hours shall be verified by the customer presenting a valid, current Colorado driver's license showing a local address (Denver metropolitan area) and recording such address on the rental agreement. A customer's designation may also be verified by presenting a copy of a valid airline ticket receipt showing that the customer did not arrive at the Airport within the past 24 hours prior to the rental of the motor vehicle.

I. **No partnership.** Notwithstanding the provision herein contained for the payment by the Company to the City of sums based upon a percentage of Gross Receipts, it is expressly understood and agreed that the City shall not be construed or held to be a partner, associate or joint venturer of the Company in the conduct of its business and the Company at all times shall have the status of an independent contractor for whose actions neither tort nor contractual liability shall be imposed upon the City.

J. **Sales Tax.** The Company agrees that the CEO and the Auditor, and their authorized representatives, may inspect any sales tax return or report and accompanying schedules and data which the Company may file with the City pursuant to the City Retail Sales Tax Article, and the Company waives any claim of confidentiality which it may have in connection therewith.

5. The attached **Exhibit Y**, referenced in amended Section 6.2.E MAG, is hereby incorporated into the Existing Concession Agreement by this reference.

6. Section 6.6 of the Existing Concession Agreement, entitled “Rental Car Customer Facility Charge (CFC),” is amended and restated to read as follows:

6.6. Rental Car Customer Facility Charge (CFC).

- A. The Airport has adopted a Customer Facility Charge (“CFC”) applicable to the Company’s Airport Customers on a per Rental Car Transaction Day basis. The method of calculating the CFC and the amount of such CFC is determined by the CEO and implemented through an Airport Rule and Regulation. The CFCs may be used by the Airport for any purpose stated in the Airport Rule and Regulation.
- B. The Company shall list the CFC separately on the Airport Customer invoice, describing it as a “Customer Facility Charge”, and shall charge the fee per Rental Car Transaction Day in connection with each and every Airport Customer rental agreement entered into in connection with its operations on airport property in such manner and as directed by Airport Rule and Regulation.
- C. The Company shall include the CFC in all forms of reservations not later than thirty (30) days prior to either the CFC charge effective date or the date on which a revised CFC rate takes effect, provided Company is notified by the Airport of the CFC, or change in CFC, at least sixty (60) days prior to charge effective date.
- D. The CFC collected by the Company shall be deemed to be the property of the Airport and shall be held in trust by the Company for the benefit of the Airport. The Company agrees that the CFC is not income, revenue or any other asset to the Company; that the Company has no ownership or property interest in the CFCs; and that the Company hereby waives any

claim to a possessory or ownership interest in the CFCs. The Airport (or the City Treasurer on its behalf) shall have complete possessory and ownership rights to the CFCs. The Company shall segregate, separately account for and disclose all CFCs as trust funds in its financial statements, and shall maintain adequate records that account for all CFCs charged and collected. Failure to segregate the CFCs shall not alter or eliminate their trust fund nature.

- E. The Company shall remit all CFCs that were collected or should have been collected from its Airport Customers on a monthly basis to the Airport, together with a monthly statement of transactions which shall include Rental Car Transaction Days. CFCs shall be remitted to and received by the Airport no later than the 20th day of the month following the month in which the CFCs were or should have been collected. Failure to strictly comply with any portion of this Section shall be considered a material breach of this Agreement and the Company's authorization to do business on Airport Property.
- F. The Company shall maintain adequate records, in full conformance with generally accepted accounting principles that account for all CFCs charged, collected and remitted. The City shall have the right to audit the CFC records upon reasonable notice to the Company.
- G. The Company shall be entitled to no compensation for collection safe keeping and accounting of the CFC.
- H. The CFC is not included in the definition of Gross Receipts.

7. Section 7.8.A of the Existing Concession Agreement, under "Performance Bond," is amended and restated to read as follows:

- A. Upon the commencement of the terms of this Agreement, the Company shall deliver to the CEO, and shall maintain in effect at all times during the term of this Agreement, including a period of six months after expiration or earlier termination of this Agreement, a valid corporate performance or surety bond or an irrevocable letter of credit, in an amount equal to three (3) months of the minimum annual guaranteed amount required by Section 6.2B hereof, payable without condition to the City, with surety acceptable to and approved by the CEO, which bond or irrevocable letter of credit shall guarantee to the City full and

faithful performance of the terms and provisions of this Agreement. The CEO may increase this to six (6) months of the minimum annual guaranteed amount required by Section 6.2B should the CEO deem three months insufficient because the Company is or has been in arrears on payments or has violated other terms of this Agreement.

9. Section 8.2 of the Existing Concession Agreement is amended and restated to read as follows:

8.2. Limitations Upon Use. The Company agrees that it will not sell or undertake any activity in connection with the retail sale of used motor vehicles at the Airport.

10. Section 8.3.B of the Existing Concession Agreement is amended and restated to read as follows:

B. Company agrees to submit any report or reports or information which the City is required by law or regulation to obtain from Company or which the CEO may reasonably request relating to Company's operations.

11. Section 8.18.J of the Existing Concession Agreement is amended and restated to read as follows:

J. The Company will complete its rental transactions, including but not limited to preparation and signing of rental contracts and exchange of money, credit cards or other legal tender, at the property leased under the Facilities Lease. The parties agree that breach of this paragraph J shall be an event of default if written notice specifying such breach is served upon the Company and the Company fails to cure within 30 days of receiving the notice.

12. The parties agree that the provisions herein constitute the entire agreement concerning the subject matter of this amendment and that all representations made by any officer, agent or employee of the respective parties unless included here are null and void and of no effect.

13. Except as expressly modified or amended herein, all terms and conditions of the Existing Concession Agreement shall remain in full force and effect as though set out in full here, and are hereby ratified and reaffirmed.

14. This Amendment is expressly subject to and shall not be or become effective or binding on the City until approved by the Denver City Council and fully executed by all signatories of the City. **[SIGNATURE PAGES FOLLOW]**

Contract Control Number:

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By _____


By _____

By _____



Contract Control Number: PLANE-201314186-01

Contractor Name: Advantage Opco, LLC

By: 

Name: William D. Rawdon
(please print)

Title: President
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



EXHIBIT Y

RENTAL CAR CONCESSION REVENUE MONTHLY REPORT

For the month of: _____ (MO/YEAR) Due on the 20th DAY of the following month.

FROM _____
 Company Name _____ Phone _____
 Address _____ FAX _____
 Email _____

1 GROSS REVENUE THIS MONTH

T&M \$ _____

INSURANCE \$ _____

FUEL \$ _____

CUSTOMER CREDITS \$ _____

DAMAGE RECOVERY WAIVER \$ _____

CONCESSION PRIVILEGE PASSTHRU \$ _____

ADD-ONS (GPS, child carrier, rooftop carrier, accessories, other svcs) \$ _____

TOTAL GROSS REVENUE THIS MONTH \$ _____

SUBTRACT DEDUCTIBLE TAXES \$ _____

RETURNS & REFUNDS \$ _____

AUTHORIZED DEDUCTIONS (Itemize in box) \$ _____

TOTAL DEDUCTIONS \$ _____

2 REPORTABLE REVENUE THIS MONTH (Subtract Allowable Deductions) \$ _____

3 PERCENTAGE COMPENSATION FEE 10% OF LINE 2 \$ _____

4 MINIMUM MONTHLY GUARANTEE PAID \$ _____

5 TOTAL RENT DUE WITH REPORT IF LINE 3 IS GREATER THAN LINE 4 \$ _____

CUSTOMER FACILITY CHARGE (CFC) COLLECTED

No. of transactions _____

Transaction days _____

@ \$2.15 per day _____

Total to Airport _____
(remit separate check for CFCs)

AGGREGATE REVENUES TO-DATE

\$ _____

\$ _____

GROSS REVENUES from facilities within 20 mile radius (if applicable)

1 _____ \$ _____

2 _____ \$ _____

3 _____ \$ _____

4 _____ \$ _____

Authorized Deductions

1 _____

2 _____

3 _____

4 _____

REMIT AMOUNT ON LINE 5 WITH THIS REPORT IF LINE 5 IS GREATER THAN ZERO

NOTE: LINE 4 (MMG) IS DUE IN ADVANCE AND WITHOUT NOTICE ON THE 1ST DAY OF EVERY MONTH.

LATE PAYMENTS ARE ASSESSED INTEREST AND PENALTY CHARGES PER CONTRACT. LATE REPORTS ASSESSED \$100/DAY/REPORT.

MAKE CHECKS PAYABLE TO AIRPORT REVENUE FUND

Mail check to: **P.O. Box 492065**
Denver, CO 80249-2065

OATH OF CONCESSIONAIRE:

The undersigned states that the revenues, rent payments and calculations shown by this statement are correct to the best of her or his knowledge and belief, and the percentage shown is due the City and County of Denver in accordance with the Concession Agreement.

 Signature—Authorized Officer Title Date