SECOND AMENDMENT TO AND RESTATEMENT OF CAR RENTAL GROUND LEASE

THIS SECOND AMENDMENT TO AND RESTATEMENT OF CAR RENTAL GROUND LEASE (the "Agreement") is made as of the date stated on the City signature page below, between the **CITY AND COUNTY OF DENVER**, a municipal corporation and home rule city organized and existing under the Constitution and laws of the State of Colorado (the **"City"**), and **THE HERTZ CORPORATION ("Hertz"),** a Delaware corporation authorized to transact business in the State of Colorado, which also is doing business as **DTG OPERATIONS, INC., which in turn is d/b/a Dollar Rent A Car, Thrifty Car Rental, and Firefly ("DTG"),** a company organized under the State of Oklahoma and which is wholly owned by Hertz (collectively the **"Company"**).

RECITALS

WHEREAS, the City, through its Department of Aviation, operates and maintains a municipal airport known as "Denver International Airport" for the use and benefit of the public **("DEN" or "Airport")**; and

WHEREAS, the Company is engaged in the principal business of renting vehicles and desires to provide the service of renting vehicles to the public at the Airport upon the terms set forth below; and

WHEREAS, DEN and The Hertz Corporation previously entered into two separate agreements: a "Car Rental Facilities and Ground Lease" dated November 10, 2014, Contract No, 201314180-00, which was amended once by a First Amendment To Car Rental Facilities And Ground Lease dated November 15, 2015 (the "**Existing Hertz Ground Lease**"), and a "Concession Agreement and Terminal Building Premises Lease" dated November 10, 2014, Contract No. 201314179-00, which was amended once by a First Amendment To Concession Agreement dated November 15, 2015 (the "**Existing Hertz Concession Agreement**"), both agreements relating to operation of a car rental concession at DEN; and

WHEREAS, DEN and DTG Operations, Inc., previously entered into two separate agreements: a "Car Rental Facilities and Ground Lease" dated November 10, 2014, Contract No. Contract No. 201415630-00, which was amended once by a First Amendment To Car Rental Facilities And Ground Lease dated November 15, 2015 (the "**Existing DTG Ground Lease**"), and a "Concession Agreement and Terminal Building Premises Lease" dated November 10, 2014, Contract No. 201415631-00, which was amended once by a First Amendment To Concession Agreement dated November 15, 2015 (the "**Existing DTG Concession Agreement**"), both agreements relating to operation of a car rental concession at DEN; and

WHEREAS, the two Existing Ground Leases were separate agreements from the two Existing Concession Agreements due to requirements of a special facilities bond.

That bond terminated December 31, 2013, and therefore the reason for keeping the Existing Ground Lease and the Existing Concession Agreement separate no longer exists; and

WHEREAS, the Parties desire to:

- **combine both Existing Ground Leases and both Existing Concession Agreements into one restated Agreement covering both Hertz and DTG;**
- **incorporate amendments to those existing agreements;**
- **thus restating and updating all existing agreements between DEN and Hertz and DEN and DTG in this Second Amendment to and Restatement of Car Rental Ground Lease;**
- **terminate the Existing Hertz Concession Agreement;**
- **terminate the Existing DTG Ground Lease and Existing DTG Concession Agreement, Contracts 201415630 and 201415631; and**
- **allow Hertz to operate at DEN as both Hertz and DTG, with Hertz the named tenant and concessionaire obligated to DEN.**

NOW, THEREFORE, in consideration of the respective representations and agreements contained herein, the City and the Company hereby agree as follows:

SECTION 1
DEFINITIONS

1.1 AIRPORT CUSTOMER. "Airport Customer" means a customer of the Company who has arrived at the Airport within 24 hours previous to either entering into a vehicle rental agreement at the airport or taking delivery of a rented vehicle at a location within zip codes 80249, 80022, 80019, 80239, 80238, 80011, 80012,80010, 80016, or 80207, regardless of where the vehicles or services are returned.

1.2 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 Section 2.6 *infra* or otherwise designated in writing by the CEO.

1.3 CUSTOMER FACILITY CHARGE OR "CFC." "Customer Facility Charge or "CFC" means a charge on the Company's Airport Customers on a per Rental Car Transaction Day basis, to be used for the purposes stated in and in the amount stated in Airport Rule and Regulation 125 and collected by the Company as required under that Rule.

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

1.5 DEN ENVIRONMENTAL GUIDELINES. "DEN Environmental Guidelines" shall mean Aviation Rules and Regulations Part 180 – Environmental Management, and any environmental compliance guidelines adopted by the Department of Aviation, including as they may be amended.

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

1.7 FACILITIES. "Facilities" shall mean those improvements described and/or depicted in **Exhibit A.**

1.8 GROSS RECEIPTS. "**Gross Receipts**" shall mean, for all purposes in the Agreement, the total amount of monies paid to Company or due or received from Airport Customers in its performance of its business at the Airport, including:

1. All charges including but not limited to time and mileage charges, whether for cash or credit, for rentals of vehicles and all other authorized items or services from each Airport Customer of the Company, regardless of where the rental vehicles are returned. This includes rentals of Airport based "fleet" vehicles and vehicles which are not assigned to the Company's Airport fleet. 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. Vehicles shall not include trucks rated one ton or more other than pickup trucks, and shall not include commercial vehicles; and
2. Any charges for insurance offered incidental to such vehicle rentals including but not limited to accident and personal effects insurance; and
3. Any charges for vehicles leased or delivered in the zip codes stated in the definition for Airport Customer but later exchanged at any other point where exchanges of such vehicles are permitted by the Company; and
4. All proceeds from the long-term lease of vehicles from any location on the Airport; and
5. 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
6. 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
7. For rental transactions that occur at the Airport or are with Airport Customers, the amount of referral fees or other compensation received by Company from apps,

internet platforms, and similar sources, including but not limited to transportation network companies; and

8. The amount charged by the Company as a pass through to its Airport Customers of the Privilege Fee; and
9. 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”:

a. Any Federal, State, County, or City sales or other similar taxes or surcharges separately stated to and collected from Airport Customers of the Company;
b. 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;
c. Revenue from the disposal of salvage vehicles or the wholesale disposal or transfer of fleet vehicles;
d. Amounts received as payment for and administration on behalf of customers of red light tickets, parking tickets, tolls, tows, and impound fees;
e. All non-revenue rentals to employees of the Company; and
f. 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.

1.9 LEASE PREMISES. "Lease Premises" shall mean the parcels of real property legally described on **Exhibit B** as well as the Facilities as defined in Section 1.7 and depicted and/or described **Exhibit A.**

1.10 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.

1.11 RENTAL CAR TRANSACTION DAY. “Rental Car Transaction Day” means a twenty-four (24) hour period or fraction thereof for which an Airport Customer is provided the use of a rental vehicle for compensation regardless of the duration or length of the rental term. However, if the same vehicle is rented to more than one customer within one continuous twenty-four (24) hour period, then each such rental shall be calculated as a transaction day. A grace period of no more than two (2) hours after the last 24-hour day booked shall not be considered a separate transaction day.

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

SECTION 2
REPRESENTATIONS

2.1. CONSIDERATION. The City enters into this Agreement in consideration of the payment by Company as herein provided and of the performance and observance by Company of the covenants and agreements herein.

2.2. REPRESENTATIONS AND COVENANTS BY THE CITY. The City hereby represents and covenants that, subject to the provisions of the Charter:

A. The City is a municipal corporation and home-rule city, duly organized and existing under the Constitution and laws of the State of Colorado; and

B. The City is authorized by the Colorado Constitution and the Charter of the City and County of Denver to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder; and

C. The City has title to the Premises and Facilities.

2.3. REPRESENTATIONS AND COVENANTS BY THE COMPANY. The Company hereby represents and covenants that:

A. The Company is a corporation duly incorporated in the state specified on page 1 of this Agreement, is in good standing in the State of Colorado, is not in violation of any provision of its Articles of Incorporation or its by-laws, has full corporate power to own its properties and conduct its business, has full legal right, power and authority to enter into this Agreement and consummate all transactions contemplated hereby and by proper corporate action has duly authorized the execution and delivery of this Agreement;

B. This Agreement has been authorized, executed and delivered by the Company and constitutes the legal, valid, and binding obligation of the Company enforceable against the Company in accordance with its terms; and

C. There are no pending or threatened actions or proceedings before any court or administrative agency, including bankruptcy, which individually (or in the aggregate in the case of any group of related lawsuits) is expected to have a material adverse effect on the financial condition of the Company or the ability of the Company to perform its obligations under this Agreement.

2.4 COMPANY TO MAINTAIN ITS CORPORATE EXISTENCE. The Company agrees that during the term of this Agreement it will maintain in good standing its

corporate existence, will remain duly qualified to do business in the State, will not dissolve or otherwise dispose of all or substantially all of its assets, and will not consolidate with or merge into another corporation; provided, however, that the Company may, without violating the agreement contained in this Section, consolidate with or merge into another corporation either incorporated and existing under the laws of the State or qualified to do business in the State as a foreign corporation, or sell or otherwise transfer to another such corporation all or substantially all of its assets as an entirety and thereafter dissolve, provided:

(i) the resulting, surviving or transferee corporation, as the case may be, is not "insolvent" within the meaning of the Colorado Uniform Commercial Code, and

(ii) the resulting, surviving or transferee corporation has not ceased to pay its debts in the ordinary course of business, can pay its debts as they become due, and is not insolvent within the meaning of the federal bankruptcy law, and

(iii) the resulting, surviving, or transferee corporation irrevocably and unconditionally assumes in writing and agrees to perform by means of an instrument which is delivered to the CEO, all of the obligations of the Company herein.

2.5 INCORPORATION OF ATTACHED EXHIBITS AND APPENDICES. The Exhibits and Appendices attached to this Agreement shall be deemed incorporated in this Agreement by reference. The Exhibits attached to this Agreement are:

- EXHIBIT A DESCRIPTION OF THE FACILITIES
- EXHIBIT B DESCRIPTION OF THE GROUND AND EASEMENTS
- EXHIBIT C INSURANCE
- EXHIBIT D COMMERCIAL TRUCK RENTAL LOCATIONS
- EXHIBIT E RENTAL CAR MONTHLY REVENUE REPORT
- EXHIBIT H SHUTTLE BUS PICK UP AND DROP OFF AREA
- EXHIBIT K OFF-SITE STORMWATER DETENTION BASIN

2.6 DELEGATION OF AUTHORITY. The CEO exercises the City's authority and discretion under the Agreement, and has the authority and discretion to further delegate any authority or discretion granted to the CEO. The CEO has designated as his representative and delegated his authority and discretion under this Agreement to DEN's Executive Vice President for Real Estate ("EVP"). Only the CEO and/or EVP may exercise City's authority and discretion granted under the Agreement, except that the EVP has delegated authority for all day-to-day management responsibilities and decisions to the Department of Aviation's Senior Vice President for Real Estate ("SVP"). The CEO and/or EVP may rescind or amend any designation of representative or delegation of authority and discretion under the Agreement upon written notice to Company.

SECTION 3
LEASE OF PREMISES AND FACILITIES

3.1 LEASE RIGHTS GRANTED; RESERVATIONS. City grants to Company the right to occupy and use the Lease Premises consistent with and subject to all of the terms and provisions of this Agreement.

A. **Subject to Existing Rights.** The rights and privileges granted herein are subject to prior easements, rights of way, and other matters affecting title to the land.

B. **Avigation.** 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.

C. **Minerals and Water.** The City also expressly reserves from the Lease Premises all oil, gas, and other mineral rights, and all water rights.

D. **Utility Installation.** 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 Company's operations and use of the Lease Premises. The Company 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 Company's operations or use of the Lease Premises.

E. **No Warranty of Condition or Suitability by the City**. The Company specifically acknowledges that the City makes no warranty, express or implied, as to the Lease Premises or their condition or that they will be suitable for the Company's purposes or needs.

3.2 FACILITIES.

A. **Identification tags.** The Company shall place or cause to be placed on each item constituting the Facilities a permanent adhesive nameplate identifying the ownership interest of the City in such item as follows: “OWNED BY THE CITY AND COUNTY OF DENVER, COLORADO.” The Company shall not allow the name of any person other than the City to be placed on any item of equipment constituting the Facilities as a designation that might be interpreted as a claim of ownership or any interest therein; provided, however, that nothing herein contained shall prohibit the Company from placing its customary colors and insignia on the Facilities.

B. **Changes to Facilities and Exhibit A.** The initial Facilities are described and/or depicted in **Exhibit A.** Exhibit A shall be revised by the Company from time to time to reflect additions to, deletions from, and changes to the Facilities made in accordance with this Agreement, subject to any approvals by the City as required by the Charter or

applicable ordinances of the City. A supplement or amendment to Exhibit A shall not be considered as an amendment of this Agreement.

3.3 USE OF LEASE PREMISES.

A. The Company shall use the Lease Premises solely for the purpose of renting vehicles to the public and operating a nonexclusive car rental concession at the Airport and for no other purposes, unless otherwise authorized in writing by the CEO.

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

C. The Company shall not undertake any major overhaul, major body repair or major painting of vehicles upon the Lease Premises. If the Company desires to undertake minor repairs or minor painting of vehicles, the procedure must be pre-approved in writing by DEN based on terms and conditions acceptable to DEN.

D. The Company shall not install any display or device upon the Lease Premises which in any way obstructs the public view of any of the other Companies or any of the other tenants of the Airport.

E. THE COMPANY SPECIFICALLY ACKNOWLEDGES THAT THE CITY MAKES NO WARRANTY, EXPRESS OR IMPLIED, AS TO THE LEASE PREMISES OR THEIR CONDITION OR THAT THEY WILL BE SUITABLE FOR THE COMPANY'S PURPOSES OR NEEDS.

3.4 QUIET ENJOYMENT. Provided the Company is not in default under the terms of this Agreement, the Company shall and may peacefully have, hold and enjoy the Lease Premises and shall not be disturbed or interfered with by the City or by any person claiming by, through, or under the City.

3.5 GRANT OF CONCESSION. The City hereby grants to the Company the right and the privilege of operating at the Airport a non-exclusive concession for the rental of vehicles to the public, together with necessary rights of ingress and egress, all in accordance with the terms of this Agreement. The City further grants to the Company the right and privilege of operating its vehicles upon the Airport in the conduct of its vehicle rental business in accordance with Airport rules and regulations, as established and amended from time to time governing the operation of such vehicles upon the Airport including without limitation any fees for the use of roadway facilities imposed in such regulations.

3.6 AGREEMENTS WITH OTHER CAR RENTAL COMPANIES.

A. **Rights Nonexclusive.** The City reserves the right to grant to other companies the right to engage in the rental of vehicles to the public and operate car

rental concessions at the Airport in locations other than the Lease Premises, and the Company understands and agrees that its right to engage in the rental of vehicles to the public at the Airport is not exclusive.

B. **Consistent Terms.** The City agrees that during the Term of this Agreement it will not enter into an Agreement with another car rental company which provides for terms and conditions more favorable than those contained herein unless the same terms and conditions are offered to the Company.

3.7 MEANS OF ACCESS. The Company, its agents, employees, suppliers, vendors, and customers have a non-exclusive right of ingress to and egress from the Lease Premises by a means of access located outside the Lease Premises boundaries as specified by DEN. In any non-public areas, such access shall be restricted under the Airport's security requirements, including as they may be amended. DEN may at any time close, relocate, reconstruct or modify such means of access, provided that a reasonably convenient and adequate means of ingress and egress is available for the same purposes. Nothing in this Agreement shall be construed to prevent DEN 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 DEN 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 the Company.

3.8 RIGHT OF INSPECTION. The City retains the full right of entry upon 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 deems necessary; and to perform periodic maintenance and make repairs and replacements in any case where the Company is obligated but has failed to do so, after the City has given the Company reasonable notice so to do, in which event the Company shall reimburse the City for the reasonable cost thereof promptly upon demand; and to do any and all things which the City deems necessary for the proper general conduct, security and operation of the Airport or in the proper exercise of the City's police power; provided, however, that nothing contained in this Section 3.07 shall limit the power of the City and its authorized officers, employees and agents to enter upon the Lease Premises as provided by law in a capacity other than as lessor under this Agreement. No such entry by or on behalf of the City upon the Lease Premises shall cause or constitute a termination of the Lease or be deemed to constitute an interference with the possession thereof by the Company.

3.9 COMPANY PROPERTY.

A. The Company may from time to time, in its sole discretion and at its own expense, install machinery, moveable equipment, and other personal property on or

upon the Lease Premises ("**Company Property**"). All Company Property so installed by the Company shall remain the sole property of the Company, in which the City shall have no interest except as otherwise provided below. The Company shall have the right at any time during the term of this Agreement, when not in default hereunder, to remove any or all of Company Property, at its own expense, subject to the Company's obligation to repair, at its own expense, all damage, if any, resulting from such removal

B. Notwithstanding anything herein to the contrary, any items installed pursuant to this Section that otherwise might be considered Company Property (other than any fuel system, storage tanks, and/or fueling lines which shall at all times remain the property of the Company as stated below) shall be considered part of the Lease Premises rather than Company Property if such property is affixed to the Lease Premises so as to be classified as a fixture under Colorado law.

3.10 ALTERATIONS TO LEASE PREMISES.

A. The Company may, with prior written approval of the CEO and at its own cost, expense and risk, install in or on the Lease Premises any improvement or do or make alterations, or do remodeling, modifications, changes, improvements, additions, deletions, repairs, and maintenance germane to the uses allowed herein or hereafter granted ("**Additional Improvements**"). Any Additional Improvements shall be deemed to be personal and shall be and remain the property of the Company, except as otherwise provided herein, and the Company shall have the right at any time during the term hereof to remove any or all of its property, subject to the Company's obligation to repair damage, if any, resulting from such removal.

B. It is understood and agreed that the Company shall obtain written approval from DEN for any proposed Additional Improvements in or on the Lease Premises. Additional Improvements shall be completed in accordance with the ordinances and applicable rules and regulations of the City and County of Denver, including the Airport Rules and Regulations governing tenant improvements, and pursuant to any required building permit.

C. The Company agrees that all Additional Improvements which are affixed to the realty, including DEN approved changes and renovations, shall become the property of the City upon their completion and acceptance by the City.

D. Notwithstanding the foregoing, title to any fuel system, storage tanks, and/or fueling lines shall remain the property of the Company and shall be Company Property as defined above. The City expressly denies any ownership, responsibility, or liability for the operation, maintenance, or removal of any fuel system, storage tanks, and/or fueling lines at any time during the term or after the termination of this Agreement.

3.11 SHUTTLE VEHICLE ACCESS.

A. Subject to any rules and regulations heretofore or hereafter adopted and promulgated by the City regarding the Airport, including without limitation any nondiscriminatory rules and regulations governing entrance to and use of the Airport, the City shall provide the Company roadways or other rights-of-way for access, ingress to and egress from the Terminal Building Premises for the Company's employees, it's or their suppliers of materials and furnishers of service, and it's or their equipment, vehicles, machinery and other property.

1. The foregoing shall not preclude the City or its licensees from making and collecting a charge for the use of public vehicle parking areas or ground transportation to or from the Airport, or preclude the City from imposing any taxes, including without limitation, sales, use and occupation taxes, any permit or license fees, and any property taxes not inconsistent with the rights and privileges granted to the Company hereunder.

B. The City agrees to initially assign to the Companies curbside loading areas on the east and west sides of the Terminal, and provide designated Shuttle Vehicle loading areas for the Company and each of the other Companies in accordance with the diagram attached as **Exhibit H.**

C. The Shuttle Vehicle loading areas may be reallocated by the CEO as needed to adapt to changes in tenants or Airport operations. The City may revise Exhibit H to reflect any modification of the designated loading areas after giving at least (30) days' notice of the change, and a new and revised Exhibit H shall be substituted, such action to be taken without the requirements of a formal amendment to this Agreement.

3.12 PARKING REVENUE CONTROL SYSTEM. Company covenants and agrees to take all reasonable and lawful steps necessary to ensure 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 AND TERMINATION

4.1 TERM.

A. **Effective Date.** This Restatement shall be effective January 1, 2022, regardless of date of execution.

B. **Term**. This Restatement shall terminate the earliest of the following events:

1. December 31, 2027;
2. Upon execution of a new lease agreement between the City and the Company; or
3. Upon 180 days' notice to the Company by DEN that the CEO has determined to terminate this agreement for Airport purposes, as provided below.

C. **Airport Purposes**. In the event the CEO determines that termination of this Agreement is required due to planning or policy changes affecting DEN's car rental program or other Airport purposes, the City shall have the right to require termination of this Agreement upon 180 days' prior written notice to the Company. Company 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 plan for the Airport, and waives any right to claim damages or other consideration arising therefrom.

4.2 HOLDING OVER. If the Company holds over after expiration of the Term or any extension thereof, thereafter the Company's occupancy shall be deemed a month-to-month tenancy.

A. If a holdover is due to the Company's negligence or fault in a) failing to vacate the premises when the Company intends to vacate, or b) failing to sign a new agreement presented to it in good faith by the City when the Company intends to continue its occupancy, the Lease Premises Rentals for such holdover shall be equal to 150 percent of the Lease Premises Rentals provided for herein, but otherwise the Company shall be bound by all compensation, terms and conditions of this Agreement in the absence of a duly executed agreement or amendment to the contrary.

B. If the holdover is at the request of the CEO, or with the written permission of the CEO, or upon mutual agreement of the CEO and Company, the Lease Premises Rentals for such holdover shall be the same as provided for herein, and Company shall be bound by all compensation, terms and conditions of this Agreement.

C. Nothing herein shall be construed to give the Company the right to hold over at any time, and the City may exercise any remedy at law or in equity to recover possession of the Lease Premises, as well as any damages incurred by the City.

4.3 SURRENDER OF LEASE PREMISES. Upon the expiration or earlier termination of this Agreement or on the date specified in any demand for possession by City after any Default by Company, Company covenants and agrees that it shall vacate the Lease Premises and perform as follows:

A. **Removal of Company Property and Restoration**. The Company shall remove, at the Company's sole cost, within 60 days following the expiration or termination of this Agreement, all of the Company Property and Additional

Improvements unless the Company and the City have entered into a new lease of the Lease Premises.

1. If the Company fails to remove any of the Company Property or Additional Improvements within 60 days following the expiration or termination of this Agreement, the City may, at its option, keep and retain any such Company Property and Additional Improvements, or City may dispose of the same and retain any proceeds therefrom, and the City shall be entitled to recover from the Company any costs of the City in removing the same and in restoring the Lease Premises in excess of the actual proceeds, if any, received by the City from disposition thereof.

2. If the City removes any of the Company Property or Additional Improvements, the Company hereby specifically agrees to indemnify and hold the City harmless from all costs, losses, expenses, or damages incurred in relation to the removal of the Company Property and Additional Improvements, including all costs of associated remedial actions, fines or penalties, reasonable attorney fees, and other professional fees.

B. **City Option to Accept Property**. The Company may notify the City at least 120 days prior to the date of the expiration or earlier termination of this Agreement of the Company's desire not to remove all or a portion of the Company Property or Additional Improvements installed by the Company. The notification shall describe such property with reasonable particularity. The City may respond no later than 30 days in advance of such expiration or earlier termination of this Agreement to inform Company of its willingness to accept title to such property in lieu of restoration of the Lease Premises. If no response is given by the City, the property shall remain the Company's and shall be removed in accordance with subsection A above.

4.4 REVERSION. Upon termination of this Agreement, the Company shall cease to have any rights with respect to the Lease Premises.

4.5 NO OBSTRUCTION TO AIR NAVIGATION. The Company agrees that no obstruction to air navigation and/or airfield surface and air traffic controller site lines as determined by application from time to time of the criteria of the Federal Aviation Administration, or its successor, will be permitted on the Ground after the Facilities shall have been completed, and any such obstruction placed on the Ground by the Company shall be removed by it at its own cost and expense. The City agrees that it will not add to or realign the runways at the Airport in such manner that the Facilities shall be deemed in the future to constitute such an obstruction.

SECTION 5
COMPENSATION

5.1 GROUND AND FACILTY RENTALS.

A. The Company agrees to pay as "**Ground and Facilities Rent**" to the City each month an amount equal to one-twelfth of the annual rentals stated below for the Lease Premises. Ground and Facilities Rent shall be payable by the Company on the first day of each month, in advance, during the term of this Agreement.

1. **Ground Rent.** Commencing on the Effective Date, Operator shall pay a ground rent at an annual rate of $1.423 per square foot per year for the property described in Exhibit B for a total of $260,403.00 per month; payment for any partial month shall be pro-rated. Upon the commencement of the second calendar year during the Term, and each year thereafter including any holdover periods, ground rent may be adjusted in accordance with Section 5.1.B.

2. **Facility Rent.** Commencing on the Effective Date, Operator shall pay a Facilities rent at an annual rate of $26.50 per square foot per year, for a total of $ 176,781.50 per month; payment for any partial month shall be pro-rated. Upon the commencement of the second calendar year during the Term, and each year thereafter including any holdover periods, Facilities rent shall increase in accordance with Section 5.1.B.

B. The amount of the Ground and Facilities Rent shall be reestablished effective January 1 of each calendar year during the Term in accordance with this Agreement and the Airport's rules, regulations, and policies.

C. The Ground or Facilities Rent for any partial month payable during the Term shall be prorated on a per diem basis.

5.2 PRIVILEGE FEE.

A. **Percentage Privilege Fee**. As consideration for the privileges granted herein to operate at DEN, Company covenants to pay a "**Privilege Fee**" to City for each month, or portion thereof, during the Term of 10% of Gross Revenues or MAG, as defined below, provided, however, that in the event of the occurrence of any of the following events, the MAG, but not the percentage of Gross Revenues, shall be suspended for the period of time the condition continues to exist:

1. In the event of any national emergency wherein there is a curtailment, either by executive decree or legislative action, of the use of motor vehicles or aircraft by the general public; or

2. In the event the number of civilian passengers enplaning at the Airport on scheduled airlines during a period of at least 60 consecutive days shall be less than 70% of the number of such enplaning passengers for the same period of time in the immediately preceding year by reason of (1) a strike involving one or more of the interstate airlines serving the Airport, (2) destruction or damage to all or a material portion of the Terminal Building at the Airport or the air operations area of the Airport by reason of fire or other casualty, or (3) occupation of the Airport in its entirety by the United States government or any of its agencies. An "air operations area" means any area of the Airport used or intended to be used for landing, takeoff or surface maneuvering of aircraft.

By the twentieth (20th) day of each month following the month in which this Agreement is fully executed, Company shall furnish to the CEO in a form acceptable to DEN a true and accurate verified statement signed by an officer of Company of its Gross Receipts and shall pay the appropriate Privilege Fee.

B. **Minimum Annual Guarantee or "MAG"**.

1. **Amount.** Starting January 1, 2022, the MAG or "initial MAG" under this restated Agreement will be 85% of the total Privilege Fees due in the contract year of Jan 2021 to Dec 2021; this amount will be determined in February 2022 after the full contract year reporting is available. An amount equal to one-twelfth of the minimum annual guaranteed amount shall be payable by the Company on the first day of each month, in advance, during the term of this Agreement, excepting that the amounts due for January and February 2022 shall be paid with 15 days after notice of the initial MAG is provided by DEN to Company. 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 or before the 20th day of the next succeeding month.

2. **Form.** The Rental Car Monthly Revenue Report form shall generally be in the form attached as **Exhibit E**, but this may be modified from time to time by DEN.

3. **Subsequent Contract Years**. Beginning January 1, 2023, and continuing each year thereafter, including any Holdover period, the MAG will equal the greater of the initial MAG or eighty-five percent (85%) of the total Privilege Fees payable in the prior year.

4. **Partial Months**. For any payment period of less than one month, the applicable MAG shall be paid on a pro rata basis in the same proportion that

the number of days in the payment period bears to the total number of days in the month for which the MAG is payable.

C. **Customer Agreement Form**. To verify whether a customer is an Airport Customer on rentals at locations within the aforementioned zip codes, the Company's 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 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.

1. After execution of this Restatement, Company may submit to DEN an "Exhibit D: Commercial Truck Rental Locations." Company is not required to verify whether a customer is an Airport Customer on rentals of commercial trucks at the locations stated on Exhibit D. By submitting Exhibit D, Company certifies that no passenger or other non-commercial vehicles are rented from the stated locations. If Company chooses to offer non-commercial vehicles at these locations, Company will inform DEN and will follow the Airport Customer process stated above for all rentals at that location. Any breach by Company of this sub-section shall be deemed a material breach of this Agreement.

D. Pass Through of Privilege Fees. The Company acknowledges that the Privilege Fee under this Agreement is not a fee that is imposed by the City upon A irport Customers renting vehicles from the Company. The City does not require, but shall not prohibit, the separate statement of the Privilege Fee on Airport Customer invoices or rental contracts provided that the Company meets all of the following conditions:

1. Such fee shall be titled "Concession Recovery Fee" and shall not exceed 11.11% of all items of the Privilege Fee on Airport Customer rental agreements;
2. Such fee shall be indicated immediately below all items invoice or agreement and not immediately adjacent to taxes on invoices;
3. If the Company elects to designate a Concession Recovery Fee on invoices, the Company must comply with all applicable laws including Federal Trade Commission requirements;
4. The Company shall not identify, treat, nor refer to the Concession Recovery Fee referenced on the rental agreements as a tax; and
5. The Company shall not pass through, unbundle, nor list as a separate item on its invoices any fees or charges payable to the City or the Airport (other than a

Concession Recovery Fee and Customer Facility Charge), except with the City's written approval.

5.3 COMMON USE SERVICES. If DEN establishes common use services to certain leaseholds, including the Lease Premises, the Company agrees to pay the cost of such services. Such services may include, but are not limited to, busing, insurance, snow removal, landscape watering and irrigation, law enforcement and/or security officers, industrial waste handling, sewer, drainage, and trash/refuse removal.

5.4 PLACE AND MANNER OF PAYMENTS TO THE CITY. All rental payments and other charges required to be paid by the Company to the City under this Agreement shall be made without demand or notice Airport Revenue Fund, Denver International Airport, P.O. Box 492065, Denver, Colorado if by check or at such other place as the CEO may hereafter designate by notice in writing to the Company and shall be made in legal tender of the United States. Any check given to the City shall be received by the City subject to collection and the Company agrees to reimburse the City for any charges, fees, or costs incurred by the City for such collection, including reasonable attorney's fees.

5.5 OBLIGATIONS OF COMPANY UNDER AGREEMENT UNCONDITIONAL.

A. The obligations of the Company to make the payments required hereunder and to perform and observe the other agreements on its part contained herein shall be absolute and unconditional and shall not be subject to any defense (other than payment) or any right of set off, counterclaim. abatement or otherwise, unless specifically stated herein, and, until such time as this Agreement has been paid in full the Company (i) will not suspend or discontinue, or permit the suspension or discontinuance of any payments required to he paid hereunder. (ii) will perform and observe all other agreements contained in this Agreement, and (iii) will not suspend the performance of its obligations hereunder for any cause, including, without limiting the generality of the foregoing, its early termination of this Agreement, surrender or abandonment of the Lease Premises, or the relocation of the Company's car rental concession to a site other than the Lease Premises, any acts or circumstances that may constitute failure of consideration. failure of or a defect of title to the Facilities or any part thereof, eviction or constructive eviction, destruction, damage or condemnation to or of all or any part of the Facilities, commercial frustration of purpose, any change in the tax or other laws or administrative rulings of or administrative actions by the United States of America or the State or any political subdivision of either, or any failure of the City to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Agreement.

B. In the event the Company shall fail to make any of the payments required hereunder, the payment so in default shall continue as an obligation of the Company until the amount in default shall have been fully paid and the Company will pay interest on such amount at the Past Due Interest Rate.

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

5.7 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.

5.8 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.

5.9 RECORD KEEPING

A. **Annual Report.** Not later than 60 days following the end of each calendar year during the term of this Agreement, the amount of the Fees payable by the Company to the City for the previous calendar year shall be determined as being the minimum annual guaranteed amount for such year or the annual percentage of Gross Revenues, whichever is greater. In the event that the correct amount of fees payable by the Company to the City for such year is the annual percentage of Gross Revenues and the total of the monthly percentage of Gross Revenues paid by the Company for such year is less than the annual percentage of Gross Revenues, the amount of such deficiency shall be promptly paid by the Company to the City. In the event that the correct amount of Privilege Fees payable by the Company to the City for such year is the annual percentage of Gross Revenues and the total of the monthly percentage of Gross Revenues paid by the Company for such year exceeds the annual percentage of Gross Revenues, the amount of such excess shall be credited against the obligation of the Company to pay Privilege Fees under this Agreement or promptly repaid to the Company, as determined by the CEO in his sole discretion.

B. 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. A copy of the Company's then-current rental contract shall be included with this report.

C. 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.

D. **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.

5.10 BOOKS OF ACCOUNT AND AUDITING.

A. Any authorized agent of the City, including the City Auditor, his or her representative, or independent auditors hired by the City, has the right to access and the right to examine and/or audit any financial records and other pertinent books, documents, papers and records of Company (together with the financial records, the "Records"), involving transactions related to this Agreement until the later of three (3) years after the final payment under this Agreement or expiration of any applicable statute of limitations. Company shall make its Records available to the City within fourteen (14) calendar days of its receipt of a written request from the City for the same. Company may satisfy this requirement by either: (i) making the Records available for examination within the Denver metropolitan area; or (ii) paying the City, in full and in advance, travel and related expenses for a City representative to travel to any location outside the Denver metropolitan area for such examination. Upon completing such travel, expenses shall be reconciled, and any difference between the advance payment and the actual expenses shall be paid by or refunded to Company as appropriate.

B. Company agrees that the City, and any of the City's agents including the City's Auditor or an authorized representative of the Auditor, may inspect any document, return, data or report filed pursuant to Chapter 53 of the Denver Revised Municipal Code by Company with the City's Department of Finance and any related reports, document, data or other information generated by the City's Department of Finance or employees under the control of the Department of Finance in connection with any investigation or audit of Company by the City's Department of Finance. Company authorizes and permits the inspection of such documents, data, returns, reports and information by the City and any of its agents, including but not limited to the City's Auditor or an authorized representative of the Auditor, and waives any claim of confidentiality that it may have in connection with such documents, returns, data, reports and information.

C. If City requests and Company fails to furnish any records in a timely manner, City reserves the right to, in addition to all other remedies available hereunder,

at law, or in equity, have an independent forensic accounting firm attempt to reconstruct the missing records. Company covenants to reimburse City for the reasonable cost associated with reconstructing any missing records, including but not limited to, the cost of the independent forensic accounting firm, attorney's fees, and litigation expenses incurred. Engagements will be conducted in accordance with the procedures identified in the Concessions Handbook. The Parties recognize that City will incur additional costs if records requested are not provided in a timely manner and that the amount of those costs is difficult to determine with certainty. Consequently, the Parties agree City may collect liquidated damages, as set forth in Article VIII, for the records requested and not received.

D. If the City determines after an audit for any Contract Year that any payment(s) made to the City were understated or materially misstated in the Annual Report, Company shall pay the amount of the deficiency plus interest at 2% per month compounded daily computed from the date due until the date paid. If such payments were understated or materially misstated by more than 1%, Company shall pay to the City the cost of the audit in addition to the deficiency and interest. If the City determines after an audit that the City was overpaid, the City shall have the option to either credit an overpayment against a subsequent amount due or provide a refund to Company.

E. Company will include a provision providing City the same rights to initiate and perform audits, inspections, or attestation engagements in any subcontractor or subconsultant agreement that it enters and cause such subs to include the statements in their agreements.

5.11 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.

5.12 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.

SECTION 6
OPERATION AND USE OF LEASE PREMISES

6.1 OPERATIONS. The Company agrees to operate its vehicle rental business at the Airport for the accommodation of its customers using the Airport, and to operate in the following manner:

A. The Company shall furnish all personnel, equipment, inventory, and supplies necessary to operate its vehicle rental business at the Airport.

B. The Company shall at all times retain at the Airport an experienced manager fully authorized to represent and act for it in all matters pertaining to the operation of its vehicle rental business at the Airport. At such times as such manager is not present at the Airport, the Company shall assign, or cause to be assigned, a qualified subordinate to be in charge of the Company's locations, services and facilities at the Airport and to be available at such locations and to act for such manager.

C. The Company agrees that, at its own expense, it will maintain the vehicles used in its vehicle rental business at the Airport in good operating order and repair and free from known mechanical defects; that it will not rent to any person any vehicle which is not in good operating order and repair, or which may be hazardous to the person renting such vehicle or to the general public; that all rental vehicles shall be kept in a clean, neat, and attractive condition inside and out; that its rental vehicles will be late model equipment no more than two years older than current year model for each vehicle type provided; and that it will at its own expense provide a sufficient number of rental vehicles to properly meet the reasonable public demand therefore.

D. The Company shall properly uniform its attendants. Attendants shall discharge their duties in a courteous and efficient manner and it shall be the duty of the Company to maintain a high standard of service by its attendants to the public to the satisfaction of the CEO in his sole discretion.

E. The Company shall not use curbside drop-off and pick-up areas at the Airport designated for passenger use or for valet drop-off.

F. The Company agrees to submit any reports or information regarding its operations that the CEO may reasonably request. The City agrees to treat such reports and information as confidential information.

6.2 SALE OF FOOD AND BEVERAGES. The Company shall not sell or permit the sale of food, food products, or beverages, both alcoholic and non-alcoholic, upon the Lease Premises except by a Company to whom the City has granted the right to provide such services on the Lease Premises.

6.3 CARE OF AREA. The Company 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. The Company, at its own expense, shall collect and deposit all trash and refuse at frequent intervals at collection station locations specified by the City. Accumulation of boxes, cartons, barrels or other similar items shall not be permitted on the Lease Premises.

6.4 VENDING MACHINES. No amusement or vending machines or other machines operated by coins, tokens, or credit cards shall be installed or maintained in or upon the Lease Premises except with the written permission of the CEO or his 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; telephones; dispensation of cash, money orders and checks; and operation of mechanical or electronic game devices, electronic video games, and entertainment devices.

6.5 COMPLIANCE WITH ALL LAWS AND REGULATIONS. The Company 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, the ordinances or Charter of the City and County of Denver or this Agreement, 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 CEO for the management, operation, and control of the Airport, either promulgated by the City on its own initiative or in compliance with regulations or actions of the Federal Aviation Administration or other authorized federal agency. The Company further agrees to submit any report or reports or information which the City is required by law or regulation to obtain from the Company or which the CEO may request relating to the Company's operations.

6.6 COMPLIANCE WITH ENVIRONMENTAL REQUIREMENTS.

A. Company, in conducting any activity on the Lease Premises, shall comply with all applicable airport, local, state and federal rules, regulations, statutes, laws or orders, as they exist at the time this agreement is executed ad as they may be amended in the future, including, but not limited to, requirements regarding the storage, use and disposal of Hazardous Materials, petroleum products, or any other substance. Company shall acquire all necessary federal, state, local and airport permits and comply with all permit requirements. For purposes of this Agreement, "**Hazardous Materials**" shall mean any flammable, explosive or radioactive material, petroleum products, PFAs or PFOs, or any substance defined as or included within the definition of "hazardous substance," "hazardous waste," "Hazardous Materials" or "toxic substances" under any applicable federal, state or local law or regulation.

B. Any Hazardous Materials not normally used in Company's operations hereunder are barred from the Lease Premises. Company shall identify all Hazardous Materials to be used at the Lease Premises.

C. Company 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 as a result of use or occupation of the Lease Premises by Company or Company's

contractors, invitees, etc., 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 Company's use or occupation of the Lease Premises.

D. In the event of a release or threatened release of Hazardous Materials relating to or arising out of the Company's use or occupancy of the Lease Premises, or in the event any claim, demand, action or notice is made against the Company with regard to the Company's failure or alleged failure to comply with any requirement hereunder, the Company immediately shall notify the City in writing and shall provide the City with copies of any written claims, demands, notices or actions so made. Company shall also undertake all actions necessary to remedy or remove any Hazardous Materials and any other contamination discovered on or under the Lease Premises introduced by or exacerbated by Company as is necessary to restore the Lease Premises to either its condition immediately prior to the initiation of the 2015 Lease between Company and DEN, or to a condition in compliance with all applicable local, state, federal or Airport rules, regulations or orders, such choice at the City's sole discretion. This work shall be performed at Company'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. Company shall further conduct all necessary and prudent surface and subsurface monitoring pertaining to Company's activities hereunder to ensure compliance with applicable laws, rules, regulations and permits.

E. Company, at the request of City, shall make available for inspection and copying, upon reasonable notice and at reasonable times, any or all of the documents and materials that the Company has prepared pursuant to any environmental requirement hereunder or submitted to any governmental or regulatory agency. If there is a requirement to file any notice or report of a release or threatened release of a substance on, under or about the Lease Premises, Company shall provide a copy of such report or notice to the City.

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

6.7 SPILL/RELEASE RESPONSE AND CLEANUP.

A. In the event of a suspected or confirmed reportable spill or release or threat of a reportable spill or release of any substance or material relating to or arising out of the Company's use or occupancy of the Lease Premises, Company shall immediately notify the DEN Communications Center (303-342-4200). In the event any claim, demand, action, or notice is made against the City or the Company with regard to the Company's failure or alleged failure to comply with any legal requirement related to

Company's activities under this Agreement, Company shall provide the City with copies of any written claims, demands, notices, or actions so made.

B. Company shall undertake all actions necessary to remediate any spill/release of Hazardous Materials discovered on or under the Lease Premises caused by Company as is necessary to restore the Lease Premises to a condition in compliance with all applicable local, state, federal or Airport laws, rules, regulations or orders, including Aviation Rule and Regulation 180. This work shall be performed at Company'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. Company shall further conduct all necessary and prudent surface and subsurface monitoring pertaining to Company's activities hereunder to ensure compliance with applicable laws, rules, regulations, and permits. Company 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 Company'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 Agreement. An access agreement will be required for such activities. Company shall request an access agreement through DEN Legal.

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

6.8 SUSTAINABILITY. City is committed to incorporating sustainable practices into all aspects of DEN operations. Company shall operate in a manner consistent with DEN's Sustainability Policy, at its own cost and expense, including but not limited to energy programs and waste reduction programs such as composting and recycling.

6.9 WASTE OR IMPAIRMENT OF VALUE. The Company agrees that nothing shall be done or kept in the Lease Premises which might impair the value of the City's property or which would constitute waste or a public or private nuisance.

6.10 STRUCTURAL OR ELECTRICAL OVERLOADING. The Company 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 Premises 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, the Company agrees to immediately remedy the violation at the Company's expense.

6.11 NOISE, ODORS, VIBRATIONS AND OTHER ANNOYANCES. The Company 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. The City acknowledges that the Company is operating a concession for the rental of vehicles to the public on the Lease Premises.

6.12 ACCESSIBILITY. The Company shall not do or permit to be done anything which might interfere with free access and passage of the public areas adjacent thereto, or hinder police, firefighting, or other emergency personnel in the discharge of their duties.

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

6.14 COMPLIANCE WITH DBE REQUIREMENTS.

A. Company agrees to comply with the Minority Business Enterprise ("MBE") and Women Business Enterprise ("WBE") requirements of Article III, Divisions 1 and 3 of Chapter 28 of the Denver Revised Municipal Code ("MBE/WBE Ordinance"), or applicable successor ordinance, in the design and construction of Improvements throughout the term of this Agreement. Company agrees to comply with rules and regulations issued by the Director of the Division of Small Business Opportunity ("DSBO"), a division of the Mayor's Office of Economic Development. The DSBO Director may set goals for design and construction in accordance with the MBE/WBE Ordinance. Company shall meet, or make a good faith effort to meet, such goals.

B. The Company agrees that it shall provide for at least two percent (2%) participation by certified Airport Concession Disadvantaged Business Enterprises ("ACDBE"s), as defined in 49 C.F.R., Part 23, as joint venturers, subtenants, or as providers of goods and services used in business conducted at the Airport under this Agreement, or in the form of any legal arrangement meeting the eligibility standards in 49 C.F.R. Part 23, as it may be amended from time to time, such percentage amount of participation being a percentage of the annual Gross Revenues obtained by the Company in its operations hereunder. Throughout the term of this Agreement, the Company shall continue to utilize qualified and available ACDBE firms which have been and which 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 percentage of participation for ACDBEs set forth in this Section. If an ACDBE subtenant, joint venturer, supplier, or service provider must be replaced for any reason during the term of this Agreement, the Company agrees to replace the subtenant, joint venturer, supplier, or service provider with another ACDBE, or if it cannot, then the Company shall demonstrate that it made good faith efforts to do so. The Company shall be required to

comply with other appropriate provisions of 49 C.F.R. Part 23 implementing Section 511(h) of the Airport and Airway Improvement Act of 1982, as amended.

SECTION 7
UTILITIES, DRAINAGE, AND MAINTENANCE

7.1 UTILITIES.

A. The City, at its sole expense, shall construct, install and maintain, or have constructed, installed and maintained, within the utility corridor adjacent to the Ground, sanitary sewer gravity main, electrical primary line, telecommunication primary cabling, non-potable water main and potable water distribution conduit.

B. The Company, at its sole expense, shall construct, install, and maintain, or shall have constructed, installed and maintained, all necessary storm sewer culverts, storm sewer mains, potable water system, fire hydrants, natural gas mains, roadway lighting, lot lighting, electrical primary service upgrade, tap lines, laterals, switchgear equipment, transformers, cabling, and facilities. The Company shall pay all charges for utility services and shall provide and maintain, at its sole expense, such telecommunication facilities and services as it may deem necessary. Any power and telecommunication lines constructed or installed by or for the Company shall be placed underground. The City is under no obligation to furnish at its expense snow removal or janitorial services, or any other utility or services for the Facilities. The Company agrees to pay a pro-rata share of any sewerage charges levied against the Airport based upon water consumption.

7.2 MAINTENANCE. The cost of maintenance, care and any necessary replacement of the Lease Premises shall be borne by the Company. The Company agrees, at its expense and without cost or expense to the City, during the Term hereof that:

A. The Company shall keep the Lease Premises 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. The Company 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. The Company 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. The Company shall appropriately light, maintain, and repair all surface areas for the parking of vehicles on the Lease Premises; and

E. DEN shall have the right to make reasonable objections regarding the maintenance and appearance of the Lease Premises. The Company agrees to promptly discontinue or remedy any objectionable condition within five (5) days after written notice by DEN.

7.3 DRAINAGE. Unless and until DEN chooses to treat drainage as a common use service, the Company agrees, at its own cost and expense, to maintain the storm water detention basins and/or water quality pond areas, culverts, and landscaped public rights-of-way described in **Exhibit K** hereto, even if these are not part of the Lease Premises, in the manner provided in the DEN Environmental Guidelines.

7.4 INTERRUPTION OF SERVICES. Company 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 Company from any of its obligations hereunder, except as otherwise provided in the section entitled "Damage, Destruction or Loss."

SECTION 8
INDEMNITY, INSURANCE, AND BONDS

8.1 PERFORMANCE BOND. 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 (the "**Surety**"), in an amount equal to six (6) months of the MAG and the Ground and Facility Rent combined, payable without condition to the City, which Surety shall guarantee to the City full and faithful performance of the terms and provisions of this agreement. The CEO may increase the Surety to up to twelve (12) months of MAG and the Ground and Facility Rent combined should the CEO deem six months to be insufficient to protect the Airport.

8.2 APPLICATION OF SURETY. In the event Company fails to perform the payment terms and conditions of this Agreement, the City may, in addition to any other rights and remedies available by law or in equity, at any time apply the Surety or any part thereof toward the payment of Company's obligations under this Agreement. In such an event, within thirty (30) days after notice, Company will restore the Surety to its original amount. City will not be required to pay Company any interest on the Surety.

Company understands and agrees that failure to maintain or replenish the Surety shall constitute a material breach of this Agreement and, in addition to all other remedies available to City, City may, in its sole discretion, terminate this Agreement.

8.3 RELEASE OF SURETY. The release of the Surety will be subject to the satisfactory performance by Company of all terms, conditions, and covenants contained herein. In the event of a dispute between the Parties, only the amount in dispute will be retained for remedy.

8.4 TAXES, LICENSES, LIENS AND FEES. Company 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. Company 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. Company agrees to furnish to the CEO, 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. Company 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.

8.5 INDEMNIFICATION

A. Company hereby agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement (“Claims”), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Company or its subcontractors either passive or active, irrespective of fault, including City’s concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

B. Company’s duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Company’s duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City’s negligence or willful misconduct was the sole cause of claimant’s damages.

C. Company will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.

D. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Company under the terms of this indemnification obligation. The Company shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

E. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

8.6 INSURANCE.

A. Required Insurance. Company covenants and agrees to secure at its own expense and to keep in force at all times hereof, from the Effective Date, insurance against claims for injury to persons or damage to property that may arise from or in connection with the performance of obligations under this Agreement by Company, its agents, representatives, or employees. The types and amounts of insurance coverage Company must procure are specified in the Certificate of Insurance for Aviation, attached hereto as **Exhibit C**. Insurance requirements set forth on Exhibit C do not limit in any way the indemnity covenants contained in this Agreement or the amount or scope of liability of Company under this Agreement. The amounts listed indicate only the minimum amounts of insurance coverage that City is willing to accept to help insure full performance of all terms and conditions of this Agreement. Company specifically agrees to comply with each condition, requirement, or specification set forth in Exhibit C during all periods when the required coverage is in effect. Insurance must be maintained without any lapse in coverage. Company shall endeavor to supply 30 day notice of cancellation to said policies. Insurance canceled without City's consent or failure by Company to provide evidence of renewal within forty-eight (48) hours after written notice by City is a material breach of this Agreement.

B. Mutual Waiver of Subrogation. Company and 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 DEN for any Loss, to the extent that such Loss is covered by any property insurance policy or policies maintained or required to be maintained pursuant to this Agreement 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. Company also waives any right of action it and/or its insurance carrier might have against City (including its respective employees, officers, commissioners, or agents) for any Loss, whether or not

such Loss is insured. If any of Company's applicable insurance policies do not allow the insured to waive the insurer's rights of subrogation prior to a Loss, Company shall cause it to be endorsed with a waiver of subrogation that allows the waivers of subrogation required by this Section.

C. Certificates Required. All certificates required by this Agreement shall be sent directly to the City. Upon written request, Company agrees to furnish City the original or a certified copy of said policy or policies.

D. Company's Risk. City in no way warrants and/or represents that the minimum limits contained herein are sufficient to protect Company from liabilities that might arise out of the performance of the terms and conditions of this Agreement by Company, its agents, representatives, or employees. Company shall assess its own risks and as it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. Company is not relieved of any liability or other obligations assumed or pursuant to this Agreement because of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. In no event shall City be liable for any: (i) business interruption or other consequential damages sustained by Company; (ii) damage, theft, or destruction of Company's inventory, Improvements, or property of any kind; or (iii) damage, theft, or destruction of an automobile, whether or not insured.

E. **Lapse.** In the event Company has failed to remedy any lapse in coverage within ten (10) days after notice thereof from City, City may affect such coverage and recover the cost thereof immediately from the Surety or from Company. City reserves the right to modify any Insurance Requirements stated herein. The Parties agree to modify the Exhibit C, to reflect modifications in the Insurance Requirements. Any such modification will be confirmed by letter executed by DEN, without need for formal amendment to this Agreement.

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

SECTION 9
DEFAULT AND REMEDIES

9.1 EVENTS OF DEFAULT DEFINED. The Company shall be in default under this Agreement if the Company:

A. Fails to pay when due any Ground or Facilities Rent, concession fee, or other payments or fees required to be paid under this Agreement;

B. Materially breaches any of its representations or warranties made in this Agreement, fails to make any payment required to be made by it hereunder or fails to observe and perform any of its covenants, conditions or agreements made on its part to be observed or performed hereunder, other than a breach, failure to pay or failure to observe and perform referred to in subsection (a) of this Section 9.01, for a period of 30 days after written notice specifying such breach, failure to pay or failure to observe and perform and requesting that it be remedied, given to the Company by the City, unless (i) the City shall agree in writing to an extension of such time prior to its expiration or (ii) if the breach, failure to pay or failure to observe and perform be such that it can be corrected but cannot be corrected within the applicable period, corrective action is instituted by the Company within the applicable period and is being diligently pursued;

C. Dissolves or liquidates the Company, or files a voluntary petition in bankruptcy; or causes entry of an order for relief under Title 11 of the United States Code, as the same may from time to time be hereafter amended, against the Company; or the filing of a petition or answer proposing the entry of an order for relief against the Company under Title 11 of the United States Code, as the same may from time to time be hereafter amended, or proposing the reorganization, arrangement or debt readjustment of the Company under any present or future federal bankruptcy act or any similar federal or state law in any court and the failure of said petition or answer to be discharged or denied within 90 days after the filing thereof; or the appointment of a custodian (including without limitation a receiver, trustee or liquidator of the Company) of all or a substantial part of the property of the Company, and the failure of such a custodian to be discharged within 90 days after such appointment; or the taking by such a custodian of possession of the Company or a substantial part of its property and the failure of such taking to be discharged within 90 days after such taking; or the Company's consent to or acquiescence in such appointment or taking; or assignment by the Company for the benefit of its creditors; or the entry by the Company into an agreement of composition with its creditors. The term "dissolution or liquidation of the Company," as used in this subsection, shall not be construed to include the cessation of the corporate existence of the Company resulting from a merger or consolidation of the Company into or with another corporation or a dissolution or liquidation of the Company following a transfer of all or substantially all of its assets under the conditions permitting such actions contained in Section 11.02 hereof;

D. Abandons, surrenders or vacates the Lease Premise or ceases to operate the concession.

9.2 REMEDIES ON DEFAULT. Whenever any default referred to in Section 9.01 hereof shall have occurred and be continuing, the City shall have the right to exercise any one or more of the following remedies:

A. The City may terminate this Agreement, effective at such time as may be specified by written notice to the Company, and demand and (if such demand is refused) recover possession of the Lease Premises from the Company;

B. The Company shall remain liable to the City for damages in an amount equal to the Ground Rentals and Facilities Rentals payable pursuant to Section 5.01 hereof, respectively, and other sums which would have been owing by the Company hereunder for the balance of the Term, had this Agreement not been terminated, less the net proceeds, if any, of any reletting of the Lease Premises by the City subsequent to such termination, after deducting all of the City's reasonable expenses in connection with such recovery of possession or reletting;

C. The City shall be entitled to collect and receive such damages from the Company on the days on which the Ground Rentals and Facilities Rentals would have been payable if this Agreement had not been terminated. Alternatively, at the option of the City, the City shall be entitled to recover forthwith from the Company, as damages for loss of the bargain and not as a penalty, an aggregate sum which, at the time of termination of this Agreement, represents the excess, if any, of (a) the aggregate of the Ground Rentals and Facilities Rentals payable pursuant to Section --- hereof and all other sums payable by the Company hereunder that would have accrued for the balance of the Lease Term, over (b) the aggregate rental value of the Ground for the balance of the Term of the Lease, and the aggregate rental value of the Facilities for the balance of the Term of this Agreement;

D. The City may reenter and take possession of the Lease Premises or any part thereof, without demand or notice, and repossess the same and expel the Company and any party claiming by, under or through the Company and remove the effects of both using such force for such purposes as may be necessary, without being liable for prosecution on account thereof or being deemed guilty of any manner of trespass, and without prejudice to any remedies for arrears of rent or right to bring any proceeding for breach of covenants or conditions. No such reentry or taking possession of the Lease Premises by the City shall be construed as an election by the City to terminate this Agreement unless a written notice of such intention is given to the Company. No notice from the City hereunder or under a forcible entry and detainer statute or similar law shall constitute an election by the City to terminate this Agreement unless such notice specifically so states. The City reserves the right, following any reentry or reletting, to exercise its right to terminate this Agreement by giving the Company such written notice, in which event the Agreement will terminate as specified in said notice. After recovering possession of the Lease Premises, the City may, from time to time, but shall not be obligated to, relet the Lease Premises, or any part thereof, for such term or terms and on such conditions and upon such other terms as the City, in its sole discretion, may determine. The City may make such repairs, alterations or improvements as the City may consider appropriate to accomplish such reletting, and the Company shall reimburse the City upon demand for all costs and expenses, including attorneys' fees, which the City may incur in connection with such reletting. The City may collect and receive the rents for such reletting, but the City shall in no way be responsible or liable for any failure to relet the Lease Premises, or any part thereof, or for any failure to collect any rent due upon such reletting. Notwithstanding the City's

recovery of possession of the Lease Premises, the Company shall continue to pay on the dates herein specified, the rental payments payable under Section 5 hereof and other amounts which would be payable hereunder if such repossession had not occurred. Upon the expiration or earlier termination of this Agreement, the City shall refund to the Company any amount, without interest, by which the amounts paid by the Company, when added to the net amount, if any, recovered by the City through any reletting of the Ground and the Facilities, exceeds the amounts payable as Ground Rentals and Facilities Rentals, if any, by the Company under this Agreement. If, in connection with any reletting, the new lease term extends beyond the existing term, or the premises covered thereby include other premises not part of the Lease Premises, a fair apportionment of the rent received from such reletting of the Lease Premises and the expenses incurred in connection therewith will be made in determining the net amount recovered from such reletting;

E. The City may take whatever action at law or in equity may appear necessary or desirable to collect the payments and other amounts then due and thereafter to become due hereunder or to enforce performance and observance of any obligation, agreement or covenant of the Company under this Agreement;

F. To the extent that any event of default referred to in Section 9.01 hereof shall have resulted from the failure on the part of the Company to observe or perform any covenant, condition or agreement on its part to be observed or performed pursuant to the provisions of this Agreement relating to amounts payable to the City, the City shall be entitled in its own name and for its own account, to the exclusion of or in addition to any exercise by the City of any other remedy provided for in this Agreement or now or hereafter existing at law or in equity or by statute, to institute such action against the Company as the City may deem necessary to compel performance or observance of such covenant, condition or agreement or to recover damages for the Company's nonperformance or nonobservance of the same; and

G. No action taken pursuant to this Section shall relieve the Company from the Company's obligations to make any payments required to be made by it hereunder.

9.3 NO REMEDY EXCLUSIVE. No remedy herein conferred upon or reserved to the City is intended to be exclusive of any other available remedy or remedies, but each and every remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any right or power or shall be construed to be a waiver thereof, but any right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the City to exercise any remedy reserved to it in this Section 9, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

9.4 AGREEMENT TO PAY FEES AND EXPENSES OF COUNSEL. In the event the Company should default under any of the provisions of this Agreement and the City should employ Counsel or incur other expenses for the collection of the amounts due hereunder or the enforcement or performance or observance of any obligation or agreement on the part of the Company herein contained, the Company agrees that it will on demand therefor pay to the City or, if so directed by the City, to the Counsel for the City, the reasonable fees of such Counsel and such other expenses so incurred by or on behalf of the City.

9.5 NO ADDITIONAL WAIVER IMPLIED BY ONE WAIVER. In the event any agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No waiver shall be effective unless it is in writing and signed by the party making the waiver.

9.6 ACTION OR INACTION BY CITY. Notwithstanding anything in this Agreement to the contrary, the City shall not be required to take or refrain from taking any action under Section 9.02 hereof (except the giving of the written notice declaring the Agreement to be in default pursuant to the terms thereof) which shall require the City to expend or risk its own funds or otherwise incur any financial liability.

9.7 WAIVERS. No failure of the City to insist upon the strict performance of a term, covenant or agreement contained in this Agreement, no failure by the City to exercise any right or remedy under this Agreement, and no acceptance of full or partial payment during the continuance of any default by the Company 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 the Company.

SECTION 10
DAMAGE, DESTRUCTION OR LOSS

10.1 DAMAGE OR DESTRUCTION AND RESTORATION. In case of damage or loss of all or any portion of the Lease Premises, the Company will give prompt notice thereof to the City; and, except as otherwise hereinafter provided in Section 10.02, the Company shall promptly commence and complete, or cause the prompt commencement and completion, with due diligence (subject to delays beyond its control), the restoration of the Lease Premises as nearly as reasonably practicable to the value and condition thereof immediately prior to such damage or destruction (with alterations at the Company's election, pursuant to Section --- hereof) or, with the consent of the City, the replacement of the Lease Premises, in whole or in part, with other facilities permitted by the General Airport Bond Ordinance. In the event of such damage or destruction, the Company shall be entitled to use or receive reimbursement from the proceeds of all property insurance policy or policies for the Lease Premises

and shall be obligated to provide any additional moneys necessary for such restoration, except as otherwise provided in Section 10.02 hereof.

10.2 COMPANY'S ELECTION NOT TO RESTORE DAMAGED PROPERTY. In the case of the damage or destruction of all or any part of the Lease Premises to such extent that, in the reasonable opinion of the Company, the repair or replacement thereof would not be economical, the Company, within 120 days thereafter, may elect not to restore or replace the Lease Premises as provided in Section 10.01. Within 180 days after the Company elects not to restore or replace the Lease Premises as provided in Section 10.01 hereof, the City may raze the Lease Premises and may restore the related portion of the Lease Premises at the Company's expense as nearly as reasonably practicable to the value and condition thereof immediately prior to the commencement of the acquisition and construction of the Lease Premises, and the Company shall be obligated to reimburse the City for the costs of such restoration, except to the extent any proceeds of insurance are available to defray such restoration costs. There shall not be included in the computation of said 180-day period any periods during which it is impracticable for the City to proceed with such restoration because of war, strike or other reason beyond the control of the City.

10.3 CITY'S RETENTION OF EXCESS INSURANCE PROCEEDS. In the event there remain any insurance proceeds in excess of the cost of the restoration of the Lease Premises pursuant to Section 10.01 hereof and/or to raze the Lease Premises and restore the related portion of the Lease Premises pursuant to Section 10.02 hereof, the City shall deposit in the Revenue Fund under the General Airport Bond Ordinance such excess insurance proceeds.

10.4 LOSS OR DAMAGE TO PROPERTY. The 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 the Company agrees to make no claim for any such loss or damage at any time.

SECTION 11
GENERAL CITY PROVISIONS

11.1 ADVERTISING AND PUBLIC DISPLAYS. Except for signs located as permitted by this Agreement, Company shall not install or have installed or allow to be installed upon or within the Lease Premises, without the prior written approval of the CEO or his 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 DEN Design Standards. Permission will not be granted for any advertising which fails to

comply with DEN Design Standards or DEN Company Development Guidelines, or any advertising material, fixture or equipment which extends beyond the Lease Premises.

11.2 AGREEMENT BINDING UPON SUCCESSORS. This Agreement, 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.

11.3 ADMINISTRATIVE HEARING. Disputes arising under or related to this Agreement, and Company's disputes of all decisions, determinations, or other actions by City arising out of this Agreement, shall be resolved by administrative hearing initiated and conducted according to the procedures outlined in D.R.M.C. §5-17 and DEN Rule 250, excepting 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 in court until there has been full compliance with the terms of this paragraph. The parties agree that the determination resulting from said administrative hearing shall be final, subject only to any Party's right to appeal the determination under the Colorado Rules of Civil Procedure, Rule 106

11.4 AGREEMENT SUBORDINATE TO AGREEMENTS WITH UNITED STATES. This Agreement is subject and subordinate to the terms, reservations, restrictions, and conditions of any existing or future agreements between the City and the United States of America, 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 or for the expenditure of federal funds for the extension, expansion or development of the Airport including the provisions of Appendix 1 which is incorporated herein by reference.

11.5 AMERICANS WITH DISABILITIES ACT. Company will comply with the applicable requirements of the Americans with Disabilities Act of 1990 ("ADA") 42 USC § 12101 *et seq*., and any similar or successor laws, ordinances, rules, standards, codes, guidelines and regulations and will cooperate with City concerning the same subject matter. In the event that compliance cannot be achieved, Company shall proceed formally to the federal, state, or local agency having jurisdiction for a waiver of compliance.

11.6 ASSIGNMENTS AND SUBLEASES BY COMPANY. Except as otherwise provided in in this Agreement, the Company shall not assign or otherwise transfer its interest in this Agreement, in whole or in part, or any right or leasehold interest or interests granted to it by this Agreement or sublet or otherwise transfer any interest in or to the Lease Premises without the prior written consent of the CEO in his sole discretion.

11.7 BOND ORDINANCES. This Agreement is in all respects subject and subordinate to any and all the 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 Agreement acknowledge and agree that all property subject to this Agreement which was financed by the net proceeds of tax-exempt bonds is owned by the City, and the Company 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 Company agrees to make, and hereby makes, an irrevocable election (binding on itself and all successors in interest under this Agreement) not to claim depreciation or an investment credit with respect to any property subject to this Agreement 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

11.8 CITY SMOKING POLICY. Company 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. The Company further agrees not to sell or advertise tobacco products. Company and its officers, agents, and employees shall cooperate and comply with the provisions of the Denver Revised Municipal Code, §§ 24-301 to 317, 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.

11.9 COLORADO PUBLIC RECORDS LAW/CORA

A. Agreement Subject to Colorado Open Records Act. Company acknowledges, understands, and accepts that City is subject to the provisions of the Colorado Open Records Act, Colorado Revised Statutes §24-72-201 *et seq.* Company agrees that it will fully cooperate with the City in the event of a request or lawsuit arising under such act for the disclosure of any materials or information which Company asserts is confidential or otherwise exempt from disclosure. Company acknowledges all documents prepared or provided by Company under this Agreement may be subject to the provisions of the Colorado Open Records Act. Any other provision of this Agreement notwithstanding, including Exhibits, Attachments, and other documents incorporated into this Agreement by reference, all materials, records, and information provided by Company to City shall be considered confidential by City only to the extent provided in the Open Records Act, and Company agrees that any disclosure of information by City consistent with the provisions of the Open Records Act shall result in no liability of City. Company agrees to defend, indemnify, hold harmless, and fully cooperate with City in the event of a request for disclosure or legal process arising under such act for the disclosure of any documents or information, which Company asserts is confidential and exempt from disclosure.

B. Indemnification in Event of Objection. In the event of a request to City for disclosure of such information, time, and circumstances permitting, City will make a

good faith effort to advise Company of such request in order to give Company the opportunity to object to the disclosure of any material Company may consider confidential, proprietary, or otherwise exempt from disclosure. In the event Company objects to disclosure, City, in its sole and absolute discretion, may file an application to the Denver District Court for a determination of whether disclosure is required or exempted. In the event a lawsuit to compel disclosure is filed prior to City's application, City will tender all such material to the court for judicial determination of the issue of disclosure. In both situations, Company agrees it will either waive any claim of privilege or confidentiality or intervene in such legal process to protect materials Company does not wish disclosed. Company agrees to defend, indemnify, and hold harmless City, its officers, agents, and employees from any claim, damages, expense, loss, or costs arising out of Company's objection to disclosure including prompt reimbursement to City of all reasonable attorney fees, costs, and damages that City may incur directly or may be ordered to pay by such court, including but not limited to time expended by the City Attorney Staff, whose costs shall be computed at the rate of two hundred dollars and no cents ($200.00) per hour of City Attorney time.

11.10 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 CEO herein, shall be valid unless executed by an instrument in writing by all the parties with the same formality as this Agreement. Company may record a memorandum of this Agreement in the public records, and the City shall execute and acknowledge same promptly after written request by Company.

11.11 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, understandings, or conditions of this Agreement due to causes 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 0Party is not responsible or which is not in its power to control. A lack of funds, however, will never be deemed beyond a Party's power to control, and in no event shall this paragraph be construed to allow Concessionaire to reduce or abate its obligation to pay the any obligation due herein.

.

11.12 GOVERNING LAW AND VENUE

A. **Governing Law**. This Agreement is made under and shall be governed by the laws of Colorado. Each and every term, provision, or condition herein shall be construed, interpreted, and applied in accordance with, governed by, and enforced under the laws of the State of Colorado, as well as the Charter and Ordinances of the City and County of Denver.

B. **Venue for Disputes**. The Parties agree that venue for any action arising from this Agreement, after any Dispute Resolution process required by this Agreement, shall be in the District Court for the City and County of Denver.

11.13 INCONVENIENCES DURING CONSTRUCTION. Company recognizes that from time to time during the Term of this Agreement, 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 Company in its operation at the Airport. Company agrees that no liability shall attach to City, its officers, agents, employees, contractors, subcontractors and representatives by way of such inconveniences, and Company waives any right to claim damages or other consideration therefrom.

11.14 INDEPENDENT CONTRACTOR. Company 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.

11.15 MINIMUM WAGE. To the extent required by law, Company shall comply with and agrees to be bound by all requirements, conditions, and City determinations regarding the City's Minimum Wage Ordinance, D.R.M.C. §§ 20-82 through 20-84, including, but not limited to, the requirement that every covered worker shall be paid no less than the City Minimum Wage in accordance with the City's Minimum Wage Ordinance. By executing this Agreement, Company expressly acknowledges that Company is aware of the requirements of the City's Minimum Wage Ordinance and that any failure by Company, or any other individual or entity acting subject to this Agreement, to strictly comply with the foregoing D.R.M.C. Sections shall result in the penalties and other remedies authorized therein. Instances in which a worker is covered by both Prevailing Wage rate requirements and City Minimum Wage rate requirements, Company shall pay every covered worker the greater of the two.

11.16 NO PERSONAL LIABILITY. No director, officer or employee or other agent of either party hereto shall be held personally liable under or in connection with this Agreement or because of its execution or attempted execution.

11.17 NONDISCRIMINATION. In connection with the performance of work under the Agreement, the Company may not refuse to hire, discharge, promote, demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity, gender expression, marital status, source of income, military status, protective hairstyle, or disability. The Company shall insert the foregoing provision in all subcontracts.

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

TO CITY: Chief Executive Officer
Attn: Commercial/Rental Cars
8500 Peña Blvd., 9th Floor
Denver, Colorado 80249

TO COMPANY: The Hertz Corporation
8501 Williams Road
Estero, FL 33928-3325

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 Company or CEO.

11.19 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 Agreement.

11.20 PATENTS AND TRADEMARKS. Company 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 Agreement. Company 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 Company under this Agreement.

11.21 CONSTRUCTION: PREVAILING WAGE *et al*. Company agrees that any construction work to be performed, including all workmanship and materials, shall be of First-Class quality and in accordance with plans approved by DEN. All construction shall be performed in accordance with all applicable laws, regulations, ordinances, codes, and permits including, but not limited to, worker's compensation requirements, City's Prevailing Wage Ordinance (D.R.M.C. § 20-76), City's MBE/WBE participation requirements (D.R.M.C. Articles III and VII), the City's Living wage Ordinance, and the Americans with Disabilities Act, 42 U.S.C. §§ 12,000 *et seq*., and DEN regulations. City and its designees shall have the right from time to time to inspect approved projects.

11.22 SECURITY. Company shall be responsible for ensuring its personnel, vendors, and contractors comply with all security rules, regulations, and procedures including, but not limited to, those issued by the FAA, TSA, and DEN. The rules, regulations, and procedures of the FAA, TSA, and DEN regarding security matters may be modified at any time and Company covenants to comply with all changes and/or modifications. Failure by Company to adhere to security regulations affecting the Airport shall

constitute a material breach of this Agreement. Company 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 Company, 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.

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

11.24 THIRD PARTIES. This Agreement shall not be deemed to confer upon any third party or parties (except parties to whom the Company may assign this Agreement 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 Company because of any breach hereof or because of any of the terms, covenants, agreements and conditions herein.

11.25 USE, POSSESSION, OR SALE OF ALCOHOL OR DRUGS. The Company, 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 implementation of the policy can result in the City's barring the Company from City facilities or participating in City operations.

11.26 NO EMPLOYMENT OF A WORKER WITHOUT AUTHORIZATION TO PERFORM WORK UNDER THE AGREEMENT

A. This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the "**Certification Ordinance**").

B. The Company certifies that:

1. At the time of its execution of this Agreement, it does not knowingly employ or contract with a worker without authorization who will perform work under this Agreement, nor will it knowingly employ or contract with a worker without authorization to perform work under this Agreement in the future.
2. It will participate in the E-Verify Program, as defined in C.R.S. § 817.5-101(3.7), and confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.
3. It will not enter into a contract with a subconsultant or subcontractor that fails to certify to the Company that it shall not knowingly employ or contract with a worker without authorization to perform work under this Agreement.

4. It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under this Agreement, and it is required to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.
5. If it obtains actual knowledge that a subconsultant or subcontractor performing work under this Agreement knowingly employs or contracts with a worker without authorization, it will notify such subconsultant or subcontractor and the City within three (3) days. The Company shall also terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the worker without authorization, unless during the three-day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with a worker without authorization.
6. It will comply with a reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of C.R.S. § 8-17.5-102(5), or the City Auditor, under authority of D.R.M.C. § 20-90.3.

C. The Company is liable for any violations as provided in the Certification Ordinance. If the Company violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If this Agreement is so terminated, the Company shall be liable for actual and consequential damages to the City. Any termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying the Company from submitting bids or proposals for future contracts with the City.

11.27 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 DEN herein, shall be valid unless executed by an instrument in writing by all the parties with the same formality as this Agreement.

11.28 EXECUTION AND FINAL APPROVAL. FINAL APPROVAL. This Agreement 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. This Agreement may be signed electronically by either party in the manner specified by the City.

END OF AGREEMENT;
SIGNATURE PAGES, APPENDICES, AND EXHIBITS FOLLOW.