

**CITY OF OCALA AIRPORT
RENTAL CAR CONCESSION AGREEMENT AND
LEASE**

BETWEEN

CITY OF OCALA, A FLORIDA MUNICIPAL CORPORATION

AND



Execution Date _____

Exhibit D- Sample Contract with Car Rental Company

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**CITY OF OCALA AIRPORT
RENTAL CAR CONCESSION AGREEMENT AND LEASE**

THIS CITY OF OCALA AIRPORT RENTAL CAR CONCESSION AGREEMENT AND LEASE is entered on the Execution Date of _____, 2019, and with an Effective Date (as defined below), by and between:

- City of Ocala, a Florida municipal corporation (“City”); and
- _____ (“Operator”), a _____ corporation.

WHEREAS:

- A. City operates and maintains the Airport.¹
- B. Having automobile rental services at the Airport is desirable for the proper accommodation of pilots, passengers, members of the public, and other Customers at the Airport.
- C. Operator is engaged in the Business of providing motor vehicle rental services to pilots, passengers, members of the public, and other Customers at airports and elsewhere.
- D. City desires to lease certain Premises, and to grant certain Concession Rights, to Operator in order to make Operator’s Business available at the Airport.
- E. Operator desires to lease the Premises, and to obtain the Concession Rights, to allow Operator to operate its Business.
- F. In consideration of leasing of the Premises and obtaining such Concession Rights from City, Operator is willing to make certain covenants and assume and undertake certain terms, conditions and obligations under this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, conditions, terms, privileges and obligations set forth herein, City and Operator hereby covenant and agree, for themselves, their successors and assigns, as follows:

1. Definitions.

- 1.1. Generally. Except as otherwise clearly indicated by the context, the words and phrases defined in this paragraph will have the following meanings when used elsewhere in this Agreement.
 - 1.1.1. *Airport* – The Ocala International Airport as it presently exists and as it is hereinafter modified or expanded.
 - 1.1.2. *Airport Director* – The Airport Director as appointed by City, any successor or successors to the duties of such official, or any other person specifically designated to act on behalf of such Airport Director.

¹ Terms capitalized herein and not previously defined herein are defined in paragraph 1 below.

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- 1.1.3. *Airport Rules and Regulations* – The Rules and Regulations adopted by the City of Ocala in 2011 governing the Airport, as now or hereafter amended, and any successor ordinance or resolution regulating activities or operations on the Airport.
- 1.1.4. *Charge* – The Concession Privilege Fee, Rent and any other amounts owed to City under this Agreement as set forth herein.
- 1.1.5. *Common Areas* – The portions of the Airport, including the Terminal, made available by City for the common use and benefit of pilots, passengers, members of the public, and other persons (including other motor vehicle rental companies). The location of the Common Areas, both before and after the construction of the Terminal Improvements, shall be determined by City in its sole discretion.
- 1.1.6. *Concession Privilege Fee* – The portion of the Charges to be paid by Operator to City as consideration for the Concession Right and, as set forth in greater detail in paragraph 6.6, consisting of the greater of the: (a) Minimum Annual Privilege Fee; or (b) Percentage Fee.
- 1.1.7. *Concession Right* – The right to engage in Operator’s Business at the Airport pursuant to this Agreement, including paragraph 5.1.
- 1.1.8. *Counter Space* – The counter, office and counter queue area referred to in paragraph 4.3.1 and located as set forth in paragraph 4.2.2.
- 1.1.9. *CPI Rider* – The formulas and methods used to increase the Rent pursuant to paragraph 6.3.1.b, and the Minimum Annual Privilege Fee pursuant to paragraph 6.5.2, and set forth on the attached **Exhibit A**.
- 1.1.10. *Customer* – A pilot, passenger, member of the public or other person desiring to lease Vehicles or obtained related services from Operator as permitted under this Agreement.
- 1.1.11. *Customer Agreement* – An agreement between Operator and a Customer for the lease of a Vehicle by Operator to such Customer.
- 1.1.12. *Effective Date* – As set forth in paragraph 2.2.
- 1.1.13. *Environmental Laws* – Every applicable law, ordinance, rule, regulation, permit, permit condition, order, and directive regulating, relating to, or imposing liability standards of conduct, relating with respect to any Hazardous Materials, or to environmental matters, including, without limitation, those relating to fines, orders, injunctions, penalties, damages, contribution, cost recovery compensation, losses, or injuries resulting from the release or threatened release of any Hazardous Materials, or regulating or relating to the generation, use, storage, transportation, or disposal of any Hazardous Materials.
- 1.1.14. *Environmental Permits* – All permits, licenses, approvals, authorizations, consents, and registrations required by any Environmental Laws, whether Federal, state or local, which pertain to the production, use, treatment, generation, transportation, processing, handling, disposal, or storage of any Hazardous Materials.

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- 1.1.15. *Execution Date* – The date this Agreement is executed by the last of the parties hereto.
- 1.1.16. *Existing Terminal* – The terminal building at the Airport as it presently exists.
- 1.1.17. *FAA* – The Federal Aviation Administration or any successor agency.
- 1.1.18. *Gross Receipts* – As defined in paragraph 6.4.2.
- 1.1.19. *Hazardous Materials* – Friable asbestos or asbestos-containing materials, polychlorinated biphenyls (PCBs), petroleum, or crude oil or any fraction thereof, natural gas, source material, special nuclear material, and byproduct materials regulated under Environmental Laws, pesticides regulated under Environmental Laws, and any hazardous waste, toxic or dangerous substance or related material, including any material defined or treated as a hazardous substance, hazardous waste, toxic substance, or contaminant (or comparable term) under any of the Environmental Laws.
- 1.1.20. *Lease Month* – Each month, with the first Lease Month beginning on the Effective Date of this Agreement and ending at midnight on the day preceding the day which is one month thereafter. If hereafter agreed to between Airport Director and Operator in writing, the Lease Months can commence on the first day of each calendar month and end on the last day of such calendar month, whereupon Charges for any partial calendar month shall be prorated.
- 1.1.21. *Lease Year* – Each period of twelve (12) consecutive Lease Months.
- 1.1.22. *Maintenance or Repairs and Maintenance* (or similar terms, and regardless of the tense of such phrase or whether the phrase is capitalized) – When used in connection with maintenance, or repairs and maintenance, of the Premises, a portion thereof, or any improvements, fixtures or equipment thereon, means the maintenance, repair or replacement of the specified item in good condition and working order, including, without limitation, ordinary or routine maintenance, repairs or replacement, extraordinary maintenance, repairs, rebuilding, or replacement, and repair, maintenance or replacement of capital or structural items.
- 1.1.23. *Minimum Annual Privilege Fee* – For each Lease Year, the amount determined as set forth in paragraph 6.5.
- 1.1.24. *Minimum Standards* – The Minimum Standards for Commercial Aeronautical Activities at Ocala International Airport as revised July 2012, as now or hereafter amended and any successor general aviation minimum standards adopted for the Airport, which is hereby incorporated herein by this reference. When any provision of this Agreement refers to a specific provision (e.g., a Section) of the current Minimum Standards, and, by virtue of a subsequent amendment to the Minimum Standards, such reference is no longer accurate, the reference shall be deemed to refer to the provision in the amended Minimum Standards that deals with the subject of the current Minimum Standards. Notwithstanding the foregoing, however, no modification of the Minimum Standards shall serve to amend the Term, Charges or the categories of Permitted Uses.

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- 1.1.25. *New Terminal* – The terminal building at the Airport after it is modified pursuant to the Terminal Improvements.
 - 1.1.26. *Operator Improvements* – All buildings, structures, pavements, facilities, and other improvements, above and below ground, constructed by Operator upon the Premises during the Term.
 - 1.1.27. *Operator Recovery Surcharge* – As described in paragraph 5.5 of this Agreement.
 - 1.1.28. *Operator’s Business* – Operator’s business of providing motor vehicle rental services to Customers.
 - 1.1.29. *Other Car Rental Companies* – Lessees of the Airport that engage in businesses substantially similar to that of Operator.
 - 1.1.30. *Parking Area* – The portion of the Airport used for parking of Vehicles and other uses as referred to in paragraph 4.3.2, and located as set forth in paragraph 4.2.3.
 - 1.1.31. *Percentage Fee* – The amount due to City from Operator pursuant to paragraph 6.4.
 - 1.1.32. *Person* – Any individual, partnership, joint venture, association, corporation, limited liability company, trust or other entity.
 - 1.1.33. *Premises* – As defined in paragraph 3.1.
 - 1.1.34. *Ready/Return Area* – The portion of the Airport used for the delivery and return of Vehicles, and located as set forth in paragraph 4.2.4.
 - 1.1.35. *Rent* – The portion of the Charges to be paid by Operator to City as consideration for the lease of the Premises, as set forth in greater detail in paragraph 6.3.1.
 - 1.1.36. *Term* – As defined in paragraph 2.
 - 1.1.37. *Terminal* – The Existing Terminal or New Terminal (as the context so dictates).
 - 1.1.38. *Terminal Improvements* – The renovation of the Existing Terminal by City pursuant to paragraph 4.2.
 - 1.1.39. *Vehicles* – Motor vehicles or trailers rented, or available for renting, by Operator to its Customers in connection with its Business.
 - 1.1.40. *Wash Area* – The portion of the Airport used for washing of Vehicles as referred to in paragraph 4.3.3 and located as set forth in paragraph 4.2.5.
- 1.2. Additional Definitions and Rules of Construction. The definitions in this Agreement shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun used herein shall include the corresponding masculine, feminine and neuter forms. The term “person” includes individuals, partnerships, corporations, limited liability companies, trusts, and other entities and associations. The words “include,” “includes,” and “including” shall be deemed to be followed by the phrase “without limitation.” The words “herein,” “hereof,” “hereunder,” and similar terms shall

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refer to this Agreement, unless the context otherwise requires. The use of verb to describe the act of performing a defined noun shall be interpreted in light of the definition of the noun; for example, to “maintain” a building means to perform maintenance on the building as “maintenance” is described in paragraph 1.1.22 and the “maintaining” of a building means the performing of such “maintenance.”

2. **Term.**

2.1. Term. The term (“Term”) of this Agreement shall begin on the Effective Date and shall expire five (5) years after the Effective Date.

2.2. Effective Date.

2.2.1. The Effective Date shall be the later of:

a. January 1, 2020; or

b. The 15th day after City provides Operator with written notice that the Tenant Improvements have been completed.

2.2.2. Upon request of City or Operator, City and Operator will execute a document acknowledging, or exchange emails confirming, the Effective Date of this Agreement.

2.2.3. City shall use good faith reasonable efforts to permit Tenant access to the Premises prior to the Effective Date so that Tenant may prepare them for use by Tenant under this Agreement; all provisions of this Agreement shall govern such access by Operator except that Operator shall not be required to pay any Charges for any access to the Premises prior to the Effective Date.

2.3. Early Termination by Operator. Notwithstanding paragraph 2.1, Operator may terminate the Term of this Agreement by providing written notice of such termination to City at least 90 days before the Effective Date of the termination.

2.4. Holding Over. If Operator remains in possession of all or any portion of the Premises after the expiration or termination of this Agreement, by lapse of time or otherwise, following notice from City indicating its intention to have Operator quit and vacate the Premises as of that date, such holding over shall constitute the creation of a tenancy at sufferance, terminable by City at any time upon thirty (30) days written notice to Operator. During such holdover tenancy at sufferance, Operator shall pay Rent applicable to its period of occupancy, in the amount of double the Rent due under paragraph 6, as authorized by Section 83.06, Florida Statutes, in addition to all other Charges due under this Agreement.

3. **Lease and Grant of Concession Rights.**

3.1. City hereby leases to Operator, and Operator hereby leases from City, the following (the “Premises”) at the Airport:

3.1.1. For Operator’s exclusive use, the Counter Space.

3.1.2. For Operator’s exclusive use, the Parking Area.

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- 3.1.3. For Operator's non-exclusive use, the Wash Area.
 - 3.1.4. For Operator's non-exclusive use, the Common Areas.
 - 3.1.5. For Operator's exclusive use, the Ready/Return Area (following completion of the Terminal Improvements only).
 - 3.2. City hereby grants to Operator, and Operator accepts from City, certain Concession Rights to permit Operator to conduct its Business at the Airport.
 - 3.3. The lease of the Premises, and the grant of the Concession Rights, involve somewhat distinct rights and obligations, but are related as set forth in this Agreement and the following provisions:
 - 3.3.1. Any breach of this Agreement by any party concerning the lease of the Premises shall constitute a breach concerning the Concession Rights, and vice versa.
 - 3.3.2. Any termination of the lease of the Premises shall terminate the Concession Rights, and vice versa.
4. **Lease of Premises.**
 - 4.1. Premises. The Premises shall consist of the following:
 - 4.1.1. For Operator's exclusive use, the Counter Space.
 - 4.1.2. For Operator's exclusive use, the Parking Area.
 - 4.1.3. For Operator's non-exclusive use, the Wash Area.
 - 4.1.4. For Operator's non-exclusive use, the Common Areas.
 - 4.1.5. For Operator's exclusive use, the Ready/Return Area (following completion of the Terminal Improvements only).
 - 4.2. Locations of Premises.
 - 4.2.1. *Generally.* As of the Execution Date, City is in the process of constructing a new Terminal pursuant to plans and specifications (the "Plans") developed by City (the "Terminal Improvements").
 - 4.2.2. *Specific Requirements.* The Terminal Improvements shall include approximately [REDACTED] square feet for the Counter Space, but shall otherwise be located and configured as determined by City in its sole discretion.
 - a. During the Terminal Improvements, City shall complete the "shell" of the Counter Space by constructing electric facilities, the structural system for the counters, and the ceiling, and providing basic flooring.
 - b. Operator shall be responsible for "finishing" the Counter Space including any improvements to the flooring and the counters.

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- 4.2.3. *Parking Area.* Following completion of the Terminal Improvements, City shall provide parking spaces within the portion of the Terminal primary parking lot dedicated to the use of car rental companies, such as Operator, and shall assign to Operator, at a location determined by City in its sole discretion, [REDACTED] spaces as Operator's Parking Area. During the Term of this Agreement, City may, by providing written notice to Operator, relocate Operator's Parking Area.
- 4.2.4. *Ready/Return Area.* Following completion of the Terminal Improvements, City shall provide an area within the portion of the Terminal parking lot dedicated for the use of car rental companies for the delivery and return of Vehicles, and shall assign to Operator, at a location within such portion as determined by City in its sole discretion, Operator's Ready/Return Area. During the Term of this Agreement, City may, by providing written notice to Operator, relocate Operator's Ready/Return Area.
- 4.2.5. *Wash Area.* Following completion of the Terminal Improvements, City shall provide an area at the Airport sufficient in size for the washing and vacuuming of three (3) cars for use by Operator and Other Car Rental Companies. During the Term of this Agreement, City may, by providing written notice to Operator, relocate the Wash Area.
- 4.3. Use of Premises. Operator may use the Premises under this Agreement for the following purposes and for no other purpose or purposes whatsoever, unless agreed to in writing and fully executed by the parties:
- 4.3.1. *Counter Space.* Operator's Counter Space may be used for processing Customer rental and return transactions, including the processing of Customer Agreements and for general office and administrative purposes related to the operation of Operator's Business.
- 4.3.2. *Parking Area.* Operator's Parking Area will be used for the short-term parking of Operator's authorized Vehicles awaiting rental and delivery to Customers, the parking of such Vehicles after their return and prior to their being washed and again made ready for rental, and the parking of Customer's Vehicles while they are engaging in business with Operator. If Operator leases Vehicles for moving goods, City may require that such Vehicles be parked elsewhere on the Airport and not in Operator's Parking Area in the Terminal's primary parking lot; such additional location shall be thereafter considered to be included in Operator's Parking Area under this Agreement.
- 4.3.3. *Wash Area.* Operator's assigned space within the Wash Area will be used to wash Operator's Vehicles prior to their delivery to the Parking Area or following their return to Operator.
- 4.4. Prohibited Uses, Products and Services. Operator agrees that the Premises shall be utilized solely for the uses permitted herein, or as otherwise approved by City in writing, and for no other purpose whatsoever. Without limiting the foregoing:
- 4.4.1. Operator may not utilize the Premises for, or engage in, the uses prohibited under the Minimum Standards.

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- 4.4.2. Operator shall not provide any products or services that are not specifically authorized by this Agreement or otherwise approved by City in writing.
- 4.4.3. Operator shall not engage in any activities prohibited by paragraph 4.7.3.
- 4.5. Compliance with Minimum Standards. Operator agrees to comply with the requirements set forth in the Minimum Standards applicable to Operator's operations at the Airport. In the event of a conflict between this Agreement and the Minimum Standards, Operator acknowledges and agrees that the more stringent requirement shall apply to Operator's operations hereunder, as determined by City.
- 4.6. Condition and Use of the Premises.
- 4.6.1. Except as expressly set forth in this Agreement, City is not making and specifically disclaims any warranties or representations of any kind or character, express or implied, with respect to the Premises, including, but not limited to, zoning, tax consequences, physical conditions, availability of access, ingress or egress, operating history or projections, valuation, governmental approvals, governmental regulations, or any other matter or thing relating to or affecting the Premises including, without limitation, the value, condition, merchantability, marketability, profitability, suitability or fitness for a particular use or purpose of the Premises. Operator agrees that with respect to the Premises, Operator has not relied upon and will not rely upon, either directly or indirectly, any representation or warranty of City or any agent of City. Operator represents that it is relying solely on its own expertise and that of Operator's consultants, and that Operator has conducted such inspections and investigations of the Premises, including, but not limited to, the physical conditions thereof, and shall rely upon same, and, shall assume the risk that adverse matters, including, but not limited to, adverse physical conditions, which may not have been revealed by Operator's inspections and investigations. OPERATOR ACKNOWLEDGES AND AGREES THAT OPERATOR HAS ACCEPTED THE PREMISES "AS IS, WHERE IS," WITH ALL FAULTS, AND WITH NO ORAL AGREEMENTS, WARRANTIES, OR REPRESENTATIONS (EXCEPT AS SPECIFICALLY PROVIDED HEREIN) COLLATERAL TO OR AFFECTING THE PREMISES BY CITY, ANY AGENT OF CITY OR ANY THIRD PARTY ACTING FOR OR ON BEHALF OF CITY. City is not liable or bound in any manner by any verbal or written statements, representations, or information pertaining to the Premises furnished by any real estate broker, agent, employee, servant, or other person, unless the same are specifically set forth or referred to in this Agreement.
- 4.6.2. The provisions of paragraph 4.6.1 shall apply to the Premises in their current location and to any relocation of the Premises pursuant to this Agreement following Operator's occupancy thereof.
- 4.7. Operator's Obligations With Respect to the Use of the Premises.
- 4.7.1. In the conduct of its business, Operator covenants and agrees to restrict its activities on the Premises to only those authorized by this Agreement and shall not use or permit the use of the Premises for any other purpose, nor shall it vacate the Premises prior to the termination or expiration of this Agreement unless authorized in writing in advance by City. Operator shall use the Premises solely for the rental

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of Vehicles to Customers, and for the provision of services and equipment reasonably and directly associated with the rental of Vehicles, as specifically authorized in this Agreement.

- 4.7.2. Except for its signs identifying Operator's Business approved in advance by City and except as otherwise authorized by City in writing, Operator shall not display nor shall it permit others to display any signs, brochures, racks, promotional materials or similar items on or about the Premises or elsewhere within the Terminal or the Airport.
- 4.7.3. Operator shall not use the Premises, or any other portion of the Airport, for the following without City's express written consent:
 - a. Selling used Vehicles.
 - b. Servicing any Vehicles (except for emergency repairs necessary to remove such Vehicles from the Airport (e.g., "jumping" the battery of a Vehicle)).
 - c. Fueling any Vehicles.
- 4.7.4. Operator shall promptly remove all damaged, destroyed or inoperable Vehicles from the Premises and the Airport.

4.8. Common Areas.

- 4.8.1. As set forth in paragraph 3.1.4, the Premises include the Common Areas.
- 4.8.2. Throughout the Term hereof, City shall operate and maintain the Common Areas for the use and benefit of the occupants of the Airport and their customers, employees and invitees. City shall at all times have exclusive control of the Common Areas and may at any time and from time to time: (a) temporarily close any part of the Common Areas; and (b) make such changes in the Common Areas as in its reasonable opinion are in the best interests of the City or Airport's occupants, including but not limited to changing the location of walkways, service areas, driveways, entrances, existing automobile parking spaces and other facilities, changing the direction and flow of traffic and establishing prohibited areas.
- 4.8.3. Operator shall keep all Common Areas free of obstructions created or permitted by Operator. Operator shall permit the use of the Common Areas only for normal uses. If in City's opinion unauthorized persons are using any of the Common Areas because of Operator's occupancy of the Premises, Operator shall, upon City's demand, enforce City's rights against all such unauthorized persons. City shall nonetheless have the right at any time to remove or restrain any such unauthorized persons from the Common Areas.

5. **Concession Rights.**

- 5.1. Concession Rights Granted. City grants to Operator the following Concession Rights, and Operator assumes all of the following as part of its obligation to operate its Business from the Premises and the Airport:

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- 5.1.1. The privilege to rent passenger-type Vehicles to the public on the Airport; the privilege to offer for sale related loss and collision damage waiver protection, personal injury and accident insurance, supplemental liability, uninsured motorist, and personal effects insurance; and the privilege to offer Customer services, including but not limited to, refueling services, baby car seats, cellular/digital phones, and other related rental equipment. All additional rights shall be approved in writing, fully executed by City from time to time.
- 5.1.2. Operator's Business shall be operated under the following brand name(s) for the Term of this Agreement [REDACTED]. Operator cannot change or operate additional brands at the Premises or from the Airport during the Term of this Agreement. If Operator shall, at any time, cease to operate the Business under the Operator's brand name specified in this paragraph 5.1.2, then this Agreement and Operator's Business privileges at the Airport shall be subject to termination upon thirty (30) days advance written notice to Operator from the City.
- 5.1.3. The privilege for Operator's employees to use, in common with other employees on the Airport, the employee parking facilities provided by City, at such charges as City may, from time to time, establish for employees using the employee parking facilities. Operator's employees may not park in Operator's assigned space in the Parking Area.
- 5.1.4. All rights and privileges not specifically granted to Operator in this Agreement shall be reserved to City.
- 5.2. Non-Exclusive Privileges. Except for Operator's exclusive use of certain of the Premises, the Concession Rights granted under this Agreement are non-exclusive. By entering into this Agreement, Operator acknowledges that City has entered into similar agreements with other rental car companies for similar services at the Airport. City reserves the right to enter into agreements with other companies providing rental car services from "on" or "off" Airport locations, if City determines that it is in its best interest to do so.
- 5.3. Standards of Service.
 - 5.3.1. Operator shall offer for rental to the public only popular-make passenger Vehicles of recent manufacture (not more than two (2) model years old). It is Operator's obligation to maintain all the Vehicles offered for rental in good and safe operating order, free from known mechanical defects, and to keep the Vehicles in a clean, neat, and attractive condition inside and out. Operator shall at all times maintain a sufficient number of Vehicles to meet reasonably foreseeable demands of the traveling public at the Airport.
 - 5.3.2. Operator shall accept at least three (3) nationally recognized credit cards for payment of automobile rentals; and provide or have access to a national reservation system for its rental services at the Airport.
 - 5.3.3. Operator shall maintain a sufficient number of trained personnel to insure that Operator's Customers will receive prompt and courteous service at all times. All personnel of Operator, while on or about the Premises or elsewhere at the Airport, shall be polite, clean and neat in appearance, and appropriately attired.

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- 5.3.4. Operator shall not misrepresent to the public its prices or the terms and provisions of its Customer Agreements or those of its competitors. Operator shall comply with all applicable rules and regulations of the Federal Trade Commission and all other governmental agencies having jurisdiction over Operator's business operations. Operator shall fully inform each Customer, prior to the execution of such Customer's Customer Agreement, of all fees and charges applicable to such Customer's rental. City will give advance notice to Operator that City considers a certain practice to be unlawful, deceptive or discriminatory and Operator shall have an opportunity to respond to the allegation. If City determines, after notice and opportunity for Operator to comment, that any of Operator's business practices are unlawful, deceptive, or discriminatory, Operator shall immediately cease such practices upon receipt of a written order to do so from City.
- 5.3.5. Operator shall at all times maintain the Premises and its improvements and other personal property located on the Premises in a safe, clean, orderly, attractive and first-class condition satisfactory to City. Any sign or other item on the Premises which City deems to be offensive to the public shall, upon notice from City, be promptly and permanently removed from the Premises by Operator. Operator shall not permit any nuisance, waste or damage to be committed on the Premises or elsewhere at the Airport.
- 5.3.6. Operator shall conduct its Business from the Premises at least between the hours of 8 a.m. and 6 p.m., excluding weekends and holidays; for purposes of this Agreement, "holiday" means the day set aside by Section 110.117, Florida Statutes, for observing New Year's Day, Martin Luther King, Jr.'s Birthday, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, the Friday after Thanksgiving Day, or Christmas Day, and any day upon which the Clerk of the Court of Marion County, Florida, is closed for ordinary business. Nothing set forth herein shall preclude Operator from conducting its Business from the Premises during additional days or hours.
- 5.3.7. The management, maintenance and operation of the Business shall at all times be under the supervision and direction of a qualified experienced full-time resident manager who shall at all times be subject to the direction and control of Operator. Operator shall assign the manager an office on the Premises and the manager shall be available during regular business hours. Operator shall at all times during the absence of the manager assign or cause to be assigned a qualified subordinate as manager to assume and be directly responsible for carrying out the duties of the manager.
- 5.4. Non-Diversion of Business. Operator covenants, warrants and agrees that it will not divert business and/or Gross Receipts from Operator's rental car Business at the Airport. Diversion shall include, but not be limited to, Operator advising or suggesting to a Customer or potential Customer arriving at the Airport or pre-arranging a car rental prior to or upon arrival at the Airport that such Customer or potential Customer rent a vehicle or take delivery of a vehicle at any off-Airport location, regardless of the reason.
- 5.5. Operator Recovery Surcharge. "Operator Recovery Surcharge" means any surcharge or any amount that Operator separately states and charges its Customers to recover the amount of the Percentage Fee that is payable under this Agreement. Operator acknowledges that its payment to City under this Agreement is for Operator's use of facilities and grant of

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Concession Rights at the Airport, and that those payments do not reflect a fee that is imposed by City upon Customers renting Vehicles from Operator. Operator understands that City does not encourage nor support the practice of transferring Operator's obligation for payment of the Percentage Fee due under this Agreement to its Customers. Operator is prohibited from stating or implying, in writing or verbally, that the City or the Airport imposes or approves of any direct charge to its Customers, including any surcharge that Operator passes on to its Customers to recoup the Percentage Fee. Operator is prohibited from misrepresenting to the public its prices or the terms and provisions of its Customer Agreement or those of its competitors, either verbally or in writing. If Operator recovers from or charges its Customers the Percentage Fee, that charge shall be clearly and separately stated in writing immediately adjacent to Operator's time and mileage and other charges on the Customer's Customer Agreement and invoice, shall not be described as a tax, and shall be no greater than six and 36/100 percent (6.36%) of the Gross Receipts resulting from such Customer Agreement. Such Operator Recovery Surcharge shall also be included within Gross Receipts subject to the Percentage Fee under this Agreement.

6. Charges.

6.1. Generally. Operator shall pay City, as and when set forth in this paragraph 6, Charges as follows:

6.1.1. The Rent as set forth in paragraph 6.3.

6.1.2. The Concession Privilege Fee which, as set forth in greater detail in paragraph 6.6, shall be the greater of:

a. The Percentage Fee as determined under paragraph 6.4.

b. The Minimum Annual Privilege Fee as determined under paragraph 6.5.

6.2. Manner of Payment. Operator agrees to pay all Charges due under this Agreement, plus applicable sales tax and such other taxes as City may be required to collect on any payments made hereunder, in lawful money of the United States of America, without invoice, unless invoicing is otherwise required hereunder, without further notice or demand, without deduction or setoff.

6.3. Rent.

6.3.1. As consideration for the lease of the Premises, Operator shall pay to City annual Rent as follows:

a. During the first Lease Year, the amount determined by multiplying Thirty and No/100 Dollars (\$30.00) times the square footage of the Counter Space (as determined by City in its reasonable discretion).

b. During each succeeding Lease Year, the amount calculated pursuant to the CPI Rider, a copy being attached as Exhibit C.

6.3.2. The Rent is payable in advance without City's demand on the first day of each calendar month during the Term. Installments of one-twelfth (1/12) of the annual

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Rent as set forth in paragraph 6.3.1. Any references in this Agreement to Rent shall also be deemed to refer to any monthly installment thereof.

- 6.3.3. If the Effective Date is a day other than the first day of a calendar month, or if the Term terminates on a day other than the last day of the calendar month, the Rent shall be prorated on a daily basis.
- 6.3.4. All Rent shall be paid to City without set-off or withholding for any reason.
- 6.3.5. At the time Rent payments are made, the Operator agrees to pay to the City all sales and use taxes that arise because of payment of Rent to the City.
- 6.3.6. Any amount advanced by City pursuant to the terms and provisions of this Agreement shall be repaid to City by Operator by the first of the calendar month following the date of such advance unless otherwise specifically provided in this Agreement.
- 6.3.7. Operator further covenants and agrees to pay promptly when due all taxes assessed against all fixtures, furnishings, equipment and stock-in-trade placed in or on the Premises during the term of this Agreement.

6.4. Percentage Fee.

- 6.4.1. The Percentage Fee shall equal Ten Percent (10.00%) times the Gross Receipts.
- 6.4.2. "Gross Receipts" means all fees, charges and receipts of any and all kinds and descriptions, without deduction for any credit card discount, from or on account of Operator's Business or activities originating on, at, from or with respect to the Premises, Operator's Business at the Airport (including providing motor vehicle rental services through fixed base operators, or other third parties, at the Airport), this Agreement, Operator's vehicle fleet assigned to the Airport, or foreign Vehicles temporarily assigned or rented from the Airport, no matter where the reservation therefor, the rental thereof, or the delivery or possession of such vehicle is made, including but not limited to reservations made through airlines, other operators or travel agencies, or by way of telephone, computer or any other means of communication, including but not limited to amounts collected or due from, for or on behalf of Operator's Customers, and revenue and consideration of any and all types and in any and all forms which are collected, accrued, received, receivable, allocated or allocable or which should have been collected, accrued, received, receivable, allocated or allocable by, for or to Operator or any person or entity acting for or on behalf of Operator, including its franchisor or any affiliated person or entity.
 - a. Gross Receipts shall include but are not limited to the following specified items:
 - 1). Base, time and mileage charges and fees for the rental and short-term leasing of Vehicles;
 - 2). Premiums and any and all other fees and charges for personal accident insurance, personal effects insurance coverage, baggage insurance, personal effects protection insurance, liability insurance, liability

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insurance supplements, extended protection insurance, and any and all other types and kinds of insurance coverages and policies (regardless of how they be denominated, regardless of the parties covered, and regardless of the risks insured against);

- 3). Any and all sums for insurance waivers, collision damage waivers, and loss damage waivers, whether cash or credit and whether collected or uncollected;
 - 4). Fuel service charges, prepaid fuel, fuel replacement fees waiver, and any and all other types and kinds of charges for fuel, fuel replacement and fuel service;
 - 5). Inter-city fees and drop charges;
 - 6). Concession Recovery Fees or Concession Recoupment Fees charged to Customers;
 - 7). Fees for rental of equipment including child safety seats, cellular telephones, recreational gear and car racks, tire chains and global positioning systems;
 - 8). Additional fees charged to Customers including additional and underage driver fees, upgrade and exchange fees, early pickup and late return fees, tire and battery recovery fees, and fees for miscellaneous services (such as service calls).
 - 9). Any and all charges made to Customers for any and all equipment and services provided for, on account of or incidental to the rental of Vehicles;
 - 10). All other receipts, compensation, revenue and other consideration received or accrued to Operator or Operator's franchisor or any other affiliated person or entity for or on account of the subject rental car concession, its operations or its fleet Vehicles, unless specifically excepted in writing by City.
- b. Gross Receipts shall specifically exclude the following:
- 1). Sales taxes which are separately stated on Operator's vehicle rental agreements and which Operator collects and remits separately to governmental taxing authorities, as required by law;
 - 2). The rental car surcharge imposed pursuant to Section 212.0606, Florida Statutes, as now existing or hereinafter amended, provided that such amount is separately stated on Operator's Vehicle rental agreements, Customer's Agreement, collected from the Customer by Operator, and remitted by Operator to the State of Florida;
 - 3). Compensation received by Operator from Customers and insurance carriers in payment of actual damages to, or the destruction or theft of, Vehicles and other personal property of Operator (but provided that

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compensation and payments for the loss of use of Vehicles are to be included as part of the Gross Receipts);

- 4). Discounts, coupons or credits provided by Operator to its Customer at the time a Customer Agreement is closed; and
 - 5). Amounts received from the administration and reimbursement of tolls, tickets, towing or fines paid by Operator.
- c. Without limiting the generality and scope of the definition of Gross Receipts and without broadening the limits of exclusions from Gross Receipts, as specified above, it is expressly agreed and understood by Operator that no exclusion shall be allowed for taxes or surcharges levied on Operator's activities, facilities, equipment, real or personal property, payroll taxes, income taxes, taxes on frequent flier miles paid directly to an airline, license, title, tag fees, or charges to recoup the same, or other charges which recoup operating costs. Therefore:
- 1). Unless specifically excluded by the express terms of paragraph 6.4.2.b, all receipts, revenues or considerations shall be deemed to be included in Gross Receipts under this Agreement.
 - 2). Gross Receipts shall not be reduced by bank charges, uncollected or uncollectible credit accounts, charges made by collection agencies, bad debt losses, or any commission or other amount paid out or rebated by the Operator to travel agents or others with respect to any rental or sale of goods or services.
- 6.4.3. Each exclusion from Gross Receipts shall be segregated as a separate account in the Operator's general ledger.
- 6.4.4. Each transaction made on installment of credit shall be treated as a transaction for the full price in the month during which such charge or transaction is made, regardless of when or whether the Operator receives any full or partial payment therefore. In no event shall the Operator's Gross Receipts or Chargeable Gross Receipts be negative in any revenue category or in any period. Operator shall not allocate revenues to any other location, regardless of which city or location owns the vehicle, or where the vehicle is ultimately returned.
- 6.5. Minimum Annual Privilege Fee. "Minimum Annual Privilege Fee" shall mean the following:
- 6.5.1. During the first Lease Year, \$.
 - 6.5.2. During each succeeding Lease Year, the amount calculated pursuant to the CPI Rider, a copy being attached as **Exhibit C**.
- 6.6. Payment of Concession Privilege Fee. Operator shall pay the Concession Privilege Fee as follows:

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- 6.6.1. The Concession Privilege Fee shall be paid in monthly installments with the amount of each installment being the greater of: (a) one-twelfth (1/12) of the Minimum Annual Privilege Fee; or (b) the Percentage Fee for the preceding month. All references herein to Concession Privilege Fee shall refer to installments thereof. Notwithstanding that the Concession Privilege Fee is paid in monthly installments, the amount of the Concession Privilege Fee for each Lease Year shall be determined pursuant to paragraph 6.8.2 such that the Concession Privilege Fee, for such Lease Year, shall be the greater of the: (a) Minimum Annual Privilege Fee; or (b) the Percentage Fee.
- 6.6.2. Each installment payment of the Concession Privilege Fee shall be paid simultaneously with the provision of the Monthly Report pursuant to paragraph 6.7.

6.7. Monthly Reports.

- 6.7.1. Within twenty-one (21) days of the end of each Lease Month during the Term of this Agreement:
- a. Operator shall submit to the Airport Director, in form and substance acceptable to the Airport Director, a monthly report (a "Monthly Report") containing the total Gross Receipts for the preceding Lease Month. Such Monthly Statement shall set forth the Gross Receipts, by individual component thereof as described in paragraph 6.4.2, and the calculation of the Percentage Fee, for such Lease Month. If so elected by City, Operator shall use a form Monthly Report as provided by City.
 - b. Operator shall pay to City the Concession Privilege Fee due for such preceding Lease Months.
- 6.7.2. City shall have the right to rely on such Monthly Report in determining Concession Privilege Fees due hereunder. Operator shall have full responsibility for the accuracy of such Monthly Report. Late payments and payment deficiencies due to incomplete or inaccurate Monthly Report to City shall be subject to the late payment and late penalty charges as set forth in paragraph 6.11 hereof. The acceptance by City of any Operator payment shall not preclude City from verifying the accuracy of Operator's reports or computations, or from recovering any additional payment actually due from Operator. Interest on any additional amount due shall accrue thereon from the date the payment was originally due, at the rate prescribed and calculated in paragraph 6.11 hereof.

6.8. Annual Reports.

- 6.8.1. Within ninety (90) days of the end of each Lease Year during the Term of this Agreement or any renewal hereof, Operator shall submit to the Airport Director, in form and substance acceptable to the Airport Director, an annual report (the "Annual Report") for the Airport for such Lease Year, prepared in accordance with generally accepted accounting principles, certified by a financial representative of Operator whose duties include familiarity with the matters set forth in the Annual Report and the reporting of such matters. Such Annual Report shall set forth the

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Gross Receipts, by individual component thereof as described in paragraph 6.4.2.a, and Operator's calculation of the Concession Privilege Fee for the Lease Year under this Agreement. If so elected by City, Operator shall use a form Annual Report as provided by City.

6.8.2. Following City's receipt of each Annual Report, City shall determine the amount of Concession Privilege Fee due from Operator for the preceding Lease Year.

a. If the amount of Concession Privilege Fee for the preceding Lease Year is in excess of the Concession Privilege Fee previously paid by Operator pursuant to paragraph 6.7 for such Lease Year, Operator shall pay the difference to City within thirty (30) days of written notice to Operator of the amount owed.

b. If the amount of Concession Privilege Fee due for the preceding Lease Year is less than the amount of Concession Privilege Fee previously paid by Operator pursuant to paragraph 6.7 for such Lease Year, City shall subtract the amount of such overpayment from the next Concession Privilege Fee payment due from Operator under paragraph 6.7; if, at the time such payment is due, this Agreement has expired or been terminated, City shall pay to Operator such overpayment in cash, provided by Operator is not then in default under the terms of this Agreement. This paragraph 6.8 shall survive the expiration or termination of this Agreement.”

6.8.3. City shall have the right to rely on such Annual Report in determining the Concession Privilege Fee due hereunder. Operator shall have full responsibility for the accuracy of such Annual Reports. Late payments and payment deficiencies due to incomplete or inaccurate Annual Reports to City shall be subject to the late payment and interest charges as set forth in paragraph 6.11 hereof. The acceptance by City of any Operator payment shall not preclude City from verifying the accuracy of Operator's reports or computations, or from recovering any additional payment actually due from Operator. Interest on any additional amount due shall accrue thereon from the date the payment was originally due, at the rate prescribed and calculated in paragraph 6.11 hereof.

6.9. Operator's Records.

6.9.1. Operator shall maintain, either at the Airport or elsewhere within Marion County, Florida, books, records and accounts for its Business at the Airport, including computerized records that can be accessed at the Airport or elsewhere within Marion County, maintained in accordance with generally accepted accounting principles, generally accepted auditing standards, and the requirements of this Agreement, recording Gross Receipts under this Agreement and providing for the determination and calculation of Concession Privilege Fee and any other payments to be made to City by Operator.

6.9.2. Such books, records and accounts shall include detailed analyses listing all of Operator's transactions from operations at the Airport in the form of printed, written or electronic media. A numbered invoice shall be issued with each sale or transaction. Books and records shall include, but shall not be limited to, all original accounting source documents detailing transactions relevant to this Agreement, including but not limited to, original Customer Agreements, operating/financial

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statements, a complete (cumulative) general ledger, monthly sales journals detailing each rental transaction for the month, reconciliations between the financial records and monthly reports submitted to City, bank statements applicable to the operations of its Business at the Airport, corporate trial balances, corporate contracts with corporate Customers, annual audited financial statements and related reports on internal controls (including management representation letters), electronic media documenting accounting records, and other sales-related documents. Such books, records and accounts shall also include documentation of all exclusions from Gross Receipts claimed by Operator. For exclusions or adjustments to Gross Receipts, Operator's books and records shall include, but are not limited to, all agreements between Operator and corporate or volume Customers establishing the Customer's contractual rights to discounts and/or rebates, if such reduction is permitted by this Agreement, lists of all individual rental transactions with all corporate or volume Customers, all individual Customer Agreements with all corporate or volume Customers, and documentation of such records supporting other reductions to Gross Receipts authorized pursuant to paragraph 6.4.2.b of this Agreement.

- 6.9.3. Operator shall cause to be installed in Operator's operating area, and shall at all times use, such cash registers, invoicing machines, sales slips and other accounting equipment, devices and forms as are reasonably necessary to record properly, accurately and completely all sales at the Airport related to Operator's Gross Receipts.
- 6.9.4. In those situations where Operator's records have been generated from computerized data (whether mainframe, minicomputer, or PC-based computer systems), Operator agrees to provide City with extracts of data files in a computer readable format on compact disks (CD), E-mail with attached files, or suitable alternative computer data exchange formats as requested by City.
- 6.9.5. Each record and item of information required hereunder shall be maintained for a period of at least five (5) years from the date of creation and for such extended period as City requires if there is an audit or litigation pending.

6.10. Audit of Operator's Books and Records.

6.10.1. City shall have the right to audit or authorize audits of Operator's book, records and accounts relevant to its operations of Operator's Business at the Airport. If either an annual audit or any other lesser period audit performed by City discloses an under reporting of Gross Receipts, Operator shall pay to City any amounts due under this Agreement within fifteen (15) calendar days of written notice by City, plus interest calculated in accordance with paragraph 6.11 of this Agreement. If an audit conducted by City or at City's direction discloses an under reporting of Gross Receipts by two percent (2%) or more for any twelve (12) month period, Operator shall reimburse City for the full cost of the audit, interest calculated in accordance with paragraph 6.11, any applicable legal fees and expenses, and shall pay liquidated damages in the amount of ten percent (10%) of the under-reported Concession Privilege Fees.

6.10.2. Operator shall provide the name and telephone number of Operator's accounting manager who has a thorough knowledge of the accounting system as it pertains to

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this Agreement and who will assist City with its audit. Operator will also allow interviews of past and present employees who were involved in the financial or operational activities of Operator as part of the audit.

- 6.10.3. Operator agrees to provide appropriate work space to conduct the audit and free access to office and equipment needed to conduct the audit. Operator will also make the requested original books and records available within ten (10) working days from the date of request by City or City's representative and will freely lend its own assistance in conducting the audit. If Operator's books and records outside the Airport or outside Marion County, Florida cannot be provided and made available locally, Operator agrees to reimburse City for expenses incurred in sending representatives to wherever such books and records are maintained. Such expense will include transportation, lodging, food and other out-of-pocket expenses resulting from the necessity to leave Marion County, Florida.
- 6.11. Late Payments. If Operator fails to make payment of any Charges, or any other payment due City by the due date thereof, Operator shall pay to City, in addition to all other remedies available to City and all other payments to be made by Operator to City, a late charge equal to an administrative fee of two hundred fifty dollars (\$250.00) per amount not paid, together with interest calculated at the rate of 10% per annum on the amount of such payment until the payment is made in full.
- 6.12. Survives Expiration or Termination. Operator's duty to maintain books and records and City's rights under this Agreement to inspect and audit the books and records of Operator shall survive the expiration or earlier termination of this Agreement.
- 6.13. No Confidentiality. Operator acknowledges that City is subject to the Florida Public Records Act (Chapter 119, Florida Statutes) and that, in such capacity, may not be able to retain any information it obtains from or concerning Operator's operation in confidence, and may, in fact, be required to disclose such information.
- 6.14. Payments by City. If City has paid any sum or sums or has incurred any obligation or expense for which Operator has agreed to pay or reimburse City, or if City is required or elects to pay any sum or sums or insure any obligations or expense by reason of the failure, neglect, or refusal of Operator to perform or fulfill any one or more of the conditions, covenants and undertakings contained in this Agreement.
- 6.15. Taxes and Assessments. Operator shall pay all taxes, including sales tax on payments made to the City subject to sales tax, any applicable payment in lieu of taxes, assessments, and charges of a like nature, which at any time during the Term of this Agreement may be levied or become a lien by virtue of any levy, assessment, or charge by the Federal Government, the State of Florida, Marion County, or any other municipal corporation or other local government entity having jurisdiction over the Airport, any government successor in authority to the foregoing, or any other tax or assessment levying bodies, in whole or in part, upon or in respect to Operator's business, the Charges or any other amount payable under this Agreement, or upon or in respect to any personal property belonging to Operator situated on the Premises. Payment of such taxes, assessments and charges, when and if levied or assessed, shall be made by Operator directly to the taxing or assessing authority charged with collection thereof. City shall timely forward to Operator any assessment or tax notice received by City and payable by Operator.

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- 6.16. License and Permit Fees. Operator shall also pay all fees associated with any and all licenses, permit, certificates and other authorizations required by any governmental authority in connection with the operations or activities performed by Operator under this Agreement.
- 6.17. Operator's Rights to Contest. Operator may, at its own expense, contest the amount or validity of any tax or assessment, or the inclusion of the Premises, this Agreement or the Charges or any other payment under this Agreement as taxable or assessable property, directly against the taxing or assessing authority and Operator shall not be deemed to be in default under this Agreement for failure to pay any such tax or assessment pending the outcome of any such contest proceedings. City reserves the right to require Operator to provide such security as City's legal counsel determines necessary to assure that the tax and any costs related to the tax contest are promptly discharged upon final determination of such tax contest adverse to Operator.
- 6.18. Accord and Satisfaction. If Operator pays any amount that is less than the amount stipulated to be paid under this Agreement, such payment shall be considered to be made only on account of the stipulated amount. No endorsement or statement on any check or letter shall be deemed an accord and satisfaction. City may accept any check or payment without prejudice to City's right to recover the balance due or to pursue any other remedy available to City pursuant to this Agreement or under the law.
- 6.19. Additional Charges. In addition to the Rent and Concession Privilege Fee, all other payments that Operator is obligated to make under this Agreement including, without limitation, under all provisions of this paragraph are considered additional Charges ("Additional Charges"), and unless explicitly stated otherwise, regardless of whether the payments are so designated. All additional payments are due and payable fifteen (15) days after the time City demands payment or at the time the next succeeding Percentage Fee installment is due, whichever occurs later. City shall have the same remedies for Operator's failure to pay Additional Charges as it does for Operator's failure to pay the stated Charges. All further references to "Charges" shall include both stated Charges and Additional Charges. The provisions of this paragraph 6.19 shall apply only concerning remedies, and not concerning Charges upon which sales and use taxes are to be calculated or paid.
- 6.20. Amounts Advanced by City. Any amount advanced by City pursuant to the terms and provisions of this Agreement shall be repaid to City by Operator by the first of the calendar month following the date of such advance unless otherwise specifically provided in this Agreement.
- 6.21. Performance Bond / Service Deposit.
- 6.21.1. Within five days after this Agreement is signed by the last of the parties hereto, the Operator shall provide City with a performance bond, in form and substance acceptable to City in its reasonable discretion with an approved and solvent corporate surety (the "Performance Bond"), or deposit with the City a security deposit (the "Deposit"), in the amount of \$ [REDACTED] (such amount being two-twelfths (2/12) of the total of the annual Rent and the Minimum Annual Privilege Fee) as security for the Operator's faithful performance and observance of the Lease terms, conditions, and provisions, including without limitation, surrender of possession of the Premises to the City. On or subsequent to the commencement of each Lease Year after the first Lease Year, City may adjust the amount of the

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Performance Bond or Deposit owed by Operator so that it is equal to two months' monthly installments of the Rent and the Concession Privilege Fees (as determined under paragraph 6.6.1) for the preceding Lease Year; Operator shall pay to City any additional Deposit within thirty (30) days of written notice from City of the amount owed. The Deposit does not constitute prepayment of Rent or Concession Privilege Fees during the Term of this Agreement.

6.21.2. If the Operator defaults on any of the terms, conditions, or provisions of this Agreement, including but not limited to the payment of Charges and additional payments, the City may apply or retain all or part of the Performance Bond or Deposit to the extent required to pay the delinquent Charges or additional payments or to reimburse the City for all sums incurred or expended because of the Operator's default. If the City applies or retains any part of the Performance Bond or Deposit, the Operator shall deposit with the City an equal amount to replace that which has been applied or retained so that the City has a full deposit at all times during the terms of this Agreement. The replacement amount is payable on the City's demand.

6.21.3. No interest shall be paid or be payable on the Performance Bond or Deposit. Operator hereby irrevocably waives the benefit of any provision of law requiring the Performance Bond or Deposit to be held in escrow or by a third party, and such Deposit shall be deemed to be the property of City and may be co-mingled by City, with City's own funds. City may deliver or credit the funds deposited hereunder by Operator to a buyer of City's interest in the Premises if such interest is sold and, thereupon, City shall be fully, finally, and absolutely discharged from any further liability with respect to such Performance Bond or Deposit and all other obligations and liabilities hereunder, and this provision shall also apply to the benefit of any and all subsequent transferees. Operator agrees that Operator will look solely to the City or its successor(s) in interest, as applicable, for the return of its Deposit.

6.21.4. If the Operator complies fully with all the terms, provisions, covenants, and conditions of this Agreement, the City shall return the Performance Bond or Deposit to the Operator within thirty (30) days after later of: the date on which this Agreement terminates; or the date that Operator delivers possession of the Premises to the City.

6.22. Allocation of Charges.

6.22.1. As set forth elsewhere in this Agreement:

- a. The Rent represents consideration to City for the lease of the Premises; and
- b. The Concession Privilege Fee represents consideration to City for the Concession Rights.

6.22.2. City shall collect sales and use taxes only on the Rent, unless City receives a notice or demand from the applicable taxing authority (currently the Florida Department of Revenue) to collect sales and use taxes on other Charges.

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6.22.3. Operator shall be solely responsible for the payment of all sales, use or other taxes levied upon the fees and other charges payable by Operator to the City hereunder, whether or not the same shall have been billed or collected by the City, together with any and all interest and penalties levied thereon, and Operator hereby agrees to indemnify the City and hold it harmless from and against all claims by any taxing authority that the amounts, if any, collected from Company to such taxing authority, were less than the total amount of taxes due, and for any sums including interest and penalties payable by the City as a result thereof. The provisions of this paragraph 6.22.3 shall survive the expiration or prior termination of this Agreement.

7. **Operator's Improvements.**

7.1. Alterations, Additions and Improvements.

- 7.1.1. Except as expressly provided for herein, Operator shall make no alterations, additions or improvements to or installations on its Premises (including, but not limited to, any work which could affect utility or other systems for which City is responsible) without the prior written permission of the City.
- 7.1.2. Before the commencement of any such work, if required by the City, detailed plans and specifications, including any modifications or amendments thereto requested by City, shall be filed with and approved, in writing, by the Airport Director and all governmental departments and authorities having jurisdiction thereover. All such work shall be done subject to and in accordance with the requirements of applicable law and regulations of all such governmental departments and authorities, and, where required, each affected public utility company.
- 7.1.3. Such work shall be performed in a good and workmanlike manner and in accordance with the plans and specifications approved for the same. At all times during such work, Operator shall have a copy of the approved plans and specifications on the construction site for inspection by City, if the same are herein required. Operator shall be required to replace any work which is not done in accordance with such plans and specifications as approved by the Airport Director.
- 7.1.4. All alterations, additions or improvements at any time placed upon its Premises by Operator shall be deemed to be and become a part of the realty and the sole and absolute property of City upon completion.
- 7.1.5. Operator shall promptly pay all claims made against City and discharge all liens filed or which exist against the Premises, any other portion of the Airport, or Operator's trade fixtures or trade equipment arising out of or in connection with, whether directly or indirectly, the failure to make payment for work done or materials provided by Operator, its contractors, subcontractors or materialmen. However, Operator shall have the right to contest the amount or validity of any such claim or lien without being in default under this Agreement. If City's legal counsel reasonably determines that security is required to guarantee discharge of such claim or lien if such claim or lien is finally determined against Operator, City shall provide Operator with written notice of such determination. Within ten (10) days of such notice, Operator shall provide such security, in such form and amount

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as is reasonably satisfactory to City's legal counsel. City shall give timely notice to Operator of all such claims and liens of which it becomes aware.

- 7.2. Conduct. Operator, its employees, passengers, guests, licensees, invitees and independent contractors shall conduct themselves in an orderly and proper manner so as not to disturb, annoy or offend others at the Airport or to violate any of City's present or future written or published policies, rules or regulations. Upon notification by City of any violation of the provisions of this paragraph 7.2, Operator shall forthwith take all reasonable measures necessary to terminate the offensive, disorderly or improper conduct.
- 7.3. Performance by City Upon Failure by Operator. If Operator fails to perform any obligation required by paragraph 7.1 or 8.2, City shall give Operator written notice of such failure. If Operator fails to perform such obligation within thirty (30) days of receipt of such notice, or if such obligation cannot with due diligence be performed within such thirty (30) day period, and Operator has failed to immediately commence and diligently pursue performance thereof upon receipt of such notice, City may perform such obligation of Operator, and charge Operator for the cost of City's performance, including a charge of fifteen percent (15%) representing City's overhead, plus a reasonable administrative charge representing City's fee for managing the same, plus attorneys' fees or costs of legal counsel, if performed by City's legal counsel.

8. **Obligations of City.**

8.1. City Operation and Maintenance.

- 8.1.1. Except at otherwise provided in this Agreement, City shall operate and maintain the Airport and the Terminal and shall keep the Airport, including the Terminal and City-installed Terminal equipment and fixtures, in good condition and repair. City's maintenance obligation with respect to the Terminal shall also include custodial and general maintenance of the public areas of the Terminal.
- 8.1.2. City shall cause electricity, air conditioning, heat, sewerage disposal and water to be supplied to the Premises. City shall not be responsible for disruptions in service due to failure of utility suppliers or other causes beyond City's control.

- 8.2. Operator's Maintenance, Replacement and Repair. Operator shall, at its own cost and expense, maintain and repair all parts of Operator's improvements, equipment, fixtures and personal property installed or located on or at the Premises, including Operator's computers and communications system, any Operator-installed connections to City-installed utility systems or property, and all other Operator's equipment and property whether or not any of the same is affixed or attached to such Premises. Operator shall also provide cleaning, general maintenance and refuse removal for the Counter Area, Parking Area, Ready/Return Area and Wash Area; the Wash Area shall be cleaned daily. Operator shall dispose of all trash or other refuse in dumpsters provided by City.

9. **Damage or Destruction.**

- 9.1. Damage. Should the Premises or any portions thereof, or buildings or structures on which the Premises may be a part, be damaged by fire or other casualty, and if the damage or buildings or structures of which the Premises are a part, is repairable within ninety (90) days from the date of the occurrence, the Premises shall be repaired with due diligence by

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City and, provided that the damage is not due to the negligence of Operator, the Rent allocable to the portions of the Premises rendered untenable, for the period from the occurrence of the damage to the completion of repairs, shall not be abated.

- 9.2. Destruction. Should the Premises or any portions thereof, or buildings or structures of which the Premises may be a part, be completely destroyed by fire or other casualty, or should they be damaged to such an extent that the damage cannot be repaired within ninety (90) days after the occurrence, City shall have the option to terminate this Agreement to the extent that it shall apply to the portion of the Premises so rendered untenable. If this paragraph 9.2 becomes applicable, City shall notify Operator within thirty (30) days after the happening of any such damage whether City has elected to continue this Agreement in effect as to the premises damaged or destroyed or to terminate it. Such notice shall advise Operator of City's estimated schedule for completion of repair and restoration and identify to Operator reasonably adequate substitute premises to be provided to Operator pending reconstruction of the damaged or destroyed Premises. If repairs are estimated to take more than one hundred eighty (180) days to complete, and City is not able to provide Operator reasonably adequate substitute premises for the premises damaged and destroyed pending reconstruction, and such premises are essential to the operation of Operator's Business, Operator may terminate this Agreement by providing written notice to City within ten (10) days of receipt of notice from City as aforesaid. If City shall elect to continue this Agreement in effect, it shall commence and prosecute with due diligence any work necessary to restore or repair the premises, and, so long as the damage is not due to the negligence of Operator, the Rent allocable to the particular Premises rendered untenable, for the period from the occurrence of the damage to the completion of the repairs, shall be abated and Operator shall pay City a reasonable rental for the substitute premises provided during reconstruction.
- 9.3. Relocation of Premises. During any time period when the Premises, or any portions thereof, are damaged by fire or other casualty, City may relocate the damaged Premises or portions to other locations at the Airport until repairs have been completed.

10. **Indemnification and Insurance.**

- 10.1. Commercial General Liability. Operator shall maintain during the entire Lease Term and all periods in which Operator is in possession of the Premises, commercial general liability insurance as well provide coverage for the following matters and with limits not less than:
- 10.1.1. \$1,000,000 each occurrence and \$2,000,000 aggregate for Bodily Injury, Property Damage, and Personal and Advertising Injury.
- 10.1.2. \$1,000,000 each occurrence and \$2,000,000 aggregate for Products and Completed Operations.
- 10.1.3. \$100,000 each occurrence for Damage to the Premises.
- 10.1.4. Policy must include coverage for contractual liability and independent contractors.
- 10.1.5. City, its officials, employees, and volunteers are to be covered as an additional insured with a CG 20 26 04 13 Additional Insured – Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage with respect to liability arising out of activities

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performed by or on behalf of Operator. The coverage shall contain no special limitation on the scope of protection afforded to City, its officials, employees, and volunteers.

- 10.2. Business Automobile Liability. Coverage must be afforded for all Owned, Hired, Scheduled, and Non-Owned vehicles for Bodily Injury and Property Damage in an amount not less than \$1,000,000 combined single limit each accident. If the Operator's Contractor does not own vehicles, the Operator's Contractor shall maintain coverage for Hired and Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.
- 10.3. Workers' Compensation and Employer's Liability. Coverage must be afforded per Chapter 440, Florida Statutes. Any person or entity performing work for or on behalf of Operator ("Operator's Contractor") must provide Workers' Compensation insurance. Exceptions and exemptions will be allowed by the City's Risk Manager, if they are in accordance with Florida Statutes. The Operator's Contractor waives, and the Operator's Contractor shall ensure that the Operator's Contractor's insurance carrier waives, all subrogation rights against the City and the City's officers, employees, and volunteers for all losses or damages. The City requires the policy to be endorsed with WC 00 03 13 Waiver of our Right to Recover from Others or equivalent. The Operator's Contractor must be in compliance with all applicable State and federal workers' compensation laws, including the U.S. Longshore Harbor Workers' Act and the Jones Act, if applicable.
- 10.4. Construction Insurance. Operator shall, at its sole expense, procure and maintain during the course of the construction of any improvement or alterations on the Premises constructed during the Term of this Agreement, "builder's risk," Operator shall ensure Operator's Contractor obtains comprehensive public liability insurance, and Operator shall also carry during such period of construction Worker's Compensation Insurance covering all persons employed by Operator on or in connection with such construction.
- 10.5. Environmental Liability. Operator shall maintain Pollution Liability or other similar Environmental Impairment Liability, at a minimum limit of not less than Two Million Dollars (\$2,000,000) per claim and Five Million Dollars annual aggregate (\$5,000,000) providing coverage for damages including, without limitation, third-party liability, clean up, corrective action, including assessment, remediation and defense costs. When a self-insured retention or deductible amount exceeds Ten Thousand Dollars (\$10,000), City reserves the right, but not the obligation, to review and request a copy of Operator's most recent annual report or audited financial statements in evaluating the acceptability of a higher self-insured retention or deductible in relationship to Operator's financial condition.
- 10.6. Deductibles. Operator's deductibles or self-insured retentions shall be disclosed to City and may be disapproved upon commercially reasonable grounds by the latter if inconsistent with industry standards. The deductibles once accepted by City may be reduced or eliminated at the option of City upon recommendation of City's Risk Management Department so long as the resulting premiums do not then become commercially unreasonable and so long as any such recommendations are consistent with industry standards. The Operator is responsible for the amount of any deductible or self-insured retention.
- 10.7. Insurance Requirements. These insurance requirements shall not relieve or limit the liability of Operator. City does not in any way represent that these types or amounts of

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insurance are sufficient or adequate to protect Operator's interests or liabilities, but are merely the minimums. No insurance is provided by City under this Agreement to cover Operator or its contractors or sub-contractors.

- 10.8. Duplicate Insurance. Insurance required of Operator or any other insurance of Operator which covers City shall be considered primary, and insurance or self-insurance of City shall be considered excess, as may be applicable to claims against City which arise out of this Agreement.
- 10.9. Insurance Certificate Requirements. Operator shall provide City with valid Certificates of Insurance (binders are unacceptable) at least ten (10) days prior to execution of this Agreement and no later than thirty (30) days prior to commencement of any improvements, or following any written request by City.
 - 10.9.1. Operator shall provide a Certificate of Insurance to City with a thirty (30) day notice of cancellation, or ten (10) days' notice if cancellation is for nonpayment of premium.
 - 10.9.2. In the event that the insurer is unable to accommodate the cancellation notice requirement, it shall be the responsibility of Operator to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested, and addressed to the certificate holder.
 - 10.9.3. In the event this Agreement term goes beyond the expiration date of the insurance policy, Operator shall provide City with an updated Certificate of Insurance no later than ten (10) days prior to the expiration of the insurance currently in effect. City reserves the right to suspend this Agreement until this requirement is met.
 - 10.9.4. City shall be named as an Additional Insured on all liability policies. Lessee shall provide copies of Additional Insured endorsements to Lessor to verify the City's status as an Additional Insured on all applicable policies.
 - 10.9.5. The Lease, Bid/Contract number, event dates, or other identifying reference must be listed on the Certificate of Insurance.
- 10.10. City May Change Limits. City reserves the right to increase or decrease, or expand or narrow, the minimum limits or amounts of insurance requirements set forth above whenever the liability of City under Florida law (including the Florida Tort Claims Act) increases or City's defined areas of liability or risk are expanded. City shall give the Operator a minimum of sixty (60) days advance written notice for any modification or change in the insurance limits as set forth herein.
- 10.11. Failure to Provide Insurance. If Operator shall fail to obtain or maintain in full force and effect any insurance coverage required to be obtained by Operator under this Agreement, City may procure same from such insurance carriers as City may deem proper, irrespective that a lesser premium for such insurance coverage may have been obtained from another insurance carrier, and Operator shall pay as additional Charges, upon demand of City, any and all premiums, costs, charges and expenses incurred or expended by City in obtaining such insurance. Notwithstanding the foregoing sentence, if City shall procure insurance coverage required of Operator hereunder, City shall in no manner be liable to Operator for any insufficiency or failure of coverage with regard to such insurance or any loss to

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Operator occasioned thereby, and additionally, the procurement of such insurance by City shall not relieve Operator of its obligations under this Agreement to maintain insurance coverage in the types and amounts herein specified, and Operator shall nevertheless hold City harmless from any loss or damage incurred or suffered by City from Operator's failure to maintain such insurance.

10.12. Safety/Environmental.

10.12.1. Operator is responsible at all times for reasonable precautions to achieve the protection of all persons including employees, and property lawfully upon the Premises.

10.12.2. Operator shall comply with all applicable safety and Environmental Laws and ordinances. Operator shall promptly notify the City's Risk Management Department regarding any and all Hazardous Material spills that are required to be reported by the State.

10.13. Miscellaneous.

10.13.1. Operator shall be responsible for carrying such insurance as Operator may desire to protect Operator's own equipment, contents, personal property and other property on the Premises, and business loss insurance

10.13.2. Operator may not perform or fail to do any act with respect to the Premises, may not use or occupy the Premises, and may not conduct or operate the Operator's business, in any manner that is objectionable to the insurance companies, it causes them to void or suspend any insurance, or that causes them to increase the premiums above the amounts that would usually have been in effect for the occupancy under this Agreement. Operator may not permit or suffer another person to do so with respect to the Premises.

10.13.3. Operator acknowledges the limits, coverages and endorsements required by this paragraph 10 are intended to minimize liability for City. Operator agrees that it will not rely upon the requirements of this paragraph 10 when assessing the extent or determining appropriate types or limits of insurance coverage to protect Operator against any loss exposures, whether as a result of this Agreement or otherwise.

11. **Default; Remedies.**

11.1. Default. The occurrence of any one or more of the following events shall constitute a default of this Agreement by Operator:

11.1.1. Vacating or abandoning of the Premises by Operator without the advance written consent of City. The Premises shall be deemed vacated or abandoned upon: (a) the Premises no longer being open for business, or Operator not being open for business as required by paragraph 5.3.6 on three or more days in a six-month period; or (b) such other facts as City determines, in its reasonable discretion, establish that Operator has vacated or abandoned the Premises.

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- 11.1.2. The failure by Operator to make payment of any Charge or any other payment required to be made by Operator hereunder, as and when due, where such failure shall continue for a period of three (3) days after such payment is due and payable.
- 11.1.3. The failure by Operator to observe or perform any of the covenants, conditions or provisions of this Agreement to be observed or performed by Operator where such failure continues for a period of thirty (30) days after written notice thereof from City to Operator, notwithstanding the foregoing:
- a. If the nature of Operator's default is such that more than thirty (30) days are reasonably required for its cure, then Operator shall not be deemed to be in default if Operator commenced such cure within such thirty (30) day period and thereafter diligently pursues such cure to completion.
 - b. Nothing contained in this paragraph 11.1.3 shall be deemed to alter or affect the cure period for performance of any covenant, condition or provision for which a specific time period is provided elsewhere in this Agreement, or to require notice and an opportunity to cure where any provision of this Agreement provides that such notice or opportunity are not necessary.
 - c. If Operator has twice previously violated a term, condition or covenant of this Agreement and is provided with notice of and an opportunity to cure such violation, any subsequent violation of the same term, condition, or covenant within twelve (12) months of the prior violation shall constitute a default without further notice or opportunity to cure.
 - d. Only three (3) days' notice and an opportunity to cure need be provided for the failure to provide insurance, or proof thereof, under this Agreement.
- 11.1.4. To the extent permitted by law, (a) the making by Operator or any guarantor, receiver, or trustee thereof of any general assignment, or general arrangement for the benefit of creditors; (b) the filing by or against Operator of a petition to have Operator adjudged bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy unless, in the case of a petition filed against Operator, the same is dismissed within sixty (60) days; (c) the appointment of a trustee or receiver to take possession of substantially all of Operator's assets located at the Premises or of Operator's interest in this Agreement, where possession is not restored to Operator within thirty (30) days; or (d) the attachment, execution or other judicial seizure of substantially all of Operator's assets located at the Premises or of Operator's interest in this Agreement, where such seizure is not discharged within thirty (30) days.
- 11.1.5. The seizure, sequestration or impounding by virtue or under authority of any legal proceeding of all or substantially all of the personal property or fixtures of Operator used in or incident to the operation of the Property.
- 11.1.6. Operator makes an assignment of this Agreement for the benefit of creditors.
- 11.1.7. Any sale, transfer, assignment, subleasing, concession, license, or other disposition prohibited under this Agreement.

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11.1.8. Notwithstanding any provision of this Agreement, Operator acknowledges and agrees that City may require Operator to immediately cease any activity, which could result in an Airport hazard or endanger safety of any other Airport user, as reasonably determined by City.

11.2. Remedies.

11.2.1. If any Operator default occurs (and has not been cured during any applicable cure period), City shall have the right, at the option of City, to pursue one or more of the following remedies, in addition to all other remedies available at law or equity:

- a. Terminate this Agreement and thereupon reenter and take possession of the Premises with or without legal process.
- b. Declare all remaining Charges under the Lease immediately due and owing. For purposes of determining Charges due for the remainder of the Term, it shall be conclusively presumed that the amount of Charges for each Lease Year during the remainder shall be the average of Charges due for the two Lease Years immediately preceding the acceleration (unless the acceleration occurs in the second Lease Year, in which event Charges due for the remainder of the Term shall be conclusively presumed to be the amount of Charges due for the first Lease Year).
- c. Without terminating this Agreement, reenter and relet the Premises, or any part thereof, and grant additional Concession Rights, for the account of Operator upon such terms and conditions as City may deem advisable or satisfactory, in which event the rents received on such reletting shall be applied:
 - a). First, to the expenses of such reletting and collection including but not limited to, necessary renovation and alterations of the Premises, reasonable attorney's fees, any real estate commissions paid;
 - b). Second, toward payment of all Charges or other sums due or to become due City hereunder; and
 - c). Third, if a sufficient sum shall not be thus realized or secured to pay such sums and other charges due City, then, Operator shall pay City any deficiency monthly, and City may bring an action therefor as such monthly deficiency shall arise.
 - d). Nothing herein, however, shall be construed to require City to reenter and relet in any event. City shall not, in any event, be required to pay Operator any surplus of any sums received by City on a reletting of the Premises in excess of the Charges provided in this Agreement.
- d. Remove all or any part of the Operator's property from the Premises and any property removed may be stored in any public warehouse or elsewhere at the cost of, and for the account of Operator, and City shall not be responsible for the care or safekeeping thereof whether in transport, storage or otherwise. Operator hereby waives any claim against City for loss, destruction and/or damage or injury that may be occasioned by any of the previously mentioned

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acts. In addition to any statutory lien granted to City, this Agreement shall be deemed and considered to grant City a security interest in the previously mentioned items and City shall have all the rights of a secured party under the Uniform Commercial Code. The foregoing notwithstanding, City will not claim or have a lien of any kind, be it contractual or statutory, on or against Operator's motor vehicles for non-payment of any Charges or fees due under the Lease, or for any default of Operator or any other reason, and the City hereby waives all such liens available to the City.

11.2.2. No reentry or taking possession of the Premises by City shall be construed as an election on City's part to terminate this Agreement unless a written notice of such intention is given to Operator. Notwithstanding any such reletting without termination, City may at all times thereafter elect to terminate this Agreement for such previous default. Any such reentry shall be allowed by Operator without hindrance, and City shall not be liable in damages for any such reentry, or guilty of trespass or forcible entry.

11.3. Cure of Operator Default by City. If Operator shall default in the performing of any covenant or condition of this Agreement and the opportunity to cure if any has expired, City may, at its sole discretion, perform the same for the account of Operator and Operator shall reimburse City for commercially reasonable expenses incurred therefore together with interest thereon at the highest legal rate. This provision imposes no duty on City nor waives any right of City otherwise provided in this Agreement.

11.4. Default by City. City shall not be in default unless City fails to perform obligations imposed upon City hereunder within a reasonable time, but in no event later than thirty (30) days after written notice by Operator to City, specifying wherein City has failed to perform such obligations; provided, however, that if the nature of City's obligations is such that more than thirty (30) days are required for performance then City shall not be in default if City commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion. Operator shall have, in the event of default by City, any remedy now or hereafter available to Operator under the laws of the State of Florida.

11.5. Surrender of Premises. Operator expressly agrees that it shall immediately surrender the Premises to City in good condition, upon expiration or earlier termination of this Agreement, depreciation and wear from ordinary use for the purpose for which the Premises were leased being excepted. Operator shall remove all of its personal property from the Premises on or before the expiration of this Agreement. Any personal property of Operator not removed by Operator shall become the property of City or may be disposed of by City at Operator's expense.

12. **Assignment, Sublease and Transfers.**

12.1. Permissible Assignments and Sublets. The Operator may not assign, mortgage, pledge, or encumber this lease, nor sublet, license, or grant any concession for the use of the Premises, to another person without obtaining the City's prior written consent, such consent shall not be unreasonably withheld or conditioned. City may require Operator and such other person to provide City with such information as City may reasonably request so that City may consider whether to grant or condition such consent.

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- 12.2. Continued Liability of Operator. If the Operator makes any assignment, sublease, license, or grant of a concession, the Operator will nevertheless remain unconditionally liable for the performance and financial obligations of all of the terms, conditions, and covenants of this Agreement.
- 12.3. City's Right to Collect Charges From Any Occupant. If the Operator is in default on any payments under this Agreement and any other person is subletting or occupying the Leased Premises, or if the Operator assigns this Agreement, the City may collect Charges from the assignee, subtenant, or occupant. The City may apply the net amount collected to the Charges required under this Agreement. The City's collection of the Charges does not waive the covenant against assignment and subletting under this Agreement nor does it constitute the City's acceptance of the assignee, subtenant, or occupant as an Operator, nor the City's waiver of the Operator's further performance of the covenants contained in this Agreement.

13. **Environmental.**

13.1. Compliance with Environmental Laws.

- 13.1.1. Operator covenants, represents, and warrants that in conducting any activity or business on the Premises or at the Airport, or in conducting any operation or performing any work pursuant to this Agreement, Operator shall comply with all applicable Environmental Laws. Operator further covenants, represents and warrants that:
- a. Operator shall obtain and maintain all Environmental Permits required for it to conduct its activities and business on the Premises and at the Airport.
 - b. At City's request, Operator shall make available to City for inspection and copying, upon reasonable notice and at reasonable times, any and all documents and materials which Operator prepared or had prepared with respect to or pursuant to any Environmental Law or Environmental Permit, or which Operator submitted or had submitted to any governmental agency, which documents or materials relate to environmental issues, Environmental Laws or Environmental Permits, pertain to the Airport or the Premises, and would be discoverable in litigation.
- 13.1.2. City and its representatives shall have access to the Premises upon prior notice to inspect the same in order to determine if Operator is using the Premises in accordance with all Environmental Laws and Environmental Permits. Operator agrees to fully cooperate with any such inspections, provided that such inspections shall not unreasonably interfere with Operator's operations. Upon receipt of written notification of noncompliance or upon assertion of a claim by a third party, and at the request of City, Operator shall conduct such testing and analysis as City deems reasonable to ascertain whether Operator is using the Premises in compliance with all Environmental Laws and Environmental Permits. Any such tests shall be conducted by qualified independent experts chosen by Operator, but who shall be subject to City's approval, which shall not be unreasonably withheld. Operator shall provide to City copies of all reports prepared by such experts within a reasonable time after Operator receives each such report.

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- 13.1.3. If Operator fails to comply with any Environmental Law or Environmental Permit or if Operator fails to commence immediate corrective action or required remediation, City may, in addition to the rights and remedies described elsewhere in this Agreement and any other rights and remedies otherwise available to City, enter the Premises and take all reasonable and necessary actions, at Operator's expense, to ensure such compliance with the Environmental Law or Environmental Permit.
- 13.1.4. In the event of any release or threatened release of Hazardous Materials caused by Operator or any of its agents, employees, invitees, licensees, contractors, or subcontractors, and which is required by an applicable Environmental Law or City Rule or Regulation to be reported by Operator, whether as a result of negligent conduct or otherwise, at, on, under or about the Premises or the Airport, or in the event any claim, demand, complaint, or action is made or taken against Operator that pertains to the environment at the Premises or the Airport, or if Operator receives any notice pertaining to Operator's failure or alleged failure to comply with any Environmental Law or Environmental Permit, Operator shall promptly notify City of all known facts pertinent to such release, threatened release, claim, demand, complaint, action, or notice, and shall provide City with a copy of each such claim, demand, complaint, notice, and action. If Operator is required by any Environmental Law, Environmental Permit, or governmental agency to file any notice or report of a release or threatened release of Hazardous Materials at, on, under or about the Premises or the Airport, Operator shall simultaneously provide a copy of such notice or report to City.
- 13.1.5. Operator shall undertake all necessary steps to remedy and remove any environmental pollution, contamination, condition, or damage to the extent caused by or resulting from the activities or conduct of Operator or any of its agents, employees, invitees, licensees, contractors, or subcontractors on the Premises or at the Airport, whether resulting from negligent conduct or otherwise, as determined by the appropriate governmental agency to be necessary to reasonably protect the public health or safety to the extent required by applicable law, or to bring the Premises or the Airport into compliance with all Environmental Laws and Environmental Permits. Such work shall be performed at Operator's expense. Except in the event of an emergency, such work shall be after Operator submits to City a written plan for completing such work and receives the prior approval of City, which shall not be unreasonably withheld. City shall have the right to review and inspect all such work at any time using consultants and representatives of its choice. The actual cost of such review and inspection shall be paid by Operator. Specific cleanup levels for any environmental remediation work Operator performs shall be designed to meet and satisfy the requirements of all applicable Environmental Laws and Environmental Permits. Operator warrants that all work performed pursuant to this Agreement shall be performed in accordance with all Environmental Laws and Environmental Permits, specifically including without limiting the generality of the foregoing any applicable National Emission Standards for Hazardous Air Pollutants (NESHAP), 40 C.F.R. 61.145.
- 13.1.6. Notwithstanding the obligations imposed on Operator in paragraph 13.1.5 of this Agreement, City and other Federal, state, and local agencies having jurisdiction shall at all times have the right, should Operator fail to respond to a notification, after a specified cure period, if any, or immediately if necessary to mediate further

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contamination, to take any and all actions as they may individually or collectively deem appropriate to cease, contain, investigate, remediate, and otherwise respond to a condition which results from, causes, or threatens to cause environmental pollution, contamination, or damage at, under or about the Premises or the Airport. Operator agrees to cooperate with any and all such actions.

13.1.7. City shall not be responsible to Operator or any of its agents, employees, invitees, licensees, contractors, or subcontractors for any environmental condition in existence on the Premises or at the Airport, which condition may interfere with Operator's business or other operations or activities, or which might otherwise cause damage to Operator through loss of business, destruction of property, or injury to Operator, its owners, directors, officers, agents, employees, Customers, clients, vendees, invitees, concessionaires, or licensees, except to the extent that any such condition is directly caused by City or its employees.

13.2. Operator's Environmental Indemnity. With respect to Environmental Laws and Environment Permits, Operator agrees as follows:

13.2.1. Without in any way limiting Operator's obligations under paragraph 13 hereof, Operator shall assume the risk of, be responsible for, protect, defend, indemnify and hold harmless City and its past, present and future officers, the members of the Board of City Commissioners, the employees and agents of City, and each of them, including without limitation the Airport Directors of City, and shall hold each and all of them harmless at all times from and against any and all losses, claims, liabilities, damages, costs, and expenses, including reasonable attorney's fees, which may be incurred in connection with any actual, threatened, or potential environmental pollution, contamination, condition, or damage to the extent caused by or resulting from any activity or conduct, or presence of Operator or any of Operator's directors, officers, agents, contractors, subcontractors, or employees at the Airport or from Operator's failure to comply with any Environmental Law or Environmental Permit. Operator is not responsible for pre-existing contamination by the City, or other tenant.

13.2.2. All rights and remedies of City as provided in this Agreement with regard to environmental pollution, contamination, damage, or any actual or threatened violations of any Environmental Law or Environmental Permit shall be deemed cumulative in nature; and City's right to indemnification as provided under this paragraph 13.2 shall survive the termination of this Agreement.

14. **Airport Specific Provisions.**

14.1. City Right to Improve Airport.

14.1.1. City has, has had and shall continue to have the absolute right to develop, expand, improve and renovate the Airport, including but not limited to, its apron and taxiways, the Terminal and other Airport facilities, regardless of the desires or views of Operator and without interference or hindrance from Operator and without any liability to Operator; and City may continue to so develop, expand, improve and renovate the Airport, including but not limited to, its apron and taxiways, Terminal and other Airport facilities throughout the Term of this Agreement.

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- 14.1.2. Upon reasonable notice, during Operator's normal business hours, City shall have the right to enter the Premises to perform any of City's obligations hereunder, exercise any of its rights hereunder or in the exercise of its governmental functions, or in the event of any alteration, improvement or construction on, adjacent to or in the vicinity of the Premises, for purposes related thereto. Notwithstanding the foregoing, in an emergency, City shall have the absolute right to enter the Premises to perform or exercise any of the aforementioned obligations or rights.
- 14.1.3. In addition to those rights reserved by City in paragraph 14.1.1 and 14.1.2 above, City reserves the right from time to time as may be reasonably necessary to close, relocate, reconstruct, change, alter or modify Operator's Premises for purposes of maintaining or constructing improvements, modifications or expansions to the Airport, provided that:
- a. At least sixty (60) days prior written notice of any such action is given by City to Operator.
 - b. Reasonably convenient and equivalent alternative premises and adequate means of ingress and egress thereto shall be made available to Operator. Such alternative premises shall be subject to Operator's reasonable approval.
 - c. Operator shall continue to pay all Charges, and all other payments applicable under this Agreement with respect to its Premises during any such temporary relocation (adjusted for any decrease in square footage); provided, however, that City shall reimburse Operator for the reasonable costs associated with any necessary relocation.
- 14.2. Reservation of Air Navigation Rights. City reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Airport, including but not limited to Operator's Premises, for navigation or flight in such airspace for landing on, taking off from, or operating at the Airport. This reservation of air navigation rights is with respect to City's operations authorized under its joint use agreement with the United States of America.
- 14.3. Nondiscrimination. To the extent that the following provisions are applicable to Operator's Premises or activities at the Airport and the inclusion of such provisions is required by law, grant agreement or contract, Operator agrees to observe and comply with such provisions:
- 14.3.1. Operator agrees that in the operation of its Business at the Airport, it shall not discriminate against any person by reason of sex, race, color, religion, national origin, disability or handicap in the use of any of the facilities provided for the public at the Airport.
 - 14.3.2. Operator, for itself, its successors in interest and assigns, as a part of the consideration therefor, does hereby covenant and agree, as a covenant running with the land, that if facilities are constructed, maintained or otherwise operated on the property described in this Agreement for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, Operator shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation

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Effectuation of Title VI of the Civil Rights Act of 1964, and as such Regulations may be amended.

14.3.3. Operator, for itself, its successors in interest and assigns, as a part of the consideration therefor, does hereby covenant and agree, as a covenant running with the land, that:

- a. No person on the grounds of sex, race, color, religion, national origin or handicap shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of such facilities;
- b. In the construction of any improvements on, over, or under such land and the furnishings of services thereon, no person on the grounds of sex, race, color, religion, national origin or handicap shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.
- c. Operator (whether a grantee, licensee, lessee, permittee, etc.) shall use the Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation- Effectuation of Title VI of the Civil Rights Act of 1964, and as such Regulations may be amended.
- d. In the event of the breach of any of the above nondiscrimination covenants, City shall have the right to terminate this Agreement and to reenter and repossess the Premises and the facilities thereon, and hold the same as if such Agreement had never been made or issued.

14.3.4. Operator assures City that it shall undertake an affirmative action program if required by Title 14, Code of Federal Regulations, Part 152, Subpart E, to ensure that no person shall, on the grounds of sex, race, color, religion, national origin, or handicap, be excluded from participating in any employment activities covered in Title 14, Code of Federal Regulations, Part 152, Subpart E. Operator assures that no person shall be excluded on these grounds from participating in or receiving the services of any program or activity covered by such Subpart E. Operator assures that it will require that its covered suborganizations to provide assurances to Operator that they similarly shall undertake an affirmative action program and that they shall require assurances from their suborganizations, if and as required by Title 14, Code of Federal Regulations, Subpart E, to the same effect. Operator assures that it shall furnish to the United States government or City, if and as required by law, any and all documents, reports, and records, including, but not limited to, an affirmative action plan, Form EEO-1, the submission of which are required by Title 14, Code of Federal Regulations, Part 152, Subpart E.

14.3.5. To the extent the requirements of Section 504 of the Rehabilitation Act of 1973, 49 CFR Part 27, and Titles II and III of the Americans with Disabilities Act of 1990 apply to the Premises and Operator's facilities thereon or the operation and/or construction or acquisition of any improvement, equipment or facilities by Operator on the Premises or the Airport or any part thereof, such improvement and equipment shall be provided and improvement and facilities shall be designed, constructed, and operated, so that the improvement, equipment or facility is

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accessible to and usable by handicapped persons. To assure such design, construction and use, Operator will design and construct the improvement, equipment or facility in accordance with the Uniform Federal Accessibility Standards (“UFAS”) and/or the American National Standards Institute “Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped” (ANSI A 117.1 1961 [R-1971]), as applicable, which standards are incorporated herein and made a part of this Agreement.

- 14.3.6. This Agreement is subject to the requirements of the U.S. Department of Transportation’s regulations, 49 CFR Part 23. The Operator, concessionaire or contractor, agrees that it will not discriminate against any business owner because of the owner’s race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23.
- 14.3.7. The Operator, concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 40 CFR Part 23 that it enters and cause those businesses to similarly include the statements in further agreements.
- 14.4. Prohibition Against Exclusive Rights. It is hereby specifically understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right to provide rental car services to the public, and City reserves the right to grant to others the privileges and right of conducting any or all activities related to the operations of a rental car concession (subject to paragraph 15).
- 14.5. Compliance with Security Requirements. Operator agrees to observe all security laws, rules, regulations and requirements of the DHS, FAA, TSA, and City applicable to Operator’s operations, as now or hereafter amended or promulgated, including, without limitation, Title 49, Parts 1500 et al., of the Code of Federal Regulations, to the extent applicable to Operator and Operator’s activities hereunder.
- 14.6. Criminal History Background Checks. Operator acknowledges that Operator and its employees, contractors, subtenants and agents may be subject to federal and state criminal history record check requirements under federal, state and/or local laws, as now or hereafter amended or promulgated which laws may require Operator to remove or restrict access of individuals who are not in compliance with the requirements of such laws. Operator agrees to comply with and to require its employees, contractors and agents to comply with all federal, state and local criminal history record check requirements, and any access restrictions imposed thereunder.
- 14.7. Security Deficiency. Operator shall rectify any security deficiency related specifically to premises under Operator’s sole control, as may be determined as such by City, DHS, FAA or TSA. If Operator fails to remedy any such deficiency, City may do so on behalf and on the account of Operator. Operator shall pay to City any costs or expenses incurred by City within thirty (30) days of the date of City’s invoice. Operator acknowledges and agrees that City shall have the right to take whatever action is necessary to rectify any security deficiency or other deficiency as may be determined by City, DHS, FAA or TSA.
- 14.8. Security Systems. City shall have the right to install, operate and maintain security cameras and other similar security devices or systems at the Airport, including locations within

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Premises, for the purpose of ensuring the safety and security of the Public Airport Facilities. City agrees to coordinate the installation and location of security cameras and other security systems or devices to be located within the Premises with Operator in an effort to avoid disruption of Operator's activities and operations. City shall be responsible for all costs associated with the maintenance and repair to any such Security Systems constructed hereunder. Nothing herein shall limit nor require Operator's right to install its own security systems/cameras within the Premises at Operator's sole cost and expense in addition to any installed by City hereunder.

14.9. Stormwater. Operator shall comply with the following provisions with respect to stormwater management at or from the Airport:

14.9.1. Notwithstanding any other provisions or terms of this Agreement, Operator acknowledges that certain properties within the Airport, or on City-leased land, are subject to stormwater rules and regulations. Operator agrees to observe and abide by such stormwater rules and regulations as may be applicable to the Airport property and uses thereof.

14.9.2. City and Operator will cooperate to insure compliance with any stormwater discharge permit terms and conditions, as well as to insure safety and to minimize cost of compliance. Operator acknowledges further that it may be necessary to undertake such actions to minimize the exposure of stormwater to "significant materials" generated, stored, handled, or otherwise used by Operator, as such term may be defined by applicable stormwater rules and regulations, by implementing and maintaining appropriate and relevant "best management practices" as that term may be defined in applicable stormwater rules and regulations.

14.10. Federal Right to Reclaim. If a United States governmental agency shall demand and take over the entire facilities of the Airport or the portion thereof wherein the Premises are located for public purposes for a period in excess of sixty (60) days, Operator may terminate this Agreement by providing written notice of such termination to City and the parties shall thereupon be released and fully discharged from any and all liability hereunder arising after such termination or as a result thereof. This paragraph 14.10 shall not act or be construed as a waiver of any rights Operator may have against the United States as a result of such taking.

14.11. City Tax Assessment Right. None of the terms, covenants and conditions of this Agreement shall in any way be construed as a release or waiver on the part of City, as a political subdivision of the State of Florida, or any of the public officials of City, of the right to assess, levy, and collect any ad valorem, non-ad valorem, license, personal, intangible, occupation, or other tax which shall be lawfully imposed on the Airport.

14.12. Right of Flight. City reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises together with the right to cause in such airspace such noise as may be inherent in the operations of aircraft now known or hereafter used, for navigation of, or flight in, such airspace for landing on, taking off from, or operating on the Airport.

14.13. Operation of Airport. Operator expressly agrees for itself, its sublessees, successors and assigns, to prevent any use of the Premises which would materially adversely affect the operation and maintenance of the Airport, or otherwise constitute a material Airport hazard.

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- 14.14. Release. Operator acknowledges that noise and vibration are inherent to the operation of an Airport and hereby releases City from any and all liability relating to the same.
- 14.15. Exclusive Rights. Notwithstanding any provision of this Agreement to the contrary, Operator understands and agrees that the rights granted under this Agreement are nonexclusive, other than the exclusive right of use of the Premises, and that City may grant similar privileges to another lessee or other lessees on other parts of the Airport.
- 14.16. No Discrimination. Operator for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree that no person on the grounds of race, creed, color, national origin, sex, sexual orientation, gender identity and expression, familial status, religion, marital status, age, or disability shall be excluded from participation (a) in or denied the use of the Premises; (b) in the construction of any improvements on, over, or under the Premises; or (c) in the furnishing of services. Operator shall use the Premises in compliance with all requirements imposed by or pursuant to Title 49, Part 21 of Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Non-discrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, as now or hereafter amended. In the event of the breach of any of the foregoing non-discrimination covenants which breach is not cured within thirty (30) days after written notice by City, City shall have the right to terminate this Agreement and to reenter and repossess such Premises and the facilities hereon, and hold the same as if this Agreement had never been made or issued. This cancellation provision shall not be effective until the procedures of Title 49, Part 21 of the Code of Federal Regulations are followed and completed including exercise or expiration of appeal rights.
15. **Most Favored Nations.**
- 15.1. If any agreement (the “Other Agreement”) granted by the City to any Other Rental Car Company provides for the lease of premises inside the Terminal and the grant of Concession Rights at the Airport contains any Major Terms (as defined below) more favorable to the Other Car Rental Company than the terms and conditions of this Agreement, Tenant shall be entitled to an amendment to this Agreement (the “MFN Amendment”) to include such Major Terms for so long as, and subject to the same conditions under which, the Major Terms of such Other Agreement shall be enjoyed by such Other Car Rental Company. In order to constitute an Other Agreement under this paragraph 15, the agreement with the Other Rental Car Company must provide for both the lease of premises inside the Terminal and the grant of Concession Rights at the Airport; therefore, an agreement with an Other Rental Car Company merely providing for the use of the Ready/Return Area (and not any area inside the Terminal) and the grant of Concession Rights to the Other Rental Car Company shall not constitute an Other Agreement. Tenant shall not be entitled to the Major Terms of such Other Agreement without accepting any less favorable terms that may be in such Other Agreement (regardless of whether such less favorable terms are Major Terms), and such favorable Major Terms shall not entitle Tenant to any refund or abatement of any Charges paid or accrued prior to the date of the MFN Amendment. For purposes of this paragraph 15.1, “Major Terms” shall include only the express provisions of paragraphs 2, 4.3, 4.4, 4.7, 5.3, 5.5, 6, 10 and 11 of this Agreement.

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- 15.2. Tenant's sole remedy for a breach of City's obligations under this paragraph 15 shall be an action for specific performance of this paragraph; in no event shall Tenant have a right to terminate this Agreement or to seek monetary damages.
- 15.3. If the Other Agreement expires or is terminated (regardless of the reason for termination or the party terminating the Other Agreement), the MFN Amendment shall be deemed canceled and the provisions of this Agreement before the MFN Amendment shall thereafter apply.

16. **General Provisions.**

- 16.1. Operator As Independent Contractor. It is expressly understood and agreed by and between the parties hereto that Operator is and shall remain an independent contractor responsible to all parties for all of its acts or omissions and City shall be in no way responsible for Operator's acts or omissions.
- 16.2. Subordination to Governmental Agreements. This Agreement shall be subject and subordinate to all the terms and conditions of any instrument or document under which City acquired the land or improvements thereon, of which the Premises are a part, and shall be given only such effect as will not conflict with nor be inconsistent with such terms and conditions. Operator understands and agrees that this Agreement shall be subordinate to the provisions of any existing or future agreement between City and the United States of America or State of Florida, or any of their agencies, relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of state or federal funds for the improvement or development of the Airport.
- 16.3. Governmental Authority. Nothing in this Agreement shall be construed to waive or limit City's governmental authority as a Florida municipality to regulate Operator or its operations. City's obligations under this Agreement are made in a proprietary capacity (rather than in a governmental capacity), and such agreements shall not be construed as: limiting, prohibiting or eliminating the obligation of the parties to comply with all applicable rules, regulations, ordinances, statues and laws; altering or impairing City's governmental functions, including, without limitation, City's right to lawfully exercise its regulatory authority over the development of the Premises; or enabling, permitting, or creating any cause of action or claim arising out of the lawful exercise of City's governmental authority.
- 16.4. Rights Reserved to City. All rights not specifically granted Operator by this Agreement are reserved to City.
- 16.5. Invalidity of Clauses. The invalidity of any portion, paragraph, provision, clause or any portion thereof of this Agreement shall have no effect upon the validity of any other part or portion hereof.
- 16.6. Governing Law. This Agreement shall be governed by and in accordance with the laws of the State of Florida.
- 16.7. Estoppel Certificates. City or Operator shall have the right to request the other party to provide an estoppel certificate, as described below, without charge, 15 days after the requesting party sends a written notice. This estoppel certificate shall consist of a written

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statement certifying the following information to the requesting party or to any person specified by that party:

- 16.7.1. This Agreement is unmodified and in full force and effect; or, if there have been any modifications in this Agreement, this Agreement is in full force and effect as modified, specifying the nature of each modification.
- 16.7.2. The name and address of the owner of the fee simple estate in the Premises.
- 16.7.3. The name and address of the owner of the leasehold estate in the Premises.
- 16.7.4. The Lease is in full force and effect.
- 16.7.5. Whether the terms of this Agreement have been assigned, supplemented, modified or otherwise amended and, if so, specifics of the assignment, supplementation, modification or other amendment.
- 16.7.6. Whether, to the best of the knowledge of the party providing the certificate, each of the obligations on its part to be performed to date under the Lease have been performed.
- 16.7.7. Whether, to the best of the knowledge of the party providing the certificate, each of the obligations of the other party to this Agreement have been performed to date under the Lease.
- 16.7.8. Whether Operator has any offsets, counterclaims, defenses, deductions or credits whatsoever with respect to the Lease.
- 16.7.9. Whether there exists any other agreements (including subordination, non-disturbance and attornment agreements) concerning the Premises, whether oral or written between City and Operator (or their respective predecessors or successors) under this Agreement.
- 16.7.10. Whether, as of the date of the certificate, any Charge is due from Operator under the Lease.
- 16.7.11. The following:
 - a. Amount of Charges currently payable by Operator under the Lease and the date through which such Charges has been paid.
 - b. Whether City or Operator have assigned the Lease and, if so, the specifics thereof.
- 16.7.12. As to the certificate to be executed by City, whether City has assigned, conveyed, transferred, sold, encumbered or mortgaged its interest in the Lease or the Premises and, if so, the specifics thereof, and whether any third party has an option or preferential right to purchase all or any of the Premises and, if so, the specifics thereof.

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- 16.7.13. Whether the party providing the certificate has received any written notice of any pending eminent domain proceedings or other governmental actions, or any judicial action of any kind, against such parties' interests in the Premises.
- 16.7.14. Whether the party providing the certificate has received written notice that it is in violation of any governmental law or regulation applicable to its interest in the Premises and its operation thereon including, without limitation, any Environmental Law or the Americans with Disabilities Act, and whether such party has any reason to believe that there are grounds for any such claim or violation.
- 16.7.15. Attaching a true and correct copy of the Lease including all amendments thereto.
- 16.7.16. Any other information with respect to this Agreement and the Premises that the requesting party shall reasonably request.
- 16.8. Force Majeure. Whenever a period of time is herein prescribed for action to be taken by City, City will not be liable or responsible for, and there will be excluded from the computation for any such period of time, any delays due to strikes, riots, acts of God, shortages of labor and materials, theft, fire, public enemy, injunction, court order, requisition of other governmental body or authority, war, governmental laws, regulations or restriction or any other causes of any kind whatsoever which are beyond the reasonable control of City (any or all of the foregoing being referred to as "Force Majeure").
- 16.9. Matters of Record. This Agreement is subject to all matters of record affecting the Premises.
- 16.10. Time.
- 16.10.1. Time is of the essence of all of the provisions and terms of this Agreement.
- 16.10.2. If a time period is five (5) days or less, intervening Saturdays, Sundays or legal holidays will be excluded from the calculation.
- 16.10.3. When any time period specified herein falls or ends upon a Saturday, Sunday or legal holiday, the time period shall automatically extend to 5:00 p.m. on the next ensuing business day.
- 16.10.4. For purposes of this Agreement, "legal holiday" means the day set aside by Section 110.117, Florida Statutes, for observing New Year's Day, Martin Luther King, Jr.'s Birthday, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, the Friday after Thanksgiving Day, or Christmas Day, and any day upon which the Clerk of the Court of Marion County, Florida, is closed for ordinary business.
- 16.11. Notices.
- 16.11.1. All notices, requests, consents and other communications (each a "Communication") required or permitted under this Agreement shall be in writing and shall be (as elected by the person giving such notice) delivered by messenger or courier service, emailed or mailed by Registered or Certified Mail (postage pre-paid), Return Receipt Requested, addressed as follows or to such other addresses

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as any party may designate by Communication complying with the terms of this paragraph:

a. City: Attn: Airport Director, Ocala International Airport, 750 SW 60th Avenue, Ocala, FL 34474; Fax: 352-629-8887; Email: airport@ocalaairport.com or mgrow@ocalafl.org.

a). With a copy to: Director of Contracts & Procurement, 110 SE Watula Avenue, 3rd Floor, Ocala, FL 34471; Fax: 352-690-2025; Email: tkimball@ocalafl.org.

b. Operator: Attn: [REDACTED]; Email: [REDACTED].

16.11.2. Each such Communication shall be deemed delivered:

- a. On the date delivered if by personal delivery;
- b. On the date of email transmission if by email; and
- c. If the Communication is mailed, on the earlier of: (a) the date upon which the Return Receipt is signed; (b) the date upon which delivery is refused; (c) the date upon which Communication is designated by the postal authorities as not having been delivered; or (d) the third business day after mailing.
- d. Notwithstanding the foregoing, service by personal delivery, or by email sent, after 5:00 p.m. shall be deemed to have been made on the next day that is not a Saturday, Sunday or legal holiday.

16.11.3. If a Communication is delivered by multiple means, the Communication shall be deemed delivered upon the earliest date determined in accordance with the preceding subparagraph.

16.11.4. If the above provisions require Communication to be delivered to more than one person (including a copy), the Communication shall be deemed delivered to all such persons on the earliest date it is delivered to any of such persons.

16.11.5. Concerning Communications sent by email:

- a. The Communication shall not be deemed to have been delivered if the sender receives a message from the sender's or the recipient's internet service provider or otherwise that the email was not delivered or received;
- b. If the sender receives an automatic reply message indicating that the recipient is not present to receive the email (commonly referred to as an "out of the office message"), the email shall not be deemed delivered until the recipient returns;
- c. Any email that the recipient replies to, or forwards to any person, shall be deemed delivered to the recipient.
- d. The sender must print the email to establish that it was sent (though it need not do so at the time the email was sent); and

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- e. The sender shall maintain the digital copy of the email in its email system for a period of no less than one year after it was sent.
- 16.12. Headings. The headings of the various paragraphs of this Agreement and the Table of Contents are for convenience and ease of reference only, and shall not be construed to define, limit, augment or describe the scope, context or intent of this Agreement or any part or parts of this Agreement.
- 16.13. Binding Effect. The terms, conditions and covenants of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors, assigns and subtenants, if any. This provision shall not constitute a waiver of any prohibitions against or limitations regarding assignment or subletting.
- 16.14. Construction. No party shall be considered the author of this Agreement since the parties hereto have participated in extensive negotiations and drafting and redrafting of this document to arrive at a final Lease. Thus, the terms of this Agreement shall not be strictly construed against one party as opposed to the other party based upon who drafted it. If any section, paragraph, sentence, clause, or provision hereof, shall be held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.
- 16.15. Public Entity Crimes. As provided in Sections 287.132 through 287.133, Florida Statutes, by entering into this Agreement or performing any work in furtherance hereof, Operator certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the effective date hereof. This notice is required by Section 287.133(3)(a), Florida Statutes.
- 16.16. Scrutinized Companies. As provided in Section 287.135, Florida Statutes by entering into this Agreement or performing any work in furtherance hereof, Operator certifies that it, its affiliates, suppliers, subcontractors and consultants who perform hereunder, have not been placed on the Scrutinized Companies Activities in Sudan List or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created pursuant to Section 215.473, Florida Statutes. If City determines, using credible information available to the public, that a false certification has been submitted by Operator, this Agreement may be terminated and a civil penalty equal to the greater of Two Million Dollars (\$2,000,000) or twice the amount of this Agreement shall be imposed, pursuant to Section 287.135, Florida Statutes.
- 16.17. No Third-Party Beneficiaries. No provision of this Agreement is intended to, or shall be construed to, create any third-party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including without limitation any citizen or employees of City and/or Operator.
- 16.18. Incorporation by References. All exhibits attached hereto and referenced herein shall be deemed to be incorporated in this Agreement by reference.
- 16.19. RADON. RADON IS A NATURALLY OCCURRING RADIOACTIVE GAS THAT, WHEN IT HAS ACCUMULATED IN A BUILDING IN SUFFICIENT QUANTITIES, MAY PRESENT HEALTH RISKS TO PERSONS WHO ARE EXPOSED TO IT OVER

Exhibit D- Sample Contract with Car Rental Company

TIME. LEVELS OF RADON THAT EXCEED FEDERAL AND STATE GUIDELINES HAVE BEEN FOUND IN BUILDINGS IN FLORIDA. ADDITIONAL INFORMATION REGARDING RADON AND RADON TESTING MAY BE OBTAINED FROM CITY'S PUBLIC HEALTH UNIT.

- 16.20. Survival. Notwithstanding any early termination of this Agreement, Operator shall remain obligated hereunder to perform any duty, covenant or obligation imposed upon Operator hereunder arising prior to the date of such termination or surviving such termination.
- 16.21. Exclusive Venue. The parties agree that the exclusive venue for any litigation, suit, action, counterclaim, or proceeding, whether at law or in equity, which arises out of concerns, or relates to this Agreement, any and all transactions contemplated hereunder, the performance hereof, or the relationship created hereby, whether sounding in contract, tort, strict liability, or otherwise, shall be in Marion County, Florida.
- 16.22. JURY WAIVER. EACH PARTY HEREBY COVENANTS AND AGREES THAT IN ANY LITIGATION, SUIT, ACTION, COUNTERCLAIM, OR PROCEEDING, WHETHER AT LAW OR IN EQUITY, WHICH ARISES OUT OF CONCERNS, OR RELATES TO THIS AGREEMENT, ANY AND ALL TRANSACTIONS CONTEMPLATED HEREUNDER, THE PERFORMANCE HEREOF, OR THE RELATIONSHIP CREATED HEREBY, WHETHER SOUNDING IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, TRIAL SHALL BE TO A COURT OF COMPETENT JURISDICTION AND NOT TO A JURY. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY. ANY PARTY MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS AGREEMENT WITH ANY COURT, AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO OF THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY. NEITHER PARTY HAS MADE OR RELIED UPON ANY ORAL REPRESENTATIONS TO OR BY THE OTHER PARTY REGARDING THE ENFORCEABILITY OF THIS PROVISION. EACH PARTY HAS READ AND UNDERSTANDS THE EFFECT OF THIS JURY WAIVER PROVISION.
- 16.23. Governing Laws. This Agreement and all transactions contemplated by this Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Florida without regard to principles of conflicts of laws.
- 16.24. Attorney's Fees. If any legal action or other proceeding (including, without limitation, appeals or bankruptcy proceedings) whether at law or in equity, which: arises out of, concerns, or relates to this Agreement, any and all transactions contemplated hereunder, the performance hereof, or the relationship created hereby; or is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs and all expenses even if not taxable as court costs, incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.
- 16.25. Language. Whenever used in this Agreement, the singular number shall include the plural, the plural number shall include the singular, and the use of any gender shall include all genders where the context permits.

Exhibit D- Sample Contract with Car Rental Company

- 16.26. Further Action. Each of the parties hereto shall execute and deliver any and all additional papers, documents, and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of the obligations hereunder and to carry out the intent of the parties hereto.
- 16.27. Waiver.
- 16.27.1. A failure to assert any rights or remedies available to a party under the terms of this Agreement, or a waiver of the right to remedies available to a party by a course of dealing or otherwise shall not be deemed to be a waiver of any other right or remedy under this Agreement, unless such waiver of such right or remedy is contained in a writing signed by the party alleged to have waived his other rights or remedies.
- 16.27.2. No payment by Operator or receipt by City or its agents of a lesser amount than the Charges and other charges stipulated in this Agreement shall be deemed to be other than a payment on account thereof, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and City or its agents may accept such check or payment without prejudice to City's right to recover the balance of the amount due or to pursue any other remedy provided in this Agreement or by applicable Law.
- 16.28. Entirety of Agreement. The parties agree that this Agreement and its Exhibits set forth the entire agreement between the parties, and there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered except by written instrument executed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed these presents as of the day and year first above written.

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SIGNATURES START ON NEXT PAGE**

Exhibit D- Sample Contract with Car Rental Company

CITY

City of Ocala, a Florida municipal corporation

Witness

Print Witness Name

Witness

Print Witness Name

ATTEST:

Angel B. Jacobs
City Clerk

Approved as to form and legality

Patrick G. Gilligan
City Attorney

By: _____
Mary S. Rich
President, Ocala City Council

Exhibit D- Sample Contract with Car Rental Company

OPERATOR

_____, a _____

By: _____

as _____

Witness

Print Witness Name

Witness

Print Witness Name

Exhibit D- Sample Contract with Car Rental Company

EXHIBIT A CPI RIDER

1. As used in this Rider, all terms defined in the Agreement to which this Rider is attached have the same meaning herein and the following terms have the following meanings:
 - 1.1. *Adjusted Charge* – The Adjustment Amount plus the Preceding Charge.
 - 1.2. *Adjustable Charge* – The Rent or Minimum Annual Privilege Fee, each of which, as set forth in the Agreement, is subject to adjustment pursuant to this Rider.
 - 1.3. *Adjustment* – An adjustment to an Adjustable Charge pursuant to this Rider.
 - 1.4. *Adjustment Amount* – The Adjustment Multiplier multiplied by the Preceding Charge.
 - 1.5. *Adjustment Date* – As defined in paragraph 2 of this Rider.
 - 1.6. *Adjustment Multiplier* – A number determined pursuant to the following formula: (New Comparison Index less Preceding Comparison Index) divided by Preceding Comparison Index.
 - 1.7. *Base Index* – The CPI in effect upon the Effective Date of this Agreement.
 - 1.8. *CPI* – Means the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, All Items, Not Seasonally Adjusted, 1982–84 = 100 reference base, published by the Bureau of Labor Statistics of the U.S. Department of Labor. If the CPI ceases to use 1982–84 = 100 as a reference base, or if the CPI is altered, modified, converted, or revised in any way, the CPI will be adjusted to the figure that would have resulted had the change not occurred. If the CPI ceases to be published, the remaining Adjustments called for in this Rider shall be made using the statistics of the Bureau of Labor Statistics of the United States Department of Labor that are most nearly comparable to the CPI. If the Bureau of Labor Statistics of the United States Department of Labor ceases to exist or ceases to publish statistics concerning the purchasing power of the consumer dollar during the Term of this Agreement, the remaining Adjustments called for in this Rider shall be made using the most nearly comparable statistics published by a recognized financial authority selected by City in its sole discretion.
 - 1.9. *New Comparison Index* – The CPI in effect on the second calendar month before the pending Adjustment Date.
 - 1.10. *Preceding Charge* – (a) As to the first Adjustment, the Adjustable Charge for the first Lease Year; and (b) as to each subsequent Adjustment, the Adjusted Charge as adjusted pursuant to the preceding Adjustment.
 - 1.11. *Preceding Comparison Index* – (a) As to the first Adjustment, the Base Index; and (b) as to subsequent Adjustments, the CPI utilized for the preceding Adjustment.
2. Commencing with the second Lease Year (i.e., on the first anniversary of the Effective Date), the Adjustable Charge will be subject to Adjustment every Lease Year during the Term, with each Adjustment being effective on the first day of the Lease Year subject to the Adjustment (the “Adjustment Date”) for proportionate increases in the CPI.

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3. On each Adjustment Date, the Adjustable Charge shall be adjusted by adding the Adjustment Amount to the Preceding Charge.
4. In no event shall the Adjustable Charge ever decrease below the Preceding Charge.
5. The Agreement shall automatically be considered as amended, without formal amendment hereto, upon written notification by City to Operator of the Adjusted Charge established pursuant to this Rider. Any delay or failure of City in computing the adjustment, as hereinabove provided, shall not constitute a waiver of or in any way impair the continuing obligation of Operator to pay Adjusted Charge from the applicable Adjustment Date.

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