

**EXHIBIT B**

**CONCESSION AGREEMENT  
FOR OPERATION OF RENTAL CAR SERVICES  
EAGLE COUNTY AIR TERMINAL CORPORATION**

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by and between Eagle County Air Terminal Corporation, a not for profit 63-20 Corporation of the State of Colorado ("Corporation"), and \_\_\_\_\_ ("Concessionaire").

**WITNESSETH:**

**WHEREAS**, Corporation is owner, constructor and operator of the Commercial Passenger Terminal Building and associated support facilities ("TERMINAL BUILDING") located on Eagle County Regional Airport in Eagle County, Colorado, and has the right to lease portions of the TERMINAL BUILDING and to grant operating privileges thereon subject to the terms and conditions hereinafter set forth; and

**WHEREAS**, CONCESSIONAIRE desires to lease certain premises within the TERMINAL BUILDING, and use certain facilities at the TERMINAL BUILDING, and acquire certain rights and privileges from Corporation in connection with its use of the TERMINAL BUILDING and CORPORATION is willing to lease and grant same to CONCESSIONAIRE under terms and conditions hereinafter stated; and

**WHEREAS**, CORPORATION has the power and authority to enter into this agreement;

**NOW, THEREFORE**, for and in consideration of the premises and the mutual covenants and considerations herein contained, CORPORATION and CONCESSIONAIRE agree as follows:

**Article 1  
Definitions**

**Section 1.1 Definitions**

The terms and phrases defined in this Article 1 for all purposes of this Agreement shall have the following meanings:

- A. **"Airport"** shall mean Eagle County Regional Airport.
- B. **"Auditor"** shall mean the Corporation's Auditor and his authorized representative.

C. **"Concession Space"** shall mean the concession counter/queuing area and associated office space, if applicable, as generally depicted on the "Terminal Space Plan", attached hereto as **Exhibit A**, located within the TERMINAL BUILDING and dedicated ready/return parking spaces as generally depicted on the attached **Exhibit B**. The parking shall only include those spaces designated on **Exhibit B**, the location of which may be modified by CORPORATION at any time in its sole discretion. Any other parking spaces desired by CONCESSIONAIRE shall be leased separately with CORPORATION or County under a separate contract.

D. **"Concessionaire's Proposal"** shall mean the Proposal as submitted by CONCESSIONAIRE, which CONCESSIONAIRE represents one or two brands, and accepted by the CORPORATION and consisting of CONCESSIONAIRE's proposed minimums and its plan of operation, which is hereby incorporated herein by reference. In the event the Concessionaire's Proposal and the terms of this Agreement conflict, the terms of this Agreement shall govern.

E. **"Dual Branding"** Dual Branding shall be permitted for companies who wholly own (100% ownership interest) two rental car brands or by franchisees whose franchisor or franchisor's parent or affiliate wholly owns (100% ownership interest) two rental car brands. Dual branding shall only be permitted for those who submit proposals under the Request for Proposal for Non-Exclusive Rental Car Concession (the "RFP") as dual brands. Concessionaires who have not proposed dual brands will not be allowed to operate as such during the term of this agreement.

F. **"Eagle County" or "County"** shall mean Eagle County, Colorado.

G. **"Director"** shall mean the Aviation Director, designated as such by the Eagle County Air Terminal Corporation. The word also means the designee of that official or acting Aviation Director, if any, of CORPORATION whenever the Aviation Director is unable to act in such capacity, or the successor of the Aviation Director in functions, if any.

H. **"Past Due Interest Rate"** shall mean interest accruing at 18% per annum commencing on the fifth calendar date after the date such amount is due and owing until paid to CORPORATION.

I. **"Lease Year"** The initial Lease Year shall commence on November 1, 2018 and end on October 31, 2019. Successive Lease years shall commence on November 1 and end on October 31 each following year throughout the term of this AGREEMENT.

J. **"Leased Premises"** shall mean the Concession Space.

## **ARTICLE 2**

### **Grant of Concession Rights**

Section 2.1 **Concession Rights Granted.** CORPORATION grants to CONCESSIONAIRE the right to occupy, improve, and use the Concession Space consistent with and subject to all the terms and provisions of this Agreement.

Section 2.2 **Uses and Privileges of Concession Space.** CONCESSIONAIRE shall enjoy the following privileges in connection with its use of the Concession Space:

A. The nonexclusive right, privilege and obligation to conduct and operate a rental car concession at the TERMINAL BUILDING. CONCESSIONAIRE understands and agrees that it shall not engage in any other business on the Airport under this Agreement.

B. The right, privilege, and obligation to service and maintain in good and safe operating order, free from known mechanical defects, only passenger-type rental vehicles; rent and check in rental vehicles, including the right to offer for sale related collision damage waiver protection, personal injury and accident insurance, personal effects insurance, and rent equipment incidental to the rental of motor vehicles, such as cellular phones, ski racks, luggage racks, infant seats and such other equipment as may be approved by CORPORATION; and occupy to operations office, storage, turnaround and ready/return parking spaces. It is the intent of this Agreement that the rental car customers of CONCESSIONAIRE will operate the vehicle rented only from the ready/return parking spaces provided herein, and CONCESSIONAIRE shall not engage in customer shuttle operations of any kind to or from the TERMINAL BUILDING. CONCESSIONAIRE shall not service or perform maintenance on any vehicles on Airport property.

C. No signs, poster or other display of advertising media, including material supplied by manufacturers of merchandise offered for sale, shall be installed by CONCESSIONAIRE on or about the TERMINAL BUILDING, including in the Concession Space, without the prior written approval of the CORPORATION. Permission will not be granted for any advertising material, fixture or equipment which extends beyond the Concession Space. The CORPORATION intends to implement and enforce signage standards in the TERMINAL BUILDING, including, but not limited to, rental car counter back wall standards, signage for ready/return parking spaces, and ready/return lot directional signage. No temporary signs or displays shall be permitted on the back wall or the counter surfaces without the prior written approval of the Director which approval shall not be unreasonably withheld. All signs, other display of advertising media and all concessionaire equipment shall be maintained in good working order and appearance.

D. CORPORATION reserves the right, in its sole discretion, to revise the parking layout, and to improve all or parts of the parking areas, and to develop other or additional parking areas, provided that it shall provide CONCESSIONAIRE the number of ready/return parking spaces identified in **Exhibit B**.

Section 2.3 **Rights Not Exclusive.** CORPORATION reserves the right, in its sole discretion, to grant up to three other concessionaires the right to offer rental car services in other locations in the TERMINAL BUILDING and CONCESSIONAIRE understands and agrees that its right to offer rental car services is not exclusive.

Section 2.4 **Means of Access.** CONCESSIONAIRE, its agents, invitees, guests, employees and suppliers have a non-exclusive right of ingress to and egress from the Concession Space by a means of access located outside the boundaries of such space as specified by CORPORATION. Such access shall, without exception, be in common

with such other persons (including, at the option of the CORPORATION, the general public) as the CORPORATION may authorize or permit, and the CORPORATION may at any time close, relocate, reconstruct or modify such means of access, provided that a reasonable convenient and adequate means of ingress and egress is available for the same purposes. This right of access is subject to the security requirements of the section herein entitled "Security."

**Section 2.5 Right of Inspection.** CORPORATION retains the full right of entry in and to the Concession Space for any purpose necessary, incidental to or in connection with its obligations hereunder, or in the exercise of its functions, or for the purpose of making any inspection it deems necessary.

**Section 2.6 Employee Parking.** CONCESSIONAIRE shall require its employees at the Concession Space and, during periods of construction in the TERMINAL BUILDING, its construction contractors, to use parking areas designated for TERMINAL BUILDING employees. CONCESSIONAIRE'S employees and construction contractors shall not park elsewhere on the Airport, and any such parking will be treated as a civil and/or criminal trespass. CORPORATION reserves the right to limit the number of spaces to be made available to CONCESSIONAIRE, to designate specific parking spaces for some or all TERMINAL BUILDING tenants, to move, contract, and expand the parking area(s) designated for employee parking, and to make such rules and regulations for the use of the parking area(s) designated for employee parking, in its sole discretion.

### **ARTICLE 3 Term**

#### **Section 3.1 Term.**

A. This Agreement shall become effective on 12:01 a.m. local time on November 1, 2018 hereinafter called the "Effective Date" and shall remain in effect until 12:01 a.m. October 31, 2021, subject to prior termination as provided in Article 8 hereof (the "Term").

B. The Term of this Agreement may be renewed for up to three additional one-year periods following the end of the initial Term, upon written approval of ECAT, in its sole discretion. The Minimum Monthly Guarantee during Ski Season (December through April) for any renewal period shall be equal to the highest amount proposed for those calendar months during the Term of this Agreement. The fee per space per month for ready/return parking spaces for any renewal period shall continue to increase by three dollars (\$3.00) for each consecutive Lease Year during the extension period(s).

C. Notwithstanding the foregoing, upon the defeasance of the bonds issued by Corporation to finance acquisition or construction of the TERMINAL BUILDING and related facilities and services (the "Bonds"), following maturity or earlier as provided in the Trust Indenture with respect to any Bonds, this Agreement shall terminate, as of the date of defeasance, and CONCESSIONAIRE shall vacate the premises leased hereunder within not more than ninety (90) days. CORPORATION will give not less than thirty (30) and not more than sixty (60) days' notice of an intent to defease the Bonds in accordance with the Trust Indenture. CORPORATION also will give CONCESSIONAIRE

notice of the date of defeasance within two (2) business days following the actual defeasance.

**Section 3.2 Surrender of Concession Space.** Upon the expiration or earlier termination of this Agreement or on the date specified in any demand for possession by CORPORATION after any Default by CONCESSIONAIRE, CONCESSIONAIRE covenants and agrees to surrender possession of the Concession Space to CORPORATION in the same condition as when first occupied, ordinary wear and tear excepted.

**Section 3.3 Holding Over.** If CONCESSIONAIRE remains in possession of the Leased Premises after the expiration of this Agreement with the permission of CORPORATION and without any written renewal thereof, such holding over shall not be deemed as a renewal or extension of this Agreement, but shall create only a tenancy from month to month that may be terminated at any time by CONCESSIONAIRE or CORPORATION upon thirty (30) days written notice to the other party. Such holding over shall otherwise be upon the same terms and conditions as set forth in this Agreement and at the same Minimum Monthly Guarantee as set forth herein for year three of this Agreement.

#### **ARTICLE 4 Compensation Charges, Fees, and Accounting Records**

**Section 4.1 Space and Facilities Charges:** During the term hereof, CONCESSIONAIRE shall pay the following space and facilities charges:

A. For the use of the counter/queuing area and associated office space, if applicable, in the TERMINAL BUILDING, the sum of four dollars and one cent (\$4.01) per square foot per month totaling \_\_\_\_ square feet, as shown on **Exhibit A**, all payments to be made in advance and without demand, on the first day of each calendar month of this Agreement. This rate is subject to annual adjustment as determined by the CORPORATION, in its sole discretion.

B. For \_\_ ready/return parking spaces as set forth in **Exhibit B**, as follows: the sum of forty-seven dollars (\$47.00) per space per month, payable in advance and without demand, on the first day of each calendar month of the First Lease Year, fifty dollars (\$50.00) per space per month, payable in advance and without demand, on the first day of each calendar month of the Second Lease Year, and fifty-three dollars (\$53.00) per space per month, payable in advance and without demand, on the first day of each calendar month of the Third Lease Year of this Agreement.

C. **Waiver Charges.** In the event that there is no commercial air service operating from the TERMINAL BUILDING during an entire calendar month, the Minimum Monthly Guarantee shall be waived in such month(s). CONCESSIONAIRE must continue to pay the Percentage Fee and the charges for use of the counter/queuing area and associated office space and charges for each ready/return space during such month(s).

D. CONCESSIONAIRE shall supply its own janitorial service and

maintenance services. Should CONCESSIONAIRE fail to clean and maintain the premises, CORPORATION shall enter the premises and perform such janitorial service and maintenance and CONCESSIONAIRE shall reimburse CORPORATION for actual charges incurred plus a reasonable administrative charge. Said payment shall be made at the office of the CORPORATION, or such other place as the CORPORATION may designate in writing, within fifteen (15) days of receipt of CORPORATION's invoice therefor.

Section 4.2 **Privilege Fee:** For the concession privileges granted hereunder, and in addition to the charges paid for the Leased Premises described in Section 1.1 C and Subsection 4.1 hereof, CONCESSIONAIRE shall pay to CORPORATION: the Percentage Fee described in Subsection 4.2(B); or, beginning on the Commencement of the Term and for each month designated thereafter, the Minimum Monthly Guarantee described in Subsection 4.2(A), whichever sum is greater, as follows:

A. Minimum Monthly Guarantee. A minimum monthly fee payable in advance, as follows:

**2018-2019 Ski Season:**

December 2018	\$20,100.00
January 2019	\$20,100.00
February 2019	\$20,100.00
March 2019	\$20,100.00
April 2019	\$20,100.00

**2019-2020 Ski Season:**

December 2019	\$20,100.00
January 2020	\$20,100.00
February 2020	\$20,100.00
March 2020	\$20,100.00
April 2020	\$20,100.00

**2020-2021 Ski Season:**

December 2020	\$20,100.00
January 2021	\$20,100.00
February 2021	\$20,100.00
March 2021	\$20,100.00
April 2021	\$20,100.00

B. Percentage Fee. Ten percent (10%) of the monthly Gross Revenue under this Agreement (the "Percentage Fee"), said Gross Revenue being hereinafter defined in Subsection 4.4. Twenty (20) days after the beginning of each calendar month during the term hereof, CONCESSIONAIRE shall pay to CORPORATION without billing a sum of money which represents the amount by which the Percentage Fee exceeds the Minimum Monthly Guarantee for the previous month. In the event the Percentage Fee shall not

exceed the Minimum Monthly Guarantee during any month in the term hereof, then no Percentage Fee shall be due and payable for such month.

C. During the months of May, June, July, August, September, October and November there shall be no Minimum Monthly Guarantee. However, during said period of time, CONCESSIONAIRE shall continue to pay to CORPORATION the Percentage Fee from the operations hereunder as hereinbefore defined.

**Section 4.3 Airport Fee.** CORPORATION acts on behalf of Eagle County to collect Eagle County's Airport Fee. At the time of entering into this Agreement, the Airport Fee is six percent (6%) of monthly Gross Revenue as defined in Subsection 4.4. The Airport Fee is due and payable on the twentieth (20<sup>th</sup>) day of each month for the preceding month. CONCESSIONAIRE shall report and pay the Airport Fee to CORPORATION at the time payments of the Percentage Fee are due; CONCESSIONAIRE shall compute and report the Airport Fee separately when making its payments to CORPORATION. The Airport Fee is subject to adjustment as determined by the CORPORATION, in its sole discretion.

**Section 4.4 Gross Revenue.** As used herein, the term "Gross Revenue" shall mean, as determined in the reasonable discretion of the CORPORATION, all amounts charged to its customers by CONCESSIONAIRE for or in connection with agreements it secures through its operations and business at EGE, regardless of whether such amounts are actually paid to or received by CONCESSIONAIRE. Gross Revenue shall include all monies or other consideration of whatever nature paid or payable to CONCESSIONAIRE by customers for all sales made and services performed for cash, credit or consideration with automobile and vehicle rentals or other products or services provided to persons through CONCESSIONAIRE's operations at the TERMINAL BUILDING without regard to the ownership, area, fleet or location assignment of vehicles and without regard to the manner in which or place at which vehicles or other products or services are furnished to CONCESSIONAIRE's customers and without regard to whether the vehicles or other products are returned to EGE or some other location.

A. The term "Gross Revenue" shall include anything and everything that is not specifically excluded. The only exclusions from Gross Revenue permitted under this Agreement shall be the specific exclusions set forth below:

1. Federal, state, county, city or municipal sales, use or excise taxes, now or hereafter levied or imposed, separately stated on the rental contracts and collected from customers of CONCESSIONAIRE,

2. Amounts received as insurance proceeds for loss of or damages of vehicles or other property of CONCESSIONAIRE.

3. Amounts received from the sale of vehicles off EGE premises: provided however, any amounts paid in connection with automobiles and vehicle rentals or other products or services provided to persons through CONCESSIONAIRE's operations that are applied to or otherwise reimbursed as a result of sale of a vehicle shall not be excluded from Gross Revenues; and

4. Reimbursements for amounts actually paid to third parties for towing, impound fees, parking tickets, red light tickets, and windshield replacement.

5. Any Customer Facility Charges (CFCs) hereinafter levied by the County or ECAT.

**Section 4.5 Title To CORPORATION's Compensation.** Immediately upon CONCESSIONAIRE's receipt of monies from the sales of services which it is authorized to sell under the terms of this Agreement, the percentages of said monies belonging to CORPORATION shall immediately vest in and become the property of the CORPORATION. CONCESSIONAIRE shall be responsible as trustee for said monies until the same are delivered to CORPORATION.

**Section 4.6 Interest on Past Due Amounts.** Any payments not made to CORPORATION when due shall accrue interest at the Past Due Interest Rate, as herein defined.

**Section 4.7 Place and Manner of Payments.** All sums payable to CORPORATION hereunder shall be made without notice at the following:

Eagle County Air Terminal Corporation  
C/O Aviation Director  
P.O. Box 850  
Eagle, Colorado 81631

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

**Section 4.8 Books of Account and Auditing.** CONCESSIONAIRE shall keep true and complete records and accounts of all Gross Revenue and business transacted, including daily bank deposits. Not later than February 28 for each and every year during the Term hereof, CONCESSIONAIRE shall furnish to CORPORATION a true and accurate statement of the total of all revenues and business transacted during the preceding Lease Year (showing the authorized deductions or exclusions in computing the amount of such Gross Revenue and business transactions). Such statement shall be prepared and certified to be true and correct by an independent certified public accountant. Such statement shall be furnished for every Lease Year in which business was transacted under this Agreement during the whole or part of any year. CONCESSIONAIRES who have been granted the right to dual brand shall make Gross Revenue information available to CORPORATION for each brand.

CONCESSIONAIRE agrees to maintain records and controls pertaining to the transactions performed in the TERMINAL BUILDING and shall be available for inspection and examination at all times by CORPORATION or its duly authorized representative upon forty-eight (48) hours advance written notice from CORPORATION. If the records



are not available at the Concession Space, CONCESSIONAIRE agrees to pay all reasonable expenses of auditors who travel to conduct such audit. If the CONCESSIONAIRE's standard business practice is to deviate from the requirement set forth above concerning sequentially numbered forms, such method shall be approved in advance by ECAT in its sole discretion and such method must fully account for and capture all revenue received by CONCESSIONAIRE at the Eagle County Air Terminal.

CONCESSIONAIRE agrees to establish and maintain a system of bookkeeping satisfactory to CORPORATION's auditor. Such system shall be kept in a manner as to allow each location of the CONCESSIONAIRE's operations hereunder to be distinguished from all other locations or operations of CONCESSIONAIRE. The Director's authorized representative shall have access during normal business hours to such books and records upon forty-eight (48) hours advance written notice from CORPORATION. CONCESSIONAIRE shall keep and preserve for at least three years, or until sooner audited by CORPORATION, all rental car contract forms, cash register tapes, sales books, bank books or duplicate deposit slips, and all other evidence of Gross Revenue and business transacted for such period. The CORPORATION's auditor and Director and their respective authorized representatives shall have the right at any time, upon forty-eight (48) hours advance written notice from CORPORATION to audit all of the books of account, bank statements, documents, records, returns, papers and files of CONCESSIONAIRE relating to the Gross Revenue and business transacted.

CONCESSIONAIRE, upon ten (10) days' written notice, shall make all such documents available for examination at the Concession Space. The CORPORATION may require CONCESSIONAIRE to install point-of-sale cash register equipment as part of its Concession Improvements. The cost of such requirement shall be reasonable in relation to the size of CONCESSIONAIRE's operation and volume of business. If CORPORATION determines after an audit for any year that the Gross Revenue and business transacted shown by CONCESSIONAIRE's statement for such year was understated by more than 3%, CONCESSIONAIRE shall pay to CORPORATION the cost of such audit and the amount of any deficiency, plus interest on such amount at 18% per annum from the date due. The CORPORATION's right to perform such an audit shall expire three years after CONCESSIONAIRE's statement for that year has been delivered to CORPORATION.

CONCESSIONAIRE expressly agrees that CORPORATION's Director and auditor and their authorized representatives may inspect any sales tax return or report and accompanying schedules and data which CONCESSIONAIRE may file pursuant to any retail sales tax regulations and waives any claim of confidentiality which it may have in connection therewith.

**Section 4.9 Customer Facility Charge/ Right to Construct New Facilities.** County and/or CORPORATION may plan or implement a development program at the Airport during the term of this Agreement. County and CORPORATION reserve the right to pursue the planning, financing and construction of new car rental facilities of any nature as County or CORPORATION may determine to accommodate County or CORPORATION'S business needs, and County or CORPORATION may take any action that it deems desirable in connection therewith. Without limitation, County or CORPORATION may at any time require CONCESSIONAIRE to commence collection of

a Customer Facility Charge in a manner and amount to be determined by County or CORPORATION, whether before or after commencing construction. CORPORATION also reserves the right to terminate this Agreement prior to the term hereof in order to commence construction, and in such a case, County or CORPORATION shall issue a new solicitation to all car rental concessionaires.

Section 4.10 **Dual Branding.** If a Company has been granted the right to operate as a dual brand, it shall provide a Minimum Monthly Guarantee for each brand. The Percentage Fee shall include the combined Minimum Monthly Guarantees and Percentage Fees for its brands. CONCESSIONAIRE shall not be permitted to add or remove any brand or brands during the term of this Agreement.

Section 4.11 **ACDBE Requirements.** CONCESSIONAIRE agrees to make good faith efforts to ensure that business concerns owned and controlled by socially and economically disadvantaged individuals as defined in the U.S. Department of Transportation's regulations, 49 CFR Part 23 and 26, as amended, participate in at least 1% of the activity, service or facility provided by CONCESSIONAIRE during the entire term of this Agreement by means of a joint venture, partnership, franchise or any other legal arrangement that results in bona fide ownership and control of the activity, service or facility. Said participation shall be measured as a percentage of total annual gross revenues obtained by CONCESSIONAIRE in its operations under this Agreement. If the CONCESSIONAIRE is unable to achieve this goal under joint venture, partnership, franchise or similar legal arrangement, CONCESSIONAIRE shall seek to obtain the required DBE participation by other means, such as the purchase of goods, services, supplies and/or products from certified ACDBE vendors. If CONCESSIONAIRE fails to achieve the 1% goal, it shall provide documentation to CORPORATION demonstrating that it made good efforts in attempting to meet the goal. In the event that the CONCESSIONAIRE qualifies as a certified ACDBE, the 1% goal shall be deemed to have been met.

CONCESSIONAIRE acknowledges that it shall identify in writing to CORPORATION within sixty (60) days of execution of this Agreement the DBEs which it would retain as subtenants, joint venture partners, suppliers, or service providers to participate in the operations to be carried out under this Agreement. After this Agreement is executed, CONCESSIONAIRE agrees to use its best efforts to enter into agreements with the DBE firms it identified in Concessionaire's Proposal. Throughout the term of this Agreement, CONCESSIONAIRE agrees that it shall continue to utilize qualified and available DBE firms which have been and continue to be certified to the fullest extent which is reasonably possible to achieve and to an extent necessary to comply with the above-stated goals. If a DBE subtenant, joint venturer, supplier or service provider must be replaced for any reason during the term of this Agreement, CONCESSIONAIRE agrees that it shall replace the subtenant, joint venturer, supplier or service provider with another DBE, or if it cannot, then CONCESSIONAIRE shall demonstrate to CORPORATION that it made good faith efforts to do so.

Each year CONCESSIONAIRE, no later than (90) days following the end of each Lease Year, shall provide to CORPORATION the following annual ACDBE information: the name and address of each certified ACDBE with which it has done business during the past year, a description of the nature of the services performed by and/or items

purchased from each firm named, and the dollar value of each transaction.

## **ARTICLE 5 OPERATION AND USE OF CONCESSION SPACE**

Section 5.1 **Operations.** CONCESSIONAIRE agrees to conduct its business to accommodate the public using the TERMINAL BUILDING and to operate the concession in the following manner:

A. CONCESSIONAIRE shall operate the concession in a first-class manner satisfactory to the Director or his authorized representative. Service shall be prompt, clean, courteous and efficient.

B. CONCESSIONAIRE shall be open for business, have automobiles for rental, and accept rental returns for all arrivals until at least one hour following the actual arrival. The CORPORATION will consult with CONCESSIONAIRE concerning hours of operation and changes to the hours of operation.

C. CONCESSIONAIRE shall maintain, at all times and at its own expense, an adequate number of automobiles on the Airport to meet the reasonable public demand. Only late-model vehicles shall be used by CONCESSIONAIRE in the performance of the privileges granted hereunder. CONCESSIONAIRE agrees that at no time will it use automobiles whose year model is more than two (2) years older than the current year model for each vehicle type provided.

D. CORPORATION and its agents and employees shall not engage in open, notorious, and public disputes, disagreements, or conflicts tending to deteriorate the quality of the car rental service of CORPORATION and its compatibility with the best interests of the public at the Airport.

E. The management, maintenance and operation of privileges under this Agreement shall at all times during the term hereof be under the supervision and direction of an active, qualified, competent, and experienced manager representing CONCESSIONAIRE, who shall be subject at all times to the direction and control of CONCESSIONAIRE. CONCESSIONAIRE will cause such manager to be assigned a duty station or office on the premises at which he or she shall be available during normal business hours; and CONCESSIONAIRE will, at all times during the absence of such manager, assign or cause to be assigned a qualified subordinate to be in charge of the premises, services, and facilities and to be available on the premises and to act for the Manager in his or her absence.

F. CONCESSIONAIRE shall, in the operation of the services under this Agreement, employ or permit the employment of only such personnel as will assure a high standard of service to the public. All such personnel, while on duty, shall be clean, neat in appearance, and courteous at all times and shall be appropriately attired, with uniforms in such instances as are appropriate. No personnel employed by CONCESSIONAIRE while on or about the premises shall use improper language, act in a loud, boisterous or otherwise improper manner, or be permitted to solicit business in an inappropriate manner.

G. CONCESSIONAIRE shall maintain a close check over attendants and employees to ensure the maintenance of a high standard of service to the public, the performance of such obligation to be determined at the sole discretion of CORPORATION's Manager. CONCESSIONAIRE shall ensure all of its employees attend the Airport's customer service training as required by the CORPORATION's Manager. CONCESSIONAIRE shall take all proper steps to correct the behavior of employees who participate in acts of misconduct while on duty.

H. CONCESSIONAIRE shall install and maintain all ready/return parking space and directional signage. Proposed major repairs and installation, including those requiring repair, installation, or modification of concrete or asphalt shall be subject to CORPORATION's review and approval.

I. CONCESSIONAIRE shall be responsible for snow and ice control and removal in the ready/return parking spaces and adjacent drive lanes.

**Section 5.2 Vending Machines.** No amusement or vending machines or other machines operated by coins, tokens or credit cards shall be installed or maintained in or upon the Concession Space except with the prior written consent of the Director or his authorized representative. This prohibition includes, but not by way of limitation, sales from vending machines of such items as cigarettes, candy, maps, coffee, soft drinks, newspapers, stamps and insurance policies; telephones; dispensation of cash, money orders and checks; and operation of mechanical or electronic game devices, electronic video games, and entertainment devices.

**Section 5.3 Compliance with all laws and Regulations.** CONCESSIONAIRE agrees not to use or permit the Concession Space to be used for any purpose prohibited by the laws of the United States or the State of Colorado or the resolutions or ordinances of Eagle County or Airport rules and regulations, all as amended from time to time, and not otherwise authorized hereunder, and it further agrees that it will use the Concession Space in accordance with all applicable federal, state and local laws, ordinances, resolutions and all rules and regulations adopted by the County or the CORPORATION for the management, operation and control of the Airport, either promulgated by the CORPORATION or Eagle County on its own initiative or in compliance with regulations or actions of the Federal Aviation Administration or other authorized federal agency including the Transportation Security Administration. CONCESSIONAIRE further agrees to submit any report or reports or information which the CORPORATION is required by law or regulation to obtain from CONCESSIONAIRE or which Director may reasonably request relating to CONCESSIONAIRE's operations.

**Section 5.4 Compliance with Environmental Requirements.** CONCESSIONAIRE, in conducting any activity on the Concession Space, shall comply with all applicable local, state or federal environmental rules, regulations, statutes, laws or orders (collectively "Environmental Regulations"), including but not limited to Environmental Requirements regarding the storage, use and disposal of Hazardous Materials or Special Wastes to the Environment. CONCESSIONAIRE shall acquire all necessary federal, state, and local environmental permits and comply with all applicable federal and state environmental permit requirements.

Section 5.5 **Hazardous Use.** CONCESSIONAIRE agrees that nothing shall be done or kept in the Concession Space and no improvements, changes, alterations, additions, maintenance or repairs shall be made to the Concession Space which might be unsafe or hazardous to any person or property. Further, CONCESSIONAIRE shall not do or permit to be done any act or thing upon the Concession Space which will invalidate, suspend or increase the rate of any fire insurance policy required under this Agreement, or carried by CORPORATION, covering the Concession Space or the buildings in which the Concession Space is located or which, in the opinion of the Director or his authorized representative, may constitute a hazardous condition that will increase the risks normally attendant upon the operations contemplated under this Agreement. If, by reason of any failure by CONCESSIONAIRE to comply with the provisions of this section, after receipt of notice in writing from CORPORATION, any fire insurance rate on the Concession Space or on the buildings in which the same is located, shall at any time be higher than it normally would be, then CONCESSIONAIRE shall pay the CORPORATION, on demand, that part of all fire insurance premiums paid by the CORPORATION which have been charged because of such violation or failure of CONCESSIONAIRE; provided, that nothing herein shall preclude CONCESSIONAIRE from bringing, keeping or using on or about the Concession Space such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its business, or from carrying on the normal operations contemplated herein.

Section 5.6 **Structural, Electrical or System Overloading.** CONCESSIONAIRE agrees that nothing shall be done or kept on the Concession Space and no improvements, changes, alterations, additions, maintenance or repairs shall be made to the Concession Space which might impair the structural soundness of the building, result in an overload of utility, plumbing, or HVAC systems serving the TERMINAL BUILDING or interfere with electric, electronic or other equipment at the Airport. In the event of violations hereof, CONCESSIONAIRE agrees to immediately remedy the violation at CONCESSIONAIRE's expense.

Section 5.7 **Noise, Odors, Vibrations and Annoyances.** CONCESSIONAIRE shall conduct its operations in an orderly and proper manner so as not to commit any nuisance in the Concession Space or annoy, disturb or be offensive to others in the TERMINAL BUILDING and shall take all reasonable measures, using the latest known and practicable devices and means, to eliminate any unusual, nauseous or objectionable noise, gases, vapors, odors and vibrations and to maintain the lowest possible sound level in its operations.

Section 5.8 **Accessibility** CONCESSIONAIRE shall not do or permit to be done anything which might interfere with the effectiveness or accessibility of utility, heating, ventilating or air conditioning systems or portions thereof on the Concession Space or elsewhere on the Airport, nor do or permit to be done anything which may interfere with free access and passage in the Concession Space or the public areas adjacent thereto, or hinder police, firefighting or other emergency personnel in the discharge of their duties. CONCESSIONAIRE shall not place any additional lock of any kind upon any window or interior or exterior door in the Concession Space, or make any change in any existing door or window lock or the mechanism thereof, unless a key therefor is maintained on the Concession Space, nor refuse, upon the expiration or sooner termination of this Agreement, to surrender to CORPORATION any and all keys to the

interior or exterior doors on the Concession Space, whether said keys were furnished to or otherwise procured by CONCESSIONAIRE. If any keys furnished to CONCESSIONAIRE by CORPORATION are lost, Concessionaire shall pay CORPORATION, on demand, the cost for replacement thereof.

Section 5.9 **No Auction.** CONCESSIONAIRE agrees not to allow or permit any sale by auction or hawking on the Concession Space.

Section 5.10 **Restrictions on Changes and Alterations.** Subject to the requirements of the section herein entitled "Renovation of Concession Space," CONCESSIONAIRE agrees not to improve, change, alter, add to, remove or demolish the Concession Improvements, as defined herein, or any improvements, on the Concession Space without the prior written consent of the Director or his authorized representative. CONCESSIONAIRE must comply with all conditions which may be imposed by the Director, in his sole discretion. Full and complete specifications for all work and improvements, along with a statement of the time required to complete such work shall be submitted to and approved in writing by the Director or his authorized representative before construction work commences. Copies of plans for all changes or alterations shall be given to the Director for review and written approval prior to commencement of construction.

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

Approval by CORPORATION shall extend to and include consideration of architectural and aesthetic matters, and CORPORATION expressly reserves the right to reject any designs submitted and to require CONCESSIONAIRE to resubmit designs and layout proposals until they meet with CORPORATION's approval. CORPORATION agrees to act promptly upon a request for approval of such plans and/or revisions thereto.

Section 5.11 **Title to Improvements.** CONCESSIONAIRE agrees that all improvements to the Concession Space, including approved changes and renovations, which are affixed to the realty, shall become the property of the CORPORATION upon their completion and acceptance by CORPORATION.

SECTION 5.12 **Removal of CONCESSIONAIRE'S Equipment.** CONCESSIONAIRE shall retain title to and shall remove, at its sole cost, prior to the expiration or termination of this Agreement, all of CONCESSIONAIRE's Equipment, as hereinafter defined. "Concessionaire's Equipment" shall mean all equipment, apparatus, machinery, signs, furnishings, trade fixtures and personal property installed by CONCESSIONAIRE and used in the operation of the business of Concessionaire (as distinguished from the use

and operation of the Concession Space). If such removal shall injure or damage the Concession Space, CONCESSIONAIRE agrees, at its sole cost, at or prior to the expiration or termination of this Agreement, to repair such injury or damage in good and workmanlike fashion and to place the Concession Space in the same condition as the Concession Space would have been if such Concessionaire's Equipment had not been installed. If CONCESSIONAIRE fails to remove any of Concessionaire's Equipment by the expiration or termination of this Agreement, CORPORATION may, at its option, keep and retain any such Concessionaire's Equipment or dispose of the same and retain any proceeds therefrom, and CORPORATION shall be entitled to recover from CONCESSIONAIRE any costs of CORPORATION in removing the same and in restoring the Concession Space in excess of the actual proceeds, if any, received by CORPORATION from disposition thereof.

## **ARTICLE 6 UTILITIES AND SERVICES**

**Section 6.1 Corporation Improvements and Services.** CORPORATION shall provide and maintain, water, sewer, general lighting, electrical power, and heating and air-conditioning for the TERMINAL BUILDING and make such utilities (with the exception of water and sewer) available to the Concession Space. If CONCESSIONAIRE requires additional water, lighting, electrical power, telephone outlets, or adjustments to the air conditioning system, such additional improvements or services shall be subject to the prior written approval of CORPORATION, and any such improvements shall be made at CONCESSIONAIRE's expense.

**Section 6.2 Common Use Services.** The Director may establish common use services at the Airport, including but not limited to trash and refuse removal, deliveries, industrial waste handling, recycling, and security guards. The Director reserves the right to establish charges for common use services based upon documented actual costs. Trash, sewer, and deliveries will be common use services which CONCESSIONAIRE may be required to use and pay its prorata actual share; however, other common use services may be utilized at CONCESSIONAIRE's option. CONCESSIONAIRE agrees to pay the charges for those common use services which are utilized by CONCESSIONAIRE.

**Section 6.3 Interruption of Services.** CONCESSIONAIRE agrees that CORPORATION shall not be liable for failure to supply any utility services. CORPORATION reserves the right to temporarily discontinue utility services at such time as may be necessary by reason of accident, unavailability of employees, repairs, alterations or improvements or whenever by reason of strikes, lockouts, riots, acts of God or any other happenings beyond the control of the CORPORATION, CORPORATION is unable to furnish such utility services. CORPORATION shall not be liable for damages to persons or property for any such discontinuance, nor shall such discontinuance in any way be construed as cause for abatement of compensation or operate to release the CONCESSIONAIRE from any of its obligations hereunder, except as otherwise provided in the section entitled "Damage, Destruction or Loss."

## **ARTICLE 7 Indemnity, Insurance and Bonds**

**Section 7.1 Indemnity.** CONCESSIONAIRE hereby agrees to release and indemnify and save harmless County and CORPORATION, its officers, agents and employees from and against any and all loss of or damage to property, or injuries to or death of any person or persons, including property and employees or agents of the CORPORATION, and shall defend, indemnify and save harmless County and CORPORATION, its officers, agents and employees from any and all claims, damages, suits, costs, expense, liability, actions, penalties or proceedings of any kind or nature whatsoever, including worker's compensation claims, of or by anyone whomsoever, in any way resulting from, or arising out of, directly or indirectly, its operations in connection herewith, its construction of the Concession Improvements, or its use or occupancy of any portion of the Airport and including acts and omissions of officers, employees, representatives, suppliers, invitees, contractors, subcontractors, and agents of the CONCESSIONAIRE; provided, that the CONCESSIONAIRE need not release, indemnify or save harmless the County and CORPORATION, its officers, agents and employees from damages resulting from the sole negligence of the County and CORPORATION's officers, agents and employees. The minimum insurance requirements prescribed herein shall not be deemed to limit or define the obligations of CONCESSIONAIRE hereunder.

**Section 7.2 Insurance.** CONCESSIONAIRE further agrees to secure at its own expense, and to keep in force at all times during the Term hereof, Comprehensive General Public Liability Insurance in the minimum amount of Five Million Dollars (\$5,000,000.00) bodily injury and property damage combined single limit each occurrence. The required insurance coverage also shall include Personal Injury, Blanket Contractual Coverage for this Agreement, and Independent Contractors Coverage.

CONCESSIONAIRE shall also maintain in force, during the term of this Agreement, Automobile Liability Insurance, Comprehensive Form, which shall insure all CONCESSIONAIRE's vehicles used by CONCESSIONAIRE at Airport pursuant to this Agreement, in the minimum amount of Five Million Dollars (\$5,000,000.00), Bodily Injury and Property Damage Combined Single Limit per occurrence. CONCESSIONAIRE shall also maintain in force during the term of this Agreement, environmental impairment liability coverage to cover loss, leakage, or spillage of fuel or gasoline products in such amounts as may now or hereafter be required by any and all applicable federal, state, or local laws, rules and regulations. CONCESSIONAIRE shall also maintain in force during the term of this Agreement Workers Compensation and Employers Liability Insurance in accordance with the provisions of Colorado law. The limit of such insurance coverage shall be for statutory Worker's Compensation benefits, and shall not be less than One Hundred Thousand Dollars (\$100,000.00) for employer's liability insurance. CONCESSIONAIRE agrees that County and CORPORATION shall be named as an additional insured under such policy or policies of insurance and said policy or policies shall include the severability of interest provision.

A certificate or certificates evidencing such insurance coverage shall be filed with CORPORATION within ten (10) days after execution of this Agreement, and said certificate(s) shall provide that such insurance coverage will not be canceled or reduced without at least thirty (30) days prior written notice to CORPORATION. At least ten (10) days prior to the expiration of said insurance policy or policies, a certificate showing that such insurance coverage has been renewed or extended shall be filed with CORPORATION. If such coverage is canceled or reduced, CONCESSIONAIRE shall



within seven (7) days of notice of cancellation or reduction, but in any event more than fifteen (15) days before the effective date of said cancellation or reduction, file with CORPORATION a certificate showing that the required insurance has been reinstated in full, or provided through another insurance company or companies.

In the event that CONCESSIONAIRE shall at any time fail to provide CORPORATION with the insurance required under this section, CORPORATION may immediately terminate this Agreement.

The insurance carried by the CONCESSIONAIRE, as required by this Agreement, shall be primary over any insurance carried by the CORPORATION or County for the CORPORATION or County's own protection. A copy of the insurance representative's license, or other legal proof of his/her authorization to sign the Certificate of Insurance for and on behalf of the insurance company/companies shown thereon, must be attached to the Certificate of Insurance. Facsimile stamped signature on the Certificate will not be accepted. The Certificate must be signed by the insurance company's authorized representative.

The CORPORATION will conditionally accept self-insurance under this section, subject to review and approval of appropriate County and State requirements. All preceding coverages and limits will apply.

The parties understand and agree that should the amount of insurance required herein become inadequate during the term of this Agreement, CONCESSIONAIRE agrees that it will increase the amount of insurance to meet new minimum limits reasonably established by CORPORATION.

**Section 7.3 Performance Bond.** Upon execution of this Agreement, CONCESSIONAIRE shall deliver to the Director, and maintain in effect at all times throughout the Term, a valid corporate performance bond, or such other acceptable surety as first approved in writing by the CORPORATION, in an amount equal to the sum of five months Minimum Monthly Guarantees for the months of December, January, February, March and April of the present Lease Year, which amount is subject to increase by the Director. Such bond shall be payable without condition to the CORPORATION and shall guarantee to the CORPORATION full and faithful performance of all of the terms and provisions of this Agreement by CONCESSIONAIRE, as said Agreement may be amended, supplemented or extended.

All bonds shall be in forms satisfactory to CORPORATION, and be executed by such sureties as are satisfactory to CORPORATION and (a) are licensed to conduct business in the State of Colorado, and (b) are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department. All bonds signed by an agent must be accompanied by a certified copy of the authority to act.

If the surety on any bond furnished by CONCESSIONAIRE is declared bankrupt, or becomes insolvent, or its right to do business in Colorado is terminated, or it ceases to meet the requirements of clauses (a) and (b) of the preceding paragraph,

CONCESSIONAIRE shall within five days thereafter substitute another bond and surety, both of which shall be acceptable to CORPORATION.

Section 7.4 **No Personal Liability.** No director, officer, manager or employee of either party hereto shall be held personally liable under this Agreement or because of its execution or attempted execution.

Section 7.5 **Taxes, Licenses, Liens and Fees.** CONCESSIONAIRE agrees to promptly pay all taxes, excises, license fees and permit fees of whatever nature applicable to its operations hereunder and to take out and keep current all municipal, state or federal licenses required for the conduct of its business at and upon the Concession Space and further agrees not to permit any of said taxes, excises, license fees or permit fees to become delinquent. CONCESSIONAIRE also agrees not to permit any mechanic's or materialman's or any other lien to become attached or be foreclosed upon the Concession Space or improvements thereto, or any part or parcel thereof, by reason of any work or labor performed or materials furnished by any mechanic or materialman. CONCESSIONAIRE agrees to furnish to the Director, upon request, duplicate receipts or other satisfactory evidence showing the prompt payment by it of Social Security, unemployment insurance and worker's compensation insurance, and all required licenses and all taxes. CONCESSIONAIRE further agrees to promptly pay when due all bills, debts and obligations incurred by it in connection with its operations hereunder and not to permit the same to become delinquent and to suffer no lien, mortgage, judgment or execution to be filed against the Concession Space or improvements thereon which will in any way impair the rights of the CORPORATION under this Agreement.

## **ARTICLE 8 DEFAULT AND REMEDIES**

Section 8.1 **Default.** CONCESSIONAIRE shall be in default under this Agreement if CONCESSIONAIRE:

- A. Fails to timely pay when due to CORPORATION the compensation or any other payment required hereunder; or
- B. Is in default under any other Agreement with CORPORATION or Eagle County; or
- C. Becomes insolvent, or takes the benefit of any present or future insolvency or bankruptcy statute, or makes a general assignment for the benefit of creditors, or consents to the appointment of a receiver, trustee or liquidator of any or substantially all of its property; or
- D. Transfers its interest under this Agreement, without the prior written approval of CORPORATION, by reason of death, operation of law, assignment, sublease or otherwise, to any other person, entity or corporation; or
- E. Fails to timely submit plans and specifications, bonds and other preconstruction submittals, fails to promptly begin and complete construction of concession

improvements, or fails to occupy and use the Concession Space after construction is completed; or

- F. Abandons, deserts or vacates the Concession Space; or
- G. Suffers any lien or attachment to be filed against the Concession Space, the Airport or CORPORATION's property because of any act or omission of CONCESSIONAIRE, and such lien or attachment is not discharged or contested by CONCESSIONAIRE in good faith by proper legal proceedings within 20 days after receipt of notice thereof by CONCESSIONAIRE; or
- H. Fails to keep, perform and observe any other promise, covenant or agreement set forth in this Agreement and such failure continues for a period of more than 30 days after delivery by Director of a written notice of such breach or default, except where a shorter period is specified herein, or where fulfillment of its obligation requires activity over a period of time and CONCESSIONAIRE within 10 days of notice commences in good faith to perform whatever may be required to correct its failure to perform and continues such performance without interruption except for causes beyond its control; or
- I. Gives its permission to any person to use for any illegal purpose any portion of the TERMINAL BUILDING made available to CONCESSIONAIRE for its use under this Agreement.

**Section 8.2 Remedies.** If CONCESSIONAIRE defaults in any of the covenants, terms and conditions herein, the CORPORATION may exercise any one or more of the following remedies:

A. CORPORATION may elect to allow this Agreement to continue in full force and effect and to enforce all of CORPORATION's rights and remedies hereunder, including without limitation the right to collect compensation as it becomes due together with Past Due Interest; or

B. CORPORATION may cancel and terminate this Agreement and repossess the Concession Space, with or without process of law, and without liability for so doing, upon giving 30 days written notice to CONCESSIONAIRE of its intention to terminate, at the end of which time all the rights hereunder of the CONCESSIONAIRE shall terminate, unless the default, which shall have been stated in such notice, shall have been cured within such 30 days. Notwithstanding the foregoing, during the Term herein, CONCESSIONAIRE shall be allowed only two notices of default hereunder which it may cure within the time specified in this section. The third notice shall be final and without opportunity for cure, unless otherwise agreed by CORPORATION, and CORPORATION in its sole discretion may elect (1) to cancel and terminate all of the rights hereunder of the CONCESSIONAIRE, and CORPORATION may, upon the date specified in such third notice, reenter the Concession Space and remove therefrom all property of the CONCESSIONAIRE and store the same at the expense of the CONCESSIONAIRE, or (2) to proceed under subparagraph C. below.

If CORPORATION elects to terminate, CONCESSIONAIRE shall be liable to

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

C. CORPORATION may elect to reenter and take possession of the Concession Space and expel CONCESSIONAIRE or any person claiming under CONCESSIONAIRE, and remove all effects as may be necessary, without prejudice to any remedies for damages or breach. Such reentry shall not be construed as termination of this Agreement unless a written notice specifically so states; however, CORPORATION reserves the right to terminate the Agreement at any time after reentry. Following reentry, the CORPORATION may relet the Concession Space, or any portion thereof, for the account of Concessionaire, on such terms and conditions as CORPORATION may choose, and may make such repairs or improvements as it deems appropriate to accomplish the reletting. CORPORATION shall not be responsible for any failure to relet or any failure to collect compensation due for such reletting.

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

Section 8.3 **Remedies Cumulative.** The remedies provided in this Agreement shall be cumulative and shall in no way affect any other remedy available to CORPORATION under law or equity.

Section 8.4 **Waivers.** No failure of CORPORATION to insist upon the strict performance of a term, covenant or agreement contained in this Agreement, no failure by CORPORATION to exercise any right or remedy under this Agreement, and no acceptance of full or partial payment during the continuance of any default by CONCESSIONAIRE shall constitute a waiver of any such term, covenant or agreement or a waiver of any such right or remedy or a waiver of any default by CONCESSIONAIRE.

**Article 9**  
**DAMAGE, DESTRUCTION OR LOSS**

Section 9.1 **Damage to or Destruction of Concession Space.** If the Concession Space, or any portion thereof, is destroyed or damaged by fire or otherwise to an extent which renders it unusable, CORPORATION may rebuild or repair any portions of the building structure destroyed or damaged, and, if the cause was beyond the control of CONCESSIONAIRE, the obligation of CONCESSIONAIRE to pay the compensation hereunder shall abate as to such damaged or destroyed portions during the time they are unusable. If CORPORATION elects not to proceed with the rebuilding or repair of the building structure, it shall give notice of its intent within 90 days after the destruction or damage. CONCESSIONAIRE may then, at its option, cancel and terminate this Agreement.

Section 9.2 **Cooperation in Event of Loss.** If CORPORATION elects to rebuild, CONCESSIONAIRE must replace all Concession Improvements at its sole cost. CORPORATION and CONCESSIONAIRE shall cooperate with each other in the collection of any insurance proceeds which may be payable in the event of any loss or damage.

Section 9.3 **Loss or Damage to Property.** CORPORATION shall not be liable for any loss of property by theft or burglary from the Airport or for any damage to person or property on the Airport resulting from lightning, or water, rain or snow, which may come into or issue or flow from any part of the Airport, or from the pipes, plumbing, wiring, gas or sprinklers thereof or that may be caused by the CORPORATION's employees or any other cause, and CONCESSIONAIRE agrees to make no claim for any such loss or damage at any time, except for any abatement of compensation or right to insurance proceeds provided for in this Section.

Section 9.4 **Mutual Waiver/Insurance Coverage.** CORPORATION and CONCESSIONAIRE each waive any and every claim for recovery from the other for any and all loss of or damage to the Concession Space or to the contents thereof, which loss or damage is covered by valid and collectible fire and extended insurance policies, to the extent that such loss or damage is recoverable under such insurance policies. Since this mutual waiver will preclude the assignment of any such claim by subrogation or otherwise to an insurance company or any other person, CONCESSIONAIRE agrees to give to each insurance company which has issued, or may issue, to the Concessionaire policies of fire and extended coverage insurance, written notice of the terms of this mutual waiver, and to have such insurance policies properly endorsed, if necessary, to prevent the invalidation of the insurance coverage by reason of this waiver.

**Article 10**  
**MISCELLANEOUS PROVISIONS**

Section 10.1 **Agreement Binding Upon Successors.** This Agreement, subject to the provisions of the section entitled "Assignment," shall be binding upon and extend to the heirs, personal representatives, successors and assigns of the respective parties hereto.

Section 10.2 **Agreement Made in Colorado.** This Agreement shall be deemed to have been made in and shall be construed in accordance with the laws of the State of Colorado.

Section 10.3 **Agreement Subordinate to Agreements with “United States.”** This Agreement is subject and subordinate to the terms, reservations, restrictions and conditions of any existing or future agreements between CORPORATION or Eagle County and the United States, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to Eagle County for Airport purposes or the expenditure of federal funds for the development of the Airport or airport system.

Section 10.4 **Agreement Subordinate to Ground Lease with Eagle County.** This agreement is subject to the written approval of Eagle County and is subject and subordinate to the terms, reservations, restrictions and conditions of the Ground Lease and any existing or future agreements between CORPORATION and Eagle County.

Section 10.5 **Assignment.** CONCESSIONAIRE shall not assign this Agreement or in any way transfer or hypothecate any of its interest in this Agreement without first obtaining the written consent of the CORPORATION, which consent will not be unreasonably withheld, provided that CONCESSIONAIRE acknowledges that CORPORATION need not consent to any such assignment or subletting at any time, and to the extent, that CORPORATION has space available to lease to rental car companies. As used herein, "assignment" means and includes, but is not limited to, (i) if CONCESSIONAIRE is a limited liability company, a change in the chief operating officer, manager or other person responsible for the day-to-day performance by CONCESSIONAIRE of the Agreement, (ii) the grant or transfer of any right, title, lien, encumbrance, security interest or other interest in, on or to some or all of the income or profits (however they may be measured or defined, e.g., gross income, gross profit, operating profit, net profit) of CONCESSIONAIRE, and (iii) the grant or transfer of any right, title, lien, encumbrance, security interest or other interest in, on or to some or all of the cash flow (however it may be measured or defined) of CONCESSIONAIRE. If CONCESSIONAIRE shall assign or attempt to assign its interest in the whole or any part of this Agreement in violation of this section, such assignment shall be void and this Agreement shall thereupon automatically terminate. CORPORATION's consent to one assignment shall not be deemed to be a consent to any subsequent assignment.

Section 10.6 **Bond Indentures.** This Agreement is in all respects subject and subordinate to any and all CORPORATION bond indentures applicable to the TERMINAL BUILDING and Airport and to any other bond indentures which should amend, supplement or replace such bond indentures. The parties to this Agreement acknowledge and agree that all property subject to this Agreement which was financed by the net proceeds of tax-exempt bonds is owned by CORPORATION or Eagle County, and CONCESSIONAIRE agrees not to take any action that would impair, or omit to take any action required to confirm, the treatment of such property as owned by CORPORATION or Eagle County for purposes of Section 142(b) of the Internal Revenue Code of 1986, as amended. In particular, the CONCESSIONAIRE agrees to make, and hereby makes, an irrevocable election (binding on itself and all successors in interest under this Agreement) not to claim depreciation or an investment credit with respect to

any property subject to this Agreement which was financed by the net proceeds of tax-exempt bonds and shall execute such forms and take such other action as CORPORATION or Eagle County may request in order to implement such election.

**Section 10.7 Force Majeure.** Neither party hereto shall be liable to the other for any failure, delay or interruption in the performance of any of the terms, covenants or conditions of this Agreement due to causes beyond the control of that party, including without limitation strikes, boycotts, labor disputes, embargoes, shortages of materials, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellion, sabotage or any other circumstance for which such party is not responsible or which is not in its power to control, but in no event shall this paragraph be construed so as to allow CONCESSIONAIRE to reduce or abate its obligation to pay the Monthly Guarantee or Percentage Fee herein.

**Section 10.8 Inconvenience During Construction.** CONCESSIONAIRE recognizes that from time to time during the Term of this Agreement, it may be necessary for CORPORATION to commence or complete programs of construction, expansion, relocation, maintenance and repair in order that the TERMINAL BUILDING and its facilities may be completed and operated as ECAT determines, and that such construction, expansion, relocation, maintenance and repair may inconvenience the CONCESSIONAIRE in its operation at the Airport. Concessionaire agrees that no liability shall attach to CORPORATION or Eagle County, its officers, agents, employees, contractors, subcontractors and representatives by way of such inconveniences, and CONCESSIONAIRE waives any right to claim damages or other consideration therefrom, except for claims for damages caused by the sole negligence of Eagle County and CORPORATION's officers, agents and employees.

**Section 10.9 Nondiscrimination.**

A. In connection with the performance of its rights, privileges and obligations under this Agreement, CONCESSIONAIRE shall not discriminate against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability. In addition, the Parties 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, as said Regulations may be amended.

B. This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. The CONCESSIONAIRE 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.

C. CONCESSIONAIRE agrees to include the above statements in Section 10.09 (A) and (B) in any subcontract concession agreement or contract covered by 49 CFR Part 23, that it enters into and cause those businesses to similarly include the

statements in further agreements.

Section 10.10 **Not Partnership.** Notwithstanding the provisions herein for payment by CONCESSIONAIRE to CORPORATION of sums based upon a percentage of Gross Revenues, it is expressly understood and agreed that the CORPORATION shall not be construed or held to be a partner, associate or joint venturer of CONCESSIONAIRE in the conduct of its business. CONCESSIONAIRE shall at all times have the status of an independent contractor without the right or authority to impose tort or contractual liability upon the CORPORATION.

Section 10.11 **Notices.** All notices required to be given to CORPORATION or CONCESSIONAIRE hereunder shall be in writing and sent by first class mail, facsimile (with an original by first class mail), or personal delivery to:

CORPORATION: Aviation Director  
Eagle County Air Terminal Corporation  
P.O. Box 850  
Eagle, Colorado 81631  
Phone: (970) 328-2680  
Fax: (970) 328-2687

Copy to: Eagle County Attorney's Office  
P.O. Box 850  
Eagle, CO 81631  
Phone: (970) 328-8685  
FAX: (970) 328-8699

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Either party hereto may designate in writing from time to time the address of substitute or supplementary persons within the State of Colorado to receive such notices. The effective date of service of any such notice shall be three calendar days after the date such notice is mailed, the date it is personally delivered or the first business day after delivery by facsimile.

Section 10.12 **Paragraph Headings.** The paragraph headings herein are for convenience in reference only and are not intended to define or limit the scope of any provision of this Agreement.

Section 10.13 **Patents and Trademarks.** CONCESSIONAIRE represents that it is the owner of or fully authorized to use any and all services, processes, machines, articles, marks, names or slogans used by it in its operations under this Agreement. CONCESSIONAIRE agrees to save and hold harmless CORPORATION, its officers, employees, agents and representatives from any loss, liability, expense, suit or claim for damages in connection with any actual or alleged infringement of any patent, trademark or copyright arising from any alleged or actual unfair competition or other similar claim



arising out of the operations of CONCESSIONAIRE under this Agreement.

Section 10.14 **Security.** CONCESSIONAIRE shall cause its officers, contractors, agents and employees to comply with any and all existing and future security regulations or Security Plan adopted by CORPORATION or Eagle County pursuant to requirements of the Transportation Security Administration or Part 107, Federal Air Regulations of the Federal Aviation Administration, as it may be amended from time to time.

Section 10.15 **Severability.** If any provision in this Agreement is held by a court to be invalid, the validity of other provisions herein which are severable shall be unaffected.

Section 10.16 **Third Parties.** This Agreement does not, and shall not be deemed or construed to, confer upon or grant to any third party or parties except parties to whom the CONCESSIONAIRE may assign this Agreement in accordance with the terms hereof, and except any successor to CORPORATION any right to claim damages or to bring any suit, action or other proceeding against either CORPORATION or the CONCESSIONAIRE because of any breach hereof or because of any of the terms, covenants, agreements and conditions herein.

Section 10.17 **Entire Agreement.** The parties acknowledge and agree that the provisions herein constitute the entire agreement and that all representations made by any officer, agent or employee of the respective parties unless included herein are null and void and of no effect. No alterations, amendments, changes or modifications, unless expressly reserved to the Director herein, shall be valid unless executed by an instrument in writing by all the parties with the same formality as this Agreement.

Section 10.18 **Concessionaire's Warranty of Its Ability To Enter Agreement.** CONCESSIONAIRE represents and warrants, which representation and warranty form a material part of the consideration of this Agreement without which CORPORATION would not enter into this Agreement, that it is authorized to and lawfully able to enter into and perform, and is under no prohibition against entering into and performing, this Agreement and that entering into this Agreement and performing pursuant to the terms thereof shall not constitute or cause a default or breach of any other contract, covenant or duty.

Section 10.19 **Most Favored Nations Provision.** CORPORATION agrees it will not charge a more favorable rental, fee or charge to any other rental car concession executing a similar agreement with CORPORATION for comparable space, facilities or rights at the Terminal Building than that being paid by CONCESSIONAIRE hereunder, unless the CORPORATION also makes those more favorable terms available to CONCESSIONAIRE. The provisions of this section 10.19 do not apply to the Minimum Monthly Guarantee amounts identified in Article 4 hereof.

Section 10.20. **Substitution of Facilities.** CORPORATION may build or provide, or cause to be built or provided, substitute facilities at the Airport. In the event of the construction and occupancy of new or substitute facilities at the Airport during the term of this Agreement, the following shall apply:

- A. CORPORATION agrees to set aside counter/queuing space, associated

office space, if applicable, and ready/return parking spaces for use of CONCESSIONAIRE.

1. CONCESSIONAIRE agrees to relocate operations from the Concession Space to the new or substituted facilities at its own expense and to thereafter conduct its operations therefrom. The new or substituted facilities shall be comparable to the previous facilities in terms of size, location and finish, all in the reasonable discretion of the CORPORATION.

2. Upon such relocation, CORPORATION shall have the right to demolish or use the existing TERMINAL BUILDING or other buildings or facilities located at the Concession Space as it sees fit.

3. The fees provided for in this Agreement shall be subject to adjustment to reflect the substitution of space for the TERMINAL BUILDING and facilities located at the Concession Space. In the event CORPORATION and CONCESSIONAIRE are unable to agree to such adjustment, then such adjustment shall be determined by a qualified real estate appraiser selected by the mutual agreement of CORPORATION and CONCESSIONAIRE, with the appraisal costs to be shared equally by them.

4. Except as modified by the substitution of facilities and the fee adjustment as provided for herein, this Agreement shall continue in full force and effect without change or modification until the expiration or termination of the license term.

B. If, in the opinion of CORPORATION, the Concession Space shall be wholly or partially required for other operations of the Airport or if the use of the Concession Space should be changed or abated by reason of other operations of the Airport, then the following shall apply:

1. CORPORATION shall substitute for the Concession Space another area at the Airport of comparable size and with comparable facilities and shall, at Corporation's expense, provide thereon facilities reasonably comparable to the facilities existing at the Concession Space, including, but not by way of limitation, the buildings, structures, paved areas, vehicle parking areas, utilities, and other improvements, either by the relocation of the existing facilities and/ or by the construction of new facilities.

2. CONCESSIONAIRE agrees to accept such other area at the Airport and the facilities to be provided thereon by CORPORATION in substitution for the Concession Space and agrees to promptly relocate its operations to such other area at CONCESSIONAIRE's expense.

3. CORPORATION shall schedule the preparation of such substituted area and shall effect such substitution and relocation of the CONCESSIONAIRE's operations in such manner as shall not result in the unreasonable interruption of the conduct of CONCESSIONAIRE's operations.

**[End of Agreement]**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

**CORPORATION**  
Eagle County Air Terminal Corporation

By: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Secretary

**CONCESSIONAIRE**

By: \_\_\_\_\_

Name: \_\_\_\_\_  
Print

Title: \_\_\_\_\_  
Print

**[Signature page to Agreement]**

# **EXHIBIT A**

## **EXHIBIT B**