



AGENDA

Asheville Regional Airport Authority Special Meeting
Friday, June 21, 2013, 8:30 a.m.
Conference Room at Administrative Offices

NOTICE TO THE PUBLIC: The Airport Authority welcomes comments from the public on any agenda item. Comments are received prior to the Board's discussion of the agenda item. Comments are limited to five minutes. If you wish to comment on an agenda item, please deliver a request card (available in the meeting room) to the Recording Secretary prior to the agenda item being called by the Chairman.

- I. Call to Order and Welcome of New Board Member – Douglas J. Tate
- II. The purposes of this special meeting are as follows:
 - (a) To consider and possibly approve the minutes for the ARAA's October 12, 2012, regular meeting ([document](#))
 - (b) To consider and possibly approve, and authorize the execution and delivery of, an instrument pursuant to which the ARAA would lease or sublease to J. Hall Waddell certain premises at AVL for the construction of a convenience store and for making certain petroleum products and sundries and other products and services periodically found at the time in or around convenience stores and gas stations, available for consumers entering or leaving AVL, as well as other members of the general public ([document](#))
 - (c) To consider and possibly authorize the ARAA Chairman and/or Executive Director to negotiate an instrument or instruments that would address, and respond to, requests by the City of Asheville for a dedication of a waterline easement and for an estoppel certificate relative to a backflow protection device (both of which matters relate to the construction of a new aircraft rescue and firefighting facility at AVL), and to possibly authorize the ARAA Chairman and/or Executive Director to execute and deliver such instrument or instruments



- (d) To consider and possibly approve the concept of a Sub-Concession Agreement concerning The Hertz Corporation Rental Car Concession Agreement and Lease, and to possibly authorize the Executive Director to negotiate and execute such instrument or instruments (if any) with respect thereto as he may deem to be appropriate and in the best interests of the ARAA ([document](#))

- (e) To hold a closed session or closed sessions pursuant to Subsection 143-318.11(a)(3) of the General Statutes of North Carolina to consult with Legal Counsel in order to preserve the attorney-client privilege.

III. Adjournment

This agenda of the Asheville Regional Airport Authority is provided as a matter of convenience to the public. It is not the official agenda. Although every effort is made to provide complete and accurate information in this agenda, the Airport Authority does not warrant or guarantee its accuracy or completeness for any purpose. The agenda is subject to change before and/or during the Board meeting.

**REGULAR MEETING
ASHEVILLE REGIONAL AIRPORT AUTHORITY
October 12, 2012**

The Asheville Regional Airport Authority ("Authority") met on Friday, October 12, 2012 at 8:30 a.m. in the Conference Room at the Authority's Administrative Offices, Asheville Regional Airport ("Airport"), 61 Terminal Drive, Suite 1, Asheville, NC 28732.

MEMBERS PRESENT: David R. Hillier, Chairman; David Gantt, Vice-Chairman; Jeffrey A. Piccirillo, Secretary-Treasurer; Martha W. Thompson; and Bob Roberts

MEMBERS ABSENT: Bill Moyer

STAFF AND LEGAL COUNSEL PRESENT: Vic Buchanan, Authority Legal Counsel; Lew Bleiweis, Executive Director; Michael Reisman, Deputy Executive Director of Development and Operations; C. Jeffrey Augram, Chief of Public Safety; David Nantz, Director of Operations and Maintenance; Royce Holden, IT Director; Vickie Thomas, Director of Finance and Accounting; Suzie Baker, Director of Administration; Tina Kinsey, Director of Marketing & Public Relations; Amy Burritt, Marketing Supervisor; and Ellen Heywood, Recording Secretary

ALSO PRESENT: Jeff Kirby, Michael Baker Corporation

CALL TO ORDER: The Chairman welcomed everyone in attendance and called the meeting to order at 8:30 a.m. The Chairman stated that two Authority Board meetings would take place and the Greater Asheville Regional Airport Authority Board meeting would be held at the conclusion of the Asheville Regional Airport Authority Board meeting.

CONSENT AGENDA: The Chairman advised the Board that Consent Agenda Item B, Approval of the Asheville Regional Airport Authority June 6, 2012 Closed Session Minutes, would be pulled for review in Closed Session.

A. Approval of the Asheville Regional Airport Authority June 6, 2012 Regular Meeting Minutes: Mr. Gantt moved to approve the Asheville Regional Airport Authority June 6, 2012 Regular Meeting Minutes. Mr. Roberts seconded the motion and it carried by a 5 to 0 vote.

CLOSED SESSION: At 8:33 a.m. Mr. Piccirillo moved to go into Closed Session pursuant to Subsection 143-318.11(a) (3) of the General Statutes of North Carolina, to consult with legal counsel in order to preserve the attorney-client privilege. Mr. Gantt seconded the motion and it carried by a 5 to 0 vote.

Esther Manheimer arrived at 8:35 a.m.

Open Session resumed at 8:59 a.m.

Esther Manheimer signed a letter and presented the letter to the Authority Board. The Board also received a letter from the attorney for the City of Asheville. The consensus of the Board was to return to Closed Session to review the letter received from the attorney for the City of Asheville.

CLOSED SESSION: At 9:01 a.m. Mr. Gantt moved to go into Closed Session pursuant to Subsection 143-318.11(a) (3) of the General Statutes of North Carolina, to consult with legal counsel in order to preserve the attorney-client privilege. Mr. Piccirillo seconded the motion and it carried by a 5 to 0 vote.

Open Session resumed at 9:53 a.m.

The Chairman called for a short break.

The Board reconvened at 9:57 a.m.

Mr. Roberts moved to seal the minutes for the two October 12, 2012 Closed Sessions and withhold such minutes from public inspection so long as public inspection would frustrate the purpose or purposes thereof. Ms. Thompson seconded the motion and it carried by a 5 to 0 vote.

APPROVAL OF ASHEVILLE REGIONAL AIRPORT AUTHORITY JUNE 6, 2012

CLOSED SESSION MINUTES: Mr. Piccirillo moved to approve the minutes for the June 6, 2012 Closed Session, and to seal and withhold such minutes from public inspection so long as public inspection would frustrate the purpose or purposes thereof. Mr. Roberts seconded the motion and it carried by a 5 to 0 vote.

The Chairman stated that the Board received a hand-delivered letter from Esther Manheimer at 9:00 a.m. in open session in which letter she resigned from the Authority. The Chairman further stated that the Board also received a letter from the attorney for the City of Asheville at that same time and that letter was reviewed in Closed Session.

NEW BUSINESS:

A. Bill of Assignment, Conveyance, Transfer, Authorization, and Grant to the Greater Asheville Regional Airport Authority: Mr. Buchanan informed the Board that he had prepared a Bill of Assignment which deals with a number of things such as transfer, assignment, and conveyance of certain property to the Greater Asheville Regional Airport Authority and also authorizes the Chairman to sign that document. It also authorizes the Greater Asheville Regional Airport Authority to operate, administer, regulate and control the Asheville Regional Airport.

Mr. Gantt moved that, effective immediately, the Asheville Regional Airport Authority hereby approves, and agrees to be bound by, the Bill of Assignment, Conveyance, Transfer, Authorization, and Grant and each and every provision thereof from and by the Asheville Regional Airport Authority to the Greater Asheville Regional Airport Authority; and hereby authorizes and directs its Chairman to forthwith execute and deliver the Bill of Assignment, Conveyance, Transfer, Authorization, and Grant for, and on behalf of, the Asheville Regional Airport Authority and its governing board. Mr. Piccirillo seconded the motion and it carried by a 5 to 0 vote.

At 10:01 a.m. the Chairman executed the Bill of Assignment document in duplicate on behalf of the Asheville Regional Airport Authority.

B. Resolution to Authorize and Direct the Executive Director to Execute and Deliver Certificates and Documents of Title, and Assignments and Transfers of Leases, Subleases, Agreements, Permits, Contracts and other Documents and Instruments: Mr. Roberts moved to approve the following resolution:

WHEREAS, by an Agreement dated November 29, 1979, and entered into by and between the County of Buncombe and the City of Asheville, the Asheville Regional Airport Authority ("ARAA") was created as a joint agency pursuant to Article 20 of Chapter 160A of the General Statutes of North Carolina; and

WHEREAS, the County of Buncombe and the City of Asheville entered into a Restated and Amended Airport Authority Agreement dated January 22, 2008 ("2008 Agreement"); and

WHEREAS, Section 4 of the 2008 Agreement provided in part that "the management, development, operation, regulation and maintenance of the Asheville Regional Airport shall be under the direct control and supervision" of ARAA; and

WHEREAS, in the past, leases, subleases, agreements, permits, contracts, and other documents and instruments have been executed by ARAA's Managing Director (which position is also referred to as the Executive Director), under authorization by the Board of ARAA; and

WHEREAS, the Greater Asheville Regional Airport Authority ("GARAA") was created by Session Law 2012-121, which was ratified by the General Assembly of North Carolina on June 28, 2012; and

WHEREAS, at the appropriate time or times, all ARAA leases, subleases, agreements, permits, contracts, and other documents and instruments (collectively, "Agreements") shall be assigned by and from ARAA to GARAA; and

WHEREAS, it is the desire of the Board of ARAA to authorize the Executive Director to execute appropriate assignment and transfer documents and instruments.

NOW, THEREFORE, BE IT RESOLVED by the Board of ARAA that:

The Executive Director is hereby authorized and directed to execute and deliver, at the appropriate time or times, certificates and documents of title, and assignments and transfers of leases, subleases, agreements, permits, contracts, and other documents and instruments (collectively, "Documents").

Notwithstanding the foregoing, prior approval from the Board of ARAA shall be required for the execution and delivery of any Documents which would materially change any of the Agreements or materially impact any interest therein or thereunder.

Adopted this 12th day of October, 2012.

Asheville Regional Airport Authority

David R. Hillier, Chairman

Attest:

Jeffrey A. Piccirillo, Secretary-Treasurer

Ms. Thompson seconded the motion and it carried by a 5 to 0 vote.

At 10:05 a.m. the Chairman and Secretary-Treasurer executed the document.

CALL FOR NEXT MEETING:

The Chairman advised the Board that it appears as if one more meeting of the Asheville Regional Airport Authority Board will be necessary. The Chairman stated that it was very uncertain as to when that meeting will be required so the Board is unable to set a date at this time.

SERVICE RECOGNITION AWARDS:

A. **Bill Moyer:** The Chairman stated that Mr. Moyer was not available but wanted to read the following Resolution of Appreciation:

Asheville Regional Airport Authority

~ Resolution ~

WHEREAS, the Asheville Regional Airport Authority was created by the City of Asheville and the County of Buncombe for the purpose of maintaining, operating, regulating and improving the Asheville Regional Airport; and

WHEREAS, Bill Moyer served as Member of the Asheville Regional Airport Authority from February 2011 through June 2012; and

WHEREAS, Bill Moyer was selected by the Authority Board after extensive investigation of other highly qualified candidates; and

WHEREAS, Bill Moyer, during his period of service to the Authority, and based upon his extensive legal and other public service experience, provided valuable insight and made many helpful suggestions for improvement to the Asheville Regional Airport and the operation of the Authority;

NOW, THEREFORE, BE IT RESOLVED, that the Asheville Regional Airport Authority expresses its sincere thanks and gratitude to Bill Moyer for his dedicated efforts in serving the needs of the Asheville Regional Airport Authority.

Adopted this 12th day of October, 2012.

David R. Hillier, Chairman

ATTEST:

Jeffrey A. Piccirillo, Secretary/Treasurer

Mr. Gantt moved to approve the Resolution of Appreciation for Bill Moyer. Mr. Piccirillo seconded the motion and it carried by a 5 to 0 vote.

B. Esther Manheimer: The Chairman stated that Ms. Manheimer served on the Asheville Regional Airport Authority Board for a short period of time and in conversation with Ms. Manheimer, learned that she felt a framed aerial photo of the airport would suffice as recognition of her service on the Board. The Chairman presented Ms. Manheimer with the aerial photo and thanked her for her contributions to the meetings. Ms. Manheimer thanked the Board and stated that she enjoyed her brief time on the Board.

C. David Gantt: The Chairman read the following Resolution of Appreciation for Mr. Gantt:

Asheville Regional Airport Authority

~ Resolution ~

WHEREAS, the Asheville Regional Airport Authority was created by the City of Asheville and the County of Buncombe for the purpose of maintaining, operating, regulating and improving the Asheville Regional Airport; and

WHEREAS, David Gantt served as Member of the Asheville Regional Airport Authority from July 2004 through June 2012; and

WHEREAS, David Gantt also served as Vice-Chairman of the Authority from August 2008 through June 2012; and

WHEREAS, David Gantt served contemporaneously as Chairman of the Buncombe County Commissioners; and

WHEREAS, during David Gantt's term on the Authority, great improvements were made at the airport, including more efficient and enhanced baggage claim area, greatly improved customer service, increased parking, renovation of "A Gates", and vast improvement in the governance of the Authority; and

WHEREAS, David Gantt, throughout his term on the Asheville Regional Airport Authority, conscientiously and diligently worked for the improvement of the Asheville Regional Airport in ways too numerous to mention, always bringing to deliberations of the Authority his wisdom, experience, knowledge, and good nature;

NOW, THEREFORE, BE IT RESOLVED, that the Asheville Regional Airport Authority expresses its sincere thanks and gratitude to David Gantt for his dedicated efforts in serving the needs of the Asheville Regional Airport Authority.

Adopted this 12th day of October, 2012.

David R. Hillier, Chairman

ATTEST:

Jeffrey A. Piccirillo, Secretary/Treasurer

Ms. Thompson moved to approve the Resolution of Appreciation for Mr. Gantt. Mr. Roberts seconded the motion and it carried by a 5 to 0 vote.

Mr. Gantt stated that he has been honored to serve and urged the Board to go to conferences and learn what is going on in the industry. Mr. Gantt further encouraged new members to be bold and think big as there's no reason why the airport can't be big and bold. Mr. Gantt stated that Asheville is one of the best airports, has wonderful staff, and the best part of his service has been getting to know the people. Mr. Gantt was proud of all that has been accomplished at the airport and asked that the Authority cherish the leadership Mr. Hillier has provided.

ADJOURNMENT: Mr. Gantt moved to adjourn the meeting at 10:13 a.m. Mr. Roberts seconded the motion and it carried by a 5 to 0 vote.

Respectfully submitted,

Jeffrey A. Piccirillo
Secretary-Treasurer

Approved:

David R. Hillier
Chairman



MEMORANDUM

TO: Members of the Airport Authority

FROM: Lew Bleiweis, A.A.E., Executive Director

DATE: June 21, 2013

Lease Agreement for Commercial Development

BACKGROUND

In December 2007, the Authority received and accepted the Master Land Use & Site Development Plan Final Report which was prepared by PBS&J consultants. This plan identified various parcels of land on airport property which would be appropriate for development. The consultants for the Airport Master Plan project currently underway also reviewed the airport property. In both reports, the one from 2007 and the forthcoming Master Plan, some parcels are identified as non-aeronautical development or property that does not have direct access to the airfield. One of these parcels is the strip of land along HWY 280 immediately south of the airport exit. Staff has been trying to find opportunities to develop this parcel in an effort to increase airport revenues without burdening the aviation community. The turn of the economy in 2008 has been a detriment in accomplishing this goal.

Late in 2012, staff was approached by a real estate broker representing a client that was interested in developing a few acres on the specific parcel by the airport exit as mentioned above.

Through this broker, Mr. J. Hall Waddell, Owner of Reaben Oil Co., has expressed an interest and is in the process of negotiating a lease with staff to open and operate a gas station/convenience store/restaurant. Mr. Waddell's company currently owns and operates Triangle Stop Food Stores/Marathon Gas. They currently do business in Henderson, Polk, and Transylvania Counties. This will be his first Buncombe County facility.



Mr. Waddell has proposed two means of ingress/egress. One is by direct access to the airport exit road providing easy access for our passengers, tenants and employees. The other is directly accessing HWY 280.

Enhanced services could be provided to our passengers while they are traveling and their cars are parked in our parking lots. Such enhanced services could include oil changes and car washes provided by our parking operator under a partnership with the gas station/convenience store operator.

The major terms and conditions of the agreement are attached.

ISSUES

The ongoing process with the City over the independent airport authority could be a concern and a risk for Mr. Waddell. At present, Mr. Waddell is aware of the situation and is willing to proceed. The Lease Agreement will provide him with a six month due diligence period to investigate and mitigate any potential risk.

The Greater Asheville Regional Airport Authority (GARAA) approved this item at its March Board meeting. However, due to the fact that the airport property has not been transferred over to the GARAA by the City, the Lease Agreement must be executed by the Asheville Regional Airport Authority thereby allowing Mr. Waddell to obtain financing for this project. The Lease Agreement shall have an automatic assignment clause assigning the Lease Agreement over to the GARAA at the time of property transfer by the City.

ALTERNATIVES

The Board could decide not to develop this parcel of land at the present time.

FISCAL IMPACT

The FAA requires fair market value for the business concession be obtained. The current negotiated deal achieves the objective by receiving appraised value of \$0.35 per square foot for the land with an incremental increase every five years. In addition, starting in year 11, the Authority will receive \$0.01 for each gallon of petroleum delivered to the facility. It is estimated that Authority revenues will increase by approximately \$33,000 per year plus increases for the land rent and an additional \$12,000 per year with the incremental fuel revenue.



RECOMMENDED ACTION

It is respectfully requested that the Airport Authority Board resolve to (1) approve a Lease Agreement with J. Hall Waddell for the operation of a gas station/convenience store/restaurant; (2) authorize the Executive Director to finalize the negotiations on the Lease Agreement consistent with the above; and (2) authorize the Executive Director to execute the necessary documents.

Attachment



MEMORANDUM

TO: Members of the Airport Authority

FROM: Lew Bleiweis, Executive Director

DATE: June 21, 2013

Approval of a Sub Concession Agreement for the Hertz Rental Car Concession Agreement and Lease

BACKGROUND

In 2008, staff solicited bids for the rental car concession and lease at Asheville Regional Airport. Five rental car operators were eligible for selection due to the number of rental car counters and service facilities available at the Airport. Bid submittals were received from Hertz, Avis, Budget, Enterprise and Vanguard (operating National and Alamo brands). The Board awarded the contracts to all five bidders.

The bid documents proposed a contract term of five years with a five-year option at the sole discretion of the Authority. Bidders were required to bid a minimum annual revenue guarantee for each of the five years of the initial term. Rankings were based on the guarantee amounts and allowed the companies to select rental car counters and service facilities.

Recently, Hertz Corporation acquired Dollar Rent A Car & Thrifty Car Rental Corporation and has decided to operate their Hertz business a bit differently and allow some of their Hertz locations to be owned and operated by a franchisee. Asheville has been selected to be one of those locations. While this type of practice has been common for years with other rental car companies such as Thrifty and Dollar, it is a change for Hertz.

Hertz is proposing to franchise its Asheville Regional Airport location and enter into a sub-concession agreement with GSP Transportation, Inc. (current owner and operator of a Dollar/Thrifty franchise) to operate the AVL Hertz location for the remainder of the rental car concession agreement and lease.



ISSUES

GSP Transportation, Inc. currently owns and operates the Dollar Rent A Car & Thrifty Car Rental franchise in Asheville and several other locations in the southeast United States. They currently have an agreement with the Authority for an off airport rental car operation. Dollar/Thrifty does not have a facility on the airport and staff has some concerns that GSP Transportation, Inc. may try to co-brand its operation out of the Hertz counter in the terminal or use the Hertz service facility to service its Dollar/Thrifty vehicles. Strong language has been added to the sub-concession agreement between Hertz and GSP Transportation, Inc. to terminate the sub-concession approval if GSP Transportation, Inc. violates any terms of its agreement or rules and regulations of the Authority.

ALTERNATIVES

The Board could decide not to approve the sub-concession agreement and require Hertz Corporation to continue operating the Asheville Regional Airport location.

FISCAL IMPACT

There will not be any fiscal impact because The Hertz Corporation shall remain liable to the Authority for all the terms and conditions of the Rental Car Concession Agreement and Lease that was executed in 2008.

RECOMMENDED ACTION

It is respectfully requested that the Airport Authority Board resolve to (1) approve the sub-concession agreement between Hertz, GSP Transportation, Inc., and the Authority for the operation of the Hertz Corporation's AVL location; and (2) authorize the Executive Director to execute the necessary documents.

Attachment

SUB-CONCESSION AGREEMENT

THIS SUB-CONCESSION AGREEMENT (the “**Sub-Concession Agreement**”) is made and entered into this ___ day of May, 2013 (the “**Effective Date**”), by and between **THE HERTZ CORPORATION**, a Delaware corporation (“**Concessionaire**”), and _____ (“**Sub-Concessionaire**”).

1. BASIC SUB-CONCESSION PROVISIONS.

- A. Airport: Asheville Regional Airport.**
- B. Concession Areas: Those certain areas described and/or depicted on Exhibit A attached hereto and made a part hereof, and which constitute a portion of the Airport.**

- C. Concessionaire’s Address (for notices):**

**The Hertz Corporation
225 Brae Boulevard
Park Ridge, New Jersey 07656
Attn: Staff Vice President, Real Estate and Concessions**

- D. Sub-Concessionaire’s Address (for notices):**

- E. Authority: Asheville Regional Airport Authority**

- F. Authority’s Address (for payment of Concession Fees and notices, when applicable):**

**Asheville Regional Airport Authority
61 Terminal Drive, Suite 1
Fletcher, NC 28732
Attn: Airport Director**

- G. Identification of Concession Agreement and all amendments thereto:**

**Rental Car Concession Agreement and Lease, dated August 1, 2008,
by and between the Authority and Concessionaire (the “Concession Agreement”).**

- H. Term: June 1, 2013 to July 31, 2013.**

- I. Commencement Date: June 1, 2013.**

- J. Expiration Date: July 31, 2013**

- K. Concession Fees: See Section 7.**

- L. Payee of Concession Fees: **Sub-Concessionaire.**
- M. Concession: **Automobile rental business and related services, and for no other use or purpose.**
- N. APA: **The Asset Purchase Agreement dated _____, between Concessionaire as seller and Sub-Concessionaire as buyer.**

2. CONCESSION AGREEMENT. Concessionaire is the concessionaire under the Concession Agreement which Concessionaire has entered into with Authority (identified in Section 1(E)). Concessionaire represents and warrants to Sub-Concessionaire that (a) Exhibit B hereto is a true and complete copy of the Concession Agreement and all amendments and modifications thereto with which Sub-Concessionaire shall be hereby bound to comply, (b) to Concessionaire's actual knowledge (which, for purposes hereof, shall mean the actual knowledge of Mark McBee, without any duty of investigation), the Concession Agreement is, as of the date hereof, in full force and effect, (c) no event of default (after all notice and cure periods have elapsed) has occurred under the Concession Agreement on the part of Concessionaire, and (d) Concessionaire has not received any written notice that Concessionaire is in breach of the Concession Agreement, nor has Concessionaire sent a written notice of breach of the Concession Agreement to the Authority. If required under the terms of the Concession Agreement, Concessionaire has obtained the consent of the Authority to this Sub-Concession Agreement.

3. SUB-CONCESSION. Concessionaire, for and in consideration of the covenants and agreements herein contained on the part of Sub-Concessionaire to be performed, hereby grants to Sub-Concessionaire the right to operate the Concession and such other rights as set forth herein, and Sub-Concessionaire agrees to operate the Concession Areas for the operation of the Concession, in each case, subject to the terms and conditions of this Sub-Concession Agreement, Concessionaire's representations, warranties and covenants herein and the Concession Agreement.

4. SUBLEASE. To the extent Concessionaire is deemed a tenant of the Concession Areas under the Concession Agreement Concessionaire, as used herein, shall also mean a "sublessor" and Sub-Concessionaire, as used herein, shall also mean "sublessee"

5. TERM.

A. **Commencement.** Subject to the terms of this Sub-Concession Agreement, the term of this Sub-Concession Agreement (the "**Term**") shall commence on the Commencement Date and shall expire on the Expiration Date, unless sooner terminated by Concessionaire or Sub-Concessionaire as provided in this Sub-Concession Agreement, or in the event of a termination of the Concession Agreement. Subject to Section 5(C) below, Concessionaire shall deliver the Concession Areas to Sub-Concessionaire on the Commencement Date for the right to operate the Concession at the Airport. Subject to the terms of Sections 23 and 24 below, in the event that (i) the Concession Agreement, and/or (ii) that certain License Agreement (the "**License Agreement**") entered into by Concessionaire, as Licensor, and Sub-Concessionaire, as Licensee, terminates for any reason with respect to the Airport, this Sub-Concession Agreement shall automatically terminate and be of no further force or effect, except

for accrued and unpaid obligations as of the date of such termination and any remedies for breach available to either party, as applicable.

B. **Renewals.** Concessionaire shall be under no obligation whatsoever to exercise any renewal or extension options granted under the Concession Agreement. In the event that Concessionaire in its sole discretion elects to exercise any renewal or extension options granted under the Concession Agreement, the Term of this Sub-Concession Agreement shall not also be so extended except upon the mutual written consent of both Concessionaire and Sub-Concessionaire, which may be given or withheld by each in its sole and absolute discretion.

6. CONDITION AND USE OF CONCESSION AREAS. Concessionaire shall deliver the Concession Areas to Sub-Concessionaire for the right to operate the Concession at the Airport, and Sub-Concessionaire shall accept the Concession Areas from Concessionaire in their “as-is, where-is” condition. Sub-Concessionaire acknowledges that Sub-Concessionaire has inspected the Concession Areas prior to the execution and delivery of this Sub-Concession Agreement, and that Sub-Concessionaire accepts the Concession Areas as suitable for the operation of the Concession and as being in good order and satisfactory condition. Sub-Concessionaire’s acceptance of the Concession Areas on the Commencement Date shall be conclusive evidence as against Sub-Concessionaire that the Concession Areas were in good order and satisfactory condition from and after the Commencement Date. The Concession Areas shall be used and occupied only for the operation of the Concession set forth in Section 1(M).

7. FEES; BOND/LETTER OF CREDIT/SECURITY DEPOSIT.

A. **Concession Fees.** Commencing on the Commencement Date, Sub-Concessionaire shall pay directly to the Authority all concession fees (the “**Concession Fees**”) that accrue on or after the Commencement Date for the right to operate the Concession as set forth in the Concession Agreement. Such Concession Fees shall be paid to the Authority prior to the date due therefor (and otherwise in accordance with the terms of the Concession Agreement), and Sub-Concessionaire shall simultaneously furnish evidence of such payment to Concessionaire. All charges, costs and sums required to be paid by Concessionaire to the Authority pursuant to the Concession Agreement, including, without limitation, any Minimum Annual Guarantee, shall constitute the Concession Fees payable hereunder, it being the intent of the parties hereto that Sub-Concessionaire shall pay all costs, fees, expenses and other charges payable by Concessionaire pursuant to the terms of the Concession Agreement. Sub-Concessionaire’s covenant to pay the Concession Fees shall be independent of every other covenant of this Sub-Concession Agreement. All Concession Fees shall be paid to the Authority without set-off or deduction whatsoever except as may be expressly set forth in the Concession Agreement. Sub-Concessionaire also shall pay Authority on the due dates for services requested by Sub-Concessionaire which are billed by Authority directly to Sub-Concessionaire rather than Concessionaire, if any. If the Concession Agreement does not provide written notice and cure period for monetary default, then Concession Fees must be paid at least five (5) business days prior to the due date. This also applies to Sections 7 (B) and (C) below.

B. **Customer and Transportation Facility Charges and other Charges.** All obligations of Concessionaire under the Concession Agreement in connection with the collection of a Customer Facility Charge (or “**CFC**”), a Transportation Facility Charge (or

“TFC”) or any other similar charges shall, during the Term hereof, be the obligation of Sub-Concessionaire. Sub-Concessionaire agrees to collect and remit all CFCs, TFCs and similar charges directly to the Authority prior to the date due therefor (and otherwise in accordance with the terms of the Concession Agreement), and shall simultaneously furnish evidence of such payment to Concessionaire. If so required under the APA, Concessionaire shall collect and remit all CFC’s, TFC’s and similar charges directly to the Authority which relates to Vehicles on Rental (as defined in the APA).

C. **Taxes and Licenses.** Sub-Concessionaire shall pay all taxes levied, assessed or charged upon the Concession and/or Sub-Concessionaire’s use of the Concession Areas and the operation of the Concession and/or on its improvements, fixtures, equipment or other property thereon directly to the applicable taxing authority and/or, to the extent required by the Concession Agreement, directly to the Authority prior to the date due therefor, and shall simultaneously furnish evidence of such payment to Concessionaire. In addition, Sub-Concessionaire shall obtain and be liable for the cost of all licenses required in connection with the operation of the Concession.

D. **Bond/Letter of Credit/Security Deposit.** If applicable, Sub-Concessionaire shall be responsible for (i) posting any performance and/or surety bonds required under the terms of the Concession Agreement, and Sub-Concessionaire shall cooperate with Concessionaire in obtaining a return to Concessionaire of any bond previously posted with the Authority by Concessionaire or (ii) providing a letter of credit on or before the Commencement Date meeting the requirements of the Concession Agreement, and Sub-Concessionaire shall cooperate with Concessionaire in obtaining a release and return for cancellation to Concessionaire of the current letter of credit provided by Concessionaire on or before the Commencement Date, or (iii) posting the cash security deposit required under the terms of the Concession Agreement, and Sub-Concessionaire shall cooperate with Concessionaire in obtaining a return to Concessionaire of any cash security deposit previously posted by Concessionaire. In the event the Authority is unwilling to accept a bond, letter of credit, or security deposit (collectively “Surety”) from Sub-Concessionaire, and/or release any existing Surety to Concessionaire, Sub-Concessionaire shall deliver to Concessionaire a back-up Surety in the same amount as that held by the Authority and that Concessionaire may draw upon in the event the Authority draws upon such Surety in accordance with the terms of the Concession Agreement.

E. **Monthly Statements to Concessionaire.** Sub-Concessionaire shall furnish to Concessionaire, on a monthly basis on or before the fifth (5th) day of each month, evidence of payment to the Authority of all Concession Fees, CFCs, TFCs and any other payments made pursuant to the terms of the Concession Agreement, which evidence shall include a statement of revenues of Sub-Concessionaire for the prior month.

8. CONCESSION AGREEMENT.

A. **Subject to Concession Agreement.** This Sub-Concession Agreement and all rights of Sub-Concessionaire hereunder are subject to the terms, conditions and provisions of the Concession Agreement. Except as modified or otherwise provided under this Sub-Concession Agreement, Sub-Concessionaire, as if it were party to the Concession Agreement,

hereby assumes and agrees to perform faithfully and on time, and be bound by, with respect to obligations which arise and occur on or after the Commencement Date, and in addition to all of Sub-Concessionaire's other obligations set forth in this Sub-Concession Agreement, all of Concessionaire's obligations, covenants, and agreements under the Concession Agreement and all terms, conditions, provisions and restrictions contained in the Concession Agreement (which terms are hereby incorporated herein by this reference).

B. Limitation and Grant of Rights. Without limitation of the foregoing:

1. Sub-Concessionaire shall not make any changes, alterations or additions in or to the Concession Areas except as expressly permitted by the terms hereof and by the Concession Agreement;

2. If Sub-Concessionaire desires to take any action and the Concession Agreement would require that Concessionaire obtain the consent of Authority before undertaking any action of the same or similar kind, Sub-Concessionaire shall not undertake the same without the prior written consent of Concessionaire, and Concessionaire may condition its consent on the consent of Authority being obtained;

3. All rights given to Authority and its agents and representatives by the Concession Agreement to access and inspect the Concession Areas shall inure to the benefit of Authority, Concessionaire and their respective agents and representatives; and

4. Except as modified under this Sub-Concession Agreement, Concessionaire shall also have all other rights, and all privileges, options, reservations and remedies, granted or allowed to, or held by Authority under the Concession Agreement, including, without limitation, all rights to audit Sub-Concessionaire's records pertaining to its business operations at the Airport, and Sub-Concessionaire agrees to keep its books and records in connection with the operation of the Concession in accordance with the terms of the Concession Agreement.

C. No Assumption of Obligations of Authority. It is expressly understood and agreed by Sub-Concessionaire that Concessionaire has not assumed and does not assume and shall not have any of the obligations or liabilities of Authority under the Concession Agreement and that Concessionaire is not making the representations or warranties, if any, made by Authority in the Concession Agreement. Concessionaire shall not be liable in damages for or on account of any failure by Authority to perform the obligations and duties imposed on it under the Concession Agreement. Notwithstanding the foregoing, Concessionaire during the Term shall use good faith efforts (after written request from Sub-Concessionaire) to enforce all material obligations of the Authority under the Concession Agreement (provided all third party costs, including reasonable legal fees, in undertaking any such enforcement are paid by Sub-Concessionaire.)

D. Obligations under Concession Agreement. The parties hereby confirm, each to the other, that it is not practical in this Sub-Concession Agreement to enumerate all of the rights and obligations of the various parties under the Concession Agreement and specifically to allocate those rights and obligations in this Sub-Concession Agreement. Accordingly, in order to afford to Sub-Concessionaire the benefits of this Sub-Concession Agreement and of those provisions of the Concession Agreement which by their nature are intended to benefit the party in possession of the Concession Areas, and in order to protect Concessionaire against a default by Sub-Concessionaire which might cause a default or event of default by Concessionaire under the Concession Agreement, Concessionaire and Sub-Concessionaire, as appropriate, hereby agree as follows:

1. Sub-Concessionaire shall perform all affirmative covenants of Concessionaire contained in the Concession Agreement (including without limitation all obligations to indemnify the Authority except as may be otherwise expressly provided in this Sub-Concession Agreement), which shall arise and occur during the Term, shall refrain from performing any act which is prohibited by the negative covenants of Concessionaire contained in the Concession Agreement and will not by its act or omission to act, cause a default under the Concession Agreement; and

2. During the Term, Concessionaire shall not agree to any amendment to the Concession Agreement unless Concessionaire shall first obtain Sub-Concessionaire's prior written approval thereof, which such approval shall not be unreasonably withheld. In the event that Sub-Concessionaire fails to deliver approval or disapproval of any such proposed amendment to the Concession Agreement within ten (10) days after the date of Concessionaire's written request for approval and delivery of the proposed amendment, such proposed amendment to the Concession Agreement shall be deemed approved by Sub-Concessionaire. Notwithstanding the foregoing, Concessionaire may agree to such an amendment without obtaining Sub-Concessionaire's consent provided Sub-Concessionaire is so advised and given the opportunity to terminate this Agreement with thirty (30) days' notice.

3. Concessionaire shall not permit the Concession Agreement to be terminated by reason of any default by Concessionaire thereunder, and Concessionaire shall perform its obligations under the Concession Agreement in all material respects, except to the extent such obligations are required to be performed by Sub-Concessionaire hereunder.

E. Rights to Remain with Concessionaire. Subject to the provisions of Section 8(D) above, but notwithstanding anything else to the contrary contained herein, Concessionaire shall retain all rights under the Concession Agreement (after reasonable good faith consultation with Sub-Concessionaire) to negotiate the terms of the Concession Agreement and/or all rights and benefits originating therefrom, with the Authority, including, without limitation, the sole right to participate in and represent the Concessionaire and Sub-Concessionaire with respect to the Concession at industry meetings, to negotiate and submit all bids for the operation of the Concession, and to negotiate all leases, material business and

operational issues and material allocation of costs issues, and that in no event shall Sub-Concessionaire be entitled to exercise any such rights.

9. SUB-CONCESSIONAIRE'S OBLIGATIONS.

A. **Costs.** Sub-Concessionaire shall be responsible for, and shall pay for all costs incurred in connection with the Concession Areas and the operation of the Concession, including, without limitation, any utilities consumed in the Concession Areas (to the extent that Concessionaire pays such amounts under the Concession Agreement). Sub-Concessionaire shall hold Concessionaire harmless from all costs and expenses that Concessionaire may incur from Sub-Concessionaire's failure to pay all such costs or to perform any of its obligations in connection therewith.

B. **Maintenance.** Sub-Concessionaire shall be responsible for all maintenance, repairs and replacements as to the Concession Areas and to its furniture, fixtures, equipment and other personal property located thereon, and shall otherwise comply in all respects with the requirements of the Concession Agreement. Sub-Concessionaire and Concessionaire shall throughout the Term jointly participate in all correspondence with, and meetings and decisions of the other concessionaires located at the Airport in connection with any consortiums or similar understandings or agreements entered into or formed to govern common or shared obligations at the Airport provided that Sub-Concessionaire shall have no authority to bind Concessionaire or to otherwise affect in any manner the rights of Concessionaire in connection with such understandings, agreements or consortiums.

10. QUIET ENJOYMENT. Concessionaire represents that it has full power and authority to enter into this Sub-Concession Agreement. So long as Sub-Concessionaire is not in default in the performance of its covenants and agreements in this Sub-Concession Agreement beyond any applicable notice and cure periods, Sub-Concessionaire's quiet and peaceable enjoyment of the Concession Areas and the operation of the Concession shall not be disturbed or interfered with by Concessionaire, or by any person claiming by, through, or under Concessionaire.

11. INSURANCE. Sub-Concessionaire shall procure and maintain, at its own cost and expense, such liability, property and other insurance as is required to be carried by Concessionaire under the Concession Agreement, naming Concessionaire, Authority and all parties required by Concessionaire and by Authority as additional insureds, which insurance shall not be rescindable or cancellable by the insurer with respect to the Concessionaire, Authority and all parties required by Concessionaire and by Authority to be named as additional insureds. If the Concession Agreement requires Concessionaire to insure leasehold improvements or alterations, then Sub-Concessionaire shall insure such leasehold improvements which are located in the Concession Areas. Sub-Concessionaire shall furnish to Concessionaire a certificate of Sub-Concessionaire's insurance and copies of the applicable insurance policies required hereunder upon Sub-Concessionaire's taking possession of the Concession Areas, and thirty (30) days prior to expiration of such insurance. Each party hereby waives claims against the other for property damage provided such waiver shall not invalidate the waiving party's property insurance; each party shall attempt to obtain from its insurance carrier a waiver of its right of subrogation. Sub-Concessionaire hereby waives claims against Authority and

Concessionaire for property damage to the Concession Areas or its contents if and to the extent that Concessionaire waives such claims against Authority under the Concession Agreement. Sub-Concessionaire agrees to obtain, for the benefit of Authority and Concessionaire, such waivers of subrogation rights from its insurer as are required of Concessionaire under the Concession Agreement. Concessionaire agrees to use commercially reasonable efforts in good faith to obtain from Authority a waiver of claims for insurable property damage losses and an agreement from Authority to obtain a waiver of subrogation rights in Authority's property insurance, if and to the extent that Authority waives such claims against Concessionaire under the Concession Agreement or is required under the Concession Agreement to obtain such waiver of subrogation rights.

12. ASSIGNMENT OR TRANSFER. Sub-Concessionaire shall not, directly or indirectly, assign, convey, pledge, mortgage or otherwise transfer this Sub-Concession Agreement or any interest under it, or allow any transfer thereof or any lien upon Sub-Concessionaire's interest by operation of law or otherwise, or permit the occupancy of the Concession Areas or any part thereof by anyone other than Sub-Concessionaire. Notwithstanding the foregoing, Sub-Concessionaire may, with Concessionaire's consent, which consent shall not be unreasonably withheld, conditioned or delayed, and subject to receipt of Authority's consent if required by the terms of the Concession Agreement, assign this Sub-Concession Agreement to, or permit the use and occupancy of all or any portion of the Concession Areas by any of Sub-Concessionaire's Affiliates (as defined herein), or any entity with whom Sub-Concessionaire merges or consolidates in any reorganization, or any entity succeeding to all or substantially all of the business and assets of Sub-Concessionaire, provided that, except with respect to Sub-Concessionaire's Affiliates, such entity has a net worth equal to or greater than Sub-Concessionaire's net worth as of the date of this Sub-Concession Agreement and is fully capable of performing all of its obligations under this Sub-Concession Agreement and the Concession Agreement (a "**Permitted Transfer**"). As used in this Sub-Concession Agreement, the term "**Affiliate**" means any corporation, partnership or other business entity which controls, is controlled by or is under common control with the party in question. For the purpose hereof, the words "control", "controlled by" and "under common control with" shall mean, with respect to any corporation, partnership or other business entity, (a) the ownership of more than fifty percent (50%) of the voting interests, or (b) the ownership of at least twenty percent (20%) of the voting interests and the possession of the power to direct or cause the direction of the management and policy of such corporation, partnership or other business entity by reason of the ownership of such voting interests or by virtue of voting trusts or other contractual arrangements.

13. RULES. Sub-Concessionaire agrees to comply with all rules and regulations and minimum standards of operation that Authority has made or may hereafter from time to time make for the Airport and/or the Concession Areas or the operation of the Concession in accordance with the terms of the Concession Agreement. Concessionaire shall not be liable in any way for damage caused by the non-observance by any of the other concessionaires of such similar covenants in their concession agreements or of such rules and regulations. Concessionaire shall deliver copies of any such rules and regulations and any changes thereto that it receives from the Authority to Sub-Concessionaire.

14. REPAIRS AND COMPLIANCE. Sub-Concessionaire shall promptly pay for the repairs set forth in Section 9(B) hereof and Sub-Concessionaire shall, at Sub-Concessionaire's own expense, comply with all applicable laws and ordinances, and all orders, rules and regulations of all governmental authorities and of all insurance bodies and their fire prevention engineers at any time in force, applicable to Sub-Concessionaire's particular use or manner of use of the Concession Areas and the operation of the Concession.

15. ALTERATIONS. Sub-Concessionaire shall not make any alterations or improvements in or additions to the Concession Areas without the prior written consent of Concessionaire and of Authority, which consent, as to Concessionaire, shall not be unreasonably withheld, conditioned or delayed. Concessionaire may condition its consent on the agreement of Sub-Concessionaire to restore the Concession Areas upon the expiration or earlier termination of this Sub-Concession Agreement if so requested by Concessionaire. Sub-Concessionaire shall be subject to all of the terms and conditions of the Concession Agreement in connection with any such alterations, and all requirements of the Authority shall also be deemed to be requirements of Concessionaire. Concessionaire shall have the right to retain its own consultants to review any plans for such alterations, and the reasonable and direct out-of-pocket costs incurred by Concessionaire in connection with such review shall be paid by Sub-Concessionaire.

16. LIENS. Sub-Concessionaire shall not do any act which shall in any way encumber the title of the Authority in and to the Airport, nor shall the interest or estate of the Authority or of Concessionaire be in any way subject to any claim by way of lien or encumbrance, whether by operation of law by virtue of any express or implied contract by Sub-Concessionaire, or by reason of any other act or omission of Sub-Concessionaire. Any claim to, or lien upon, the Concession Areas or the Airport arising from any act or omission of Sub-Concessionaire shall accrue only against any interest of Sub-Concessionaire as a result of this Sub-Concession Agreement and shall be subject and subordinate to the paramount title and rights of the Authority in and to the Airport and the interest of Concessionaire in the Concession Areas pursuant to the Concession Agreement. Without limiting the generality of the foregoing, Sub-Concessionaire shall not permit the Concession Areas or the Authority to become subject to any mechanics', laborers' or materialmen's lien on account of labor or material furnished to Sub-Concessionaire or claimed to have been furnished to Sub-Concessionaire in connection with work of any character performed or claimed to have been performed to the Concession Areas by, or at the direction or sufferance of, Sub-Concessionaire.

17. CASUALTY/CONDEMNATION. The terms of the Concession Agreement or, in the event the terms of the Prime Lease conflict with the terms of the Concession Agreement, the terms of the Prime Lease shall control in the event of a fire or other casualty or condemnation affecting the Concession Areas. If the Concession Agreement (or the Prime Lease, as applicable) imposes on Concessionaire the obligation to repair or restore improvements or alterations to the Concession Areas, Sub-Concessionaire shall be responsible for repair or restoration of such improvements or alterations to the Concession Areas; provided, however, that any decision to terminate the Concession Agreement as a result of any fire or other casualty or condemnation shall be made jointly by Sub-Concessionaire and Concessionaire.

18. SURRENDER. Upon the expiration of this Sub-Concession Agreement, or upon the termination of this Sub-Concession Agreement or of Sub-Concessionaire's right to

possession of the Concession Areas, Sub-Concessionaire shall at once cease operation of the Concession and surrender and deliver up the Concession Areas, including all improvements thereto, to Concessionaire in good condition and repair, reasonable wear, tear and damage caused by any casualty excepted and otherwise in the condition that existed as of the Commencement Date and as required by the terms of the Concession Agreement; conditions existing because of Sub-Concessionaire's failure to perform maintenance, repairs or replacements as required of Sub-Concessionaire under this Sub-Concession Agreement shall not be deemed "reasonable wear and tear." With respect to the cessation of the operation of the Concession, the terms of Article XIV of the License Agreement shall govern and control. In the event that the terms of the Concession Agreement require that Sub-Concessionaire remove any alterations or improvements upon the expiration or earlier termination of this Sub-Concession Agreement, Sub-Concessionaire shall remove such alterations or improvements and restore the Concession Areas to their condition prior to the making of such improvements and alterations, repairing any damage occasioned by such removal or restoration and otherwise in the condition required under the Concession Agreement. In the event that Sub-Concessionaire does not make such removal in accordance with this Section 18, Concessionaire may remove the same (and repair any damage occasioned thereby), and dispose thereof, or at its election, deliver the same to any other place of business of Sub-Concessionaire, or warehouse the same, at Sub-Concessionaire's expense, plus interest at the [default rate/delinquent rate] set forth in the Concession Agreement.

19. REMOVAL OF SUB-CONCESSIONAIRE'S PROPERTY. Upon the expiration or earlier termination of this Sub-Concession Agreement, Sub-Concessionaire shall remove Sub-Concessionaire's articles of personal property, equipment and trade fixtures, as well as all cabling, wiring and servers brought onto the Concession Areas by Sub-Concessionaire (collectively, the "**Trade Fixtures**"); provided, however, that Sub-Concessionaire shall repair any injury or damage to the Concession Areas which may result from such removal, and shall restore the Concession Areas to the same condition as prior to the installation thereof and otherwise in the condition required under the Concession Agreement. If Sub-Concessionaire does not remove Sub-Concessionaire's Trade Fixtures from the Concession Areas prior to the expiration or earlier termination of the Term, Concessionaire may, at its option, remove the same (and repair any damage occasioned thereby and restore the Concession Areas as aforesaid) and dispose thereof or deliver the same to any other place of business of Sub-Concessionaire, or warehouse the same, and Sub-Concessionaire shall pay the cost (together with interest thereon at the [default rate/delinquent rate until paid) of such removal, repair, restoration, delivery or warehousing to Concessionaire on demand, or Concessionaire may treat said Trade Fixtures as having been conveyed to Concessionaire with this Sub-Concession Agreement as a bill of sale, without further payment or credit by Concessionaire to Sub-Concessionaire.

20. HOLDING OVER. Sub-Concessionaire shall have no right to occupy the Concession Areas or any portion thereof or to operate the Concession after the expiration or earlier termination of this Sub-Concession Agreement or after termination of Sub-Concessionaire's right to possession in consequence of an Event of Default hereunder. In the event Sub-Concessionaire or any party claiming by, through or under Sub-Concessionaire holds over, Concessionaire may exercise any and all remedies available to it at law or in equity to recover possession of the Concession Areas, and to recover damages, including without limitation, damages payable by Concessionaire to Authority, as well as any and all amounts incurred by Concessionaire under the Concession Agreement by reason of such holdover.

21. INDEMNITY AND RELEASE.

A. **Waiver by Sub-Concessionaire.** Sub-Concessionaire hereby releases and waives any and all claims against Concessionaire and Authority and each of their respective officers, directors, partners, agents and employees (collectively, the “**Indemnified Parties**”) for injury or damage to person, property or business sustained in or about the Airport or the Concession Areas by Sub-Concessionaire or by its employees, agents, representatives or invitees, other than by reason of the gross negligence or willful and wanton misconduct of any of the Indemnified Parties and except in any case which would render this release and waiver void under law.

B. **Indemnity by Sub-Concessionaire.** Except in the event of the gross negligence or willful and wanton misconduct of any of the Indemnified Parties, Sub-Concessionaire agrees to indemnify, defend and hold harmless each of the Indemnified Parties, from and against any and all claims, demands, costs and expenses of every kind and nature, including reasonable attorneys’ fees and litigation expenses, arising out of any claims for bodily injury, death or property damage relating to (i) Sub-Concessionaire’s use and occupancy of the Concession Areas and/or operation of the Concession, (ii) Sub-Concessionaire’s construction of any alterations or leasehold improvements in the Concession Areas, or (iii) any act or neglect of Sub-Concessionaire or its agents, officers, employees, guests, servants, invitees or customers in or about the Concession Areas and/or the Airport. In addition, Sub-Concessionaire agrees to indemnify, defend and hold harmless Concessionaire from any liability incurred by Concessionaire, under or with respect to the Concession Agreement, Concession Areas or as a result of any audit by the Authority, due to Sub-Concessionaire’s acts or omissions, including, without limitation, any breach or default on the part of Sub-Concessionaire in the performance of any agreement or covenant of Sub-Concessionaire under this Sub-Concession Agreement and/or under the Concession Agreement. In case any such proceeding is brought against any of said Indemnified Parties, Sub-Concessionaire covenants, if requested by Concessionaire, to defend such proceeding at its sole cost and expense by legal counsel reasonably satisfactory to Concessionaire.

C. **Indemnity by Concessionaire.** Concessionaire agrees to indemnify, defend and hold harmless Sub-Concessionaire from any liability incurred by Sub-Concessionaire as a result of any event of default by Concessionaire under the Concession Agreement, except for any such event of default that is caused by or results from a breach of Sub-Concessionaire’s obligations hereunder.

22. HAZARDOUS MATERIALS.

A. **Prohibited Use.** Sub-Concessionaire shall not cause or permit the receipt, storage, use, location or handling on the Concession Areas and at the Airport of any product, material or merchandise which is explosive, highly inflammable, or a hazardous or toxic material, as that term is hereafter defined, except as may be otherwise permitted by the Concession Agreement. Notwithstanding the foregoing, Sub-Concessionaire shall not be in breach of this provision as a result of the presence in the Concession Areas or at the Airport of minor amounts of hazardous or toxic materials which are in compliance with all applicable laws, ordinances and regulations, and/or are customarily present in the operation of a concession

similar to the Concession provided that Sub-Concessionaire's use, storage and handling of such materials is in compliance with all applicable laws, ordinances and regulations. "**Hazardous or toxic material**" shall include all materials or substances which have been determined to be hazardous to health or the environment and are regulated or subject to all applicable laws, rules and regulations from time to time, including, without limitation hazardous waste (as defined in the Resource Conservation and Recovery Act); hazardous substances (as defined in the Comprehensive Emergency Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act); gasoline or any other petroleum product or by-product or other hydrocarbon derivative; toxic substances (as defined by the Toxic Substances Control Act); insecticides, fungicides or rodenticide (as defined in the Federal Insecticide, Fungicide, and Rodenticide Act); and asbestos, radon and substances determined to be hazardous under the Occupational Safety and Health Act or regulations promulgated thereunder.

23. Environmental Indemnity. Without limiting in any way Sub-Concessionaire's obligations under any other provision of this Sub-Concessionaire Agreement, Sub-Concessionaire agrees to indemnify, defend and hold harmless the Indemnified Parties from and against all claims, damages, costs and expenses of every kind and nature, known or unknown, contingent or otherwise (including, without limitation, reasonable attorneys' fees, litigation, arbitration and administrative proceedings costs, expert and consultant fees and laboratory costs, as well as damages for the loss of the Concession Areas and sums paid in settlement of claims), which arise during or after the Term in whole or in part as a result of the presence or suspected presence of any hazardous or toxic materials, in, on, under, from or about the Concession Areas or the Airport due to Sub-Concessionaire's acts or omissions, on or about the Concession Areas or the Airport, unless such claims, damages, costs and expenses arise out of or are caused by the gross negligence or willful and wanton misconduct of any of the Indemnified Parties. The indemnities contained herein shall survive the expiration or earlier termination of this Sub-Concession Agreement.

24. DEFAULTS. Sub-Concessionaire agrees that any one or more of the following events, each of which shall be considered a material breach of this Agreement, shall be considered Events of Default hereunder:

A. Sub-Concessionaire shall default in any payment of the Concession Fees or any other monetary obligations or payments required to be made by Sub-Concessionaire hereunder when due as herein provided and such default shall not be cured within the time, if any, permitted for such cure; or

B. Sub-Concessionaire shall default in any of the other covenants and agreements herein contained to be kept, observed and performed by Sub-Concessionaire, and such default shall continue for thirty (30) days (or such shorter period as set forth in the Concession Agreement) after notice thereof in writing to Sub-Concessionaire (or within such period, if any, as may be reasonably required to cure such default if it is of such nature that it cannot be cured within such thirty-day period and Sub-Concessionaire proceeds with reasonable diligence thereafter to cure such default, not to exceed an additional one hundred twenty (120) days, or such shorter period as set forth in the Concession Agreement); or

C. Sub-Concessionaire shall breach a provision of the Concession Agreement or, by its breach of the terms of this Sub-Concession Agreement, cause a default under the Concession Agreement and such default shall not be cured within the time, if any, permitted for such cure under the Concession Agreement; or

D. Omitted; or

E. Sub-Concessionaire shall default under the terms of the License Agreement and such default shall not be cured within the time, if any, permitted for such cure under the License Agreement; or

F. Sub-Concessionaire commences a voluntary bankruptcy proceeding under the United States Bankruptcy Code or takes similar action under applicable state or foreign law; consents to entry of an order for relief against it in an involuntary bankruptcy proceeding under the United States Bankruptcy Code or take similar action in any proceeding under applicable state or foreign law; takes any corporate action, action in a legal proceeding or other steps towards, or consents to or fails to contest, the appointment of a receiver, trustee, assignee, administrator, examiner, liquidator, custodian or similar person or entity appointed under any federal, state or foreign law related to bankruptcy, expropriation, attachment, sequestration, distress, insolvency, winding-up, liquidation, readjustment of indebtedness, arrangements, composition, reorganization or other similar law for itself or any substantial part of its property; or makes any general assignment for the benefit of creditors; or

G. A court enters an order or decree that is an order for relief against Sub-Concessionaire in an involuntary bankruptcy proceeding under the United States Bankruptcy Code, or has similar effect under applicable state or foreign law; appoints a receiver, trustee, assignee, administrator, examiner, liquidator, custodian, or similar person or entity for Sub-Concessionaire or any substantial part of its property; garnishes, attaches, seizes, forecloses upon or takes similar action against Sub-Concessionaire or any substantial part of its property; or directs the winding-up or liquidation of Sub-Concessionaire or any substantial part of its property; or

H. A final, non-appealable judgment or arbitration award is entered against Sub-Concessionaire by any federal, state or foreign court, tribunal or arbitration panel in an amount exceeding One Million Dollars (\$1,000,000), which goes unsatisfied for more than ten (10) days; or

I. Sub-Concessionaire admits that it is insolvent or unable to pay its debts as they become due; or

J. Sub-Concessionaire violates the provisions of Section 12 of this Sub-Concession Agreement by attempting to make an unpermitted transfer or assignment, or by allowing an unpermitted use or occupancy to occur; or

K. Sub-Concessionaire defaults under the terms of any other agreement with Concessionaire, and such default shall not be cured within the time, if any, permitted for such cure under such agreements.

25. REMEDIES. Upon the occurrence of any one or more Events of Default, Concessionaire may exercise, without limitation of any other rights available to it hereunder or at law or in equity, any or all of the following remedies:

A. **Concession Agreement Remedies.** Any remedy against Sub-Concessionaire available to the Authority that Authority may exercise for default by Concessionaire pursuant to the terms of the Concession Agreement, each of which is incorporated herein.

B. **Termination of this Sub-Concession Agreement.** Concessionaire may, by providing notice to Sub-Concessionaire after any monetary Event of Default or a material non-monetary Event of Default, terminate this Agreement, effective on the date specified by Concessionaire in such notice. A material non-monetary Event of Default shall include, without limitation, any default under this Sub-Concession Agreement which could result, if not cured within any applicable cure period, in the termination of the Concession Agreement.

C. **Default Rate/Delinquent Rate Interest.** All payments becoming due from Sub-Concessionaire under this Sub-Concession Agreement and remaining unpaid as and when due shall bear interest until paid at the default rate set forth in the Concession Agreement. In addition, in the event that Concessionaire pays the Concession Fees or any portion thereof or any other fees owed to the Authority directly to the Authority upon an Event of Default, Sub-Concessionaire shall immediately upon demand reimburse Concessionaire therefor, which amount shall include interest at the default rate set forth in the Concession Agreement.

D. **Self-Help.** If Sub-Concessionaire fails timely to perform any of its duties under this Sub-Concession Agreement, in addition to all other remedies available to Concessionaire hereunder, Concessionaire shall have the right (but not the obligation), after the expiration of any grace or notice and cure period elsewhere under this Sub-Concession Agreement expressly granted to Sub-Concessionaire for the performance of such duty (except in the event of an emergency, or where prompt action is required to prevent injury to persons or property, in which case Concessionaire need not wait for the expiration of any applicable grace or notice and cure period under this Sub-Concession Agreement), to perform such duty on behalf and at the expense of Sub-Concessionaire without further prior notice to Sub-Concessionaire, and all sums reasonably expended or expenses reasonably incurred by Concessionaire in performing such duty.

26. NOTICES AND CONSENTS. All notices, demands, requests, consents or approvals which may or are required to be given by either party to the other shall be in writing and shall be deemed given when received or refused if sent by (i) United States registered or certified mail, postage prepaid, return receipt requested, or (ii) overnight commercial courier service, (a) if to Sub-Concessionaire, to the address set forth in Section 1(D) of this Sub-Concession Agreement, or such other place as Sub-Concessionaire may from time to time designate by notice in writing to Concessionaire or (b) if to Concessionaire, addressed to Concessionaire at the address specified in Section 1(C) or at such other place as Concessionaire may from time to time designate by notice in writing to Sub-Concessionaire. Each party agrees to deliver to the other party a copy of any notice (including, without limitation, any notice received via electronic mail), demand, request, consent or approval received from the Authority

within two (2) business days after receipt. In addition, each party agrees to deliver to the other party a copy of any notice (including, without limitation, any notice delivered via electronic mail), demand, request, consent or approval delivered to the Authority within two (2) business days after delivery to the Authority.

27. THE AUTHORITY. This Sub-Concession Agreement shall not (a) create privity of contract between Authority and Sub-Concessionaire, or (b) be deemed to have amended the Concession Agreement in any regard; provided, however, that the Authority shall be deemed a third party beneficiary for purposes of Sections 21 and 22 hereof.

28. SIGNAGE. Sub-Concessionaire shall have all rights to install, operate and maintain signage as set forth in the Concession Agreement.

29. BROKERAGE. Each party warrants to the other that it has had no dealings with any broker or agent in connection with this Sub-Concession Agreement and covenants to pay, hold harmless and indemnify the other party from and against any and all costs (including reasonable attorneys' fees), expense or liability for any compensation, commissions and charges claimed by any other broker or other agent with respect to this Sub-Concession Agreement or the negotiation thereof on behalf of such party.

30. MISCELLANEOUS.

A. **Representations.** Sub-Concessionaire represents and warrants to Concessionaire that this Sub-Concession Agreement has been duly authorized, executed and delivered by and on behalf of Sub-Concessionaire and constitutes the valid, enforceable and binding agreement of Sub-Concessionaire in accordance with the terms hereof. Concessionaire represents and warrants to Sub-Concessionaire that this Sub-Concession Agreement has been duly authorized, executed and delivered by and on behalf of Concessionaire and constitutes the valid, enforceable and binding agreement of Concessionaire in accordance with the terms hereof.

B. **No Waiver.** Failure of Concessionaire to declare any default or Event of Default or delay in taking any action in connection therewith shall not waive such default or Event of Default. No receipt of moneys by Concessionaire from Sub-Concessionaire after the expiration or earlier termination of the Term or of Sub-Concessionaire's right of possession hereunder or after the giving of any notice shall reinstate, continue or extend the Term or affect any notice given to Sub-Concessionaire or any suit commenced or judgment entered prior to receipt of such moneys.

C. **Rights and Remedies Cumulative.** All rights and remedies of Concessionaire under this Sub-Concession Agreement shall be cumulative and none shall exclude any other rights or remedies allowed by law.

D. **Successors and Assigns.** This Sub-Concession Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of parties hereunder.

E. **Integration.** This Sub-Concession Agreement, the APA, the Concession Agreement and the License Agreement, and all documents relating thereto, contain all of the

terms, covenants, conditions and agreements between Concessionaire and Sub-Concessionaire relating in any manner to the rental, use and occupancy of the Concession Areas. This Sub-Concession Agreement, and the License Agreement are intended to be and shall be interpreted as an integrated and non-severable unitary agreement governing the rental, use and occupancy of the Concession Areas, each of which is dependent upon the validity and enforceability of the other. No prior agreement or understanding pertaining to the same shall be valid or of any force or effect. The terms, covenants and conditions of this Sub-Concession Agreement cannot be altered, changed, modified or added to except by a written instrument signed by Concessionaire and Sub-Concessionaire.

F. **Governing Law; Forum.** This Sub-Concession Agreement shall be construed and enforced in accordance with the laws of the state in which the Airport is located.

G. **Waiver of Jury.** Concessionaire and Sub-Concessionaire each hereby waive their respective right to trial by jury of any cause of action, claim, counterclaim or cross-complaint in any action, proceeding and/or hearing brought by either Concessionaire against Sub-Concessionaire or Sub-Concessionaire against Concessionaire on any matter whatsoever arising out of, or in any way connected with, this Sub-Concession Agreement, the relationship of Concessionaire and Sub-Concessionaire, Sub-Concessionaire's use of the Concession Areas or operation of the Concession, or any claim of injury or damage, or the enforcement of any remedy under any law, statute, or regulation, emergency or otherwise, now or hereafter in effect.

H. **Confidentiality.** Sub-Concessionaire shall keep the content and all copies of this Sub-Concession Agreement and the Concession Agreement, all related documents and amendments, and all proposals, materials, information and matters relating hereto strictly confidential, and shall not disclose, divulge, disseminate or distribute any of the same, or permit the same to occur, except to the extent reasonably required for proper business purposes by Sub-Concessionaire's employees, attorneys, agents, insurers, auditors, lenders and permitted successors and assigns (and Sub-Concessionaire shall obligate any such parties to whom disclosure is permitted to honor the confidentiality provisions hereof) and except as may be required by law or court proceedings, and to the extent such materials and information are not already in the public domain.

I. **Notwithstanding.** Notwithstanding anything to the contrary set forth in this Sub-Concession Agreement, the Concession Agreement, and/or the APA, or set forth in any acceptance, acknowledgement, or consent with respect to any assignment or transfer of the Concession Agreement by Concessionaire, or any part thereof, the provisions hereof are and shall be subject to the covenants, representations, warranties, indemnifications, conditions, and limitations set forth in the foregoing documents, and Concessionaire is not relieved of its liability or obligations under the foregoing documents and/or any of them, to the Asheville Regional Airport Authority and/or the Greater Asheville Regional Airport Authority and/or their respective successors or assigns.

(Signature page follows)

IN WITNESS WHEREOF, the parties have executed this Sub-Concession Agreement as of the day and year first above written.

CONCESSIONAIRE

THE HERTZ CORPORATION,
a Delaware corporation

By: _____

Its: _____

Date: _____

SUB-CONCESSIONAIRE

By: _____

Its: _____

Date: _____

Exhibit A

Description and/or Depiction of Concession Areas

As described in the Concession Agreement.

Exhibit B

Concession Agreement

