

MEMORANDUM

TO: Real Estate & Transportation Committee
Commissioner Don Selvage, Chairman
Commissioner Justin Troller
Commissioner Phillip Walker

FROM: City Attorney's Office

DATE: September 6, 2016

RE: Rental Car Concession Agreement with The Hertz Corporation

Attached hereto for your consideration is a proposed Rental Car Concession Agreement with The Hertz Corporation (Hertz) for use of space at the Airport Terminal facility to provide rental cars to customers. Pursuant to this Agreement, the Airport will provide Hertz with the use of ticket counter and adjacent office space to operate. In addition, Hertz will utilize a minimum of thirty-three (33) parking spaces at the Airport for its business.

The Term of this Agreement is for a period of one (1) year, with a retroactive effective date of September 1, 2016 upon approval by the City Commission, with two (2) additional one (1) year renewal options upon mutual written agreement of the parties. In accordance with the Agreement, Hertz will pay a concession fee equal to 10% of its gross revenue collected from customers renting vehicles at the Airport. The concession fee will not apply to rentals of vehicles through insurance relationships provided such rentals do not constitute more than 10% of the total rental car activity by Hertz on the Airport premises.

It is recommended that the City Commission approve this Concession Agreement with Hertz and authorize the Airport to finalize and execute the Agreement consistent with the above-specified terms.

LAKELAND LINDER REGIONAL AIRPORT
RENTAL CAR CONCESSION
AGREEMENT

Date of Execution: _____
Initial Term: _____

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RENTAL CAR CONCESSION AGREEMENT

This Rental Car Concession (hereinafter referred to as "Agreement"), made and entered into this 6th day of September 2016, by and between the CITY OF LAKE LAND, a Florida municipal corporation (hereinafter referred to as the "City"), whose address is 228 S. Massachusetts Ave., Lakeland, Florida 33801 and THE HERTZ CORPORATION, whose address is 8501, Williams Road, Estero, Florida 33928 (hereinafter referred to as the "Concessionaire").

WITNESSETH:

Whereas the City is the owner and operator of the Lakeland Linder Regional Airport ("Airport"); and

Whereas, the City finds the provision and regulation of ground transportation services to Airport customers to be in the public interest and to be essential to the operation of the Airport; and

Whereas, the City finds that businesses providing ground transportation services to on and off Airport customers derive a special economic benefit from the City's ongoing airport operation, such that it is reasonable to raise funds to support the continued and ongoing operations of the Airport through fees imposed for the privilege of doing business with customers who use Airport facilities; and

Whereas, Concessionaire desires to enter into this Agreement for the purpose of operating a car rental business to serve Airport customers;

Now, therefore, the City and Concessionaire agree as follows:

ARTICLE 1

Nature of Payments and Rights Conferred

1.1 Concession Fee

As consideration for the concession granted by the City and in recognition of the economic benefit conferred upon Concessionaire because of the continued operation of the Airport, Concessionaire shall pay the fees described in Article 6.1 below. The concession fee is not rent but is in the nature of a franchise charged for the privilege of providing ground transportation services at the Airport.

It is the intent and understanding of the parties that the concession fee is paid for intangible rights and is not consideration for the use or occupancy of any real property owned by the City. Payment of the concession fee does not confer upon Concessionaire any right to use or occupy any real property owned by the City.

1.2 Use of Public Roads for Transportation Purposes

The City currently does not impose any toll or access or transportation fee for the use of the Airport access roads or Airport terminal curb. In the event the City decides after the effective date of this Agreement to impose a toll, fee or charge for the use of the Airport access roads or Airport terminal curb, Concessionaire shall be exempt from such tolls, fees or charges.

ARTICLE 2

Premises

2.1 Terminal Ticket Counter Space

The City shall make available for use by Concessionaire a ticket counter which includes both counter and office space located within the baggage claim area of the terminal building.

Concessionaire shall be required to operate and maintain ticket counter space throughout the term hereof subject to all terms and conditions hereof. The City reserves the right to assign the location of the ticket counter and associated office space to each Concessionaire, but will make reasonable efforts to accommodate the requests of each Concessionaire.

2.2 Ready Car Parking Spaces

The City shall make available space for the Concessionaires to park no less than a total of thirty-three (33) vehicles in the terminal complex area within short walking distance of the terminal building, said space hereinafter referred to as "ready car parking space." The City reserves the right to assign the location of the ready car parking spaces for use by each Concessionaire, but will make reasonable efforts to accommodate the requests of each Concessionaire as to the assignment of the ready car parking spaces. The City further reserves the right to assign such additional ready car spaces to each Concessionaire within the Airport parking lots, as the City in its sole discretion may determine reasonably can be dedicated to such use without interfering with the parking needs of Airport customers, employees and users.

The terminal ticket counter and office space and the ready car spaces assigned to the Concessionaire collectively are referred to herein as the "Premises". The Premises do not include, and this Agreement does not authorize the use of, any portion of the Airport for a quick turn around facility to be used for rental car refueling.

2.3 Pick Up and Return

Concessionaire shall not make any arrangements, nor permit or allow its employees to make any arrangements, with any customer of Concessionaire which would allow the customer to pick up or drop

off a rental vehicle on Airport property other than at an appropriate ready car parking space or other location approved by the City. In the event Concessionaire desires to use courtesy shuttle vehicles to transport customers between the terminal building and any such other approved location, Concessionaire shall obtain advance approval by the City and comply with all conditions specified by the City.

ARTICLE 3

Term

This Agreement shall be for a term beginning at 12:01 a.m. on September 1, 2016, and ending at Midnight on August 31, 2017 unless otherwise cancelled or terminated as provided herein, with two (2) additional one (1) year option of renewal upon mutual written agreement of the parties.

ARTICLE 4

Nonexclusive Concession and Restrictions

4.1 Grant of Nonexclusive Concession

In exchange for payment of the Concession Fee described in Article 6.1 below, the City hereby authorizes Concessionaire to operate a rental car business serving customers arriving at the Airport. This concession is nonexclusive, and the City reserves the right to grant similar concessions to no more than two (2) additional Concessionaires, to Fixed Base Operators to conduct on-Airport car rental services at their leaseholds and to as many non-concessionaires as the City finds, in its sole discretion, to be in the public interest.

4.2 Use and Rights

The rights granted hereunder are expressly limited to the operation of a rental car concession pursuant to the terms of this Agreement, including the rental of cars or taking of reservations for the rental of cars for delivery at other locations. Concessionaire shall also be entitled to sell or offer insurance incidental to the rental of its cars. The words "cars", "automobiles", and "vehicles" when used herein in the singular or plural shall include, but not be limited to, automobiles and vans. The word "rental" includes leasing.

4.3 Restrictions

Concessionaire agrees as follows:

- A. Concessionaire shall not solicit customers for hire nor transport customers on specific trips, nor for specified destinations, nor otherwise engage in the taxicab business, nor render the type of service to patrons or customers, which is customarily performed by taxicab and limousine services.
- B. Concessionaire shall not provide valet parking services nor a park and busing service for a fee from Concessionaire's place of business for customers other than Concessionaire's rental car

- customers.
- C. Concessionaire shall not enter into any business activity regulated by the City other than as permitted herein.
- D. Concessionaire shall not divert, or cause to be diverted, any car rental business from the Airport.
- E. Concessionaire's sale of fuel shall be limited to its rental car customers.

ARTICLE 5

Signage and Improvements

Except at the sole discretion and prior written approval of the City, the Concessionaire shall not make any improvements or erect, maintain or display any signs or any advertising at or on the exterior parts of the Premises or in the Premises so as to be visible from outside the Premises.

5.1 Signs

Concessionaire shall have the right to install identification signs(s) on its Premises pertaining to customer information normally needed for day to day operations. Such sign(s) shall be at locations, in the number and of types, sizes and designs approved in writing in advance by the City. Concessionaire is expressly prohibited from erecting signs, displaying advertisements of any kind, in any other manner outside the Premises without the City's written consent. If Concessionaire fails to promptly remove such unauthorized signs after written notice from the City, the City reserves the right to terminate the use by Concessionaire of any facility within which the Concessionaire may be in violation of this Article 5.1 or at its option, require the payment of an advertising fee of one hundred dollars (\$100.00) per day per square foot or part thereof of space occupied by the material or device not authorized in writing by the City or to cause removal of the unauthorized material or device, without liability to the City.

Upon the expiration or termination of this Agreement, the Concessionaire shall remove, obliterate or paint out, as the City may direct, any and all signs and advertising on the Premises and, in connection therewith, shall restore the portion of the Premises affected by such signs or advertising to the same conditions as the same existed prior to the placing thereon of such signs or advertising. In the event of a failure on the part of the Concessionaire to remove, obliterate or paint out each and every sign or advertising and to restore the Premises and the Airport, the City may perform the necessary work and the Concessionaire shall pay the reasonable costs thereof to the City.

5.2 Improvements

Concessionaire shall have the right, at its sole expense, to install or erect upon the Premises provided hereunder such improvements and facilities as may be required consistent with the terms of this

Agreement and Concessionaire's operations hereunder, including but not limited to, computer terminals, storage drawers and racks, reservation display racks, modesty screening and the like. No such improvement(s) shall be made or installed by Concessionaire without the prior written approval of the City. Concessionaire covenants and agrees prior to the installation or making of any such improvements, to submit for approval of the City a plan acceptable to the City, depicting design and character of proposed improvements.

ARTICLE 6

Rents, Fees and Payments

6.1 Concession Fee Payments

As consideration for the privilege of doing business with Airport customers and the grant of intangible concession rights conferred hereunder, Concessionaire agrees to pay the City a concession fee of ten percent (10%) of gross revenues for the term of the Agreement exclusive of rentals as a result of insurance related relationships. If the percentage of activity of this type of activity for the Concessionaire exceeds ten percent of its activity both the Concessionaire and the City will revisit this activity to determine what if any fees would apply.

Concessionaire shall submit to the Airport by the 20th day of the second and each succeeding month of the term hereof one copy of an accurate statement of Gross Revenues for the preceding month, and simultaneously therewith shall pay the Airport an amount of ten percent (10%) of the Gross Revenues of the preceding month. This statement shall be certified by a manager properly authorized to provide and certify the statement on behalf of Concessionaire.

6.2 Concession Pass-Through

The City will not prohibit Concessionaire from charging its customers sum or all of the concession fee paid by Concessionaire to the City. The charge shall be collected as a percentage (not to exceed 10%) of all items leased or sold by the customer that fall within the definition of items composing "Gross Revenues" as defined in Article 6.3. The City does not require or endorse this practice but will not prohibit it provided that Concessionaire meets ALL of the following conditions:

- A. Fee shall be titled "Concession Recoupment Fee."
- B. Fee shall not be included, associated with, or implied as a tax on the Airport customer invoice.
- C. Fee assessed to the customer shall not exceed the percentage fee paid by Concessionaire to the City.
- D. Fee shall not be identified, implied, or referred to as a tax or as a City-imposed charge by anyone employed by or associated with Concessionaire, including counter personnel and

reservation agents.

Failure to comply with the above rules at all times will result in Concessionaire losing its right to impose this charge during the term of this Agreement.

6.3 Definition of Gross Revenues

- A. "Gross Revenues" as used herein shall mean the total amount actually charged to the customers arriving or dropping off through operations of the Airport prior to leasing a vehicle, after discounts whether for cash or credit or whether collected or uncollected by Concessionaire for or in connection with the use of a vehicle and any additional services including but not limited to:
- (1) all insurance services charged to customer including Personal Accident Insurance;
 - (2) Concessionaire pass-through charges as stated in Article 6.2.
 - (3) All charges for LDW (Limited Damage Waiver) and LCW (Limited Collision waiver)that exceed \$7.00/day on limited coverage and \$10.00/day for full coverage on LDW and LCW as allocated to national rental accounts.

For purposes of calculating Gross Revenues, it shall be conclusively presumed that all customers leasing vehicles at Concessionaire's Premises arrived through operations of the Airport prior to leasing the vehicle.

Gross revenues may not be reduced by promotional or other discounts not given directly to the customer arriving through the Airport operations renting a vehicle (i.e. Promotional discounts given to other entities at a certain volume of customers participating in a program).

- B. "Gross Revenues" shall not include:
- (1) the amounts of any federal, state, or county sales taxes and Florida State surcharge separately stated on the rental agreement and collected from the customers of Concessionaire now or hereafter levied or imposed and paid to the appropriate taxing entity (rental fees charged to recover business costs are not taxes and are not excluded from Concessionaire income); or
 - (2) any sums received by Concessionaire from customers for damage to automobiles or Concessionaire's property, or loss, conversion, or abandonment of such automobiles; or
 - (3) any sums received by reason of Concessionaire's disposal of capital assets and/or trade fixtures;
 - (4) any sums received by Concessionaire for LCW and/or LDW charges that are separately

stated and charged to Concessionaire's customer in their sales contract.

- (5) all charges for LDW and LCW up to and including \$7.00/day on limited coverage and \$10.00/day for full coverage on LDW and LCW as allocated to national rental accounts.
- (6) any sums billed and paid by customers for fueling or refueling services.
- (7) any amounts received for payment or administration of red light tickets, parking tickets, other governmental fines and fees, tolls, towing and impounded vehicles

It is understood and agreed that all losses, or charge-backs are to be borne solely by Concessionaire and that the City is to be paid on the Gross Revenue without charge or reduction for costs of losses.

6.4 Interest on Late Rentals/ Fees or Charges

In the event Concessionaire fails to make timely payment of any rentals/fees, charges, and payments due and payable in accordance with the terms of this Agreement within ten (10) days after same shall become due and payable, interest at the maximum rate allowed by law or 1.5% per month, whichever is the lesser, shall accrue against the delinquent payment from the date due until the date payment is received by the City. The foregoing shall in no way be construed as a waiver of any right granted the City in Article 10 below, nor shall this provision be construed to prevent the City from terminating this Agreement for cause or from exercising any other right or from enforcing any other provision contained herein or implied by law.

6.5 Service Charge for Worthless Check

In the event Concessionaire delivers a worthless check or draft to the City in payment of any obligation arising under this Agreement, Concessionaire shall incur a service charge of Twenty Dollars (\$20.00) or five percent (5%) of the face amount of such check, whichever is greater; or, if Florida Statute § 832.07 is amended, such other fee as shall be set by said statute.

6.6 Revenue Reports and Payments

Concessionaire shall pay all rents (in its capacity as Concessionaire), fees, charges, and billings required by this Agreement to the following address:

LAKELAND LINDER REGIONAL AIRPORT
3900 Don Emerson Drive, Suite 210
Lakeland, FL 33811

All reports and other correspondence should be addressed as indicated in the Article hereof entitled, "Notices and Communications."

6.7 Parking Fee

The City does not presently charge a fee to park in the Airport parking lots. Should the City decide in its sole discretion to charge for parking at the Airport, the City may assess a parking fee upon Concessionaire following written notice of such parking fee for Concessionaire's use of the assigned ready car spaces, in addition to the concession fee provided in Article 6.1.

ARTICLE 7

Accounting Records and Audits

7.1 Books and Records

Concessionaire shall maintain during the term of this Agreement all books of account and records for the Airport business location customarily used in this type of business operation, in conformity with generally accepted accounting principles, and for such period of time thereafter as provided herein, unless otherwise approved by the City. The City or its authorized representative shall be permitted to audit and examine all such books of account and records at any time during normal business hours, including federal and state tax returns relating to Concessionaire's operations hereunder and including franchisee/licensee records and audits of all business transactions and records of sale at any business locations of Concessionaire within the City. Concessionaire agrees that records and instruments will be available to the City for at least two (2) years after the close of the agreement term. Concessionaire shall maintain a record of each rental agreement written at the Airport, including a copy of each original agreement signed by Concessionaire's customer. The rental agreement shall be identified to indicate that the Airport is the originating location. Accountability for the numerical sequence of contracts issued and unissued shall be maintained. Accounting records of Concessionaire shall be stored sequentially, or in such other manner approved by the Airport, to provide reasonable and expeditious access for audit purposes hereunder.

7.2 Audit

Within ninety (90) days after each anniversary of the commencement date of this Agreement, Concessionaire shall provide, at its sole cost and expense, an audit by an independent certified public accountant, licensed in the State of Florida and acceptable to the City, of monthly Gross Revenues, as defined under Article 6.3. There may be no limitation on the scope of the examination that would hinder the auditor in expressing his opinion as to the correctness and completeness of the reported revenues. The examination shall include a schedule of Gross Revenues and concession fees per month of Concessionaire's operations under this Agreement, prepared in accordance with the comprehensive

basis of accounting defined under terms of the Agreement and reported in format acceptable to the City. The auditor shall consider in determining scope, the appropriateness of classification of car rental revenues for rental agreements being written at Concessionaire locations (on or off Airport) that fall within the definition of Gross Revenues under Article 6.3 for any pickup or drop off activity at the Airport. The examination shall be conducted in accordance with generally accepted auditing standards. In addition, the examination shall also comprehend compliance procedures to determine whether accounting records and reports are being maintained in accordance with this Article 7. The auditor shall report such procedures and findings in a separate letter to the City. Any change in scope from that described above shall be included in the report. The first such examination shall cover twelve (12) full calendar months from the effective date of this Agreement. Each subsequent annual report shall cover successive twelve month periods. The last such report shall include the last day of operations. Any unreported revenues determined by the certified report are considered due by the fifteenth (15th) day of the month following the month during which the Gross Revenues were received or accrued. Delivery of an audit report containing a qualified opinion, an adverse opinion, or a disclaimer of opinion as defined in the Statements on Auditing Standards, or as same may from time to time be amended or superseded, issued by the Auditing Standards Board of the American Institute of Certified Public Accountants, or any successor board or agency thereto, shall be deemed to be a material breach of this Agreement.

7.3 Special Audit

Notwithstanding the annual audit by Concessionaire requirement of this Article, the City or its representative may at any time perform special audits of all or selected operations performed by Concessionaire under the terms of this Agreement. Within sixty (60) days after receipt of a written request from the City for a special audit, Concessionaire shall provide, at its sole cost and expense, the books of account and records requested by the City for the special audit. If the books of account and records are kept at locations other than the Airport, Concessionaire shall arrange for them to be brought to a location convenient to the auditors for the City in order for the City to conduct the special audit as set forth in this Article, or Concessionaire may at its option transport the City audit team to Concessionaire's headquarters for purposes of undertaking said audit. In such event, Concessionaire shall pay reasonable costs of transportation, food and lodging for the City's audit team.

A special audit report will be issued by the City or its representative and made available to Concessionaire. There may be no limitation in the scope of the examination that would hinder the City or its authorized representative in testing the accuracy and completeness of the reported revenue. Failure to maintain books of account and records as defined in Article 7.1 herein or a scope limitation that hinders testing the accuracy and correctness of reported revenue shall be deemed to be a material breach of this agreement. Concessionaire shall have thirty (30) calendar days to comment in writing on

the special audit report. Failure of Concessionaire to submit such written comments shall constitute acceptance of the special audit report as issued.

ARTICLE 8

Security for Payment

8.1 Security Options

To provide security for the rentals, fees, charges, and performance required hereunder, Concessionaire shall comply with either of the following two (2) options:

- A. Post with the City a surety bond to be maintained throughout the term of this Agreement in an amount of \$50,000.00 Such bond shall be issued by a surety company acceptable to City and authorized to do business in the State of Florida and shall be in the form and content prescribed by the City.
- B. Deliver to the City an irrevocable letter of credit drawn in favor of the City upon a bank which is satisfactory to the City and which is authorized to do business in the State of Florida. Said irrevocable letter of credit shall be in an amount equal to \$25,000.00 as set forth in this Agreement, shall be kept in force throughout the term of this Agreement and shall be in the form and content prescribed by the City.

8.2 Satisfactory Performance

The refund of the surety bond or irrevocable letter of credit required pursuant to this Article 8.1 shall be conditioned on the satisfactory performance of all terms, conditions, and covenants contained herein throughout the entire term of this Agreement.

ARTICLE 9

Service Standards

9.1 Quality of Service

Concessionaire shall furnish good, prompt, efficient and courteous service, adequate to reasonably meet all advertised services and holiday, seasonal and other reasonable demands for automobile rental service at the Airport, including the providing of devices to make available rental car service to persons with disabilities consistent with state and federal law. Concessionaire shall maintain close supervision over all employees to ensure maintenance of a high quality of service and courtesy to the public, and prudent, safe use of the Airport roadway system. Concessionaire shall, within reason, control the conduct, demeanor and appearance of its employees, invitees, and of those doing business with it and, upon objection from the City concerning the conduct, demeanor and appearance of any such persons, shall immediately take all reasonable steps necessary to remove the cause of objection. The performance or nonperformance of all obligations stated in this paragraph is to be determined at the sole discretion of the City.

9.2 Condition of Automobiles

Concessionaire shall furnish rental automobiles in good operative order, free from known mechanical defects and in clean, neat and attractive condition inside and outside and as advertised for rental to its potential customers. Said automobiles shall be late models manufactured not more than two (2) years prior to the rental thereof. The purpose of this provision is to ensure Concessionaire maintains a fleet of late model vehicles for rent.

9.3 Period of Operation

The facilities to be provided by Concessionaire hereunder for the purpose of providing automobile rental service shall remain open for such periods during each day and such days during each week as may be necessary to meet seasonal, holiday and other reasonable demands for automobile rental services. Terminal rental sales counters shall be staffed with at least one (1) Concessionaire representative a minimum of five days a week, or 40 hours a week through the term hereof.

9.4 Personnel

Personnel performing services hereunder shall be neat, clean and courteous and uniformed in a manner acceptable to the City. Concessionaire shall not permit its agents, servants, or employees so engaged to solicit tips, to drive in an unlawful or reckless manner, to conduct business in a loud, noisy, boisterous, offensive or objectionable manner, to solicit business outside its own rental sales counter space(s) in any manner whatsoever, or to offer any service not directly authorized or related to the rental of automobiles hereunder.

9.5 Payment of Obligations

Concessionaire shall pay all applicable sales taxes on rentals and ad valorem taxes and any other taxes or assessments against the Premises. Concessionaire reserves the right to contest any such taxes and withhold payment of such taxes, so long as the nonpayment of such taxes does not result in a lien against the Premises or a direct liability on the part of the City. Concessionaire shall notify the City in writing when contesting such taxes.

9.6 Maintenance of Premises

Concessionaire shall keep clean, repair and maintain in good order and condition the facilities from which it operates its concession business as well as its signs, furniture, fixtures and equipment installed therein and thereon. If not so cleaned, repaired and maintained, after reasonable notice, the City reserves the right to enter the Premises of Concessionaire and perform required repair, maintenance and cleaning; and Concessionaire shall be liable for one hundred and fifty percent (150%) of the City's

labor and material costs. Notwithstanding the foregoing, the City shall remain responsible for the exterior of the facilities, structural repairs thereto, as well as all building systems including but not limited to HVAC, plumbing and electrical.

9.7 Nationwide Reservation System

Throughout the term hereof, Concessionaire shall participate in a national reservation system. The purpose of this requirement is to ensure that any member of the traveling public can pre-reserve a rental vehicle for use upon arrival at this Airport from any major city in the continental United States.

ARTICLE 10

Default and Termination

10.1 City's Rights of Termination

The City, in addition to any other right of termination herein given to it or any other rights to which it may be entitled by law or in equity or otherwise, may cancel this Agreement by giving Concessionaire at least thirty (30) days' advance written notice of such termination, to be served as hereinafter provided, upon or after the happening of any one or more of the following events (Events of Default):

- A. if Concessionaire fails to make due and punctual payment of any fees or charges payable hereunder on the date specified for such payments and such default shall continue for a period of fifteen (15) business days after receipt of written notice from the City of such nonpayment;
- B. the filing by Concessionaire of a voluntary petition in bankruptcy or any assignment for benefit of creditors of all or substantially all of Concessionaire's assets;
- C. any institution of proceedings in bankruptcy against Concessionaire and continuation thereof for a period of ninety (90) days;
- D. the taking of jurisdiction by a court of competent jurisdiction of Concessionaire or its assets pursuant to proceedings brought under the provisions of any federal reorganization act;
- E. the appointment of a receiver or trustee of Concessionaire's assets by a court of competent jurisdiction or by a voluntary agreement with Concessionaire's creditors;
- F. the abandonment by Concessionaire of the Premises or the conduct of its business with the Airport customers and, in this connection, suspension of operations for a period of ten (10) days will be considered abandonment in the absence of a labor strike in which Concessionaire is directly involved;
- G. if Concessionaire is prevented for a period of thirty (30) days, from conducting its business with the Airport customers, or it is so prevented from conducting any business at the Airport, either by:

- (1) reason of the United States or any agency thereof, acting directly or indirectly, taking possession of, in whole or substantial part, the Premises or premises required for the actual operation of Concessionaire's business at the Airport, or
 - (2) if all or a substantial part of the Premises shall be acquired through the process of eminent domain;
- H. the failure of Concessionaire to use the Premises in accordance with the terms and conditions of this Agreement following written notice of any alleged failure;
 - I. the failure of Concessionaire within thirty (30) days after receipt of written notice from the City, to keep, perform or observe any term, covenant or condition of this Agreement to be kept, performed or observed by Concessionaire; provided, however, that if by its nature such default cannot be cured within such thirty (30) day period, then such default shall not constitute an Event of Default if Concessionaire commences to cure or remove such default within said thirty (30) day period and thereafter pursues the curing or removal of such default with due diligence;
 - J. if Concessionaire shall fail to provide the Contract Security in accordance with Article 8 or to renew or replace such Contract Security on or before the date on which the same is required hereunder; or
 - K. the intentional diversion, through direct or indirect means, of rental car revenues from the inclusion in gross revenues as defined in this Agreement. A shortage of rental cars at the Airport while having rental cars available at other locations within Polk County and renting such cars to a potential customer that arrived at the Airport and not including the resulting rental car revenue in the gross revenues defined in this Agreement shall constitute such an intentional diversion. The taking of a reservation, advising or suggesting to a potential customer arriving through operations of the Airport that the customer rent a car at another location of Concessionaire within Polk County regardless of the reason and not including the rental car revenue resulting from such transaction in gross revenues, as defined in this Agreement, shall constitute an intentional diversion. The performance of any other acts that could reasonably be construed as diversion of potential Airport rental car revenues from gross revenues as defined in this Agreement shall constitute an intentional diversion.
 - L. Non-Compliance with Florida Statute 287.133 - Concerning Criminal Activity on Contracts with Public Entities

10.2 No Waiver of Default

The failure by the City to take any authorized action upon default by Concessionaire of any of the terms, covenants or conditions required to be performed, kept and observed by Concessionaire shall not be construed to be or act as a waiver of said default or of any subsequent default of any of the terms, covenants and conditions herein contained to be performed, kept and observed by Concessionaire.

10.3 Payment after Default

The acceptance of fees or charges by the City from Concessionaire for any period or periods after a default by Concessionaire of any of the terms, covenants and conditions herein required to be performed, kept and observed by Concessionaire shall not be deemed a waiver or estoppel of any right on the part of the City to cancel this Agreement for failure by Concessionaire to so perform, keep or observe any of said terms, covenants or conditions.

10.4 Termination and Reletting

Should there occur an early termination of this Agreement pursuant to the terms of Section 11 hereof, the City shall have the right to reenter the Premises, make repairs necessary, and enter into another agreement, or any part thereof, for the remainder of the term hereof. In the event of such early termination, Concessionaire shall remain liable to the City for the full amount of all fees and charges, except the percentage fee under Article 6.1, and shall continue to pay the same or such part thereof that remains unpaid after the application of the fees and charges collected by the City from such other agreement and privileges or any part thereof. Concessionaire shall remain liable for such payments whether or not another agreement is entered into, the City's responsibility being in mitigation of damages as provided herein.

10.5 Concessionaire's Right of Termination

In addition to any other right of cancellation herein given to Concessionaire or any other rights to which it may be entitled by law, as long as Concessionaire is not in default in payment to the City of any amounts due the City under this or any other agreement, Concessionaire may terminate this Agreement by giving the City thirty (30) days' advance written notice, to be served as hereinafter provided, upon or after the happening of the following events:

- A. the permanent abandonment of scheduled or unscheduled commercial passenger air carrier operations at the Airport;
- B. the default by the City of any of the covenants or conditions contained herein and the failure of the City to remedy such default for a period of sixty (60) days after its receipt from Concessionaire of written notice to remedy the same;
- C. Concessionaire shall be prevented for a period of thirty (30) days, after exhausting or abandoning all appeals, by an action of any government, board, agency or offices having jurisdiction thereof, from conducting its business with airline customers arriving at the Airport or it is so prevented from conducting any business at the Airport by reason of a taking of possession of the Premises by the U.S. Government.

ARTICLE 11

City's Right to Replace Concessionaire

In the event Concessionaire fails to perform under the terms of this Agreement, and this Agreement is terminated, the City reserves the right to replace Concessionaire utilizing any means considered to be in the best interest of the City. In such event, the new concessionaire, if replacing a Concessionaire, shall be placed last in ranking for space assignment purposes without regard to the financial consideration under terms and conditions no more favorable than those contained herein. Additionally, the City shall have the right to assign to such new Concessionaire a number of ready car spaces not to exceed the number of spaces allotted to the replaced concessionaire spaces.

ARTICLE 12

Title to Improvements

All permanent improvements of whatever kind or nature, including but not limited to, all buildings and all equipment installed therein which, under the laws of the State of Florida, are part of the realty, heating and air conditioning equipment, interior and exterior light fixtures, fencing, landscaping, paving, and all other permanent improvements which become part of the realty placed upon the Premises, with or without consent of the City, shall become and be deemed to be a part of the Premises and shall become the property of the City, upon expiration or default of this Agreement and shall remain on the Premises at the expiration of the term hereof unless otherwise agreed to in writing. Title to all personal property, furnishings and trade fixtures shall be and remain with Concessionaire and may be removed from the Premises at any time, provided Concessionaire is not then in default hereunder, and further provided Concessionaire exercises care in the removal of same and repairs any damage to the Premises caused by said removal.

ARTICLE 13

Construction Lien

The City's interest in said Premises shall not be liable for or subject to any construction lien whether the City has given its written approval for the improvements or otherwise; Concessionaire shall save and hold harmless the City and its interest in the Premises from any such lien or purported lien. Within fifteen (15) days of filing of any lien, Concessionaire shall cause same to be satisfied or shall bond off the lien. At the request of the City, Concessionaire will execute a memorandum of Agreement reciting the basic terms of this Agreement, including this provision, which memorandum, at the City's option, may be recorded in the Public Records of Polk County, Florida.

ARTICLE 14

Taxes, Permits, Licenses

Concessionaire shall bear, at its own expense, all costs of operating its equipment and business, including any and all taxes assessed against its interest in the Premises, including any sales tax imposed on the and concession fee payments, furnishings, equipment or stocks of merchandise and supplies and shall obtain and pay for all permits, licenses, or other authorizations required by the City or other governmental entity in connection with the operation of its business at the Airport. Concessionaire shall have the right to challenge any and all taxes assessed against its interest at its own expense.

ARTICLE 15

Insurance

During the life of the Agreement, Concessionaire shall provide, pay for, and maintain with insurance carriers satisfactory to the City, the types of insurance described herein. All insurance shall be from responsible companies duly eligible to do business in the State of Florida and Concessionaire may self-insure the insurance described herein. All Liability Policies of Concessionaire under this Agreement shall also provide the Severability of Interest Provision. The insurance coverages and limits required shall be evidenced by properly executed Certificates of Insurance. The Certificate shall be signed by the Authorized Representative of the insurance company shown in the Certificate with proof that he/she is an authorized representative thereof. The required policies of insurance shall be performable in Polk County, Florida and shall be construed in accordance with the laws of the State of Florida. In lieu of providing the required policies of insurance set forth herein, should the Concessionaire decide to self-insure, then, it shall provide to the City of Lakeland for approval the following: (i) a certificate of self-insurance evidencing its financial ability to self-insure, and (ii) a copy of its most recent 10-K filed with the SEC.

Thirty (30) days' prior written notice by registered or certified mail shall be given the City of any cancellation, intent not to renew, or reduction in the policies' coverages except in the application of the Aggregate Limits Provisions. In the event of a reduction in any Aggregate Limit, Concessionaire shall take immediate steps to have it reinstated. If at any time the City requests a written statement from the insurance company as to any impairments to the Aggregate Limit, Concessionaire shall promptly authorize and have delivered such statement to the City. Concessionaire shall make up any impairment when known to it. Concessionaire authorizes the City and the City of Lakeland's Director of Risk Management and Purchasing and LLRA's Insurance Consultant to confirm all information furnished the City, as to its compliance with its Insurance Requirements, with Concessionaire's insurance agents, brokers, and insurance carriers. All insurance coverages of Concessionaire shall be primary to any insurance or self-insurance program carried by the City of Lakeland for this Agreement.

The acceptance of delivery to the City of any Certificate of Insurance evidencing the insurance coverages and limits required does not constitute approval or agreement by the City that the insurance requirements have been met or that the insurance policies shown in the Certificates of Insurance are in compliance with the Agreement Insurance Requirements.

The Certificate of Insurance evidencing compliance with the insurance requirements outlined therein must be filed with and approved by the City prior to any activity being performed at the Airport by Concessionaire.

The insurance coverages and limits required of Concessionaire are designed to meet the minimum requirements of the City. They are not designed as a recommended insurance program for Concessionaire. Concessionaire alone shall be responsible for the sufficiency of its own insurance program.

Concessionaire and the City understand and agree that the minimum limits of the insurance herein required may become inadequate, and Concessionaire agrees that it will increase such minimum limits upon receipt of written notice. Increases in the minimum limits of the insurance requirements may be required at any time in accordance with commercially reasonable levels and indemnification awards being granted by the courts.

If any General Liability Insurance required herein is to be issued or renewed on a "claims made" form as opposed to the "occurrence" form, the retroactive date for coverage shall be no later than the commencement date of the Agreement and shall provide that in the event of cancellation or non-renewal, the discovery period for insurance claims (Tail Coverage) shall be unlimited.

All of the required insurance coverages shall be issued as required by law and shall be endorsed, where necessary, to comply with the minimum requirements contained herein. The City of Lakeland shall be named as an additional insured and same shall be indicated on the certificate. Thirty (30) days' advance written notice of cancellation, intent not to renew any policy or any change that will reduce the insurance coverages required except for the application of the Aggregate Limits Provisions shall be given to:

LAKELAND LINDER REGIONAL AIRPORT
3900 Don Emerson Drive Suite 210
Lakeland, FL 33982

Renewal Certificates of Insurance shall be provided to the City a minimum of ten (10) days prior to expiration of current coverages so that there shall be no interruption in the operations of Concessionaire due to lack of proof of insurance coverages required of Concessionaire in this Agreement.

The City may terminate or suspend this Agreement should Concessionaire, in the opinion of the City's Director of Risk Manager or authorized designee, fail to provide or maintain; (1) the insurance coverages required in this Agreement, The amounts and types of insurance shall conform to the following minimum requirements with the use of Insurance Service Office (ISO) policies, forms and endorsements or broader where applicable. Notwithstanding the foregoing, the wording of all policies, forms, and endorsements must be acceptable to the City.

1. Workers' Compensation and Employers' Liability Insurance shall be maintained in force during the term of the Agreement for all employees engaged in the operations of Concessionaire, in accordance with the laws of the State of Florida. Employers' Liability Insurance shall also be maintained with limits of not less than:

Workers' Compensation	Florida Statutory Requirements
Employers' Liability	\$ 500,000 Limit Each Accident
	\$ 500,000 Limit Disease Aggregate
	\$ 500,000 Limit Disease Each Employee

2. Commercial General Liability Insurance shall be maintained by Concessionaire. Coverage shall include Premises & Operations, Personal Injury, Contractual for this Agreement, Independent Contractors, and Broad Form Property Damage including Completed Operations.

Limits of Coverage shall not be less than:
\$1,000,000 Combined Single Limit Each Occurrence
Bodily Injury, Personal Injury, and Property Damage Liability
\$1,000,000 Each Occurrence and Aggregate for liability
associated with all operations under this specific Agreement
The Aggregate limits shall be separately applicable to this
specific Agreement.

Should Concessionaire's General Liability Insurance be written or renewed on the Comprehensive General Liability Form, then the limits of coverage required shall not be less than:

\$1,000,000 Combined Single Limit Each Occurrence
Bodily Injury & Property Damage Liability

3. Automobile Liability Insurance shall be maintained by Concessionaire as to the ownership, maintenance, and use of all owned, non-owned or hired vehicles to be used on the Airport with limits of not less than:

Bodily Injury Liability	\$1,000,000 Limit Each Person
	\$1,000,000 Limit Each Accident
Property Damage Liability	\$1,000,000 Limit Each Accident

OR

Bodily Injury and Property Damage Liability	\$1,000,000 Combined Single Limit Each Occurrence
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4. Umbrella Liability Insurance or Excess Liability Insurance, used to reach the limits of Liability required, shall not be less than \$1,000,000 Each Occurrence and Aggregate. The limits of Primary Liability Insurance for the General Liability and Employers' Liability Insurance Coverages required in this section shall be not less than \$500,000 Combined Single Limit Each Occurrence and Aggregate where applicable for Bodily Injury, Personal Injury, & Property Damage Liability.

ARTICLE 16

Indemnification

Concessionaire agrees to protect, defend, reimburse, indemnify and hold the City, its agents, employees and elected officers and each of them, free and harmless at all times from and against any and all claims, liability, expenses, losses, costs, fines and damage (including attorney fees) and causes of action of every kind and character against or from the City by reason of any damage to property or the environment, including any contamination of Airport property such as the soil or storm water by fuel, gas, chemicals or other substances deemed by the United States Environmental Protection Agency or the Florida Department of Environmental Protection to be environmental contaminants at the time this Agreement is executed or as may be redefined by the appropriate regulatory agencies in the future, or bodily injury (including death) incurred or sustained by any party hereto, any agent or employee of any party hereto, and any third or other party whomsoever, or any governmental agency, arising out of or incident to or in connection with Concessionaire's performance under this Agreement, Concessionaire's use or occupancy of the Premises, Concessionaire's acts, omissions or operations hereunder or the performance, nonperformance or purported performance of Concessionaire or any breach of the terms of this Agreement. Concessionaire recognizes the broad nature of this indemnification and hold harmless clause, and voluntarily makes this covenant and expressly acknowledges that it is an express condition of this Agreement. This clause shall survive the termination of this Agreement. Compliance with the insurance requirements as attached hereto shall not relieve Concessionaire of its liability or obligation to indemnify the City as set forth in this Article.

ARTICLE 17

Casualty

In the event the Premises or a portion thereof is rendered uninhabitable by fire or other casualty, the City shall have the option of terminating this Agreement or rebuilding or relocating the Premises, and in the event of such casualty written notice of the election by the City shall be given to Concessionaire within thirty (30) days after the occurrence of such casualty. In the event the City elects to rebuild the Premises, the Premises shall be restored to its former condition within a reasonable time. In the event the City elects to terminate this Agreement, the Concession fee shall be paid to and adjusted as of the date of such casualty, and the term of this Agreement shall then expire and this Agreement shall be of no further force or effect and the City shall be entitled to sole possession of the Premises. In the event the City elects to relocate the Premises, the concession fee shall continue.

ARTICLE 18

Compliance with Laws, Regulations, Ordinances, Rules

Concessionaire shall at all times comply with applicable federal, state and local laws and regulations, Airport Rules and Regulations, all applicable health rules and regulations and other mandates and directives whether existing or as promulgated from time to time by the federal, state or local government, the City or Airport Management, including but not limited to permitted and restricted activities, security, safety, parking, ingress and egress, environmental and storm water regulations and any other matters related to safety, security and environmental protection at the Airport. This shall include, but not be limited, to Concessionaire precluding its employees, agents, customers or invitees from entering upon any restricted area of the Airport as identified by the City or as noted in procedures, rules, regulations or plans adopted the City pursuant to 49 CFR Parts 1540 and 1542 as the same currently exists or as revised, modified or amended from time to time. In addition to other remedies provided hereunder, any violation of Airport security procedures and directives or 49 CFR Parts 1540 and 1542 shall subject Concessionaire to an administrative damage payment of five hundred dollars (\$500.00) (in consideration for the administrative processing required by the City to process and to respond to a violation) and to damages equal to the greater of (1) one thousand dollars (\$1,000.00) per occurrence (in consideration for damage which might be suffered by the City in the form of fines or administrative procedures resulting from such violation), or (2) the civil fine imposed by the Department of Homeland Security upon the City as a result of the violation. This amount must be paid by Concessionaire within ten (10) days of written notice or this agreement shall be terminated by the City.

ARTICLE 19

FAA

The City shall be responsible for requesting and obtaining any and all approvals as may be required from the Federal Aviation Administration for the continued operation and development of the Airport during the term hereof.

ARTICLE 20

Environmental Regulations

20.1 Environmental Representations

Notwithstanding any other provisions of this Agreement, Concessionaire acknowledges that certain properties and uses of properties within the Airport are subject to environmental regulations. Concessionaire agrees to observe and abide by said regulations as applicable to its use of the Airport, and in addition to any and all other Agreement requirements, and any other covenants and warranties of Concessionaire, Concessionaire hereby expressly warrants, guarantees, and represents to the City, upon which the City expressly relies that:

- A. Concessionaire is knowledgeable of any and all federal, state, regional and local governmental laws, ordinances, regulations, orders and rules, without limitation which govern or which in any way apply to the direct or indirect results and impacts to the environmental and natural resources due to, or in any way resulting from, the conduct by Concessionaire of its operations pursuant to or upon the Premises. Concessionaire agrees to keep informed of future changes in environmental laws, regulations and ordinances;
- B. Concessionaire agrees to comply with all applicable federal, state, regional and local laws, regulations and ordinances protecting the environmental and natural resources and all rules and regulations promulgated or adapted as some may from time to time be amended and accepts full responsibility and liability for such compliance;
- C. Concessionaire shall secure any and all permits, and properly make all necessary notifications as may be required by any and all governmental agencies having jurisdiction over parties or the subject matter hereof;
- D. Concessionaire, its employees, agents, contractors, and all persons working for, or on behalf of Concessionaire, have been fully and properly trained in the handling and storage of all such hazardous and toxic waste materials and other pollutants and contaminants; and such training complies with any and all applicable federal, state and local laws, ordinances, regulations, rulings, orders and standards which are now or are hereinafter promulgated;
- E. Concessionaire shall provide the City satisfactory documentary evidence of all such requisite legal permits and notifications as hereinabove required.
- F. Concessionaire agrees to cooperate with any investigation, audit or inquiry by the City or any governmental agency regarding possible violation of any environmental law or regulation.

20.2 Generator of Hazardous Waste

If Concessionaire is deemed to be a generator of hazardous waste, as defined by state, federal, or local law, Concessionaire shall obtain an Environmental Protection Agency (EPA) identification number and the appropriate generator permit and shall comply with all federal, state, regional and local requirements imposed upon a generator of hazardous waste including, but not limited to, ensuring that the appropriate transportation and disposal of such materials are conducted in full compliance with the law. Concessionaire shall bear all costs associated with such disposal.

20.3 Inventory List

Provisions shall be made by Concessionaire to have an accurate inventory list (including quantities) of all such hazardous, toxic and other contaminated or polluted materials, whether stored, disposed of or recycled, available at all times for inspection at any time on the Premises by City officials and also by Fire Department Officials or regulatory personnel having jurisdiction over the Premises, for implementation of proper storage, handling and disposal procedures.

20.4 Notification and Copies

Notification of all hazardous waste activities by Concessionaire shall be provided on a timely basis to the City or such other agencies as the City may from time to time designate. Concessionaire agrees that upon requests of the City a twenty-four (24)-hour emergency coordinator and phone number shall be furnished to the City and to such state and county officials as are designated by the City, in case of any spill, leak or other emergency situation involving hazardous, toxic, flammable and/or other pollutant/contaminated materials. Designation of this emergency coordination may be required by existing federal, state, regional or local regulations which require such designation regardless of such request by the City.

Concessionaire agrees to provide the City copies of all permit application materials, permits, monitoring reports, environmental response plan, and regulated materials storage and disposal plans, within ten (10) days of their required submittal to regulation agencies having jurisdiction over such matters.

20.5 Violation

Any agency Notice of Violation or similar enforcement action or notice of noncompliance shall be provided by Concessionaire to the City within twenty-four (24) hours of receipt by Concessionaire or Concessionaire's agent. Violation of any part of the provisions of this Article or disposition by Concessionaire of any sanitary waste, pollutants, contaminants, hazardous waste, toxic waste, industrial cooling water, sewage or any other materials in violation of the provisions of this section of this Agreement shall be deemed to be a default under this Agreement and, unless cured within ten (10) days

of receipt of notice from the City shall be deemed to be a material breach as provided for under this Agreement, and shall be grounds for termination of this Agreement, and shall also provide the City grounds for taking whatever other action it may have in addition to termination based upon default as provided for under this Agreement.

ARTICLE 21

Federal Storm Water Regulations

Notwithstanding any other provisions or terms of the Agreement, Concessionaire acknowledges that certain properties and uses of properties within the Airport or on City-owned land are subject to Federal storm water regulations as set forth in 40 CFR Part 122. Concessionaire agrees to observe and abide by said regulations as applicable to use of the Premises.

If needed, Concessionaire agrees to participate in any City-organized task force or other work group established to coordinate storm water activities at the Airport.

ARTICLE 22

Americans with Disabilities Act

Concessionaire shall at all times maintain the Premises in accordance with and in compliance with the requirements of the Americans with Disabilities Act (ADA) of 1990, and its implementing regulations, as each may be amended from time to time, and with the State of Florida Accessibility Requirements Manual (ARM) as it applies to Concessionaire's facilities and operations at the Airport. If, as a result of Concessionaire's use or occupancy of the Premises, any additions, alterations or improvements must be made the City to any part of the Airport in order to comply with the requirements of the ADA or the ARM, or any other laws or regulations concerning the accommodation of persons with disabilities, Concessionaire shall reimburse the City, on demand, for the costs incurred by the City to effect such compliance.

ARTICLE 23

Nondiscrimination

Concessionaire, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree, that (1) no person on the grounds of race, color, creed, sex or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of Airport facilities; and (2) that Concessionaire shall use the Airport premises in compliance with all requirements imposed or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation-Effectuation of

Title VI of the Civil Rights Act of 1964, and as said regulations may be amended. In the event of breach of any of the above nondiscrimination covenants, the City shall have the right to terminate the Agreement.

This Agreement may be 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 covered by 49 CFR part 23.

Concessionaire agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

ARTICLE 24

Rights Reserved to City

Rights not specifically granted to Concessionaire by this Agreement are expressly and independently reserved to the City. The City expressly reserve(s) the right to prevent any use of the described Premises which would interfere with or adversely affect the operation or maintenance of the Airport, or otherwise constitute an Airport hazard.

ARTICLE 25

Right to Entry

The City, through the Airport Director, shall have the right to request from Concessionaire and to be provided entry to the Premises assigned herein to Concessionaire, for the purposes and to the extent necessary to protect the City's rights and interest, to provide for periodic inspection of said Premises from the standpoint of safety and health, and to check Concessionaire's compliance with the terms of this Agreement. Access shall be upon forty-eight (48) hours; notice and jointly with a representative from Concessionaire. No notice shall be required in the event of emergency.

ARTICLE 26

Right of Flight

It shall be a condition of this Agreement that the City reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the real property owned by the City, together with the right to cause in said airspace, such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the said airspace, and for use of said airspace for landing on, taking off from or operating on the

Airport.

ARTICLE 27

Property Rights Reserved

This Agreement, and all provisions hereof, shall be subordinate to all the covenants and restrictions of the deeds under which the City acquired the Airport from the United States of America, insofar as such covenants and restrictions remain in effect, such deeds being identified as follows:

- (a) Quitclaim Deed and Surrender of Lease dated September 26, 1947, between the United States of America and City of Lakeland, recorded in Deed Book 816, page 571, Public Records of Polk County, Florida; and
- (b) Supplemental Quitclaim Deed dated April 20, 1948, between the United States of America and the City of Lakeland, recorded in Deed Book 832, page 311, Public Records of Polk County, Florida; except however, as any such covenants and restrictions may hereafter become ineffective or have been or may hereafter be extinguished or released, whether by statute, rule or regulations, interpretation, judicial decision, or deed or other instrument, including but not limited to the release of the "National Emergency Use Provisions" by the Deed of Release dated December 17, 1959, recorded in Official Records Book 389, page 338, current public records of Polk County, Florida, and the extinguishment of the restrictions on use for industrial or manufacturing purposes by the Act of Congress on July 30, 1947 (61 Stat. 678).

This Agreement shall be subordinate to the provisions of any existing or future agreement entered into between the City and the United States of America, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the planning, improvement or expansion of the Airport. Should the Department of Transportation, Federal Aviation Administration or any successor department or agency issue an order determining that any provision herein is inconsistent with any covenant or restriction of the deeds under which the City acquired the Airport, or the provisions of any existing or future agreement entered into between the City and United States of America, the parties shall amend this Agreement as necessary to resolve the inconsistency. If the parties cannot agree on the manner in which to resolve the inconsistency, the City shall have the unilateral right to amend this Agreement to resolve the inconsistency.

This Agreement and all the provisions hereof shall be subject to whatever right the Government of the United States of America now has or in the future may have or acquire, affecting the control, operation, regulation and reacquisition of the Airport or the exclusive or nonexclusive use of the Airport by the United States of America during the time of war or national emergency.

ARTICLE 28

Quiet Enjoyment

The City covenants that Concessionaire shall and may peaceably and quietly have, hold and enjoy its Concessionaire space and all parts thereof for the term hereby granted, subject to the terms and provisions hereof.

ARTICLE 29

No Mortgage Rights of Concessionaire

The Concessionaire shall not have the right to mortgage the Premises for the purpose of securing a loan from any lender.

ARTICLE 30

Fees as a Separate Covenant

Concessionaire shall not for any reason withhold or reduce Concessionaire's required payments of fees and charges provided in this Agreement, it being expressly understood and agreed by the parties that the payment of fees and charges is a covenant by Concessionaire that is independent of the other covenants of the parties hereunder.

ARTICLE 31

Assignment

Concessionaire shall not assign its rights under this Agreement, either in whole or in part, without prior written consent of the City which consent may be at the sole discretion of the City. No request for, or consent to, such assignment shall be considered unless Concessionaire shall have paid all rentals, fees, and charges which have accrued in favor of the City and Concessionaire shall have otherwise met all other legal obligations to be performed, kept, and observed by it under the terms and conditions of this Agreement or as this Agreement may be subsequently amended or modified. The City reserves the right to investigate the financial capacity of the proposed Assignee. In the event of an assignment, the assignee is responsible for the same fees as the Concessionaire-assignor and is subject to the same audit provisions herein.

ARTICLE 32

Status Upon Expiration

If Concessionaire holds over and continues in possession of the Premises after expiration of the term of this Agreement or any extension of that term, other than provided above, Concessionaire will be deemed to be occupying the Premises at sufferance from month-to-month tenancy, without limitation on any of the City's rights or remedies hereunder, subject to all of the terms and conditions of this Agreement.

Fees shall be based on the same formula as the last month of the term of the Agreement prior to the hold over. Similarly, if Concessionaire continues to exercise its privilege of doing business at the Airport after expiration of the term of this Agreement or any extension of that term, other than provided above, Concessionaire will be deemed to be conducting such business at the sufferance of the City, without limitation on any of the City's rights or remedies thereunder, subject to all of the terms and conditions of this Agreement. The concession fee shall be based on the formula provided in Article 6.1.

ARTICLE 33

Corporate Concessionaire

If Concessionaire is a corporation, the undersigned officer of Concessionaire hereby warrants and certifies to the City that Concessionaire is a corporation in good standing and is authorized to do business in the State of Florida. The undersigned officer of Concessionaire hereby further warrants and certifies to the City that he or she, as such officer, is authorized and empowered to bind the corporation to the terms of this Agreement by his or her signature thereto.

ARTICLE 34

Eminent Domain

In the event that the United States of America or the State of Florida shall, by exercise of the right of eminent domain or any other power, acquire title in whole or in part of the Airport, including any portion assigned to Concessionaire, Concessionaire shall have no right of recovery whatsoever against the City but shall make its claim for compensation solely against the United States of America or the State of Florida, as the case may be.

ARTICLE 35

Surrender of Premises

Concessionaire shall surrender up and deliver its Premises to the City upon termination of this Agreement in the same condition as existed at the commencement of the Agreement, ordinary wear and tear excepted. Provided the Concessionaire is not in default in the payment of rents, fees and charges required under this Agreement, Concessionaire, at the termination of this Agreement, shall remove all of its personal property from the Premises forthwith. Failure on the part of Concessionaire to remove its personal property on the date of termination shall constitute a gratuitous transfer of title thereof to the City for whatever disposition is deemed to be in the best interest of the City. Any costs incurred by the City in the disposition of such personal property shall be borne by the Concessionaire.

ARTICLE 36

No Acceptance of Surrender

No act or action done by the City or the City's agents or employees during the term of this Agreement shall be deemed an acceptance of the surrender of this Agreement and no acceptance of surrender shall be valid unless in writing.

ARTICLE 37

Personal Property

Any personal property of Concessionaire or of others placed in the Premises shall be at the sole risk of the Concessionaire or the owners thereof, and the City shall not be liable for any loss or damage thereto, irrespective of the cause of such loss or damage, and Concessionaire hereby waives all rights of subrogation or recovery from the City for such damage, destruction or loss.

ARTICLE 38

Governing Law and Venue

This Agreement shall be construed in accordance with the laws of the State of Florida. Venue for any action brought pursuant to this Agreement shall be in Polk County, Florida. Any action for breach of or enforcement of any provision of this Agreement shall be brought in the Judicial Circuit Court in and for Polk County or the United States District Court in and for the Middle District of Florida, Tampa Division.

ARTICLE 39

Attorney's Fees and Costs

In the event legal action is required hereunder to enforce the rights of the parties pursuant to this Agreement the prevailing party in such action shall be entitled to recover costs and attorney's fees, including appellate fees.

ARTICLE 40

Invalidity of Clauses

The invalidity of any portion, article, paragraph, provision or clause of this Agreement shall have no effect upon the validity of any other part of portion thereof.

ARTICLE 41

Notices and Communications

All notices or other communications to the City or Concessionaire pursuant hereto shall be deemed validly given, served, or delivered, upon deposit in the United States mail, certified and with proper postage and certified fee prepaid, addressed as follows:

TO City:
LAKELAND LINDER REGIONAL AIRPORT
Attn: _____
3900 Don Emerson Drive Suite 210
Lakeland , Florida 33811

TO CONCESSIONAIRE:
THE HERTZ CORPORATION
Attn: Real Estate Department
8501 Williams Road
Estero, Florida 33928

or to such other address as the addressee may designate in writing by notice to the other party delivered in accordance with the provisions of this article.

ARTICLE 42

Federal Right to Reclaim

In the event a United States governmental agency shall demand and take over the entire facilities of the Airport or the portion thereof wherein the Premises are located, for public purposes, then this Agreement shall thereupon terminate and the City shall be released and fully discharged from any and all liability hereunder.

ARTICLE 43

Relationship of the Parties

Concessionaire is and shall be deemed to be an independent contractor and operator responsible to all parties for its respective acts or omissions, and the City shall in no way be responsible therefore.

ARTICLE 44

City Not Liable

The City shall not be responsible or liable to Concessionaire for any claims for compensation or any losses, damages or injury sustained by Concessionaire resulting from (a) temporary closure of the Airport in response to hazardous conditions or for any other reason, (b) cessation for any reason of air carrier operations at the Airport, or (c) diversion of passenger traffic to any other facility.

ARTICLE 45

Waivers

No waiver by the City at any time of any of the terms, conditions, covenants, or agreements of this Agreement, or noncompliance therewith, shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant, or agreement herein contained, nor of the strict and prompt performance thereof by Concessionaire. No delay, failure or omission of the City to reenter the Premises or to exercise any right, power, privilege, or option arising from any default nor subsequent acceptance of fees and charges then or thereafter accrued, shall impair any such right, power, privilege,

or option or be construed to be a waiver of any such default or relinquishment thereof, or acquiescence therein. No notice by the City shall be required to restore or revive time as of the essence hereof after waiver by the City or default in one or more instances. No option, right, power, remedy, or privilege of the City shall be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all of the rights, power, options, or remedies given to the City by this Agreement are cumulative and no one of them shall be exclusive of the other or exclusive of any remedies provided by law, and that the exercise of one (1) right, power, option or remedy by the City shall not impair its rights to any other right, power, option or remedy.

ARTICLE 46

Time of the Essence

Time is expressed to be of the essence of this Agreement.

ARTICLE 47

Miscellaneous

All of the terms and provisions hereof shall be binding upon and the benefits inure to the parties hereto and their heirs, personal representatives, successors and assigns. Wherever used, the singular number shall include the plural, the plural the singular and the use of any gender shall include all genders. This Agreement, and instruments or documents relating to same, shall be construed under Florida law. This Agreement represents the complete agreement of the parties and any prior concession agreements or representations, regarding concession agreement, whether written or verbal, are hereby superseded. This Agreement may subsequently be amended only by written instrument signed by the parties hereto.

ARTICLE 48

Public Records

IF THE CONCESSIONAIRE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONCESSIONAIRE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS: KEVIN COOK - DIRECTOR OF COMMUNICATIONS AT: PHONE: 863-834-6264, E-MAIL: KEVIN.COOK@LAKELANDGOV.NET, ADDRESS: ATTN: COMMUNICATIONS DEPARTMENT, 228 S. MASSACHUSETTS AVE., LAKELAND, FLORIDA 33801.

In accordance with Florida Statute §119.0701, the Concessionaire shall keep and maintain public records required by the City in performance of services pursuant to the contract. Upon request from the City's custodian of public records, Concessionaire shall provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided pursuant to Florida Statute Chapter 119 or as otherwise provided by law. Concessionaire shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Concessionaire does not transfer the records to the City. Concessionaire shall, upon completion of the contract, transfer, at no cost, to the City all public records in possession of the Concessionaire or keep and maintain public records required by the City to perform services pursuant to the contract. If the Concessionaire transfers all public records to the City upon completion of the contract, the Concessionaire shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Concessionaire keeps and maintains public records upon completion of the contract, the Concessionaire shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

[Signatures appear on the following page.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their appropriate officials as of the date first above written.

CITY OF LAKELAND:

THE HERTZ CORPORATION:

By: _____

By: _____

Name Printed: R. Howard Wiggs
Title: Mayor

Name Printed: Richard P. McEvily
Title: Senior Vice President and Deputy General Counsel

ATTEST:

ATTEST:

Kelly S. Koos, City Clerk

Assistant Secretary

Approved as to form and correctness:

By: _____
Timothy J. McCausland, City Attorney