

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

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Meeting Date: December 18, 2012 [x] Consent [] Regular
[] Ordinance [] Public Hearing

Department:

Submitted By: Department of Airports

Submitted For: Department of Airports
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I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: Airport Consent to Subconcession Agreement (Consent) with The Hertz Corporation (Hertz), consenting to the subconcession/sublease by Hertz to Simply Wheelz, LLC (Wheelz) d/b/a Advantage Rent A Car (Advantage) for a portion of its Agreement for Rental Car Lease and Concession at the Palm Beach International Airport (PBIA) dated September 13, 2011 (the Concession Agreement).

Summary: The Concession Agreement authorizes Hertz to market and operate the Hertz and Advantage brands at PBIA. Hertz is required to divest Wheelz, which operates the Advantage brand as a subsidiary of Hertz, in order to acquire the Dollar Thrifty Automotive Group, Inc. Accordingly, Hertz has requested the County to provide its consent to a subconcession/sublease to allow Wheelz to continue to operate the Advantage brand at PBIA. Hertz will continue to remain primarily liable to the County for fulfilling all obligations, terms and conditions of the Concession Agreement. **Countywide (AH)**

Background and Justification: Hertz has been pursuing the acquisition of Dollar Thrifty Automotive Group, Inc. (Dollar/Thrifty). Hertz must divest its subsidiary Wheelz, as operator of the Advantage brand, in order to secure approval acquisition of Dollar/Thrifty from the United States Federal Trade Commission (FTC). The Consent will enable the purchaser of Wheelz to continue to have the right to operate the Advantage brand at PBIA. In Fiscal Year 2012, Hertz paid concession fees in the amount of \$2,644,948 plus facility rentals in the amount of \$76,037.90. For FY2013, the minimum annual guarantee due from Hertz under the Concession Agreement is \$2,380,453 and facility rentals are \$73,557.48.

Attachments:

- 1. Consent (3)

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Recommended By: [Signature] 11/20/12
Department Director Date

Approved By: [Signature] 12/10/12
County/Deputy/Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	_____	_____	_____	_____	_____
No. ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included In Current Budget? Yes _____ No _____
 Budget Account No.: Fund _____ Department _____ Unit _____
 RSource _____ Reporting Category _____

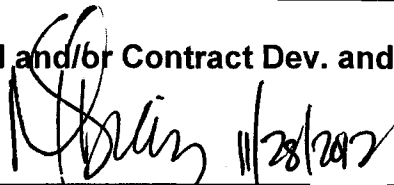
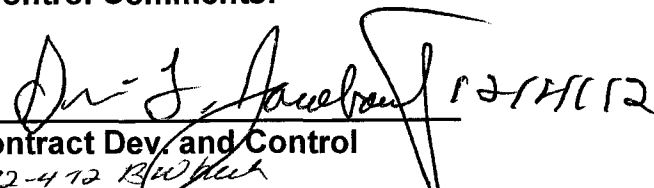
B. Recommended Sources of Funds/Summary of Fiscal Impact:

There is no fiscal impact from this Agreement. Hertz will continue to remain primarily liable to County for fulfilling all obligations, terms and conditions of the Concession Agreement, including the payment of concession fees and facility rentals.

C. Departmental Fiscal Review: CM Simms

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

 11/28/12
 OFMB 11/27/12 11/26/12
 12-4-12
 Contract Dev. and Control 12-4-12

B. Legal Sufficiency:

Anne Helgenst 12-6-12
 Assistant County Attorney

C. Other Department Review:

 Department Director

AIRPORT CONSENT TO SUBCONCESSION AGREEMENT

THIS AIRPORT CONSENT TO SUBCONCESSION AGREEMENT (this "Consent") dated as of this _____ day of _____, 2012, is delivered by Palm Beach County, a political subdivision of the State of Florida ("County") to The Hertz Corporation, a Delaware corporation ("Concessionaire" or "Hertz").

RECITALS

WHEREAS, Concessionaire and County entered into that certain Agreement for Rental Car Lease and Concession at the Palm Beach International Airport on September 13, 2011 (the "Agreement") (R-2011-1346); and

WHEREAS, the Agreement authorized Concessionaire to market and operate the Hertz and Advantage Rent A Car ("Advantage") brands from its Assigned Premises (as defined in the Agreement); and

WHEREAS, Concessionaire intends to divest the Advantage brand and has requested County for its consent to subconcession/sublease a portion of its interest in the Agreement to Simply Wheelz, LLC, ("Subconcessionaire") as required under Article 14 of Agreement.

NOW, THEREFORE, County consents to Concessionaire entering into a Subconcession Agreement, in the form attached hereto and incorporated herein as Exhibit "A", with Subconcessionaire, subject to the terms, conditions and limitations set forth below:

1. Notwithstanding any provision of the Subconcession Agreement to the contrary, the Subconcession Agreement shall be subject and subordinate to the Agreement. Concessionaire shall remain primarily liable to County for fulfilling all obligations, terms and conditions of the Agreement, throughout the Term of the Agreement.
2. Nothing in this Consent or the Subconcession Agreement shall be construed as modifying or otherwise amending the Agreement.
3. No future amendment, modification, alteration or assignment of the Subconcession Agreement shall become effective without the prior written consent of County, which consent may be granted or withheld in County's sole and absolute discretion.
4. This Consent shall not waive any rights of County or impose any additional obligations or liabilities on the County in connection with the Agreement.
5. Upon execution of the Subconcession Agreement by Concessionaire and Subconcessionaire, Concessionaire shall furnish one (1) fully executed copy to County in accordance with Article 18 of the Agreement.

IN WITNESS WHEREOF, the County has executed this Consent on the day and year first written above.

ATTEST:

**PALM BEACH COUNTY,
A POLITICAL SUBDIVISION OF THE
STATE OF FLORIDA, BY ITS BOARD
OF COUNTY COMMISSIONERS**

**SHARON R. BOCK,
CLERK AND COMPTROLLER**

By: _____
Deputy Clerk

By: _____
Chair

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

**APPROVED AS TO TERMS
AND CONDITIONS**

By: _____
County Attorney

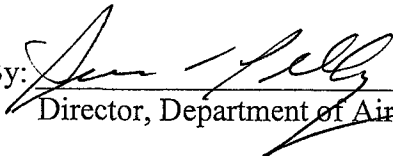
By:  _____
Director, Department of Airports

EXHIBIT "A"
TO
AIRPORT CONSENT TO SUBCONCESSION AGREEMENT

(SUBCONCESSION AGREEMENT FORM)

SUBCONCESSION AGREEMENT

THIS SUBCONCESSION AGREEMENT (this "Subconcession Agreement") is made and entered into this ___ day of _____, 2012 (the "Effective Date"), by and between THE HERTZ CORPORATION, a Delaware corporation ("Hertz"), and SIMPLY WHEELZ LLC dba ADVANTAGE RENT A CAR, a Delaware limited liability company ("Advantage").

1. BASIC SUBCONCESSION TERMS AND PROVISIONS.

- A. "Advantage's Pro Rata Portion": shall mean 25%.
- B. "Airport": Palm Beach International Airport, as more fully described in the Concession Agreement.
- C. "Authority": Palm Beach County, a political subdivision of the State of Florida.
- D. "Business Day": a day on which banks are open for business in New York City.
- E. "Commencement Date": _____.
- F. "Concession": high quality rental car concession and related services, and for no other use or purpose.
- G. "Concession Agreement": Agreement for Rental Car Lease and Concession at the Palm Beach International Airport, dated September 13, 2011, by and between the Authority and Hertz.
- H. "Concession Areas": subject to Section 7(A), 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.
- I. "Concession Fees": See Section 6(A).
- J. "Rent": See Section 6(B).
- K. "Stub Period": means the period beginning on the date of this Agreement and ending on the last day of the current Contract Year (as defined in the Concession Agreement).
- L. "Subconcession": the right to operate the Concession within the Subconcession Areas under the Advantage ® tradename owned by Advantage.

M. "Subconcession Areas": subject to Section 7(A), those certain areas described and/or depicted on Exhibit B attached hereto and made a part hereof, and which constitute a portion of the Concession Areas.

N. "Termination Date": September 30, 2016.

O. Hertz's Address (for notices):

The Hertz Corporation
225 Brae Boulevard
Park Ridge, NJ 07656
Attn: Staff Vice President, Real Estate and Concessions
Fax: (201) 307-2644

With a copy to:

Debevoise & Plimpton LLP
919 Third Avenue
New York, NY 10022
Attn: John M. Allen, Jr.
Fax: (212) 909-6836

P. Advantage's Address (for notices):

Simply Wheelz LLC
c/o Franchise Services of North America Inc.
1052 Colony Parkway, Suite 204
Ridgeland, Mississippi 39157
Attn: Robert A. Barton and Sandy Miller
Fax: (813) 434-2119; (601) 713-4384; and
(386) 226-8380

With a copy to:

Edinger Associates
1875 I Street, NW, Suite 500
Washington, DC 20006
Attn: Brook Edinger
Fax: (202) 747-1691

and to:

Macquarie Capital (USA) Inc.
125 West 55 Street
New York, NY 10019
Attention: Katherine Mogg, Senior Vice President, Legal Counsel

and to:

Macquarie Capital (USA) Inc.
125 West 55 Street
New York, NY 10019
Attention: Bruce Donaldson

Q. Authority's Address (for payments):

Palm Beach County Department of Airports
846 Palm Beach International Airport
West Palm Beach, FL 33406-1470

(for notices):

Palm Beach County Department of Airports
ATTN: Deputy Director Airports Business Affairs
846 Palm Beach International Airport
West Palm Beach, FL 33406-1470

With a copy of notices to:

Palm Beach County Attorneys' Office
ATTN: Airport ATTORNEY
301 North Olive Avenue, Suite 601
West Palm Beach, FL 33401

2. **CONCESSION AGREEMENT.** Hertz is the concessionaire under the Concession Agreement which Hertz has entered into with the Authority. Hertz represents and warrants to Advantage that (a) Hertz has delivered to Advantage a true and complete copy of the Concession Agreement and all amendments and modifications thereto with which Advantage shall be hereby bound to comply, (b) the Concession Agreement is, as of the date hereof, in full force and effect, (c) no event of default (and no event which would, after all notice and cure periods have elapsed, constitute an event of default) has occurred under the Concession Agreement on the part of Hertz, and (d) Hertz has not received any written notice that Hertz is in breach of any material provision of the Concession Agreement, nor has Hertz sent a written notice of breach of the Concession Agreement to the Authority. If required under the terms of the Concession Agreement, Hertz has obtained the consent of the Authority to this Subconcession Agreement in accordance with the Concession Agreement.

3. **SUBCONCESSION.** Hertz, for and in consideration of the covenants and agreements to be performed by Advantage, hereby grants to Advantage the right to use the Subconcession Areas for the operation of the Subconcession and grants such other rights as set forth herein, and Advantage accepts the use of the Subconcession Areas for the operation of the Subconcession within the Subconcession Areas, in each case, subject to the terms and conditions

of this Subconcession Agreement, Hertz's representations, warranties and covenants herein and the Concession Agreement.

4. **TERM.** Subject to the terms of this Subconcession Agreement, the term of this Subconcession Agreement (the "Term") shall commence on the Commencement Date and shall expire on the Termination Date, unless sooner terminated by Hertz or Advantage as provided in this Subconcession Agreement, or in the event of a termination of the Concession Agreement. Hertz shall deliver the Subconcession Areas to Advantage on the Commencement Date for the right to operate the Subconcession at the Airport.

5. **CONDITION AND USE OF CONCESSION AREAS.** Hertz shall deliver the Subconcession Areas to Advantage for the right to operate the Subconcession at the Airport within the Subconcession Areas, and Advantage shall accept the Subconcession Areas from Hertz in their "as-is, where-is" condition. Hertz makes no express or implied representations or warranties whatsoever pertaining to the Subconcession Areas, including, without limitation, as to their condition, suitability for any purpose or compliance with law. Advantage acknowledges that Advantage has inspected the Subconcession Areas prior to the execution and delivery of this Subconcession Agreement, and that Advantage accepts the Subconcession Areas as suitable for the operation of the Subconcession and as being in good order and satisfactory condition. Hertz shall maintain the Subconcession Areas in substantially their condition as of the date of such inspection until the Commencement Date, reasonable wear and tear excepted. Advantage's acceptance of the Subconcession Areas on the Commencement Date shall be conclusive evidence as against Advantage that the Subconcession Areas were in good order and satisfactory condition from and after the Commencement Date. The Subconcession Areas shall be used and occupied only for the operation of the Subconcession. Except to the extent of any breach of this Section 5 by Advantage, and except as provided in Section 8(B) and Section 14, Hertz shall have the sole obligation to restore the Concession Areas at the expiration of the Concession in accordance with the terms of the Concession Agreement.

6. **FEES; RENT; TAXES AND LICENSES; BOND/LETTER OF CREDIT.**

A. **Concession Fees.** Commencing on the Commencement Date, Hertz shall pay to the Authority, on behalf of Advantage, a concession fee (the "Concession Fees") in accordance with the terms and conditions of the Concession Agreement (i) with respect to all business done by Advantage at the Airport equal to 10% of Advantage's Gross Revenues (as defined in the Concession Agreement) for the Stub Period, with no Minimum Annual Guarantee (as defined in the Concession Agreement) and (ii) subsequent to the Stub Period and continuing through the end of the Term, equal to the greater of (x) 10% of Advantage's Gross Revenues, or (y) Advantage's Minimum Annual Guarantee for each subsequent Contract Year. Advantage's Minimum Annual Guarantee for each such period shall be the greatest of (a) 90% of the total amount of Concession Fees due from Advantage to the Authority in the immediately preceding Contract Year, (b) Advantage's Minimum Annual Guarantee for the immediately preceding Contract Year or (c) \$88,757.73. Advantage's Minimum Annual Guarantee shall be subject to abatement pursuant to the terms and conditions of the Concession Agreement. If the Term of this Subconcession Agreement begins or ends on a day other than the first or last day of a calendar month, respectively, the Concession Fees payable hereunder shall be adjusted and pro

rated on a per diem basis for any such month. The Concession Fees shall be (i) increased from time to time by Hertz proportionate to any increases in the concession fees payable by Hertz to the Authority under the Concession Agreement and, in the case of concession charges not based on revenues, increases in such charges attributable to the operations of Advantage, and (ii) subject to abatement pursuant to the terms and conditions of the Concession Agreement. Advantage shall pay to Hertz the full amount of Advantage's Concession Fees that are required to be paid by Hertz to the Authority pursuant to this Section 6(A), not later than three Business Days prior to the due date by which Hertz must make the payment of such Concession Fees to the Authority. Advantage's failure to pay shall not affect Hertz's obligation to pay the Authority as provided in the first sentence of this Section 6(A), but such payment by Hertz shall not relieve Advantage of its liability to Hertz, including liability for late charges in accordance with Section 21(A)(2). All Concession Fees shall be paid by Advantage to Hertz without any set-off or deduction whatsoever except to the extent permitted by the Concession Agreement. Advantage also shall pay the Authority on the due dates for services requested by Advantage which are billed by the Authority directly to Advantage rather than Hertz, if any. Hertz and Advantage shall provide the Authority with separate breakouts and reports on a timely basis as to their Gross Revenues, and such other revenue, accounting and calculation methodologies as the Authority may require. Advantage shall provide Hertz on a timely basis with such information as Hertz may require in order to comply with its reporting obligations under the Concession Agreement.

B. Rent. Advantage shall pay to Hertz \$1,584 per month for Facility Rental (as defined in the Concession Agreement) ("Rent").

Rent shall be (i) increased from time to time by Hertz proportionate to any increases in the rents and fees payable by Hertz to the Authority under the Concession Agreement attributable to the operations of Advantage, and (ii) subject to abatement pursuant to the terms and conditions of the Concession Agreement. Advantage shall pay to Hertz the full amount of Rent pursuant to this Section 6(B), not later than three Business Days prior to the due date by which Hertz must pay its rent and fees to the Authority under the Concession Agreement; provided that if the Term of this Subconcession Agreement begins or ends on a day other than the first or last day of a calendar month, respectively, the Rent payable hereunder shall be adjusted and pro rated on a per diem basis for any such month. Advantage's failure to pay Rent shall not affect Hertz's obligation to pay Rent to the Authority as provided in the Concession Agreement, but such payment by Hertz shall not relieve Advantage of its liability to Hertz, including liability for late charges in accordance with Section 21(A)(2). All Rent shall be paid by Advantage to Hertz, without any set-off or deduction whatsoever except to the extent permitted under the Concession Agreement.

C. Taxes and Licenses. Advantage shall pay all taxes levied, assessed or charged upon the Subconcession and/or Advantage's use of the Subconcession Areas and the operation of the Subconcession and/or on its improvements, fixtures, equipment or other property thereon. In addition, Advantage shall obtain and be liable for the cost of all licenses required in connection with the operation of the Subconcession.

D. Bond/Letter of Credit. Advantage shall be responsible for Advantage's Pro Rata Portion of the premium or issuance fee payable in connection with any performance or

surety bond or letter of credit posted by Hertz in accordance with the terms of the Concession Agreement, and, provided Advantage pays such portion of the premium or issuance fee upon demand of Hertz, Hertz agrees to use its reasonable commercial efforts to keep such bond or letter of credit in place during the Term.

7. CONCESSION AGREEMENT.

A. **Subject to Concession Agreement.** This Subconcession Agreement and all rights of Advantage hereunder with respect to the Concession Areas are subject to the terms, conditions and provisions of the Concession Agreement. Except as modified or otherwise provided under this Subconcession Agreement, Advantage, 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 after the Commencement Date, and in addition to all of Advantage's other obligations set forth in this Subconcession Agreement, all of Hertz'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), except to the extent to which they, by their nature, or in the context of the Concession Agreement are (x) intended to apply only to the relationship between the Authority and Hertz or (y) applicable solely to that portion of the Concession Areas not included in the Subconcession Areas (collectively, the "Excluded Provisions"). In the event of any reallocation by the Authority such that Exhibit A no longer accurately describes and/or depicts the areas allocated to Hertz under the Concession Agreement (a "Reallocation"), (i) "Concession Areas" shall no longer mean the areas described and/or depicted on Exhibit A and shall instead mean the areas allocated to Hertz following the Reallocation and (ii) "Subconcession Areas" shall no longer mean the areas described and/or depicted on Exhibit B and shall instead mean the areas reasonably designated by Hertz to proportionately reflect the increase, decrease or relocation of the Concession Areas as a result of the Reallocation.

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

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

2. If Advantage desires to take any action and the Concession Agreement would require that Hertz obtain the consent of the Authority before undertaking any action of the same or similar kind, Advantage shall not undertake the same without the prior written consent of the Authority, which Hertz shall use commercially reasonable efforts to obtain; provided that Hertz shall not be required to incur any unreimbursed expenses in connection with seeking any such consent;

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

4. Except as modified under this Subconcession Agreement, Hertz 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, or authorize the Authority to audit, Advantage's records pertaining to its business operations at the Airport, and Advantage agrees to keep its books and records in connection with the operation of the Subconcession in accordance with the terms of the Concession Agreement; and

5. Notwithstanding anything to the contrary herein, Advantage shall have no rights in the Subconcession Areas that are greater than Hertz's rights in the Concession Areas under the Concession Agreement other than as the result of a separate grant by the Authority.

C. **No Assumption of Obligations of the Authority.** It is expressly understood and agreed by Advantage that Hertz has not and does not assume and shall not have any of the obligations or liabilities of the Authority under the Concession Agreement and that Hertz is not making the representations or warranties, if any, made by the Authority in the Concession Agreement. Hertz shall not be liable in damages for or on account of any failure by the Authority to perform the obligations and duties imposed on it under the Concession Agreement.

D. **Obligations under Concession Agreement.** The parties hereby confirm, each to the other, that it is not practical in this Subconcession 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 Subconcession Agreement. Accordingly, in order to afford to Advantage the benefits of this Subconcession Agreement and of those provisions of the Concession Agreement which by their nature are intended to benefit the party in possession of the Subconcession Areas, and in order to protect Hertz against a default by Advantage which might cause a default or event of default by Hertz under the Concession Agreement, Hertz and Advantage, as appropriate, further agree as follows:

1. Except as expressly provided to the contrary herein including with respect to the Excluded Provisions, Advantage shall perform all affirmative covenants of Hertz contained in the Concession Agreement (including without limitation all obligations to indemnify the Authority), shall refrain from performing any act which is prohibited by the negative covenants of Hertz contained in the Concession Agreement and will not by its act or omission to act, cause a default under the Concession Agreement;

2. Hertz shall not agree to any amendment to the Concession Agreement (except those required by the Authority) which (i) would create any additional liability for fees or other charges due from Advantage under this Subconcession Agreement and which is disproportionate to any additional liability or burden incurred by Hertz under the Concession Agreement or (ii) would materially reduce the utility of the Subconcession Areas unless Hertz

shall first obtain Advantage's prior written approval thereof (which shall not be unreasonably withheld, conditioned or delayed). In the event that Advantage fails to deliver approval or disapproval of any such proposed amendment to the Concession Agreement within ten Business Days after the date of Hertz's written request for approval and delivery of the proposed amendment in accordance with the notice provisions hereof, such proposed amendment to the Concession Agreement shall be deemed approved by Advantage;

3. Hertz shall not permit the Concession Agreement to be terminated by reason of any default by Hertz thereunder which is not attributable to any default by Advantage under this Subconcession Agreement;

4. Advantage shall be entitled to all rights of Hertz under the Concession Agreement with respect to the Subconcession Areas and the Public Areas (as defined in the Concession Agreement), as set forth in the Concession Agreement; and

5. Hertz shall, at Advantage's direction and expense, enforce all of Advantage's rights under the Concession Agreement.

8. ADVANTAGE'S OBLIGATIONS.

A. **Costs.** Advantage shall be responsible for, and shall pay for all costs incurred by Advantage and all reasonable out-of-pocket, bona fide, third-party costs incurred by Hertz in connection with the Subconcession Areas and the operation of the Subconcession, including, without limitation, any utilities consumed in the Subconcession Areas (to the extent that Hertz pays such amounts with respect to the Concession Areas under the Concession Agreement) and the cost of construction and/or installation of any fencing or divider required to delineate the Subconcession Areas and/or separate Advantage's operations from Hertz's operations at the Airport. If such costs are paid directly by Hertz, Hertz shall provide Advantage with reasonable documentation of such costs.

B. **Maintenance.** Advantage shall be responsible for all maintenance, repairs and replacements as to the Subconcession 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.

9. **QUIET ENJOYMENT.** Hertz represents that it has full power and authority to enter into this Subconcession Agreement. So long as an Event of Default by Advantage has not occurred and is continuing, Advantage's quiet and peaceable enjoyment of the Subconcession Areas and the common areas of the Airport to the extent granted under the Concession Agreement and the operation of the Subconcession shall not be disturbed or interfered with by Hertz, or by any person claiming by, through, or under Hertz.

10. **INSURANCE.** Advantage shall procure and maintain, at its own cost and expense, such liability, property and other insurance as is required to be carried by Hertz under

the Concession Agreement, naming Hertz, the Authority and all parties required by Hertz and by the Authority as additional insureds, which insurance shall not be rescindable or cancellable by the insurer with respect to Hertz, the Authority and all parties required by Hertz and by the Authority to be named as additional insureds. If the Concession Agreement requires Hertz to insure leasehold improvements or alterations, then Advantage shall insure such leasehold improvements which are located in the Subconcession Areas. Advantage shall furnish to Hertz a certificate of Advantage's insurance and copies of the applicable insurance policies required hereunder upon Advantage's taking possession of the Subconcession Areas, and 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. Advantage hereby waives claims against the Authority and Hertz for property damage to the Subconcession Areas or its contents if and to the extent that Hertz waives such claims against the Authority under the Concession Agreement. Advantage agrees to obtain, for the benefit of the Authority and Hertz, such waivers of subrogation rights from its insurer as are required of Hertz under the Concession Agreement. Hertz agrees to use commercially reasonable efforts in good faith to obtain from the Authority a waiver of claims for insurable property damage losses and an agreement from the Authority to obtain a waiver of subrogation rights in the Authority's property insurance, if and to the extent that the Authority waives such claims against Hertz under the Concession Agreement or is required under the Concession Agreement to obtain such waiver of subrogation rights.

11. ASSIGNMENT OR TRANSFER. Advantage shall not, directly or indirectly, assign, convey, pledge, mortgage or otherwise transfer this Subconcession Agreement or any interest under it, or allow any transfer thereof or any lien upon Advantage's interest by operation of law or otherwise, or permit the occupancy of the Concession Areas or any part thereof by anyone other than Advantage. Notwithstanding the foregoing, Advantage may, with Hertz's consent, which consent shall not be unreasonably withheld, conditioned or delayed, and subject to receipt of the Authority's consent if required by the terms of the Concession Agreement, assign this Subconcession Agreement to, or permit the use and occupancy of all or any portion of the Subconcession Areas by any of Advantage's Affiliates (as defined herein), or any entity with whom Advantage merges or consolidates in any reorganization, or any entity succeeding to or acquiring all or substantially all of the business and assets of Advantage; provided that, such entity is fully capable of performing all of its obligations under this Subconcession Agreement and the Concession Agreement (a "Permitted Transfer"). As used in this Subconcession 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 50% of the voting interests, or (b) the ownership of at least 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.

12. **RULES.** Advantage 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. Hertz 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. Hertz shall deliver copies of any such rules and regulations and any changes thereto that it receives from the Authority to Advantage.

13. **REPAIRS AND COMPLIANCE.** Advantage shall promptly pay for repairs as set forth in Section 8(B) and Advantage shall, at Advantage'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 Advantage's particular use or manner of use of the Subconcession Areas and the operation of the Subconcession.

14. **ALTERATIONS.** Advantage may make any alterations or improvements in or additions to the Subconcession Areas only to the extent and on the terms permitted in the Concession Agreement and to the extent such alterations, improvements and additions would not adversely affect Hertz's use and enjoyment of the remainder of the Concession Areas. Hertz may make any alterations or improvements in or additions to the Concession Areas only to the extent and on the terms permitted in the Concession Agreement and to the extent such alterations, improvements and additions would not adversely affect Advantage's use and enjoyment of the Subconcession Areas. If Advantage desires to make any alterations or improvements in or additions to the Subconcession Areas, and the Concession Agreement would require that Hertz obtain the consent of the Authority before undertaking any such alterations, improvements or additions, Advantage shall not undertake the same without the prior written consent of the Authority, which Hertz shall use commercially reasonable efforts to obtain; provided that Hertz shall not be required to incur any unreimbursed expenses in obtaining such consent. Advantage shall be subject to all of the terms and conditions of the Concession Agreement in connection with any such alterations.

15. **LIENS.** Advantage 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 Hertz 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 Advantage, or by reason of any other act or omission of Advantage. Any claim to, or lien upon, the Concession Areas or the Airport arising from any act or omission of Advantage shall accrue only against any interest of Advantage as a result of this Subconcession 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 Hertz in the Concession Areas pursuant to the Concession Agreement. Without limiting the generality of the foregoing, Advantage shall not permit the Subconcession Areas or the Authority to become subject to any mechanics', laborers' or materialmen's lien on account of labor or material furnished to Advantage or claimed to have been furnished to Advantage in connection with work of any character performed or claimed to have been performed to the Subconcession Areas by, or at the direction or sufferance of, Advantage.

16. **CASUALTY/CONDEMNATION.** The terms of the Concession Agreement shall control in the event of a fire or other casualty or condemnation affecting the Subconcession Areas. If the Concession Agreement imposes on Hertz the obligation to repair or restore improvements or alterations to the Concession Areas, Advantage shall be responsible for repair or restoration of such improvements or alterations to the Subconcession Areas; provided, that any decision to terminate the Concession Agreement as a result of any fire or other casualty or condemnation shall rest solely with Hertz.

17. **SURRENDER.** At the end of the term or expiration of Advantage's right to possession of the Subconcession Areas, Advantage shall at once surrender and deliver up the Subconcession Areas, including all improvements thereto, to Hertz 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 Advantage's failure to perform maintenance, repairs or replacements as required of Advantage under this Subconcession Agreement shall not be deemed "reasonable wear and tear." In the event that Hertz or the Authority and/or the terms of the Concession Agreement require that Advantage remove any alterations, improvements or additions made by Advantage upon the expiration or earlier termination of this Subconcession Agreement, Advantage shall restore the Subconcession Areas to their condition prior to the making of such improvements, alterations or additions, repairing any damage occasioned by such removal or restoration. Advantage shall not be responsible for the restoration of any portion of the Subconcession Area to the extent the improvements, alterations or additions necessitating any such restoration were made by or on behalf of Hertz prior to the Commencement Date. In the event that Advantage does not make such removal in accordance with this Section 17, Hertz 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 Advantage, or warehouse the same, at Advantage's expense, plus interest at the Default Rate (as hereinafter defined).

18. **REMOVAL OF ADVANTAGE'S PROPERTY.** Upon the expiration or earlier termination of this Subconcession Agreement, Advantage shall remove Advantage's articles of personal property, equipment and trade fixtures, as well as all cabling, wiring and servers brought onto the Subconcession Areas by Advantage (collectively, the "**Trade Fixtures**"); provided, that Advantage shall repair any injury or damage to the Subconcession Areas which may result from such removal, and shall restore the Subconcession Areas to the same condition as prior to the installation thereof but only to the condition required under the Concession Agreement. If Advantage does not remove Advantage's Trade Fixtures from the Subconcession Areas prior to the expiration or earlier termination of the Term in accordance with and to the extent required under the Concession Agreement, Hertz 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 Advantage, or warehouse the same, and Advantage shall pay the cost (together with interest thereon at the Default Rate until paid) of such removal, repair, restoration, delivery or warehousing to Hertz on demand, or Hertz may treat said Trade Fixtures as having been conveyed to Hertz with this Subconcession Agreement as a bill of sale, without further payment or credit by Hertz to Advantage.

19. **HOLDING OVER.** Advantage shall have no right to occupy the Subconcession Areas or any portion thereof or to operate the Subconcession after the expiration or earlier termination of this Subconcession Agreement or after termination of Advantage's right to possession in consequence of an Event of Default (as defined below) hereunder. In the event Advantage or any party claiming by, through or under Advantage holds over, Hertz 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 Hertz to the Authority, as well as any and all amounts incurred by Hertz under the Concession Agreement by reason of such holdover, including but not limited to any increases in the concession fees, rent and charges payable by Hertz to the Authority during such holdover period.

20. **DEFAULTS.** The parties agree 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 upon written notice from the non-defaulting party after the expiration of any applicable cure period set forth below:

A. Advantage's Events of Default.

1. Advantage shall default in any payment of the Concession Fees, Rent, or any other monetary obligations or payments required to be made by Advantage hereunder when due as herein provided; or

2. Advantage shall default in any of the other covenants and agreements herein contained to be kept, observed and performed by Advantage, and such default shall continue for 30 days after notice thereof in writing to Advantage (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 30-day period and Advantage proceeds with reasonable diligence thereafter to cure such default, not to exceed an additional 90 days); or

3. Advantage shall breach a provision of the Concession Agreement made applicable to Advantage pursuant to this Subconcession Agreement or, by its breach of the terms of this Subconcession Agreement, cause a default under the Concession Agreement and, in the case of both of the foregoing, such breach or default shall not be cured within the time, if any, permitted for such cure under the Concession Agreement; or

4. Advantage violates the provisions of Section 11 of this Subconcession Agreement by making an unpermitted transfer or assignment.

B. Hertz's Events of Default.

1. Hertz shall default in the payment of any concession fees, rent or any other monetary obligations or payments required to be made under the Concession Agreement when due and such default shall not be cured within the time, if any, permitted for such cure under the Concession Agreement; or

2. Hertz shall default in any of the other covenants and agreements herein contained to be kept, observed and performed by Hertz, and such default shall continue for 30 days after notice thereof in writing to Hertz (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 30-day period and Hertz proceeds with reasonable diligence thereafter to cure such default; not to exceed an additional 90 days); or

3. Hertz shall breach a provision of the Concession Agreement or, by its breach of the terms of this Subconcession Agreement, cause a default under the Concession Agreement and, in the case of both of the foregoing, such breach or default shall not be cured within the time, if any, permitted for such cure under the Concession Agreement.

C. Mutual Events of Default.

1. Either party makes an assignment for the benefit of creditors or admits in writing its inability to pay its debts as they mature; 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 takes 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

2. A court enters an order or decree that is an order for relief against either party 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 either party or any substantial part of their property; garnishes, attaches, seizes, forecloses upon or takes similar action against either party or any substantial part of their property; or directs the winding-up or liquidation of either party or any substantial part of their property and in any such case such order or decree or appointment is not dismissed or rescinded within 45 days.

21. REMEDIES.

A. **Hertz's Remedies.** Upon the occurrence of any one or more Events of Default, Hertz 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:

1. **Concession Agreement Remedies.** Any remedy against Advantage available to the Authority that Authority may exercise for default by Hertz under Section 13.03 of the Concession Agreement, each of which is incorporated herein.

2. **Default Rate Interest.** All payments becoming due from Advantage under this Subconcession Agreement and remaining unpaid as and when due shall accrue interest daily until paid at the rate of 12% per annum or, if less, the maximum rate permitted by applicable law (the "Default Rate"). In addition, in the event that Hertz pays to the Authority any amounts owed by Advantage to the Authority directly upon an Event of Default, Advantage shall immediately upon demand reimburse Hertz therefor, which amount shall include interest at the Default Rate. The provision for payment of the Default Rate shall be in addition to all of Hertz's other rights and remedies, at law and in equity, with respect to overdue payments under this Subconcession Agreement and shall not be construed as liquidated damages.

B. **Mutual Remedies.** Upon the occurrence of any one or more Events of Default, the non-defaulting party 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:

1. **Termination of this Subconcession Agreement.** By providing notice to the other party, terminate this Subconcession Agreement, effective on the date specified by the terminating party in such notice.

2. **Self-Help.** If either party fails timely to perform any of its duties under this Subconcession Agreement, in addition to all other remedies available to the non-defaulting party hereunder, the non-defaulting party shall have the right (but not the obligation), after the expiration of any grace or notice and cure period elsewhere under this Subconcession Agreement expressly granted to the defaulting party 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 the non-defaulting party need not wait for the expiration of any applicable grace or notice and cure period under this Subconcession Agreement), to perform such duty on behalf and at the expense of the defaulting party without further prior notice to the defaulting party, and all sums expended or expenses incurred by the non-defaulting party, including reasonable attorneys' fees, in performing such duty, plus an administrative fee of 12% of such amount(s), shall be due and payable upon demand by the non-defaulting party.

3. **Specific Performance.** The non-defaulting party shall be entitled to enforcement of this Subconcession Agreement by a decree of specific

performance requiring the defaulting party to fulfill its obligations under this Subconcession Agreement, in each case without the necessity of showing economic loss or other actual damage and without any bond or other security being required.

22. **RIGHT TO CURE.** If Hertz fails timely to perform any of its duties under the Concession Agreement which gives the Authority the right to terminate the Concession Agreement or any portion of such Agreement or gives the Authority another remedy, in each case which in the reasonable judgment of Advantage jeopardizes this Subconcession Agreement or the exercise of any of its material rights hereunder, in addition to all other remedies available to Advantage hereunder, Advantage shall have the right (but not the obligation) to perform such duty on behalf and at the expense of Hertz without further prior notice to Hertz, and all sums expended or expenses incurred by Advantage, including reasonable attorneys' fees, in performing such duty, plus an administrative fee of 12% of such amount(s), shall be due and payable upon demand by Advantage.

23. **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, (ii) overnight commercial courier service, or (iii) confirmed telecopier transmission, (a) if to Advantage, to the address set forth in Section 1(P), or such other place as Advantage may from time to time designate by notice in writing to Hertz or (b) if to Hertz, addressed to Hertz at the address specified in Section 1(O) or at such other place as Hertz may from time to time designate by notice in writing to Advantage. Each party agrees to deliver to the other party a copy of any notice, demand, request, consent or approval received from Authority relating to or affecting the Subconcession Areas within 24 hours after receipt.

24. **THE AUTHORITY.** This Subconcession Agreement shall not (a) create privity of contract between the Authority and Advantage, or (b) be deemed to have amended the Concession Agreement in any regard.

25. **SIGNAGE.** Advantage shall have all rights to install, operate and maintain signage at the Subconcession Areas, subject to the restrictions set forth in the Concession Agreement and this Subconcession Agreement.

26. **VIOLATIONS.** In the event that the Authority provides notice to Advantage that any of Advantage's activities violate the terms of the Concession Agreement or any of the Airport's rules and regulations, Advantage shall provide notice to Hertz, within two Business Days, of such notice from the Authority to Advantage.

27. **BROKERAGE.** Each party warrants to the other that it has had no dealings with any broker or agent in connection with this Subconcession 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 Subconcession Agreement or the negotiation thereof on behalf of such party.

28. MISCELLANEOUS.

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

B. **No Waiver.** Failure of Hertz 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 Hertz from Advantage after the expiration or earlier termination of the Term or of Advantage'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 Advantage or any suit commenced or judgment entered prior to receipt of such moneys.

C. **Rights and Remedies Cumulative.** All rights and remedies of Hertz and Advantage under this Subconcession Agreement shall be cumulative and none shall exclude any other rights or remedies allowed by law.

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

E. **Integration.** This Subconcession Agreement, the Concession Agreement and all documents relating thereto, contain all of the terms, covenants, conditions and agreements between Hertz and Advantage relating in any manner to the rental, use and occupancy of the Subconcession Areas. This Subconcession Agreement is intended to be and shall be interpreted as an integrated and non-severable unitary agreement governing the rental, use and occupancy of the Subconcession 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 Subconcession Agreement cannot be altered, changed, modified or added to except by a written instrument signed by Hertz and Advantage.

F. **Governing Law; Forum.** This Subconcession Agreement shall be construed and enforced in accordance with the laws of Florida.

G. **Waiver of Jury.** Hertz and Advantage 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 Hertz against Advantage or Advantage against Hertz on any matter whatsoever arising out of, or in any way connected with, this Subconcession Agreement, the relationship of Hertz and Advantage, Advantage's use of the Subconcession

Areas or operation of the Subconcession, 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.** Advantage shall keep the content and all copies of this Subconcession 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 Advantage's employees, attorneys, agents, insurers, auditors, lenders and permitted successors and assigns (and Advantage 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.

I. **Counterparts, etc.** This Subconcession Agreement may be executed in any number of counterparts (including facsimile transmission), each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument. Section and exhibit references herein are to sections and exhibits of this Subconcession Agreement unless otherwise specified.

J. **Attorneys' Fees.** In the event of any dispute hereunder, the prevailing party shall be entitled to reimbursement of its costs, including reasonable attorneys' fees.

(Signature page immediately follows)

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

THE HERTZ CORPORATION

By: _____
Its: _____

**SIMPLY WHEELZ LLC,
dba ADVANTAGE RENT A CAR**

By: _____
Its: _____

Exhibit A

Description and/or Depiction of Concession Areas

EXHIBIT "A"

to

Agreement for Rental Car Lease and Concession

The "Assigned Premises"

The Hertz Corporation
d/b/a Hertz and d/b/a Advantage Rent A Car
RENTAL CAR COUNTER #5

confidential
Alex Fisher

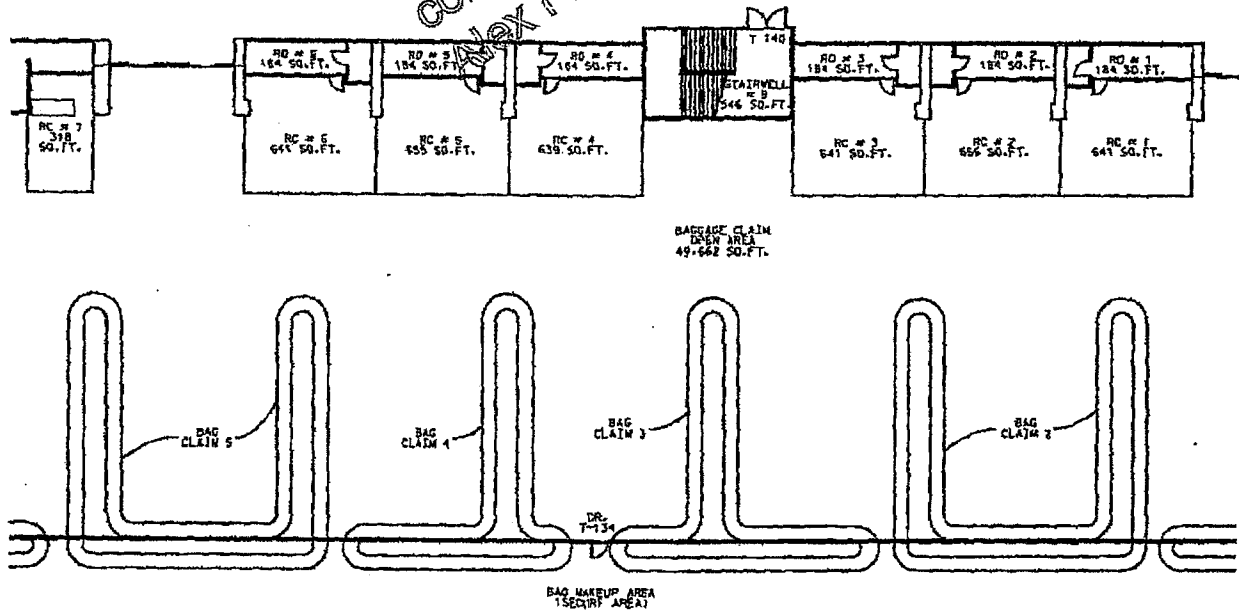


Exhibit B

Description and/or Depiction of Subconcession Areas

EXHIBIT "A"
to
Agreement for Rental Car Lease and Concession
The "Assigned Premises"

The Hertz Corporation
d/b/a Hertz and d/b/a Advantage Rent A Car
RENTAL CAR COUNTER #5

Note: the shaded area represents
25% of the Type One space and
25 % of the Type Two space (as
defined in the Concession
Agreement

