

Item Number: 6a Supp

Date of Meeting: June 4, 2013

# LEASE AND CONCESSION AGREEMENT

WITH

ATZ INC.

SEATTLE-TACOMA INTERNATIONAL  
AIRPORT PARKING LOT

**PORT OF SEATTLE  
SEATTLE-TACOMA INTERNATIONAL AIRPORT  
LEASE AND CONCESSION AGREEMENT**

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DRAFT

**PORT OF SEATTLE**  
**SEATTLE-TACOMA INTERNATIONAL AIRPORT**  
**LEASE AND CONCESSION AGREEMENT**

THIS LEASE AND CONCESSION AGREEMENT (hereinafter referred to as “Agreement”) made as of the \_\_\_\_ day of May 2013, by and between the PORT OF SEATTLE, a Washington municipal corporation (hereinafter referred to as “the Port”), and ATZ Inc., a Washington corporation (hereinafter referred to as “Lessee”).

W I T N E S S E T H

WHEREAS, the Port, as owner and operator of Seattle-Tacoma International Airport, desires to provide a wide range of services for the benefit of the air traveling public and others using the Airport; and

NOW, THEREFORE, in consideration of their mutual promises, the parties hereto do hereby mutually agree as follows:

**1. GENERAL DEFINITIONS**

For purposes of this Agreement, the following terms have the following meanings:

- 1.1 Affiliate. “Affiliate” shall mean any person that, directly or indirectly, (i) is owned by, (ii) owns, (iii) shares common ownership with, (iv) is controlled by, (v) controls, or (vi) is subject to common control with Lessee. As used in the prior sentence, “person” includes an individual, partnership, corporation, company, limited liability company, association, trust, unincorporated organization or any other entity or organization, including a government or agency or political subdivision thereof.
- 1.2 Agreement Year. “Agreement Year” shall mean each successive year during the term of this Agreement, beginning with the Commencement Date.
- 1.3 Airport. “Airport” shall mean the Seattle-Tacoma International Airport.
- 1.4 Airport Concessions Disadvantaged Business Enterprise (or ACDBE). “Airport Concessions Disadvantaged Business Enterprise” or “ACDBE” shall mean, a business, whether it is a corporation, sole proprietorship, partnership or joint venture certified as a ACDBE by the State of Washington, of which at least fifty-one percent (51%) of the interest is owned and controlled by one or more socially and economically disadvantaged individuals as defined in the Airport and Airways Safety and Capacity Expansion Act of 1987 and the regulations promulgated pursuant hereto at 49 CFR Part 23.
- 1.5 Alterations. “Alterations” shall have the meaning set forth in Section 16.1 of this Agreement.

- 1.6 Building. “Building” shall mean and refer to the two-story building currently located on the Premises or, as more specifically set forth in Section 15, its replacement.
- 1.7 Building Rent. “Building Rent” shall have the meaning set forth in Section 4.1.1 of this Agreement.
- 1.8 Commencement Date. “Commencement Date” shall mean and refer to October 1, 2013.
- 1.9 Days. “Days” shall, unless otherwise specified, mean and refer to calendar days, not business days.
- 1.10 Enplaned Passenger. “Enplaned Passenger” shall mean all those passengers boarding scheduled or chartered flights at the Airport, whether domestic or international, including non-revenue passengers (but excluding airline crew for the flight), and including those passengers connecting from arriving flights of same or other airlines.
- 1.11 Gross Receipts. “Gross Receipts” as used in this Agreement, is defined as follows:
- 1.11.1 Parking – The aggregate gross amount of revenue derived from all sales of 1 parking including revenues associated with any valet parking, and related merchandise or services, except those revenues related to Ancillary Services as defined in Section 1.11.2. Revenues shall include the amount of all consideration other than money received for any of the foregoing including, specifically, but not limited to, the amount of credit allowed for any trade-in. No deduction shall be permitted for credit card discounts or thefts, and for uncollected or uncollectible credit or charge accounts. Any deposit not refunded shall be included in Gross Receipts. Each installment or credit sale shall be treated as a sale for the full price in the month during which such sale is made, regardless of the time when Lessee receives payment therefore and without deduction for any fee payable to the credit issuer.
- 1.11.2 Ancillary Services - The aggregate gross amount of revenue derived from all merchandise of any type or kind transacted or made and all charges for service performed by Lessee or any persons, firms or corporations on its behalf, or any subtenants, licensees or concessionaires of Lessee, from, in, or upon the Premises, and whether wholesale or retail, and whether cash or credit, in connection with retail vending operation, meeting room sales, car oil change, car detailing or repair or other services outside the general parking operation as may be approved from time to time by the Port; provided, however, that in the event Lessee contracts out the service to a third party contractor that is not an Affiliate of Lessee, only the fee or income received by Lessee shall be considered in Ancillary Services Gross Receipts and subject to the rental fee pursuant to Sections 4.1.3.6 through 4.1.3.10. “Ancillary Services” shall also include any so-called promotional or advertising income received by or credited to Lessee on account of displays, promotions, advertising or other activities at the Premises or shuttle busses. No deduction shall be permitted for credit card discounts or thefts, and for uncollected or uncollectible credit or charge accounts. Any deposit not refunded shall be included in Gross Receipts. Each installment or credit sale shall

be treated as a sale for the full price in the month during which such sale is made, regardless of the time when Lessee receives payment therefore and without deduction for any fee payable to the credit issuer.

- 1.11.3 “Gross Receipts” shall not include the following when properly recorded and accounted for:
- 1.11.3.1 Refunds allowed by Lessee to customers because of unacceptable or unsatisfactory goods or services to the extent such refunds were actually granted and adjustment actually made.
  - 1.11.3.2 Any discounts actually granted.
  - 1.11.3.3 The amount of any sales tax or other excise tax imposed upon the customer and collected by Lessee as agent for the taxing body imposing the tax and billed to the customer as a separate item.
  - 1.11.3.4 The amount of any rent attributable to a sublease and/or license of any portion of the Building, provided, however, such rent shall be subject to the requirements related to Excess Rentals in Section 28.2.
- 1.12 Legal Requirements. “Legal Requirements” shall mean and refer to all laws, statutes and ordinances including building codes and zoning regulations and ordinances and the orders, rules, regulations and requirements of all federal, state, county, city or other local jurisdiction departments, agencies, bureaus, offices and other subdivisions thereof, or any official thereof, or of any other governmental, public or quasi-public authority, including the Port, which may be applicable to or have jurisdiction over the Premises.
- 1.13 Minimum Annual Guarantee. “Minimum Annual Guarantee” shall have the meaning set forth in Section 4.1.2 of this Agreement.
- 1.14 Parking Automated Revenue Control System (or PARCS). “Parking Automated Revenue Control System” or “PARCS” shall mean and refer to the hardware, software, and network that will issue, process, report, and manage tickets, transactional data, and parking inventory within the parking facility. The PARCS may incorporate and make use of, at Lessee’s discretion, portions of the revenue control system currently installed on the Premises, which current revenue control system will become owned by the Port on the expiration of the current lease between the Port and Lessee for the Premises. Any such use shall be incidental to, and specifically included within, the lease rights granted under this Agreement. The PARCS also specifically includes any cashier booths, whether during construction or otherwise, that are not specifically provided as part of the Port’s improvements under Section 15.1.
- 1.15 Percentage Fee. “Percentage Fee” shall have the meaning set forth in Section 4.1.2 of this Agreement.
- 1.16 Port Standards. “Port Standards” shall mean the Sea-Tac Rules and Regulations, the Regulations for Airport Construction, the Tenant Design and Construction Process Manual (also known as, and referred to herein, as the “Tenant Roadmap”), the CAD

Standards Manual, the Concession Design Standards, the Port's mechanical, electrical, water and waste, and industrial waste and storm drainage standards and any other, similar document establishing requirements and/or standards for design and construction at the Airport.

- 1.17 Premises. "Premises" shall mean and refer to the Airport Parking Lot, which is legally described on Exhibit A and depicted on Exhibit B, together with the Signage Area. The Premises (exclusive of the Signage Area) are located north of the Airport, are bounded by the Airport freeway and 170<sup>th</sup> Street, and consist of approximately 528,108 square feet of land, on which certain improvements including the Building are located.
- 1.18 Rent. "Rent" shall mean and refer collectively to sums denominated as Building Rent, Minimum Annual Guarantee, Percentage Fee, Excess Rentals or any other sums or charges otherwise payable by Lessee under the terms of this Agreement. Failure by Lessee to pay any sum denominated as Rent shall entitle the Port to pursue any or all remedies specified in this Agreement as well as remedies specified in RCW Chapter 59.12 or otherwise allowed by law.
- 1.19 Shuttle Services. "Shuttle Services" shall mean and refer to the service of providing transportation for parking customers making use of the Premises to/from the Airport from/to the Premises. Shuttle Services shall be provided in full conformance with all of the terms, conditions and covenants in this Agreement.
- 1.20 Signage Area. "Signage Area" shall mean and refer to that parcel of land located across 170<sup>th</sup> Street from the Airport Parking Lot, consisting of approximately \_\_\_ square feet of land, on which the Port has constructed, or will construct, a monument sign for the parking concession granted by this Agreement.

## **2. LEASED PREMISES**

Effective on the Commencement Date, the Port hereby leases to Lessee and Lessee hereby leases from the Port, the Premises.

## **3. TERM**

- 3.1 Base Term. Unless earlier terminated pursuant to any provision of this Agreement, the term of this Agreement shall be five (5) years, commencing on the Commencement Date and expiring at 11:59:59 p.m. on the day immediately prior to the fifth anniversary of the Commencement Date.
- 3.2 Extension. Upon the mutual consent of the parties, the term of this Agreement may be extended for up to two (2) additional five (5) year terms.

## **4. RENT/CONCESSION FEES**

- 4.1 Rent and Fees. Commencing on the Commencement Date, Lessee shall pay to the Port, for the concession rights and privileges granted herein, the following:



- 4.1.1 Building Rent. Lessee agrees to pay as minimum rent for the Building located on the Premises (“Building Rent”) the sum of one thousand dollars and no cents (\$1,000.00) per month for the first five months of this Agreement and one thousand five hundred dollars and no cents (\$1,500.00) thereafter for remainder of the base term of the Agreement. The Building Rent shall be paid to the Port in advance on the first day of each and every month during the term of this Agreement without any prior demand and without any abatement, deduction or setoff whatsoever.
- 4.1.2 Minimum Annual Guarantee. In addition to the Building Rent payable under Section 4.1.1, Lessee agrees to pay the Port a minimum annual guarantee (the “Minimum Annual Guarantee”) as follows:
- 4.1.2.1 *First Agreement Year*. For the first Agreement Year, the Minimum Annual Guaranty will be one million five hundred thousand dollars and no cents (\$1,500,000.00).
- 4.1.2.2 *Second Agreement Year*. For the second Agreement Year, the Minimum Annual Guaranty will be two million five hundred thousand dollars and no cents (\$2,500,000.00).
- 4.1.2.3 *Third Agreement Year*. For the third Agreement Year, the Minimum Annual Guaranty will be two million six hundred thousand dollars and no cents (\$2,600,000.00).
- 4.1.2.4 *Fourth Agreement Year*. For the fourth Agreement Year, the Minimum Annual Guaranty will be two million seven hundred thousand dollars and no cents (\$2,700,000.00).
- 4.1.2.5 *Fifth Agreement Year*. For the fifth Agreement Year, the Minimum Annual Guaranty will be two million eight hundred thousand dollars and no cents (\$2,800,000.00).

For each Agreement Year, the Minimum Annual Guarantee amount shall be divided into seasonally adjusted monthly payments based on the monthly distribution of Lessee’s total Gross Receipts from all sources for the prior Agreement Year (or for the first Agreement, the year immediately prior to the Commencement Date). All monthly payments of the Minimum Annual Guarantee shall be payable in advance, on or before the first day of each and every month during the term hereof, without notice from the Port and without setoff or deduction until the amount of the annual Minimum Annual Guarantee has been met. The Minimum Annual Guarantee and Percentage Fees shall be subject to annual reconciliation following receipt of the Annual Report required under Section 5.2.

Notwithstanding the foregoing, in the event that the total number of Enplaned Passengers for any month decreases by more than twenty percent (20%) from the same month of the prior year, then the Minimum Annual Guarantee payment due for the next month shall automatically be adjusted downward by the percentage

decrease in the number of Enplaned Passengers for the month experiencing the decrease. For example, if the number of Enplaned Passengers for the month of July 2014 declined by 25% over the number of Enplaned Passengers for the month of July 2013, then the Port will reduce the Minimum Annual Guarantee amount payable for the month of August 2014 by 25%.

- 4.1.3 Percentage Fees. Commencing on the Commencement Date, Lessee also agrees to pay the Port a percentage fee (the “Percentage Fee”), to the extent that the Percentage Fee is higher than the monthly payment of the Minimum Annual Guaranty paid to the Port pursuant to Section 4.1.2, according to the following schedule:

**Gross Receipts from Parking**

- 4.1.3.1 *First Agreement Year.* For the first Agreement Year, the Percentage Fee on Gross Receipts from Parking will be fifty five percent (55%).
- 4.1.3.2 *Second Agreement Year.* For the second Agreement Year, the Percentage Fee on Gross Receipts from Parking will be sixty percent (60%).
- 4.1.3.3 *Third Agreement Year.* For the third Agreement Year, the Percentage Fee on Gross Receipts from Parking will be sixty one percent (61%).
- 4.1.3.4 *Fourth Agreement Year.* For the fourth Agreement Year, the Percentage Fee on Gross Receipts from Parking will be sixty two percent (62%).
- 4.1.3.5 *Fifth Agreement Year.* For the fifth Agreement Year, the Percentage Fee on Gross Receipts from Parking will be sixty three percent (63%).

**Gross Receipts from Ancillary Services**

- 4.1.3.6 *First Agreement Year.* For the first Agreement Year, the Percentage Fee on Gross Receipts from Ancillary Services will be fifteen percent (15%).
- 4.1.3.7 *Second Agreement Year.* For the second Agreement Year, the Percentage Fee on Gross Receipts from Ancillary Services will be fifteen percent (15%).
- 4.1.3.8 *Third Agreement Year.* For the third Agreement Year, the Percentage Fee on Gross Receipts from Ancillary Services will be fifteen percent (15%).
- 4.1.3.9 *Fourth Agreement Year.* For the fourth Agreement Year, the Percentage Fee on Gross Receipts from Ancillary Services will be fifteen percent (15%).
- 4.1.3.10 *Fifth Agreement Year.* For the fifth Agreement Year, the Percentage Fee on Gross Receipts from Ancillary Services will be fifteen percent (15%).

On or before the fifteenth (15<sup>th</sup>) day of each month, Lessee shall submit to the Port a detailed statement showing the Gross Receipts from both Parking and Ancillary Services generated from the concession during the preceding month and shall simultaneously pay to the Port the Percentage Fee due for that preceding month. The reports shall show such reasonable detail and breakdown as may be required by the Port.

- 4.2 Contract Rent. The Port and Lessee agree that the Building Rent together with the first forty one thousand six hundred sixty six dollars and sixty seven cents (\$41,666.67) of the Gross Receipts paid to the Port per month (which sum approximates a fair market rental rate of \$0.08 per square foot per month or \$0.96 per square foot per year on land area) shall be the contract rent for the Premises. All amounts in excess of the Building Rent and this sum shall be consideration for the concession rights and access to the Airport granted under this Agreement.

## 5. ACCOUNTING PROCEDURES

- 5.1 Lessee covenants and agrees that it will establish and maintain an accounting system (specifically including all books of account and records customarily used in the type of operation permitted by this Agreement) in full and complete accordance with generally accepted accounting principles and otherwise satisfactory to the Port for the determination of any Rent or other computations, or both, which may be necessary or essential in carrying out the terms of this Agreement. Lessee shall maintain its records relating to the operation permitted by this Agreement for a period of at least three (3) years after the end of each Agreement Year (or until the close of any ongoing audit thereof being conducted by, or on behalf of, the Port); provided, however, that the Port may request that any such records be retained for a longer period of time, in which case Lessee, at its option, may deliver such records into the custody of the Port.
- 5.2 In addition to any monthly reports required, Lessee shall provide the Port with (i) a report within sixty (60) days after the close of each Agreement Year (the "Annual Report"), reflecting the amount of Gross Receipts for the preceding Agreement Year, broken down by category and (ii) such other and further reports, on such frequency as the Port may require from time to time, all without any cost to the Port. All such reports shall be provided in writing and/or electronic format as specified by the Port from time to time. The Annual Report shall be accompanied by a signed certificate of an independent Certified Public Accountant (CPA), or Lessee's Chief Financial Officer, or Lessee's Chief Executive Officer stating specifically that (a) he/she has examined the Annual Report, (b) his/her examination included such tests of Lessee's books and records as he/she considered necessary or appropriate under the circumstances, (c) such report presents fairly the information reflected for the preceding Agreement Year (or, in the case of the first Agreement Year, for the period from Rent Commencement until the end of the first Agreement Year), (d) the information reflected conforms with and is computed in compliance with the definitions set forth in this Agreement, and (e), if the certificate is submitted by a CPA, the standards observed by the CPA in its audit are such that it planned and performed the audit to obtain reasonable assurances that Lessee's report is free from material misstatement.

## **6. AUDIT**

- 6.1 A representative designated by the Port shall be allowed to inspect and audit Lessee's books of accounts and records with reference to the determination of any matters relevant to this Agreement at all reasonable times. The cost of such audit shall be borne by the Port unless the results of such audit reveal a discrepancy of more than two percent (2%) reported in accordance with Section 4 above for any twelve (12) month period. In the event of such discrepancy, the full cost of the audit shall be borne by the Lessee, and Lessee shall promptly pay all additional fees owing to the Port.
- 6.2 In the event that Lessee's books of accounts are not maintained in the Puget Sound region, they shall be made available for audit locally within five (5) business days of a request by the Port, or Lessee shall pay in full, any travel and related expenses of Port representative(s) to travel to the location outside the Puget Sound region. In addition, The Port shall have the right to conduct a "surprise" audit not more frequently than twice every twenty four (24) months, and, in the event that Lessee's books and records are not maintained locally, Lessee shall further pay in full, any travel and related expenses of the Port representative(s) to travel the location outside the Puget Sound region for such "surprise" audit(s).

## **7. LATE CHARGES**

Lessee hereby acknowledges that late payment by Lessee to the Port of the Rent, or any other sums due hereunder will cause the Port to incur costs not otherwise contemplated by this Agreement. Accordingly, if any installment of Rent, or any other sum due from Lessee, shall not be received by the Port within ten (10) days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall pay the Port a late charge equal to five percent (5%) of such overdue amount. The parties agree that such late charge represents a fair and reasonable estimate of the costs the Port will incur by reason of late payment by Lessee. Acceptance of such late charge by the Port shall in no event constitute a waiver of Lessee's default with respect to such overdue amount, nor prevent the Port from exercising any of the other rights and remedies granted hereunder. In addition to the late charges provided for in this Section, interest shall accrue on Rent, or any other sums due hereunder, at the rate of eighteen percent (18%) per annum or the maximum rate provided by law, whichever is less, from the date due until paid.

## **8. LETTER OF CREDIT OR OTHER SECURITY**

- 8.1 Lessee shall, upon execution of this Agreement, obtain and deliver to the Port an irrevocable stand-by letter of credit or other security in a form approved by the Port in an amount equal to five hundred thousand dollars and no cents (\$500,000.00) (hereinafter referred to as "Security"), to secure Lessee's full performance of this Agreement, including the payment of Rent and other amounts now or hereafter payable to the Port hereunder. The amount, form provisions and nature of the Security, and the identity of the issuing bank or other obligor there under, shall at all times be subject to the Port's approval. The Security shall remain in place at all times throughout the full term of this Agreement and throughout any holdover period. No interest shall be paid on the Security

and the Port shall not be required to keep the Security separate from its other accounts. No trust relationship is created with respect to the Security.

- 8.2 The Security is a part of the consideration for execution of this Agreement. If Lessee shall have fully performed all terms and conditions of this Agreement, any cash deposit security shall be paid to Lessee within thirty (30) days following the termination (or expiration) date without interest; otherwise the Port shall, in addition to any and all other rights and remedies available under this Agreement or at law or equity, retain title thereto.
- 8.3 The Port may apply all or part of the Security to unpaid Rent or any other unpaid sum due hereunder, or to cure other defaults of Lessee. If the Security is in a form that periodically requires renewal, Lessee must renew the Security not less than forty-five (45) days before the Security is scheduled to expire. If the Port uses any part of the Security, Lessee shall restore the Security to an amount acceptable to the Port within fifteen (15) days after the receipt of the Port's written request to do so. The retention or application of such Security by the Port pursuant to this Section 8 does not constitute a limitation on or waiver of the Port's right to seek further remedy under law or equity.
- 8.4 It is further agreed that in the event the laws of the State of Washington applicable hereto shall hereafter be amended, the provisions of this entire Section 8 shall be deemed likewise automatically amended upon the effective date of such statutory amendments, to the extent and in a manner necessary to comply therewith.

## **9. USE OF PREMISES**

- 9.1 Lessee shall use the Premises (including the Building) exclusively for the operation of paid public parking for automobiles and Shuttle Services. Notwithstanding the foregoing, Lessee may also: (i) subject to the prior approval of the Port, make incidental use of the Premises (including the Building) for the provision of goods and/or services ancillary to, and generally in support of, the operation of paid public parking for automobiles (e.g. coffee cart, detail service, etc.) and (ii) utilize the Building, either directly or by way of sublease or license as set forth in Section 28, for general office purposes. Lessee shall not use the Premises (including the Building) for any other purpose without the Port's advance written consent.
- 9.2 Lessee shall operate the Premises under the name Doug Fox Parking and/or Doug Fox Economy Parking, or such other name as may be requested by Lessee and approved by the Port in its sole discretion. Notwithstanding the foregoing, Lessee may, subject to the Port's reasonable approval, reflect that it is the operator of the Premises on any advertisements, signs, receipts, etc. Any such indication shall, however, be subtle and of a size significantly smaller than that of approved name for Premises.
- 9.3 Lessee shall conduct all operations on the Premises in a first class manner and well-maintained condition continuously during the entire term of this Agreement. Lessee shall further operate its business and conduct all operations on the Premises in a manner that will produce the maximum dollar volume of Gross Revenues.
- 9.4 In addition to, and not in lieu of, any other requirements set forth in this Agreement:

- 9.4.1 Lessee shall not use or occupy or permit the Premises or any part thereof to be used or occupied, nor do or permit anything to be done in or on the Premises, in whole or in part, in a manner which would in any way (i) violate any present or future Legal Requirements, or (ii) violate any of the covenants, agreements, provisions and conditions of this Agreement, or (iii) violate the certificate of occupancy then in force with respect thereto, or (iv) may make it difficult for either the Port or Lessee to obtain fire or other insurance required hereunder, or (v) as will constitute a public or private nuisance.
- 9.4.2 Lessee shall also not use or occupy or permit the Premises to be used or occupied, in whole or in part, in a manner which, in the Port's reasonable judgment, may or tends to, impair or interfere with (i) the character, reputation or appearance of the Premises or the Port; or (ii) the use of any other Port property, or occasion discomfort, inconvenience or annoyance to, the Port or any of its tenants or occupants of any adjacent property.

## **10. LISTING BY THE PORT**

The Port shall list the Premises on its official Sea-Tac Airport website of Airport parking services under the name Doug Fox Parking. The listing shall be in a manner and prominence consistent with how the parking lot is selected on the website as of the date of this Agreement and will specifically include the Lessee's logo and link to the Lessee's website.

## **11. STANDARD OF OPERATIONS**

Lessee shall ensure that the Premises are operated, at a minimum, under the following standards:

### **11.1 General.**

- 11.1.1 The highest degree and standards of quality of products and services must be provided to the patrons of the Premises.
- 11.1.2 Operations must be conducted in a safe, clean, orderly and inviting condition at all times.
- 11.1.3 The Premises must be open to the public for parking operations seven (7) days per week, twenty-four (24) hours per day, every day of the year.
- 11.1.4 Traveler's checks and at a minimum Visa, MasterCard, and American Express must be accepted for any purchase over \$5.00.
- 11.1.5 As more specifically set forth in Sections 5.1, 16.1 and 18.2, the Lessee shall purchase, install, and maintain the proposed PARCS required to properly and accurately process and record the Gross Receipts on all sales, by type, services, and other business transactions made.
- 11.1.6 No loud, boisterous or otherwise improper actions or language shall be permitted within the Premises. No radio or television or other similar device shall be installed without first obtaining the written approval of the Port. Also, no antenna

or aerial device shall be erected on the roof, interior walls or exterior walls of the Premises without first obtaining the written approval of the Port.

11.1.7 Service must be provided promptly, efficiently, and on a fair, equal and not unjustly discriminatory basis to all patrons of the Airport.

11.1.8 All written complaints concerning Lessee's operation shall be responded to in writing by Lessee within five (5) days and shall be reported to the Port along with the response.

11.1.9 Prices and charges for parking-related services sold or offered from the Premises shall be conspicuously displayed.

## 11.2 Personnel.

11.2.1 Lessee shall provide qualified parking concierge, valets, cashiers and all other persons necessary to the efficient operation of the parking operation. Any persons moving passenger vehicles shall possess all necessary licenses for the type of vehicle operated.

11.2.2 Lessee shall train all its employees in the proper operation of its business, the compliance with any applicable laws and regulations and the provisions of this Agreement, and the provision of good service to customers.

11.2.3 The concession shall be supervised at all times by an active, qualified, competent manager or a qualified assistant manager, who shall have full authority to make day-to-day business and operational decisions. The concession must be adequately staffed with sufficient and well-trained personnel who shall be neat, clean and courteous at all times. All employees serving the traveling public must wear their nametag and, if required, an Airport Identification badge at all times while performing their duties in the area in which the employee is working.

11.2.4 When on duty, all parking concierges, valets, cashiers, drivers and other persons working shall maintain a clean, neat and well-groomed appearance and shall wear a uniform established by Lessee, which uniform shall consist, at a minimum, of a collared shirt and long pants/shorts and shall be subject to the reasonable approval of the Port.

11.2.5 Lessee shall ensure that all employees, contractors and agents conduct themselves in a professional and courteous manner. Parking concierges, valets, cashiers and all other persons working may accept tips but shall not solicit tips. Tip jars are not allowed.

## 11.3 Security.

11.3.1 Lessee acknowledges that the Rent payable to the Port hereunder does not include the cost of guard service or other security measures, and that the Port shall have no obligation whatsoever to provide same.

11.3.2 Lessee shall be responsible for determining, and shall provide, all necessary security in and on the Premises. At minimum, the level of security shall not be less than proposed in Lessee's response to the Port's Request for Proposal for the Leasing and Management of the Premises.

#### 11.4 Parking.

11.4.1 The Premises may be operated as a self-park facility, a valet-park facility or a combination of both.

11.4.2 To the extent any portion of the Premises is operated as a valet-park facility, valet parking operations shall be separate from self-parking. Lessee shall meet Airport passengers arriving at the Premises with a parking valet or concierge and shall assist passengers in exiting their vehicle and unloading their luggage. Lessee shall issue passengers a parking ticket for their vehicle, guide them to the Shuttle Services and, as necessary, assist them in entering the shuttle bus and loading any baggage. Passengers may be required to pre-pay for their parking. Upon arrival at the Airport, Lessee shall, as necessary, assist passengers with exiting the shuttle bus and unloading of their baggage. On the return to the Premises, Lessee shall direct passengers to the shuttle bus and, as necessary, assist them in entering the shuttle bus and loading their baggage. Lessee shall obtain parking ticket numbers from all entering passengers and, while in transit, move the passengers' vehicles from the parking area to the receiving area. Upon arriving at the Premises, Lessee shall, as necessary, assist passengers in exiting the shuttle bus, unloading and loading their baggage and entering their personal vehicles. To the extent Lessee does not obtain pre-payment for parking, Lessee shall ensure smooth and efficient payment following the passengers' return to the Parking Facility.

11.4.3 To the extent operated as a self-park facility, Lessee shall issue passengers a parking ticket for their vehicle, direct them to the Shuttle Services, and, as necessary, assist them in entering the shuttle bus and loading any baggage. Passengers may be required to pre-pay for their parking. Upon arrival at the Airport, Lessee shall, as necessary, assist passengers with exiting the shuttle bus and unloading of their baggage. On the return to the Premises, Lessee shall direct passengers to the shuttle bus and, as necessary, assist them in entering the shuttle bus and loading their baggage. Upon arriving at the Premises, Lessee shall, as necessary, assist passengers in exiting the shuttle bus and unloading their baggage. To the extent Lessee does not obtain pre-payment for parking, Lessee shall ensure smooth and efficient payment following the passengers' return to the Parking Facility.

11.4.4 Every effort shall be made to avoid queuing of automobiles at any entrance or exit, or of people at any pay station or shuttle station. A typical wait for any patron waiting to pay for services or parking shall not exceed two (2) minutes on a regular basis. Effective and safe traffic management and lane control shall be administered during peak periods.



11.4.5 Lessee shall provide sufficient directional signage for the location and efficient operation of ingress/egress, parking and Shuttle Services.

11.4.6 Lessee shall patrol the designated handicap parking spaces to ensure they are used by vehicles with legal handicap stickers and/or license plate designations, and shall take appropriate steps to enforce the Handicap Parking laws. In the event a vehicle with legal handicap designations cannot find parking, the Lessee shall park the vehicle and retrieve it upon the driver's request.

## 11.5 Shuttle Services.

11.5.1 Lessee shall provide Shuttle Services between the Premises and the Airport. Shuttle Services shall be provided twenty-four (24) hours per day, seven (7) days per week, every day of the year. Excepting delays attributable to excessive traffic congestion, Shuttle Services shall be conducted in such a manner that passengers in-transit between the Premises and the Airport shall not be required to wait more than five (5) minutes before beginning transport between the facilities. Vehicle fueling must be done so as not to interfere with the Shuttle Services as set forth in this Agreement.

11.5.2 All vehicles providing Shuttle Services shall be clearly marked to indicate that they are providing shuttle services to/from the Premises. As such, they shall prominently feature the name/brand under which the operation is to be conducted under Section 9.2. Lessee's own business/trade name may only be reflected as set forth in that Section 9.2.

11.5.3 All vehicles utilized in providing Shuttle Services shall be in good working condition and mechanically sound. Vehicle appearance shall be subject to the reasonable approval of the Port, and manager shall remove any vehicle, which the Port reasonably determines is unsightly. All vehicles utilized for Shuttle Services must be air-conditioned. All vehicles shall comply with the following:

11.5.3.1 *Exterior.* All headlights, taillights, brake lights, signal lights, license plate lights, windshield wipers, horn, window raisers (if so equipped), doors and door locks, trunk locks (if so equipped), hood latch, door handles, mirrors, exhaust system, hubcaps, bumpers, fenders, body and tires shall be functioning safely and properly. There shall be no tears or rust holes in the vehicle body and no loose pieces such as fenders, bumpers, or trim hanging from the vehicle body. There shall be no un-repaired body damage or any body condition that would create a safety problem or interfere with the operation of the vehicle.

11.5.3.2 *Interior.* The rearview mirror, steering wheel, foot brakes, parking brakes, windows, air conditioning and heating systems shall be functioning safely and properly. The upholstery, floor mats or carpet, seats, seat belts (if so equipped), and door panels shall be clean and free of excessive wear.

- 11.5.4 Lessee shall keep the vehicles clean and in proper working order. Lessee's employees or agents shall pick up trash in the vehicles throughout the day, clean the glass as required every day, clean the metal grab bars as required every day, and wipe clean vinyl seats (if so equipped) as required every day.
- 11.5.5 Lessee shall provide qualified drivers for the vehicles. Drivers shall possess all necessary licenses for the type of vehicle operated. Drivers and other persons working on the vehicles shall assist passengers with their luggage and shall be responsible for loading and unloading all luggage stored in luggage holds or trunks. Drivers and other persons working on the vehicles may accept tips but shall not solicit tips.
- 11.5.6 Lessee shall not undertake the repair or maintenance of any vehicles utilized in providing Shuttle Services on or about the Property. All such repair and maintenance shall be provided at off-site facilities not supplied under this Agreement. Lessee may, however, clean vehicles used in providing Shuttle Services on or about the site in full conformance with all applicable environmental and/or water quality laws.
- 11.5.7 Lessee shall be subject to any ground transportation or other agreement that the Port requires of other commercial vehicle operators that would access the airport. Lessee shall fully comply with the terms of any such agreement. Notwithstanding the foregoing, Lessee shall not be obligated to pay a "per trip" or other fee for access to the Airport under such ground transportation agreement; the amounts payable pursuant to Section 4.1.2 and 4.1.3 are specifically intended to compensate the Port for access to the Airport and the customers generated as a result of its operations.
- 11.5.8 Shuttle services shall have the proper equipment to accommodate handicapped persons and this equipment shall meet or exceed ADA requirements.
- 11.5.9 Lessee shall act to ensure its fleet of vehicles minimizes air emissions and impacts to the natural environment. Lessee shall also institute operational practices that promote the efficient movement of people to and from the Airport. Without limiting the generality of the foregoing, Lessee shall:
- 11.5.9.1 By the commencement date of the agreement the Lessee shall ensure that one hundred percent (100%) of the vehicle fleet it uses for courtesy shuttle service are hybrid electric vehicles or utilizes alternative fuels, as defined by the U.S. Energy Policy Act. The Lessee shall submit evidence of alternative fuel status electronically to the Port's Manager, Ground Transportation by February 1 every year. The Lessee shall submit vehicle registrations or other documentation as approved by the MGT as verification of compliance.
- 11.5.9.2 By May 1, 2013, the Lessee shall develop, implement, and submit to the Port's Manager, Ground Transportation a fleet-wide anti-idling policy. The Lessee's anti-idling policy shall include the requirement that

vehicle engines shall be turned off when vehicles are not occupied. The Airport encourages the Lessee to evaluate opportunities to procure and install anti-idling equipment where appropriate.

11.5.9.3 The Lessee shall promote efficient driving techniques by its drivers such as anti-idling, maximizing vehicle occupancy, and utilizing the most efficient vehicles and routes for service.

11.5.9.4 The Lessee shall coordinate a semi-annual meeting with Airport environmental staff to discuss achievements and obstacles to improving the efficient and effective movement of people to and from the Airport via shuttle service.

11.5.9.5 The Lessee shall submit fuel use estimates annually to the Port and provide additional information as requested to assist with the Port's efforts to calculate greenhouse gas emissions associated with shuttle service operations.

11.6 Rates. Lessee shall, without the need for Port approval, have sole responsibility over rates charged for all parking and ancillary services on the Premises.

## **12. QUALITY ASSURANCE AUDITS**

The Port may conduct the following regular concession performance inspections ("Quality Assurance Audits") to ensure compliance with all of the standards of operation set forth in Sections 9.4.2 and 11 as well as anywhere else they may appear in this Agreement:

12.1 The Port may, in its discretion, review Lessee's operations for quality assurance at any time typically on a quarterly basis.

12.2 The Port shall document all Quality Assurance Audits. All Quality Assurance Audits shall, at a minimum, focus on, but not be limited to, the following:

12.2.1 Premises – General upkeep, signage, pricing, maintenance, equipment, and cleanliness.

12.2.2 Personnel – Professionalism, appearance, customer service, receipts provided and activity.

12.3 The Port shall provide Lessee with written results of any Quality Assurance Audits. Where deficiencies in performances are noted, the Port shall provide Lessee with fifteen (15) days to correct all deficiencies noted in the Quality Assurance Audits. Lessee shall promptly notify the Port of the corrections as completed, or request additional time to correct outstanding items where the Port determines progress has been made by Lessee to correct such deficiencies.

12.4 In the event that Lessee fails to timely correct the deficiencies noted in any Quality Assurance Audit as provided in this Section 12, the Port may issue a notice of default

pursuant to Section 29; provided, however, the applicable cure period shall be fifteen (15) days notwithstanding anything to the contrary in Section 29.2.1.

### **13. POSSESSION**

If the Port shall be unable for any reason to deliver possession of the Premises, or any portion thereof, at the time of the commencement of the term of this agreement, the Port shall not be liable for any damage caused thereby to Lessee, nor shall this agreement thereby become void or voidable, nor shall the term specified herein be in any way extended, but in such event Lessee shall not be liable for any rent until such time as the Port can deliver possession. If Lessee shall, in the interim, take possession of any portion of the Premises, Lessee shall pay as rent the full rent specified herein reduced pro rata for the portion of the Premises not available for possession by Lessee.

### **14. ACCEPTANCE OF PREMISES**

Subject only the Port's obligations to make the improvements set forth in Section 15, Lessee accepts the Premises (including the Building) in their present, "as-is" condition, and agrees to make any changes in the Premises necessary to conform to federal, state and local law applicable to Lessee's use of the Premises, and obtain necessary permits therefor.

### **15. IMPROVEMENTS BY THE PORT**

#### **15.1 Improvements to the Premises.**

15.1.1 The Port shall, at its cost and expense, construct certain improvements on, about or in the vicinity of the Premises. These improvements generally consist of improved signage (including certain expressway signs, a monument sign opposite the premises and new premises sign), an improved facility drainage system, a partial replacement and resurfacing of the asphalt surface, improved lighting, conduit for a new security camera system (which systems is to be supplied and installed by Lessee), a new modular office (with demolition of the old office), and new entrance/exit facility with cashier booths and a canopy (but Lessee shall be responsible for the revenue control system, including without limitation gates and ticket spitters). Although subject to revision as part of on-going design development and review, the specific improvements are more specifically detailed in the design documents associated with the Doug Fox Service Upgrades project, copies of the cover page and indices are attached hereto as Exhibit C. In the construction of these improvements, the Port generally intends to follow the phasing plan set forth in the design documents, with construction continuing, as weather permits, through the summer of 2014.

15.1.2 The Port shall reasonably coordinate with Lessee through the course of design and construction of these improvements and use commercially reasonable efforts to minimize the impacts on Lessee's operations from the Premises during the course of construction of the improvements set forth in Section 15.1. Without limiting the generality of the foregoing, the Port agrees that it will not demolish or otherwise substantially impair the use of the current Building until such time as the new Building is constructed. In addition, the Port agrees that it will endeavor

to accommodate any additional work that Lessee intends to undertake as part of any approved site development provided the accommodation of such work will not cost the Port additional amounts or delay the progress of the project, all as determined by the Port's selected contractor(s) for the project.

15.1.3 The rental amounts set forth in Sections 4.1.2 and 4.1.3 specifically take account of the impacts associated with the work set forth in Section 15.1.1 for the period of time outlined in that Section 15.1.1, and Lessee shall not be entitled to any further relief associated with those improvements provided they are constructed substantially according to that schedule. In the event that the Port materially deviates from that schedule and, despite its commercially reasonable efforts, substantially and negatively impacts Lessee's operations from the Premises, the Port agrees to negotiate a further equitable adjustment in the Minimum Annual Guarantee or to bear reasonable costs of any modifications to the Premises reasonably necessary to permit Lessee to continue to operate its business. In no event, however, shall the Port be responsible for any reduced efficiency or loss of business occasioned thereby.

## 15.2 Expected Nearby Improvements.

15.2.1 Separate from the improvements to the Premises, the Port expects to make traffic improvements on South 170th Street during 2014 to accommodate the relocation of the "cell phone lot." During the construction of any such improvements, the Port agrees to use its commercially reasonable efforts to maintain customer access to the Premises from the Air Cargo Road off-ramp from the southbound Airport Expressway. Additionally, the Port agrees to use commercially reasonable efforts to maintain access to the Air Cargo on-ramp to the southbound Airport Expressway by Lessee's shuttle buses.

15.2.2 As part of these improvements, the Port agrees to use commercially reasonable efforts to install a sign, as part of new signage to be installed as part of the traffic improvements, on or about the ramp for the S. 170<sup>th</sup> Street exit from the southbound Airport Expressway which provides further direction towards "Off-Airport Parking"; provided, however, whether the Port will be able to do depends on whether it may install separate signage for the left and right lanes of the roundabout that is expected to be installed as part of the traffic improvements. In the event that the Port is not able to install such separate signs and is otherwise limited to listing three directional items on a single sign for both lanes, Lessee acknowledges that "Off Airport Parking" will not be listed as one of the three directional items.

15.2.3 In the event that the Port, despite its commercially reasonable efforts, nonetheless substantially and negatively impacts Lessee's operations from the Premises from the nearby improvements set forth in Section 15.2.1, the Port agrees to negotiate an equitable adjustment in the Minimum Annual Guarantee or to bear reasonable costs of any modifications to the Premises reasonably necessary to permit Lessee to continue to operate its business. In no event, however, shall the Port be responsible for any reduced efficiency or loss of business occasioned thereby.

## **16. IMPROVEMENTS BY LESSEE**

- 16.1 Lessee shall, immediately upon the commencement of this Lease, install all hardware, software, and networking necessary to issue, process, report, and manage tickets, transactional data, and parking inventory (the PARCS) for the Premises. Lessee shall perform this work at its sole cost and expense, in a good and workmanlike manner and otherwise in full and complete accordance with all Legal Requirements and Port Standards.
- 16.2 Lessee shall make no other alterations, additions, substitutions or improvements (collectively referred to as "Alterations") to or upon the Premises (including the Building) without first obtaining the written approval of the Port. Lessee shall likewise install any necessary security system hardware and software in Port-supplied conduit and raceways, constructed as part of the improvements made under Section 15. In any event, all such Alterations shall be done at Lessee's sole cost and expense and at such times, subject to such conditions, and in such manner as the Port may from time to time designate.
- 16.3 Any permitted Alteration shall be of high quality, shall conform to the design criteria approved by the Port, shall be of fireproof construction according to the standards of the local rating organization, shall be constructed in a good and workmanlike manner and shall otherwise be in full and complete accordance with all Legal Requirements and Port Standards.
- 16.4 Before any construction of any Alteration, Lessee shall prepare plans and specifications for the review and approval of the Port. Except as otherwise specifically provided in this Agreement, Lessee shall obtain all necessary permits, including any discretionary permits, for any Alteration. In the event the Port is required or has obtained any of the necessary permits, Lessee will reimburse the Port for any permit fees and associated costs in obtaining said permits.
- 16.5 Within ninety (90) days of the completion of any Alteration, Lessee shall provide the Port with: (a) a certification that the Alteration has been constructed in accordance with the approved drawings and specifications and in strict compliance with all Legal Requirements and the Port Standards; (b) a certified proof in writing demonstrating that no liens exist on the Alteration; and (c) a reproducible final copy of the plans as-built for the Alteration along with computer discs as electronic files in a format compatible with the Port's CAD Standards Manual, to enable the Port to upgrade its existing files to reflect the as-constructed changes made by Lessee.
- 16.6 Other than those leasehold improvements and Alterations which are installed and become such a part of the Premises that they cannot be removed without substantial injury to the Premises (all of which shall immediately become the property of the Port following installation) and those new portions of the PARCS procured by the Lessee (which portions shall remain the property of Lessee until the expiration or earlier termination of this Lease, at which time such portions shall become the Port's without the necessity of payment), Lessee shall retain ownership of all furniture, trade fixtures and equipment from time to time installed in the Premises by Lessee at its expense. Lessee may remove

any of such furniture, trade fixtures or equipment at any time during the term and shall remove all thereof prior to the expiration of the term. Any such property not removed at the expiration of the term shall, at the election of the Port, become the property of the Port without payment to Lessee, or be deemed abandoned and removed by the Port, at Lessee's expense. Upon any removal of such property, Lessee shall promptly repair any and all damage to the Premises caused thereby and reimburse the Port for its costs and expenses in removing any such property not removed by Lessee and repairing any such damage not repaired by Lessee; this covenant shall survive the termination of this Agreement.

## **17. UTILITIES**

Lessee shall be liable for, and shall pay throughout the term of this Agreement, all charges for all utility services furnished to the Premises, including, but not limited to, light, heat, electricity, ADT or equivalent, gas, water, sewerage, garbage disposal, and janitorial services. In the event that the Premises are part of a building or part of any larger premises to which any utility services are furnished on a consolidated or joint basis, Lessee agrees to pay to the Port Lessee's pro-rata share of the cost of any such utility services. Lessee's pro rata share of any such services may be computed by the Port on any reasonable basis, and separate metering or other exact segregation of cost shall not be required. All other items, including all license fees and other governmental charges levied on the operation of Lessee's business on the Premises will be paid directly by Lessee.

## **18. MAINTENANCE AND REPAIR**

### **18.1 Maintenance and Repair by Port.**

18.1.1 The Port will keep and maintain the foundations, roof structure (but not membrane), bearing walls and structural columns of the Building in good condition and repair, except for repairs required thereto by reason of the acts of Lessee, its employees, agents, invitees, licensees, or contractors. Lessee agrees to report to the Port the need for repairs as promptly as possible after discovery.

18.1.2 The Port may temporarily enter or have access to the Premises from time to time as reasonably necessary in connection with maintenance or repair work, which the Port may elect to undertake from time to time to those areas that are the Port's responsibility.

### **18.2 Maintenance and Repair by Lessee.**

18.2.1 Subject only to the specific obligations of the Port set forth in Section 18.1.1, Lessee will keep and maintain the Premises and every part thereof and any fixtures, facilities or equipment (including the PARCS and the sign located in the Signage Area) contained therein, in good condition and repair, including, but not limited to, the parking surface, gatehouse, any fence, the electrical, plumbing and sewer systems, the Building floors, doors, interior walls, ceilings, roof membrane, window frames, and glass, and shall make any replacements thereof.

18.2.2 Lessee shall perform all maintenance, repairs, or replacements using quality materials equal to the original, and, if materially changed from the original, shall be subject to the prior written approval of the Port.

18.2.3 Lessee shall provide complete and adequate arrangements for the sanitary handling of all trash, garbage, and other refuse generated in connection with the use of the Premises.

18.2.4 Lessee shall be responsible for the complete control of all rodents and insects or other pests in, on or about the Premises.

18.3 Semiannual Condition Surveys. The Port and Lessee shall conduct an inspection of the Premises semiannually to observe and note the condition of, cleanliness of and existing damage to the Premises and to determine repairs and maintenance required to be performed. Not less than fourteen (14) days before a scheduled inspection, Lessee shall prepare a report documenting the preventative and corrective maintenance actions planned and performed during the prior six-month period. The report shall be provided in both hardcopy and electronic forms, with the electronic forms in Microsoft Excel or other format reasonably specified or approved by the Port for import into the Port's maintenance management software. Responsibility for repairing any problems or defects noted shall be as provided in Sections 18.1 and 18.2.

## **19. OUTSIDE AREAS AND ROOF**

The roof and walls of the Building are reserved to the Port, which shall have the right to utilize same for any purpose, including the installation of signs for directional, advertising or other purpose.

## **20. DAMAGE OR DESTRUCTION**

### **20.1 Building**

20.1.1 Should the Building be damaged by fire or other casualty, and if the damage is repairable within four (4) weeks from the date of the occurrence (with repair work and the preparations therefor to be done during regular working hours on regular work days), the Building (other than furniture, fixtures and equipment owned by Lessee pursuant to Section 16.6) shall be repaired with due diligence by the Port, in the meantime, the Building Rent shall be abated in the same proportion that the untenable portion of the Building bears to the whole thereof, for the period from the occurrence of the damage to the completion of the repairs.

20.1.2 Should the Building be completely destroyed by fire or other casualty, or should it be damaged to such an extent that the damage cannot be repaired within four (4) weeks of the occurrence, the Port and Lessee shall have the option to terminate this Agreement as to the Building only on thirty (30) days written notice, effective as of any date not more than sixty (60) days after the occurrence. In the event that this Section 19.1.2 shall become applicable, either party shall advise the other within thirty (30) days after the occurrence of any such damage whether to continue the Agreement in effect or terminate it as to the Building. If the parties



shall elect to continue this Agreement in effect, it shall commence and prosecute with due diligence any work necessary to restore or repair the building (other than furniture, fixtures and equipment owned by Lessee pursuant to Section 15.5). If either party shall fail to notify the other of its election within said thirty (30)-day period, that party shall be deemed to have elected to continue this Agreement.

## 20.2 Premises Other Than Building

20.2.1 Should the Premises other than the Building (and excluding Lessee's furniture, fixtures and equipment) be damaged by fire or other casualty, and if the damage is repairable for less than one million dollars (\$1,000,000), the Premises shall be repaired with due diligence by the Lessee.

20.2.2 Should the Premises other than the Building be completely destroyed by fire or other casualty, or should they be damaged to such an extent that the damage is not repairable for less than one million dollars (\$1,000,000), the Lessee shall have the option to terminate this Agreement on thirty (30) days notice, effective as of any date not more than sixty (60) days after the occurrence. In the event that this Section 20.2.2 shall become applicable, Lessee shall advise the Port within thirty (30) days after the occurrence of any such damage whether to continue the Agreement in effect or terminate it. If Lessee shall elect to continue this Agreement in effect, it shall commence and prosecute with due diligence any work necessary to restore or repair the Premises. If Lessee shall fail to notify the Port of its election within said thirty (30)-day period, Lessee shall be deemed to have elected to continue this Agreement.

20.3 Lessee's Furniture, Fixtures and Equipment. Lessee shall, at its sole cost and expense, be responsible for any and all repair or restoration of any furniture, fixtures and equipment owned by Lessee pursuant to Section 16.6, which repair or restoration may be necessary as a result of any casualty.

## 21. **INDEMNIFICATION**

To the maximum extent permitted by law, Lessee shall indemnify, defend (with counsel reasonably acceptable to the Port) and save harmless the Port, the commissioners, representatives, directors, officers, agents and employees of the Port, and those in privity of estate with the Port, from and against all claims, expenses (including, without limitation, attorney's fees) or liability of whatever nature: (a) arising from any default, act, omission or negligence of Lessee, or Lessee's contractors, licensees, agents, servants or employees, or the failure of Lessee or such persons to comply with any rule, order, regulation or lawful direction now or hereafter in force of any public authority, in each case to the extent the same are related, directly or indirectly, to the Premises or Lessee's use thereof; or (b) arising, directly or indirectly, from any accident, injury or damage, however caused, to any person or property on or about the Premises; or (c) arising directly or indirectly, out of default by Lessee under any of the terms or covenants of this Agreement, or in connection with any mechanical, electrical, plumbing, or any other equipment or installations that are to be maintained or repaired by Lessee; or (d) arising from any accident, injury or damage to any person or property occurring outside of the Premises but within the Airport or the general area of the Airport, where such accident, injury or damage

results, or is claimed to have resulted from, any act, omission or negligence on the part of Lessee, or Lessee's contractors, licensees, agents, servants or employees or customers, or anyone claiming by, through or under Lessee; provided, however, nothing in this Section 21 shall require Lessee to indemnify the Port from injury or damage caused by the sole negligence of the Port. This indemnity and hold harmless agreement shall include indemnity against all costs, expenses (including, without limitation, reasonable attorneys' fees) and liabilities incurred in or in connection with any such claim, or any action or proceeding brought thereon.

## 22. INSURANCE

22.1 Insurance. Lessee shall obtain and keep in force, at its sole cost and expense, during the term of this Agreement the following types of insurance, in the amounts specified and in the form hereinafter provided for:

22.1.1 Liability Insurance. Lessee shall keep in force during the term of this Agreement the following insurance:

22.1.1.1 *Commercial General Liability*. Lessee shall obtain and keep in force during the term of this Agreement a commercial general liability policy of insurance protecting Lessee and the Port, as an additional insured using ISO Form 20 26 or equivalent, against claims for bodily injury, personal injury, property damage and contractual liability, based upon, involving or arising out of the tenancy, use, occupancy or maintenance of the Premises and all areas appurtenant thereto, and specifically including the action/inaction of any subtenant, licensee or concessionaire permitted by Section 28. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than one million dollars (\$1,000,000) per occurrence. The policy shall not contain any intra-insured exclusions as between insured persons or organizations. The policy shall contain legal liability coverage for damage to rented or leased premises in an amount of not less than \$250,000.

22.1.1.2 *Automobile Liability*. Lessee shall obtain and keep in force during the term of this Agreement business automobile liability insurance protecting Lessee. The policy shall have a waiver of subrogation in favor of the Port. Coverage shall include loss or damage for bodily injury and property damage based upon, involving or arising out of any automobile (whether owned, hired or non-owned), and specifically including the action/inaction of any subtenant, licensee or concessionaire as permitted by this Lease. Such insurance shall be on an occurrence basis providing single combined limit coverage in an amount not less than one million dollars (\$1,000,000) per occurrence.

22.1.1.3 *Garage Keeper's Legal Liability*. Lessee shall obtain and keep in force during the term of this Agreement a garage keeper's legal liability policy of insurance to cover against claims of bodily injury and property damage based upon, involving or arising out of the tenancy, use, occupancy or maintenance of the Premises and all areas appurtenant

thereto, and specifically including the action/inaction of any subtenant, licensee or concessionaire permitted by this Lease. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than two million dollars (\$2,000,000) per occurrence. The policy shall not contain any intra-insured exclusions as between insured persons or organizations.

22.1.2 Property Insurance. Lessee shall obtain and keep in force property insurance using an ISO CP 10 20 Cause of Loss Broad Form (or an equivalent manuscript form) insuring Lessee's personal property and Alterations (specifically including "betterments and improvements") made by or for Lessee against physical damage, including loss of use of the Premises. The policy shall include coverage for any additional costs resulting from debris removal and reasonable amounts of coverage for the enforcement of any ordinance or law regulating the reconstruction or replacement of damaged property including any undamaged sections of the Premises required to be demolished or removed by reason of the enforcement of any Legal Requirement as the result of a covered cause of loss. The amount of such insurance shall be procured on a replacement cost basis (or the commercially reasonable and available insurable value thereof if, by reason of the unique nature or age of the improvements involved, such latter amount is less than full replacement cost). The policy shall also contain an agreed valuation provision in lieu of any coinsurance clause. The Port of Seattle shall be included as an Additional Insured and Loss Payee on Lessee's property insurance policy with respect to the Port's interest in Alterations.

22.1.3 Other Insurance. Lessee shall further obtain and keep in force such other and further insurance as Port may from time to time reasonably request for the protection by insurance of its interest in the premises.

## 22.2 Insurance Policies.

22.2.1 Insurance required hereunder shall be in companies duly licensed to transact business in the State of Washington, and maintaining during the policy term a General Policyholders Rating of 'A-' or better and a financial rating of 'IX' or better, or such other rating as may be required by a lender having a lien on the Premises, as set forth in the most current issue of "Best's Insurance Guide." Lessee shall not do or permit to be done anything that shall invalidate the insurance policies referred to in this Article.

22.2.2 Lessee shall cause to be delivered to the Port each of the following on an annual basis:

22.2.2.1 Certificate of Liability Insurance:

22.2.2.2 Evidence of Property Insurance

22.2.2.3 Loss Payee Endorsement on the Property Insurance Policy;

22.2.2.4 Additional Insured Endorsement on Commercial General Liability Policy;

22.2.2.5 Waiver of Subrogation on the Business Automobile Liability Policy

22.2.2.6 Waiver of Subrogation on the Garage Keepers Liability Policy;

22.2.3 No such policy shall be cancelable or subject to non-renewal or modification except after thirty (30) days prior written notice to the Port. Lessee shall at least thirty (30) days prior to the expiration of such policies, furnish the Port with evidence of renewals or “insurance binders” evidencing renewal thereof, or the Port may order such insurance and charge the cost thereof to Tenant, which amount shall be payable by Tenant to the Port upon demand.

22.2.4 No insurance required herein shall contain a deductible or self-insured retention in excess of \$50,000 without the prior written consent of the Port. Lessee bears full responsibility for payments of all deductibles or self-insured retentions.

22.3 Waiver of Subrogation. Without affecting any other rights or remedies, Lessee (for itself and on behalf of anyone claiming through or under it by way of subrogation or otherwise) hereby waives any rights it may have against the Port, its officers, agents and employees (whether in contract or in tort) on account of any loss or damage occasioned to Lessee arising out of or incident to the perils required to be insured against under this Agreement. Accordingly, Lessee shall cause each insurance policy required by this Agreement to further contain a waiver of subrogation clause. The effect of such release and waiver of the right to recover damages shall not be limited by the amount of insurance carried or required, or by any deductibles applicable thereto.

22.4 Miscellaneous Insurance Provisions.

22.4.1 The limits of insurance required by this Agreement or as carried by Lessee shall not limit the liability of Lessee nor relieve Lessee of any obligation hereunder. All insurance to be carried by Lessee shall be primary to and not contributory with any similar insurance carried by the Port, whose insurance shall be considered excess insurance only.

22.4.2 The amounts and types of insurance specified in this Agreement shall be subject to periodic adjustment to reflect changes in insuring practices for similar properties in the same geographic area and changes in insurance products.

## **23. ENVIRONMENTAL STANDARDS – INDEMNITY**

23.1 “Law or Regulation” as used herein shall mean any environmentally related local, state or federal law, regulation, ordinance or order (including without limitation any final order of any court of competent jurisdiction), now or hereafter in effect. “Hazardous Substances” as used herein shall mean any substance or material defined or designated as a hazardous waste, toxic substance, or other pollutant or contaminant, by any Law or Regulation.

- 23.2 Lessee shall not allow the presence in or about the Premises of any Hazardous Substance in any manner that could be a detriment to the Premises or in violation of any Law or Regulation. Lessee shall not allow any Hazardous Substances to migrate off the Premises, or the release of any Hazardous Substances into adjacent surface waters, soils, underground waters or air. Lessee shall provide the Port with Lessee's USEPA Waste Generator Number, and with copies of all Material Safety Data Sheets (MSDS), Generator Annual Dangerous Waste Reports, environmentally related regulatory permits or approvals (including revisions or renewals) and any correspondence Lessee receives from, or provides to, any governmental unit or agency in connection with Lessee's handling of Hazardous Substances or the presence, or possible presence, of any Hazardous Substance on the Premises.
- 23.3 If Lessee, or the Premises, is in violation of any Law or Regulation concerning the presence or use of Hazardous Substances or the handling or storing of hazardous wastes, Lessee shall promptly take such action as is necessary to mitigate and correct the violation. If Lessee does not act in a prudent and prompt manner, the Port reserves the right, but not the obligation, to come onto the Premises, to act in place of the Lessee (Lessee hereby appoints the Port as its agent for such purposes) and to take such action as the Port deems necessary to ensure compliance or to mitigate the violation. If the Port has a reasonable belief that Lessee is in violation of any Law or Regulation, or that Lessee's actions or inactions present a threat of violation or a threat of damage to the Premises, the Port reserves the right to enter onto the Premises and take such corrective or mitigating action as the Port deems necessary. All costs and expenses reasonably incurred by the Port in connection with any such actions shall become payable by Lessee within fifteen (15) days after presentation of an invoice therefor.
- 23.4 The Port shall have access to the Premises to conduct an annual environmental inspection. In addition, Lessee shall permit the Port access to the Premises at any time upon reasonable notice for the purpose of conducting environmental testing at the Port's expense. Lessee shall not conduct or permit others to conduct environmental testing on the Premises without first obtaining the Port's written consent. Lessee shall promptly inform the Port of the existence of any environmental study, evaluation, investigation or results of any environmental testing conducted on the Premises, whenever the same becomes known to Lessee, and Lessee shall provide copies to the Port.
- 23.5 Prior to vacation of the Premises, in addition to all other requirements under this Agreement, Lessee shall remove and demonstrate to the Port's satisfaction that Lessee has not left any Hazardous Substances on the Premises. This demonstration shall be a condition precedent to the Port's payment of any Agreement Security to Lessee upon termination or expiration of this Agreement.
- 23.6 No remedy provided herein shall be deemed exclusive. In addition to any remedy provided above, the Port shall be entitled to full reimbursement from Lessee whenever the Port incurs any costs resulting from Lessee's use or management of Hazardous Substances on the Premises, including but not limited to, costs of clean-up or other remedial activities, fines or penalties assessed directly against the Port, injuries to third persons or other properties, and loss of revenues resulting from an inability to re-lease or

market the property due to its environmental condition (even if such loss of revenue occurs after the expiration or earlier termination of this Agreement).

23.7 In addition to all other indemnities provided in this Agreement, Lessee agrees to defend, indemnify and hold the Port free and harmless from any and all claims, causes of action, regulatory demands, liabilities, fines, penalties, losses, and expenses, including without limitation cleanup or other remedial costs (and including attorneys' fees, costs and all other reasonable litigation expenses when incurred and whether incurred in defense of actual litigation or in reasonable anticipation of litigation), arising from the existence or discovery of any Hazardous Substance on the Premises, or the migration of any Hazardous Substance from the Premises to other properties or into the surrounding environment, whether (a) made, commenced or incurred during the term of this Agreement, or (b) made, commenced or incurred after the expiration or termination of this Agreement if resulting from Lessee's use or management of the Premises during the term of this Agreement. Provided, however, Lessee's obligation to indemnify the Port pursuant to this Section 23.7 shall not apply with respect to any Hazardous Substance either (a) first existing on the Premises, (b) first released in, on or under the Premises, or (c) first migrating from the Premises to other areas of the surrounding environment, prior to the commencement of this Agreement under Section 3.

#### **24. INCREASE IN COST OF INSURANCE**

Lessee shall not use the Premises in such a manner as to increase the existing rates of insurance applicable to the Building or other structures of which the Premises are a part. If it nevertheless does so, then, at the option of the Port, the full amount of any resulting increase in premiums paid by the Port with respect to the buildings or structures of which the Premises are a part, and to the extent allocable to the term of this Agreement, may be added to the amount of rent or fee hereinabove specified and shall be paid by Lessee to the Port upon the monthly rental day next thereafter occurring.

#### **25. TAXES**

Lessee shall be liable for, and shall pay throughout the term of this Agreement, all license and excise fees payable for, or on account of, the activities conducted on the Premises and all taxes on the property of Lessee on the Premises and any taxes on the Premises and/or on the leasehold interest created by this Agreement and/or any taxes levied in lieu of a tax on said leasehold interest and/or any taxes levied on, or measured by, rent or fees payable hereunder, whether imposed on Lessee or on the Port. Lessee shall reimburse the Port for all such taxes paid or payable by the Port. With respect to any such taxes payable by the Port which are on or measured by the rent or fee payments hereunder, Lessee shall pay to the Port with each rent or fee payment an amount equal to the tax on, or measured by that particular payment. All other tax amounts for which the Port is or will be entitled to reimbursement from Lessee shall be payable by Lessee to the Port at least fifteen (15) days prior to the due dates of the respective tax amounts involved; provided, that Lessee shall be entitled to a minimum of ten (10) days' written notice of the amounts payable by it.

## **26. SIGNS; ADVERTISING**

- 26.1 No signs, promotions or other advertising matter, symbols, canopies or awnings (collectively "Signs") shall be attached to, painted on, or installed about the Premises (including the Building and shuttle busses) without the prior written approval of the Port. Any permitted Sign shall be professionally prepared. The Port may, without notice and without any liability therefor, enter the Premises and remove any items installed or maintained by Lessee in violation of the provisions of this Section 26. At the termination or sooner expiration of this Agreement and unless otherwise elected by the Port, Lessee shall remove all such Signs at its own expense, and Lessee shall repair any damage or injury to the Premises and correct any unsightly condition caused by the maintenance and removal of said Signs.
- 26.2 All advertising placed on or about the Premises or any vehicles being used in providing the Shuttle Services shall be of a first-class nature, in keeping with high aesthetic and ethical standards, and in compliance with all Legal Requirements, shall be appropriate for areas of the Airport used by the general public or all ages, and shall complement and be consistent with the general operations of the Airport by the Port and the utilization thereof by air and surface carriers and the general public as a facility for national and international commerce. All advertising panels and ad content are specifically subject to the prior review and approval of the Port. Lessee shall specifically submit to the Port for its prior review all contemplated advertising material which Lessee desires to display, including (a) copies of all written text to be used, (ii) sketches, photographs, mock-ups or other visual data which show the visual character of the proposed advertisement, and (iii) such other information concerning the number, size, form, character and proposed location and duration of the proposed advertisement not otherwise disclosed which is necessary to assist the Port in its review. The Port may, in its reasonable discretion, approve, disapprove or condition any individual proposed advertisement, all in a manner consistent with the Port's published sign policy. All such approvals shall be communicated to Lessee within fifteen (15) days after Lessee has submitted to the Port the information required above, unless special circumstances require a longer period, in which event the Port shall advise Lessee within a reasonable period of time under the circumstances. The Port may withdraw a previously granted approval upon the direction of the Port Commission or in any instances where circumstances make such a revocation of approval necessary or advisable. Lessee shall not install any advertising material disapproved by the Port and, with respect to approvals subsequently withdrawn, shall remove the advertisement involved within fifteen (15) days after such approval is withdrawn.

## **27. COMPLIANCE**

Lessee agrees to comply with all applicable rules and regulations of the Port, whether now in existence or hereafter promulgated, pertaining to the Premises (including the Building), which exist for the general safety and convenience of the Port, its various tenants, invitees, licensees and the general public. Lessee further agrees to comply with all applicable federal, state, and municipal laws, ordinances, and regulations, including without limitation those relating to environmental matters and airport security. Any fees for any inspection of the Premises during

or for the term of the Agreement by a federal, state or municipal officer and the fees for any so-called "Certificate of Occupancy" shall be paid by Lessee.

## **28. ASSIGNMENT OR SUBLEASE**

28.1 Prohibition. Lessee shall not assign or transfer this Agreement or any interest therein nor sublet or license the whole or any portion of the Premises, nor shall this Agreement or any interest there under be assignable or transferable by operation of law or by any process or proceeding of any court, or otherwise without the advance written consent of the Port. If Lessee is anything other than an individual, Lessee further agrees that if at any time during the term of this Agreement more than one-half (1/2) of the outstanding voting equity interests shall belong to any persons other than those who own more than one-half (1/2) of those outstanding voting equity interests at the time of the execution of this Agreement or to members of their immediate families, such change in the ownership of Lessee shall be deemed an assignment of this Agreement within the meaning of this Section 28.1; provided, however, that this sentence shall not apply if, and to the extent that Lessee is a corporation, the outstanding voting stock of which is listed on a recognized security exchange. Lessee's entering into any operating agreement, license or other agreement where under a third party is given rights or privileges to utilize a portion of the Premises shall be an attempted assignment or subletting within the meaning of this Section.

28.1.1 If Lessee shall, at any time during the term of this Agreement, desire to sell, assign or otherwise permanently transfer the Agreement in whole or in part, or any right or leasehold interest granted to it by this Agreement, Lessee shall, at the time the Lessee requests the consent of the Port, deliver to the Port such information in writing as the Port may reasonably require respecting the proposed assignee or subtenant including, without limitation, the name, address, nature of business, ownership, financial responsibility and standing of such proposed assignee or subtenant together with the proposed form of assignment or sublease. Within thirty (30) days from receipt of the information specified above, the Port shall notify Lessee of its election to: (a) consent to the assignment, or (b) disapprove the assignment, setting forth the grounds for doing so.

28.1.2 As a condition for the Port's consent to any transfer, the Port may require that the assignee or subtenant remit directly to the Port on a monthly basis, all monies due to Lessee by said assignee or subtenant (except with respect to excess rentals otherwise due Lessee pursuant to Section 28.2). In addition, a condition to the Port's consent to any assignment or sublease of this Agreement or the Premises shall be the delivery to the Port of a true copy of the fully executed instrument of assignment or sublease and an agreement executed by the assignee or subtenant in form and substance satisfactory to the Port and expressly enforceable by the Port, whereby the assignee or subtenant assumes and agrees to be bound by the terms and provisions of this Agreement and perform all the obligations of Lessee hereunder.

28.1.3 In the event of any assignment, Lessee and each respective assignor, waive notice of default by the Lessee in possession in the payment of rent or fees and in the



performance of the covenants and conditions of this Agreement and consents that the Port may in each and every instance deal with the Lessee in possession, grant extensions of time, waive performance of any of the terms, covenants and conditions of this Agreement and modify the same, and in general deal with the Lessee then in possession without notice to or consent of any assignor, including Lessee; and any and all extensions of time, indulgences, dealings, modifications or waivers shall be deemed to be made with the consent of Lessee and of each respective assignor.

28.1.4 Lessee agrees that any sublease will contain a provision in substance that if there be any termination whatsoever of this Agreement then the subtenant, at the request of the Port, will attorn to the Port and the sub-tenancy, if the Port so requests, shall continue in effect with the Port, but the Port shall be bound to the sub-tenant in such circumstances only by privity of estate. Nothing herein shall be deemed to require the Port to accept such attornment.

28.1.5 No assignment, subletting or license by Lessee shall relieve Lessee of any obligation under this Agreement, including Lessee's obligation to pay any sums due hereunder. Any purported assignment or subletting contrary to the provisions hereof without consent shall be void. The consent by the Port to any assignment or subletting shall not constitute a waiver of the necessity for such consent to any subsequent assignment or subletting.

28.1.6 Lessee shall reimburse the Port any reasonable professionals' fees and expenses incurred by the Port in connection with any request by Lessee for consent to an assignment or sublease.

28.2 Excess Rentals. If in connection with any assignment or sublease, Lessee receives rent or other monetary consideration, either initially or over the term of the assignment or sublease, in excess of the payments called for hereunder, or in case of the sublease of a portion of the Premises, in excess of such amounts fairly allocable to such portion, after appropriate adjustments to account for any improvements or alterations made by Lessee and assure that all other payments called for hereunder and out-of-pocket expenditures, operating costs or concessions incurred by Lessee in connection with such assignment, sublease or license, are appropriately taken into account, Lessee shall pay to the Port sixty percent (60%) of the excess of each such payment of rent or other consideration received by Lessee after its receipt.

## **29. DEFAULTS AND REMEDIES**

### **29.1 Defaults.**

Time is of the essence for each of Lessee's obligations under this Agreement. The occurrence of any one or more of the following events constitutes a default of this Agreement by Lessee with or without notice from the Port:

29.1.1 The vacating or abandonment of the Premises by Lessee.

- 29.1.2 The failure by Lessee to make any payment of Rent, or any other payment required by this Agreement, when due.
- 29.1.3 The discovery by the Port that any financial or background statement provided to the Port by Lessee, any successor, grantee, or assignee was materially false.
- 29.1.4 The filing by Lessee of a petition in bankruptcy, Lessee being adjudged bankrupt or insolvent by any court, a receiver of the property of Lessee being appointed in any proceeding brought by or against Lessee, Lessee making an assignment for the benefit of creditors, or any proceeding being commenced to foreclose any mortgage or other lien on Lessee's interest in the Premises or on any personal property kept or maintained on the Premises by Lessee.
- 29.1.5 A failure by Lessee to observe or perform any covenant, condition, or agreement to be observed or performed by Lessee under this Agreement.

## 29.2 Remedies.

- 29.2.1 Whenever any default (other than a default under Section 29.1.4, upon which termination of this Agreement shall, at the Port's option, be effective immediately without further notice) continues un-remedied in whole or in part for thirty (30) days after written notice is provided by the Port to Lessee (or for ten (10) days after written notice in the case of default for failure to pay any Rent, or other required payment when due), this Agreement and all of Lessee's rights under it will automatically terminate if the written notice of default so provides. Notwithstanding the foregoing, with respect to any default (other than a monetary default) that cannot reasonably be cured within the period of time provided, this Agreement shall not terminate upon the expiration of this period of time if, but only if, Lessee shall, within such period of time, commence such cure and thereafter diligently prosecute the same to completion. Upon termination, the Port may reenter the Premises using such force as may be necessary and remove all persons and property from the Premises. The Port will be entitled to recover from Lessee all unpaid rent, concession fees or other payments and damages incurred because of Lessee's default including, but not limited to, the costs of re-letting, including tenant improvements, necessary renovations or repairs, advertising, leasing commissions, and attorney's fees and costs ("Termination Damages"), together with interest on all Termination Damages at the rate of 18% per annum, or the maximum rate permitted by applicable law, whichever is less, from the date such Termination Damages are incurred by the Port until paid.
- 29.2.2 In addition to Termination Damages, and notwithstanding termination and re-entry, Lessee's liability for all rent, concession fees or other charges which, but for termination of this Agreement, would have become due over the remainder of the term of the Agreement ("Future Charges") will not be extinguished and Lessee agrees that the Port will be entitled, upon termination for default, to collect as additional damages, a rental deficiency. "Rental Deficiency" means, at the Port's election, either:

29.2.2.1 An amount equal to Future Charges, less the amount of actual rent and concession fees, if any, which the Port receives during the remainder of the term of the Agreement from others to whom the Premises may be rented, in which case such Rental Deficiency will be computed and payable at the Port's option either:

- (i) In an accelerated lump-sum payment discounted to present value, or
- (ii) In monthly installments, in advance, on the first day of each month following termination of this Agreement and continuing until the date on which the term of the Agreement would have expired but for such termination, and any suit or action brought to collect any portion of Rental Deficiency attributable to any particular month or months, shall not in any manner prejudice the Port's right to collect any portion of Rental Deficiency by a similar proceeding; or

29.2.2.2 An amount equal to Future Charges less the aggregate fair rental value of the Premises over the remaining term of the Agreement, reduced to present value. In this case, the Rental Deficiency must be paid to the Port in one lump sum, on demand, and will bear interest at a rate of 18% per annum, or the maximum rate permitted by applicable law, whichever is less, until paid. For purposes of this Section 29.2.2, "present value" is computed by applying a discount rate equal to one percentage point above the discount rate then in effect at the Federal Reserve Bank in, or closest to, Seattle, Washington.

29.2.3 If this Agreement is terminated for default as provided in this Agreement, the Port shall use reasonable efforts to re-let the Premises in whole or in part, alone or together with other premises, for such term or terms (which may be greater or less than the period which otherwise would have constituted the balance of the term of the Agreement), for such use or uses and, otherwise on such terms and conditions as the Port, in its sole discretion, may determine, but the Port will not be liable for, nor will Lessee's obligations under this Agreement be diminished by reason for any failure by the Port to re-let the Premises or any failures by the Port to collect any rent or concession fee due upon such re-letting.

29.2.4 If upon any re-entry permitted under this Agreement, there remains any personal property upon the Premises, the Port, in its sole discretion, may remove and store the personal property for the account and at the expense of Lessee. In the event the Port chooses to remove and store such property, it shall take reasonable steps to notify Lessee of the Port's action. All risks associated with removal and storage shall be on Lessee. Lessee shall reimburse the Port for all expenses incurred in connection with removal and storage as a condition to regaining possession of the personal property. The Port has the right to sell any property, which has been stored for a period of thirty (30) days or more, unless Lessee has tendered reimbursement to the Port for all expenses incurred in removal and storage. The proceeds of sale will be applied first to the costs of sale (including

reasonable attorney fees), second to the payment of storage charges, and third to the payment of any other amounts which may then be due and owing from Lessee to the Port. The balance of sale proceeds, if any, will then be paid to Lessee.

29.2.5 The Port's action pursuant to this Remedies Section shall not be construed to limit the Port in the exercise of any other additional right or remedy which may be available to the Port, at law or in equity, by reason of Lessee's default.

### **30. TERMINATION OF AGREEMENT**

This Agreement may be terminated in advance of its scheduled expiration date on any of the following events:

- 30.1 In the event of Lessee's default under the Agreement pursuant to Section 29.
- 30.2 In the event the Port requires the Premises for a capital improvement of the Airport, or for safety and security reasons, the Port shall give Lessee three (3) months advance notice of termination pursuant to this provision.
- 30.3 In the event that any federal, state or local government or agency or instrumentality thereof shall, by condemnation or otherwise, take title, possession or the right to possession of the Premises or any part thereof, the Port may, at its option, terminate this Agreement as of the date of such taking, and if Lessee is not in default under any of the provisions of this Agreement on said date, any rent or concession fees prepaid by Lessee shall, to the extent allocable to any period subsequent to the effective date of the termination, be promptly refunded to Lessee.
- 30.4 In the event that any court having jurisdiction in the matter shall render a decision which has become final and which will prevent the performance by the Port of any of its obligations under this Agreement, then either party hereto may terminate this Agreement by written notice, and all rights and obligations hereunder (with the exception of any undischarged rights and obligations that accrued prior to the effective date of termination) shall thereupon terminate. If Lessee is not in default under any of the provisions of this Agreement on the effective date of such termination, any rent or concession fees prepaid by Lessee shall, to the extent allocable to any period subsequent to the effective date of the termination, be promptly refunded to Lessee.

### **31. NONWAIVER; RIGHT TO PERFORM**

- 31.1 Receipt of Monies Following Termination. No receipt of monies by the Port from Tenant after the termination or cancellation of this Agreement in any lawful manner shall (a) reinstate, continue or extend the Term of this Agreement; (b) affect any notice theretofore given to Tenant; (c) operate as a waiver of the rights of the Port to enforce the payment of any Rent and fees then due or thereafter falling due; or (d) operate as a waiver of the right of the Port to recover possession of the Premises by proper suit, action, proceeding or remedy; it being agreed that after the service of notice to terminate or cancel this Agreement, or after the commencement of suit, action or summary proceedings, or any other remedy, or after a final order or judgment for the possession of the Premises, the Port may demand, receive and collect any monies due, or thereafter falling due, without

in any manner affecting such notice, proceeding, suit, action, order or judgment; and any and all such monies collected shall be deemed to be payments on account of the use and occupation and/or Tenant's liability hereunder.

- 31.2 No Waiver of Breach. The failure of the Port to insist in any one or more instances, upon a strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall not be construed as a waiver of or relinquishment for the future of the performance of such covenant, or the right to exercise such option, but the same shall continue and remain in full force and effect. The receipt by the Port of the Rent or fees, with knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver by the Port of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Port. The consent or approval of the Port to or of any act by Tenant requiring the Port's consent or approval shall not be deemed to waive or render unnecessary the Port's consent or approval to or of any subsequent similar acts by Tenant.
- 31.3 No Waiver of Rent. The receipt by the Port of any installment of the Base Rent, fees or of any Additional Rent shall not be a waiver of any Base Rent or Additional Rent then due.
- 31.4 Application of Payments. The Port shall have the right to apply any payments made by Tenant to the satisfaction of any debt or obligation of Tenant to the Port, in the Port's sole discretion and regardless of the instructions of Tenant as to application of any such sum, whether such instructions be endorsed upon Tenant's check or otherwise, unless otherwise agreed upon by both parties in writing. The acceptance by the Port of a check or checks drawn by others than Tenant shall in no way affect Tenant's liability hereunder nor shall it be deemed an approval of any assignment of this Agreement or subletting by Tenant.
- 31.5 Port's Right to Perform. Upon Tenant's failure to perform any obligation or make any payment required of Tenant hereunder, the Port shall have the right (but not the obligation) to perform such obligation of Tenant on behalf of Tenant and/or to make payment on behalf of Tenant to such parties. Tenant shall reimburse the Port the reasonable cost of the Port's performing such obligation on Tenant's behalf, including reimbursement of any amounts that may be expended by the Port, plus interest at the Default Rate, as Additional Rent.

## **32. SURRENDER OF PREMISES**

At the expiration or sooner termination of this Agreement, Lessee shall promptly surrender possession of the Premises to the Port broom-clean, in their improved condition, wear and tear (consistent with Section 9.3 and 18.2) excepted, remove all its furniture, fixtures and equipment, and shall deliver to the Port all keys that it may have to any and all parts of the Premises. Lessee shall be responsible for all consequential damages to the Port as a result of Lessee's failure to surrender the Premises in accordance with this Agreement, and this clause shall survive the termination of the Agreement. Nothing herein contained shall be deemed to constitute a release or discharge of Lessee with respect to any obligation or liability incurred under the Agreement and outstanding and unsatisfied on the surrender date.

### 33. LIENS AND ENCUMBRANCES

Lessee shall keep the Premises free and clear of any liens and encumbrances arising or growing out of the use and occupancy of the said Premises by Lessee. Lessee agrees to fully indemnify and defend the Port in connection with any such liens filed against the Port property. At the Port's request, Lessee shall furnish the Port with written proof of payment of any item, which would or might constitute the basis for such a lien on the Premises if not paid.

### 34. NOTICES

All notices hereunder shall be in writing and shall be delivered personally, by certified or registered mail, or by recognized overnight courier addressed as follows:

***To the Port:***

***U. S. Postal Service Address:***

Port of Seattle  
Seattle-Tacoma International Airport  
P. O. Box 68727  
Seattle, WA 98168  
Attn: Manager, Aviation Properties

***Overnight Delivery Address:***

Port of Seattle  
Seattle-Tacoma International Airport  
Room A6012M  
17801 International Blvd. South  
Seattle, WA 98158  
Attn: Manager, Aviation Properties

***For payments only, the following mailing address should be used:***

Port of Seattle  
P. O. Box 34249  
Seattle, Washington 98124-1249

***To Lessee:***

***U. S. Postal Service Address:***

ATZ Inc.  
PO Box 68160  
Seattle, WA 98168-0160  
Attn: President and CEO

***Overnight Delivery Address:***

ATZ Inc.  
2626 South 170th  
Seattle, WA 98168-0160  
Attn: President and CEO

or to such other respective addresses as either party hereto may hereafter from time to time designate in writing. Notices shall be deemed delivered (i) when personally delivered; (ii) on the third day after mailing when sent by certified or registered mail and the postmark affixed by the United States Postal Service shall be conclusive evidence of the date of mailing; (iii) on the date transmitted by facsimile, if the facsimile is confirmed received; or (iv) on the first business day after deposit with a recognized overnight courier if deposited in time to permit overnight delivery by such courier as determined by its posted cutoff times for receipt of items for overnight delivery to the recipient.

Payments may be made in the manner provided for notice or may be delivered by regular mail (postage prepaid); provided, payments made by regular mail (postage prepaid) shall be deemed delivered when actually received by the Port.

### **35. ATTORNEYS' FEES**

In the event that either party shall be required to bring any action to enforce any of the provisions of this Agreement, or shall be required to defend any action brought by the other party with respect to this Agreement, and in the further event that one party shall prevail in such action, the losing party shall, in addition to all other payments required therein, pay all of the prevailing party's actual costs in connection with such action, including such sums as the court or courts may adjudge reasonable as attorneys' fees in the trial court and in any appellate courts. For purposes of calculating attorneys' fees, legal services rendered on behalf of the Port by public attorneys shall be computed at hourly rates charged by attorneys of comparable experience in private practice in Seattle, Washington.

### **36. AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE**

- 36.1 It is the policy of the Port to support participation of ACDBEs, as defined in 49 CFR, Part 23, in concession activities at the Airport. If Lessee operates the Premises as a DBE, Lessee agrees to submit to the Port, upon execution of this Agreement, certification from the State of Washington that Lessee is a certified ACDBE. At all times during the term of this Agreement, Lessee shall be and remain certified as an ACDBE in accordance with all applicable federal, state and local laws, rules and regulations and shall timely file any and all applications, together with all supporting documentation, necessary to maintain such certification. In the event that Lessee is certified as a ACDBE and that certification is necessary to satisfy the requirements of this Section, prior to any change in ownership, control or organization of Lessee, Lessee shall (in addition to any requirements that may be imposed by Section 28) similarly obtain ACDBE certification for Lessee as so changed and provide the Port with proof of the same. If Lessee shall at any time cease to be so certified, the Port may, at its sole option, terminate this lease on not less than ninety (90) days advance written notice to Lessee.
- 36.2 It is the policy of the Port to ensure that Airport Concessions Disadvantaged Business Enterprises (ACDBEs) as defined in the Department of Transportation (DOT), 49 CFR Part 23, and other small businesses have an equal opportunity to receive and participate in DOT-assisted contracts. The Port encourages Lessee to make every reasonable effort to maximize the contracting opportunities for ACDBEs and other small businesses in the architectural, engineering and construction of the Premises, and in the procurement of goods and services necessary for the operation of the retail concession at this Airport.
- 36.3 Lessee shall submit quarterly ACDBE participation reports to the Port starting on the first day of the second month after the commencement of this Agreement. Lessee shall submit such reports as may be required by the Port, for the purpose of demonstrating compliance with 49 CFR Part 23.

## **37. NONDISCRIMINATION**

- 37.1 Lessee for itself, its heirs, personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on the Airport for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulation may be amended.
- 37.2 Lessee for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree: (a) that no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (b) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied benefits of, or otherwise be subjected to discrimination, (c) that Lessee shall use the Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.
- 37.3 Lessee assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This Provision obligates Lessee or its transferee for the period during which Federal assistance is extended to the airport program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, the Provision obligates Lessee or any transferee for the longer of the following periods: (a) the period during which the property is used by the Port or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the Port or any transferee retains ownership or possession of the property. In the case of contractors, this Provision binds the contractors from the bid solicitation period through the completion of the contract.
- 37.4 In addition, Lessee agrees that, whether or not this Agreement is conducted with, or benefits from, Federal assistance, it shall in all matters pertaining to the performance of this Agreement conduct its business in a manner which assures fair, equal and nondiscriminatory treatment of all persons without respect to race, sex, age, color, creed, sexual preference, marital status, national origin, or the presence of any sensory, mental or physical handicap.
- 37.5 Lessee will maintain open hiring and employment practices and will welcome applications for employment in all positions from all qualified individuals.



- 37.6 It is the policy of the Department of Transportation that disadvantaged business enterprises as defined in the Airport and Airway Improvement Act, as amended, and as implemented by Federal regulations shall have the maximum opportunity to participate in the performance of services as defined in 49 CFR 23.5. Consequently, this Agreement is subject to 49 CFR Part 23 as applicable.
- 37.7 Lessee will, at the timely request of the Port, provide any information needed in preparation of necessary reports, forms, documents, and other data relative to equal employment.
- 37.8 Lessee hereby assures that it will include the above clauses in any subcontract(s) approved by the Port and cause subcontractor(s) to similarly include clauses in further subcontracts.

### **38. MANDATORY PROGRAMS**

- 38.1 Lessee understands that, from time to time, the Port may institute certain programs that the Port believes, in its sole judgment, will be in the best interests of the Airport and its tenants. Such programs shall include, but not be limited to, trash recycling, commuter trip reduction, luggage cart token program, and Aircraft Operations Area (AOA) Clean Surface Program for FOD (Foreign Object Debris).
- 38.2 Lessee agrees to promptly comply with and carry out any and all obligations issued by the Port under such programs, as may exist from time to time.

### **39. LABOR DISPUTES**

Lessee agrees to use its best efforts to avoid disruption to the Port, its tenants or members of the public, arising from labor disputes involving Lessee, and in the event of a strike, picketing, demonstration or other labor difficulty involving Lessee, to use its good offices, including the utilization of available legal remedies, to minimize and/or eliminate any disruption to the Port, its tenants or members of the public, arising from such strike, picketing, demonstration or other labor difficulty.

### **40. RIGHT OF ENTRY, EASEMENTS**

- 40.1 The Port shall have the right to enter the Premises at any and all reasonable times throughout the duration of this Agreement for any reasonable purpose; provided, that the Port shall not interfere unduly with Lessee's operations. This right shall impose no obligation on the Port to make inspections to ascertain the condition of the Premises, and shall impose no liability upon the Port for failure to make inspections.
- 40.2 The Port hereby reserves such continuous access and utilities easements within or upon the Premises as may in the opinion of the Port from time to time be desirable for the purpose of enabling it to exercise any right or reservation or to perform any obligation contained in this Agreement or in connection with the Port's ownership or operation of other properties. If the Port exercises this reservation of easement in any manner which substantially and negatively impacts Lessee, the Port agrees to negotiate an equitable adjustment in the rent or fee, or to bear reasonable costs of any permanent modifications

to the Premises necessary to permit Lessee to continue to operate its business. In no event, however, shall the Port be responsible for any reduced efficiency or loss of business occasioned thereby.

#### **41. HOLDING OVER**

- 41.1 If Lessee shall, with the consent of the Port, hold over after the expiration or sooner termination of the term of this Agreement, the resulting tenancy shall, unless otherwise mutually agreed, be on a month-to-month basis.
- 41.2 In order to facilitate transition from Lessee's tenancy to that of other Lessee at the expiration of the term of the Agreement, the Port may request, and Lessee shall agree, to extend its tenancy as to some or all of the Premises on a month-to-month basis, not to exceed six (6) months. No later than nine (9) months before expiration of the Agreement, the parties shall meet to discuss the process for transitioning occupancy of the Premises in order to minimize disruption of service to the traveling public at the Airport.
- 41.3 During any month-to-month tenancy pursuant to this Section 41, Lessee shall pay to the Port the same rent or fee as set forth herein, unless a different rent or fee shall be agreed upon, and shall be bound by all of the additional provisions of this Agreement insofar as they may be pertinent.

#### **42. FORCE MAJEURE**

- 42.1 In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lockouts, inability to procure labor or materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war, fire or other casualty or other reason of a similar or dissimilar nature beyond the reasonable control of the party, delayed in performing work, or doing acts required under the terms of this Agreement, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. Delays or failures to perform resulting from lack of funds shall not be deemed delays beyond the reasonable control of a party.
- 42.2 After the Rent Commencement Date the provisions of this Section 42 shall not operate to excuse Lessee from the prompt payment of Rent as required by this Agreement and shall not extend the term of this Agreement.

#### **43. JOINT AND SEVERAL LIABILITY**

Each and every party who signs this Agreement, other than in a representative capacity, as Lessee, shall be jointly and severally liable hereunder.

#### **44. "LESSEE" INCLUDES LESSEES, ETC.**

It is understood and agreed that for convenience, the word "Lessee" and verbs and pronouns in the singular number and neuter gender are uniformly used throughout this Agreement, regardless

of the number, gender or fact of incorporation of the party who is, or of the parties who are, the actual Lessee or Lessees under this Agreement.

#### **45. CAPTIONS**

The captions in this Agreement are for convenience only and do not in any way limit or amplify the provisions of this Agreement.

#### **46. INVALIDITY OF PARTICULAR PROVISIONS**

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.

#### **47. SURVIVAL OF INDEMNITIES**

All indemnities provided in this Agreement shall survive the expiration or any earlier termination of this Agreement. In any litigation or proceeding within the scope of any indemnity provided in this Agreement, Lessee shall, at the Port's option, defend the Port at Lessee's expense by counsel satisfactory to the Port.

#### **48. LAWS OF WASHINGTON; VENUE**

This Agreement shall be construed under the laws of Washington without regard to its conflicts of laws principles. Jurisdiction and venue for any action relating hereto shall be in King County, Washington. In any action on or related to the terms of this Agreement, the parties (for themselves and their successors and assigns) hereby waive any right to trial by jury and expressly consent to trial of any such action before the court.

#### **49. BROKER'S FEE**

Lessee warrants that it has had no discussions, negotiations and/or other dealings with any real estate broker or agent other than affirmatively disclosed to the Port in connection with the negotiation of this Agreement, and that it knows of no other real estate broker or agent who is or may be entitled to any commission or finder's fee in connection with this Agreement. Lessee shall, at its sole cost and expense, be responsible for the compensation of any real estate broker or agent with which it has had any discussions and agrees to indemnify and hold the Port harmless from and against any and all claims, demands, losses, liabilities, lawsuits, judgments, costs and expenses (including without limitation, attorneys' fees and costs) with respect to any leasing commission or equivalent compensation alleged to be owing on account of discussions, negotiations and/or dealings with any broker or agent in connection with this Agreement or any assignment or sublease.

#### **50. NONCOMPETITION**

Neither Lessee nor any Affiliate of Lessee will operate a competing off-Airport parking lot within a three (3) mile radius of the Airport or the Premises (whichever extends farther) without

the prior written approval from the Port, which approval may be granted, conditioned or denied in the sole and unfettered discretion of the Port.

**51. ENTIRE AGREEMENT - AMENDMENTS**

This Agreement, together with the Exhibits A, B, and C all of which are attached hereto and incorporated herein by this reference, constitute the entire agreement between the parties. There are no terms, obligations, covenants, or conditions other than those contained herein. No modification or amendment of this Agreement shall be valid or effective unless evidenced by an agreement in writing signed by both parties.

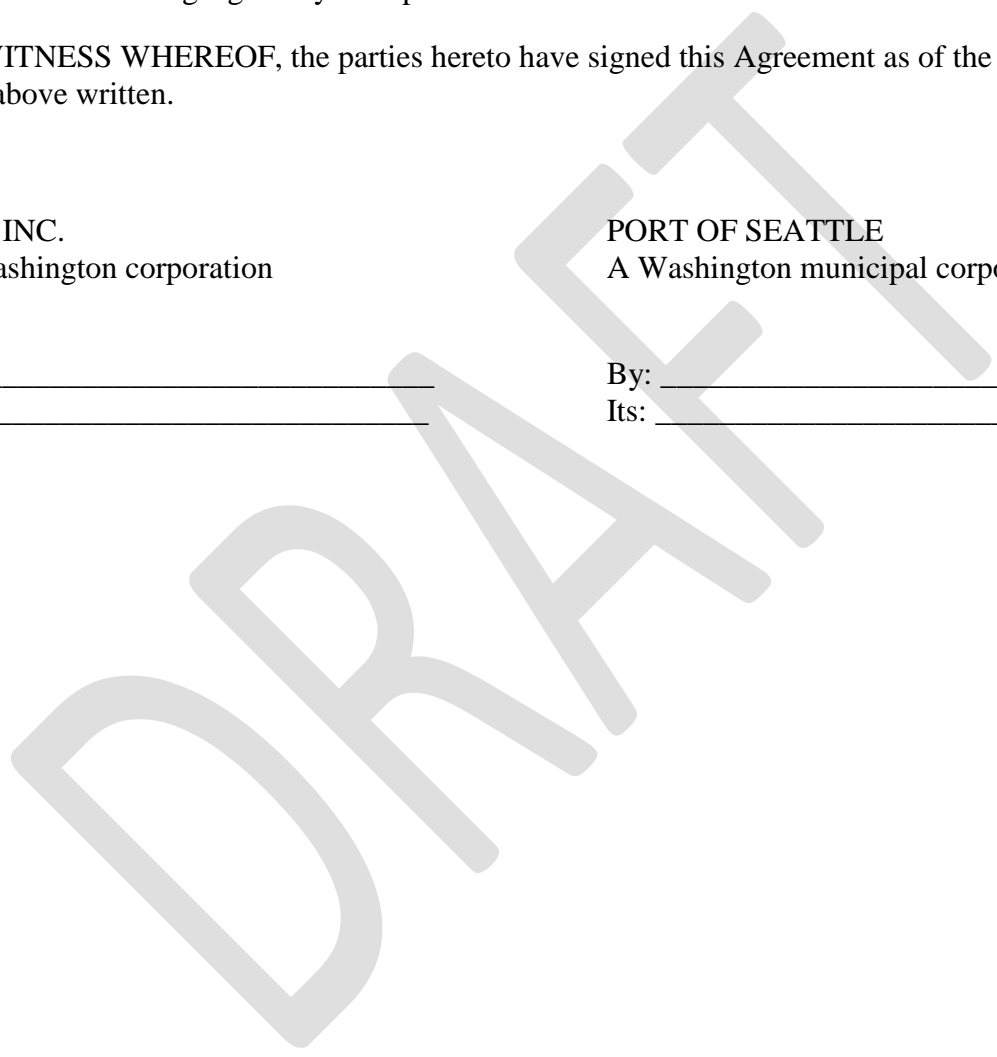
IN WITNESS WHEREOF, the parties hereto have signed this Agreement as of the day and year first above written.

ATZ INC.  
A Washington corporation

PORT OF SEATTLE  
A Washington municipal corporation

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

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



**(ACKNOWLEDGMENT FOR LESSEE)**

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2012, before me, personally appeared \_\_\_\_\_ to me known to be the \_\_\_\_\_ of ATZ, Inc., the corporation that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was duly authorized to execute the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year first above written.

\_\_\_\_\_  
Notary Public in and for the  
State of \_\_\_\_\_  
Residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

**(ACKNOWLEDGMENT FOR THE PORT)**

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2012, before me, personally appeared \_\_\_\_\_ to me known to be the \_\_\_\_\_ of the PORT OF SEATTLE, a municipal corporation, the corporation that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was duly authorized to execute the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

\_\_\_\_\_  
Notary Public in and for the  
State of Washington  
Residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

EXHIBIT A

Legal Description of Premises

(See Attached)

DRAFT

EXHIBIT B

Map of Premises

(See Attached)

DRAFT

EXHIBIT C

Port Improvements

The final DRAWINGS dated *[INSERT DATE HERE]* and SPECIFICATIONS dated *[INSERT DATE HERE]* for the Doug Fox Service Upgrades project are incorporated herein by this reference. The following documents are attached hereto as reference to the specified documents:

- The cover page from the final DRAWINGS dated *[INSERT DATE HERE]*;
- The index to final DRAWINGS dated *[INSERT DATE HERE]*;
- The cover page from final SPECIFICATIONS dated *[INSERT DATE HERE]*; and
- The index to the final SPECIFICATIONS dated *[INSERT DATE HERE]*.

***[NOTE: YOU MUST ATTACHED COPIES OF THESE PAGES TO THE ACTUAL AGREEMENT]***

DRAFT