

Item Number: 6d Attachment
Date of Meeting: February 9, 2010

EXHIBIT A

RENTAL CAR CONCESSION AGREEMENT

FOR

**SEATTLE-TACOMA INTERNATIONAL AIRPORT
CONSOLIDATED RENTAL CAR FACILITY**

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RENTAL CAR CONCESSION AGREEMENT

THIS RENTAL CAR CONCESSION AGREEMENT is made as of this ____ day of _____, 20__ by and between the PORT OF SEATTLE, a Washington municipal corporation, and _____, a _____ corporation.

For and in consideration of the mutual promises, covenants and conditions hereinafter set forth, the parties agree as follows:

ARTICLE 1: DEFINITIONS

1.1 Attachment. Definitions of terms utilized in this Concession Agreement are attached hereto as Attachment 1. Other terms may be defined in other parts of the Concession Agreement.

ARTICLE 2: GRANT OF CONCESSION; PREMISES

2.1 Grant of Concession. The Port hereby awards and grants to Concessionaire, and Concessionaire hereby accepts, the right to operate a Rental Car Concession at the Airport on a nonexclusive basis for the purpose of arranging rental car and related services for Airport Customers where such services are furnished by or on behalf of Concessionaire. The concession rights and privileges granted and awarded to Concessionaire are expressly made subject to all of the terms, covenants and conditions of this Concession Agreement and the Lease Agreement. Concessionaire specifically acknowledges and understands that the Port intends to grant Rental Car Concessions to all qualified companies on substantially the same terms and conditions as are contained herein. The award of concession rights and privileges to such other rental car operators shall not constitute a violation of this Concession Agreement, nor, in the event of the cessation or termination of such other Rental Car Concessions during the term hereof, shall the award of concession rights and privileges to a substitute or successor rental car operator constitute a violation hereof, provided, that taking into account all of the then existing circumstances, the successor operator is not granted concession rights and privileges which, taken as a whole, are on terms and conditions which are substantially more favorable than the terms and conditions of this Concession Agreement.

ARTICLE 3: TERM

3.1 Term. The Term of this Concession Agreement shall commence on the Opening Date and, unless earlier terminated pursuant to any provision, shall extend for a period of ten (10) Agreement Years.

ARTICLE 4: CONCESSION FEES

4.1 Concession Fees. Concessionaire shall pay to the Port, for the concession rights and privileges granted herein, the following:

4.1.1 Minimum Annual Guarantee.

4.1.1.1 *First Agreement Year.* For the first Agreement Year, the Minimum Annual Guarantee shall be _____ (\$_____).

4.1.1.2 *Second and Subsequent Agreement Years.* For the second and each subsequent Agreement Year, the Minimum Annual Guarantee shall be an amount equal to eighty five percent (85%) of the total amount (whether by Minimum Annual Guarantee or Percentage Fees) paid or payable by Concessionaire to the Port for the previous Agreement Year or the Minimum Annual Guarantee for the first Agreement Year set forth in Section 4.1.1.1, whichever is greater.

4.1.1.3 *Payment.* The Minimum Annual Guarantee amount shall be divided into equal monthly payments and shall be paid in advance on or before the first day of each and every month during the Term without any prior demand therefor and without any abatement, deduction or setoff whatsoever.

4.1.1.4 *Relief for Exceptional Circumstances.* 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: (a) the Minimum Annual Guarantee payment due for the next month (or such later month immediately following the date on which the number of Enplaned Passengers can reasonably be determined) shall automatically be adjusted downward by the percentage decrease in the number of Enplaned Passengers for the month experiencing the decrease, and (b) the Minimum Annual Guarantee for the Agreement Year in which the reduced monthly payment amount falls shall also be reduced by a like dollar amount. For example, if the number of Enplaned Passengers for the month of July 2015 declined by 25% over the number of Enplaned Passengers for the month of July 2014, then the Port will: (a) reduce the Minimum Annual Guarantee amount payable for the month of August 2015 by 25%, and (b) reduce the Minimum Annual Guarantee for the Agreement Year in which August 2015 falls by a like dollar amount.

4.2 Percentage Fees. Concessionaire shall also pay the Port a percentage fee ("Percentage Fee") equal to ten percent (10%) of its Gross Revenues for each Agreement Year (or for the first Agreement Year, from the Opening Date until the end of the first Agreement Year). The Percentage Fee, subject to reconciliation as provided in Section 4.2.3, shall be paid monthly. Concessionaire shall pay the Percentage Fee to the extent the Percentage Fee is higher than the monthly payment of the Minimum Annual Guarantee paid to the Port pursuant to Section 4.1.1.

4.2.1 *Revenue Reports; Remittance.* On or before the twentieth (20th) day of each month, Concessionaire shall submit to the Port a detailed statement showing the Gross Revenue generated from the concession during the preceding month and shall simultaneously pay to the Port the Percentage Fee (if any) due for that preceding month less the monthly payment of Minimum Annual Guarantee already paid by the Concessionaire for that month. The reports shall show such reasonable detail and breakdown as may be required by the Port. A copy of the current report form required by the Port is attached hereto as **Exhibit Q**. Concessionaire may, subject to the Port's reasonable consent, utilize its own form that clearly reflects all of the information required by the Port.

4.2.2 *Annual Report.* Concessionaire shall submit, for the approval of the Port, an "Annual Report" for each Agreement Year during the Term of this Concession Agreement. Such Annual Report shall be submitted no later than ninety (90) calendar days following the last day of each Agreement Year. The Annual Report shall be submitted without regard to whether the Port has elected to exercise any of its rights under Section 6.1 of the Concession Agreement. Concessionaire shall bear the entire cost of preparing and providing such reports. The Annual Report shall be prepared by Concessionaire and signed by its chief financial officer, or their designee, attesting to the amounts shown. The Annual Report shall also be audited by an independent certified public accounting firm in accordance with generally accepted auditing standards ("GAAS"), with a copy of the independent certified public accounting firm's audit report sent to the Port stating that in its professional opinion, based on the audit, the Concession Fees paid by the Concessionaire during the previous Agreement Year were properly calculated and paid in accordance with the terms and conditions of the Concession Agreement. The Annual Report shall contain at a minimum and in detail satisfactory to the Port a complete, itemized statement of Concessionaire's: (a) total Gross Revenues broken out monthly, as shown on the books and records of Concessionaire, that were used to compute the Concession Fee during the period covered by the Annual Report; (b) the total Concession Fees paid; and (c) a statement whether or not the Concession Fees paid by Concessionaire during the preceding Agreement Year was properly calculated and paid in accordance with the terms and conditions of this Concession Agreement. In addition to this report, the Port shall have the right to request a reasonable number of rental transaction agreements for the preceding Agreement Year as it deems appropriate and Concessionaire shall provide such agreements together with all backup to such agreements to demonstrate calculation and remittance of funds to the satisfaction of the Port. This provision shall survive the expiration or early termination of this Concession Agreement.

4.2.3 *Annual Reconciliation.* The Port shall, within sixty (60) days following Concessionaire's delivery of the Annual Report, reconcile the Minimum Annual Guarantee and Percentage Fees paid by Concessionaire for the previous Agreement Year. To the extent that Concessionaire made any overpayment to the Port, the Port may apply such amount to any unpaid Concession Fees, Lease Agreement obligations or any other sum due by Concessionaires or any other default as if such sum were additional Security, or if there is no such unpaid amounts or other default, shall issue Concessionaire a credit against future amounts of Concession Fees due to the Port (or, following the expiration or earlier termination of this Concession Agreement, shall issue Concessionaire a refund of the amount of such overpayment).

4.2.4 *Recovery of Percentage Fee.* Concessionaire acknowledges that Concession Fee payments by Concessionaire to the Port under this Concession Agreement are for Concessionaire's privilege to use the Airport facilities and access the Airport market and are not fees imposed by the Port upon Concessionaire's customers. The Port does not require, but will not prohibit, a separate statement of and charge for the Percentage Fee on customer invoices or rental agreements ("Recovery Fee"), provided that such Recovery Fee meets all of the following conditions: (a) such Recovery Fee must be titled "Concession Recovery Fee," "Concession Recoupment Fee" or such other name first approved by the Port in writing; (b) the Recovery Fee must be shown on the customer rental car agreement and invoiced with other Concessionaire charges

(i.e. "above the line"); (c) the Recovery Fee as stated on the invoice and charged to the customer shall be no more than eleven and eleven-hundredths percent (11.11%) of Gross Revenues, specifically excluding from Gross Revenues for purposes of this calculation the Recovery Fee; (d) Concessionaire shall neither identify, treat, or refer to the Recovery Fee as a tax, nor imply that the Port is requiring the pass through of such fee; (e) Concessionaire shall comply with all applicable laws, including Federal Trade Commission requirements, the Washington State Consumer Protection Act and any commitment to or contractual obligation by Concessionaire with the Attorney General of Washington or any group of State Attorneys General.

ARTICLE 5: REMITTANCE; LATE PAYMENT

5.1 Remittance Address. Any and all payments due to the Port by Concessionaire shall be remitted to the following address: Port of Seattle, P. O. Box 34249-1249, Seattle, WA 98124-1249, or at such other place as the Port may direct in writing.

5.2 Late Payment. If any payment of Concession Fees or other sum or charge otherwise payable by Concessionaire is not received by the Port within ten (10) days of when due, Concessionaire shall pay to the Port a late payment charge equal to five percent (5%) of the amount of such delinquent payment in addition to the installment of Concession Fees or other sum or charge otherwise payable by Concessionaire then owing, regardless of whether or not a Notice of Default has been given by the Port. Notwithstanding the foregoing, in the event that the Operator has not, within the prior twenty four months, been subject to any late payment charge (whether or not assessed), the Port agrees it will waive any late payment charge provided Operator pays any amounts due within three (3) business days of oral or written notification from the Port to Operator of the delinquency. In addition, if such delinquent payment of Concession Fees or other sum or charge otherwise payable by Concessionaire and late charge are not received within fifteen (15) days of when such delinquent payment was originally due, Concessionaire shall further pay interest on such delinquent payment and late charge thereafter at the Default Rate. The Port and Concessionaire recognize that the damages which the Port will suffer as a result of Concessionaire's failure to timely pay Concession Fees or other sum or charge otherwise payable by Concessionaire are difficult or impracticable to ascertain, and agree that said interest and late charge are a reasonable approximation of the damages that the Port will suffer in the event of Concessionaire's late payment. This provision shall not relieve Concessionaire from payment of Concession Fees or other sum or charge otherwise payable by Concessionaire at the time and in the manner herein specified.

ARTICLE 6: ACCOUNTING PROCEDURES; AUDIT

6.1 Same Rights and Obligations. Article 8 of the Lease Agreement is specifically incorporated in this Concession Agreement by reference. The Port shall have the same rights, and Concessionaire shall have the same obligations, with respect to Concessionaire's books and records and the inspection/audit thereof under this Concession Agreement as the parties have under Article 8 of the Lease Agreement.

ARTICLE 7: BOND OR OTHER SECURITY

7.1 Security. Article 9 of the Lease Agreement is specifically incorporated in this Concession Agreement by reference; provided, however, Concessionaire shall not be required to provide additional Security under this Concession Agreement. The Security provided by Concessionaire under the Lease Agreement shall secure Concessionaire's full performance of this Concession Agreement, including the payment of all Concession Fees and other amounts now or hereafter payable to the Port hereunder. The Port shall have the same rights, and Concessionaire shall have the same obligations, with respect to the Security under this Concession Agreement as the parties have under Article 9 of the Lease Agreement.

ARTICLE 8: USE

8.1 Use of Premises. Subject to and in accordance with all present and future Legal Requirements and Port Standards as well as the Lease Agreement, Concessionaire covenants and agrees that it shall use the Premises granted to it under the Lease Agreement solely for the purpose of operating a Rental Car Concession and for no other purpose or use. In addition, each Concessionaire may, subject to the Port's reasonable consent, provide (whether or not for additional charge) ancillary business services that are not in direct competition with any concession operated by a Non-RAC Concessionaire in the Consolidated Rental Car Facility as a convenience to the customers of Concessionaire's Rental Car Concession. Any revenue from such ancillary business services shall, however, be considered Gross Revenues.

ARTICLE 9: STANDARDS OF OPERATION

9.1 First Class Service. Concessionaire shall ensure that its Rental Car Concession is operated, at the minimum, in conformance with the following standards:

9.1.1 *General Standards*.

9.1.1.1 Concessionaire shall provide the highest degree and standards of quality of services to the patrons of the Airport. Concessionaire shall furnish prompt, efficient, first-class rental car service that is adequate to meet all reasonable demands for its rental car service by Airport Customers, and shall conduct its Rental Car Concession in a first-class manner.

9.1.1.2 Concession operations must be conducted in a safe, clean, orderly and inviting condition at all times. Trash or debris shall not be allowed to accumulate or be stored on any portion of the Premises. Similarly, no loud, boisterous or otherwise improper actions or language shall be permitted within or about 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 shall be erected on the roof, interior walls or exterior walls of the Premises without first obtaining the written approval of the Port.

9.1.1.3 Traveler's checks and credit cards must be acceptable forms of payment for rental transactions.

9.1.1.4 At all locations within three miles of the Airport, the Concessionaire's motor vehicle rental agreements shall be printed or stamped in such form so as to provide a separate space for its customers to indicate by their signature if they are *not* an "Airport Customer" as defined in Attachment 1. Any rental agreement which does not have a customer signature upon it designating that the customer is not an "Airport Customer" shall be treated hereunder as though such customer is an "Airport Customer" for purposes of computing compensation due to the Port under this Concession Agreement.

9.1.1.5 Concessionaire shall not engage in activities that will divert Airport Customers from the Rental Car Concession for any purpose whatsoever including, but not limited to, writing of sales agreements for an Airport Customer at any of Concessionaire's other rental car operations that are not included within this Concession Agreement's definition of Rental Car Concession. If the Port believes, in its opinion, that Concessionaire is engaging in such a diversion of activity, it reserves the right to inspect any relevant Concessionaire records, including records from operations other than the Rental Car Concession. The operation of off-airport public parking by Concessionaire will not be considered a diversion activity under this Concession Agreement.

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

9.1.1.7 If the Port receives and forwards to Concessionaire, any complaint concerning Concessionaire's operation of the Rental Car Concession, Concessionaire shall promptly respond to such complaint, in writing, within thirty (30) days of its receipt and shall make a good-faith attempt to resolve the cause of such complaint

9.1.2 *Personnel.*

9.1.2.1 Concessionaire shall employ a sufficient number of trained personnel to handle customer service, vehicle maintenance, car handling and office and administration duties necessary for the efficient and effective operation of the Rental Car Concession. Concessionaire 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 Concession Agreement, and the provision of good service to customers. Concessionaire shall ensure that all employees, contractors and agents conduct themselves in a professional and courteous manner.

9.1.2.2 The Rental Car 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 must wear their nametag and Airport Identification badge at all times while performing their duties if required in the area in which the employee is working.

9.1.2.3 When on duty, all of Concessionaire's employees having dealings with Airport Customers shall maintain a clean, neat and well-groomed appearance and shall wear a uniform or appropriate attire as established by Concessionaire.

9.1.2.4 Concessionaire's employees may accept tips but shall not solicit tips. Tip jars are not allowed.

9.1.2.5 Concessionaire shall not permit its agents or employees to use pressure sales tactics or to personally solicit customers of the Airport for car rentals or related services offered by Concessionaire under this Concession Agreement. The Port shall be the sole judge of whether conduct amounts to a violation of this Section. Upon written notice from the Port, Concessionaire shall take all necessary steps to immediately eliminate conduct in violation of this Section and to prevent its recurrence. Nothing in this Section shall, however, prohibit the proper use of signage, advertising boards or other approved advertising within Operator's Exclusive Use Premises.

9.1.2.6 Concessionaire shall provide the Port a list of representatives and their telephone numbers, for emergency purposes.

9.1.3 *Hours of Operation.* Concessionaire's Rental Car Concession shall remain open and staffed seven (7) days a week, twenty-four (24) hours a day, including all holidays, with the exception of temporary closure during such periods as may be reasonably necessary for repair or redecorating or for reasons beyond Concessionaire's control.

9.1.4 *Rental Vehicles.*

9.1.4.1 Concessionaire shall maintain, at Concessionaire's sole expense, all vehicles used in its Rental Car Concession in good, safe and operative order, free from known mechanical defects, and in clean, neat and attractive condition, inside and outside.

9.1.4.2 Rental vehicles must not be more than three (3) model years old. Notwithstanding the foregoing, Concessionaire may offer for rental antique, vintage, classic or other luxury or prestige vehicle or handicapped operated vehicles. The Port shall have the right to prohibit Concessionaire from offering for rental any such vehicle which the Port determines not to meet the mechanical or appearance standards described in Section 9.1.4.1.

9.1.4.3 Concessionaire shall have available a sufficient number of vehicles to meet all reasonably foreseeable demands of the traveling public.

9.1.4.4 Concessionaire shall operate all of its vehicles in a safe manner and in accordance with all applicable Legal Requirements and Port rules and regulations. Concessionaire shall ensure that its employees strictly observe all posted speed limits and other traffic and safety signs.

9.1.4.5 Concessionaire shall undertake to consider the feasibility of incorporating alternative fuel vehicles into its rental car fleet using such alternative fuels as compressed natural gas, electricity, or hybrid fuel systems, and to report to the Port in writing upon the Port's request and/or at the beginning of the second Agreement Year and every two Agreement Years thereafter regarding its determination of the feasibility of providing such vehicles to the public.

9.2 "Multi Branding."

9.2.1 Subject to the provisions regarding assignment in ARTICLE 14, Concessionaire shall be prohibited from operating at the Airport under any brand name or trade name other than the brand name(s) or trade name(s) identified on **Exhibit R**. During the Term of this Concession Agreement, Concessionaire shall operate and maintain all signage only under the brand or trade name(s) originally designated in its response to the Request for Qualifications. No other brand name shall be used or displayed by Concessionaire at the Airport or upon the Premises during the Term of this Concession Agreement. Except as provided herein, the operation of two or more brand or trade names under a single Concession Agreement ("Multi Branding") is prohibited.

9.2.2 If Concessionaire utilizes any particular brand or trade name under a license or franchise agreement, Concessionaire represents and warrants to the Port that Concessionaire has been granted the right to use any such brand or trade name that may be used at the Premises for the entire term of this Concession Agreement, pursuant to a franchise or license agreement (the "Franchise Agreement") with the trade name owner (a "Franchisor"). At the Port's request, Concessionaire agrees to provide the Port with a copy of the Franchise Agreement and reasonable evidence that such agreement remains in full force and effect. Concessionaire agrees that the termination of Concessionaire's right to use Concessionaire's brand or trade name at the Premises or to conduct a Rental Car Concession at the Premises of the type then conducted by or under license from Franchisor under the brand or trade name, shall constitute a material breach of Concessionaire's obligations under this Concession Agreement.

9.3 Concessionaire Otherwise Responsible. Concessionaire shall otherwise obtain all licenses/permissions necessary for, and pay all costs and expenses incurred with respect to, the operation of the Rental Car Concession, it being understood and agreed that the Port shall not, except as specifically set forth in this Concession Agreement, be required to furnish services of any nature with respect to the operation of the Rental Car Concession, Concessionaire hereby assuming full and sole responsibility for the supply and payment for all licenses, services, and operational costs. This includes, without limitation, all taxes, permit fees, license fees and assessments lawfully levied or assessed upon the Concessionaire.

ARTICLE 10: INDEMNITY AND INSURANCE

10.1 Indemnity and Insurance. Article 17 of the Lease Agreement is specifically incorporated in this Concession Agreement by reference. The Port shall have the same rights, and Concessionaire shall have the same obligations, with respect to indemnity and insurance under this Concession Agreement as the parties have under Article 17 of the Lease Agreement.

ARTICLE 11: DEFAULT

11.1 Events of Default. The occurrence of any of the following events shall constitute an "Event of Default" on the part of the Concessionaire with or without notice from the Port:

11.1.1 The vacating or abandonment of the Premises by Concessionaire.

11.1.2 The failure by Concessionaire to collect and remit the Customer Facility Charge as required by the Lease Agreement when due.

11.1.3 The failure by Concessionaire to make any payment of rent, fees or any other payment required by the Lease Agreement or this Concession Agreement, when due.

11.1.4 The failure by Concessionaire to observe or perform any covenant, condition, or agreement to be observed or performed by Concessionaire in the Lease Agreement or this Concession Agreement.

11.1.5 The discovery by the Port that any financial or background statement provided to the Port by Concessionaire, any successor, grantee, or assign was materially false.

11.1.6 The filing by Concessionaire of a petition in bankruptcy, Concessionaire being adjudged bankrupt or insolvent by any court, a receiver of the property of Concessionaire being appointed in any proceeding brought by or against Concessionaire, Concessionaire making an assignment for the benefit of creditors, or any proceeding being commenced to foreclose any mortgage or other lien on Concessionaire's interest in the Premises or on any personal property kept or maintained on the Premises by Concessionaire.

11.2 Remedies. In addition to, and not in lieu or to the exclusion of, any other remedies provided in this Concession Agreement or to any other remedies available to the Port at law or in equity, and subject to the Port's obligation to mitigate as set forth in Section 11.2.3:

11.2.1 Whenever any default (other than a default under Section 11.1.6 above, upon which termination of this Concession Agreement shall, at the Port's option, be effective immediately without further notice) continues unremedied in whole or in part for 30 days after Notice of Default is provided by the Port to Concessionaire (or for 15 days after Notice of Default in the case of default for failure to pay any rent, fees or other required payment when due), this Concession Agreement and all of Concessionaire's rights under it will automatically terminate if the Notice of

Default so provides. 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 Concessionaire all unpaid Concession Fees, other sum or charge otherwise payable by Concessionaire, or any other payments and damages incurred because of Concessionaire's default including but not limited to, the reasonable and necessary costs of granting a replacement concession, any advertising reasonably required, any commissions reasonably required, and attorney's fees and costs reasonably required ("Termination Damages"), together with interest on all Termination Damages at the Default Rate, from the date such Termination Damages are incurred by the Port until paid.

11.2.2 In addition to Termination Damages, and notwithstanding termination and reentry, Concessionaire's liability for all Concession Fees, other sum or charge otherwise payable by Concessionaire, or other charges which, but for termination of this Concession Agreement, would have become due over the remainder of the Concession Term (the "Future Charges") will not be extinguished and Concessionaire agrees that the Port will be entitled, upon termination for default, to collect as additional damages, a Concession Deficiency. "Concession Deficiency" means, at the Port's election, either:

(a) An amount equal to Future Charges, less the amount of actual fees, if any, which the Port receives during the remainder of the Concession Agreement term from others to whom the Concession may be granted, 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 worth, or

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

(b) An amount equal to Future Charges less the aggregate fair value of the Concession over the remaining Concession Agreement term, reduced to present worth. In this case, the Concession Deficiency must be paid to the Port in one lump sum, on demand, and will bear interest at the Default Rate until paid. For purposes of this subsection, "present worth" 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.

11.2.3 If this Concession Agreement is terminated for default as provided in this Concession Agreement, the Port shall use reasonable efforts to grant a replacement Rental Car Concession for such term or terms (which may be greater or less than the period which otherwise would have constituted the balance of the Concession Agreement term), 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 Concessionaire's obligations under this Concession Agreement be diminished by reason for any failure by the Port to grant such concession or any failures by the Port to collect any sums due once granted.

11.3 Remedies Cumulative. All rights, options and remedies of the Port contained in this Concession Agreement shall be construed and held to be distinct, separate and cumulative, and no one of them shall be exclusive of the other, and the Port shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law or in equity, whether or not stated in this Concession Agreement.

ARTICLE 12: TERMINATION

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

12.1.1 *Default.* In the event of Concessionaire's default under the Concession Agreement pursuant to Section 11.2.

12.1.2 *Termination of Lease Agreement.* In the event that the Lease Agreement is terminated for any reason set forth in Sections 24.1 or 24.2 of the Lease Agreement.

12.1.3 *Court Decree.* 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 material obligations under this Concession Agreement, then either party hereto may terminate this Concession 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 Concessionaire is not in default under any of the provisions of this Concession Agreement on the effective date of such termination, any rent or concession fees prepaid by Concessionaire shall, to the extent allocable to any period subsequent to the effective date of the termination, be promptly refunded to Concessionaire.

ARTICLE 13: NO WAIVER; LANDLORD'S RIGHT TO PERFORM

13.1 Receipt of Monies Following Termination. No receipt of monies by the Port from Concessionaire after the termination or cancellation of this Concession Agreement in any lawful manner shall (a) reinstate, continue or extend the Term of this Concession Agreement; (b) affect any notice theretofore given to Concessionaire; (c) operate as a waiver of the rights of the Port to enforce the payment of any Concession Fees, or other sum or charge otherwise payable by Concessionaire 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 Concession 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 Concessionaire's liability hereunder.

13.2 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 Concession 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 Concession Fees, or other sum or charge otherwise payable by Concessionaire, 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 Concessionaire 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 Concessionaire.

13.3 No Waiver of Rent. The receipt by the Port of any installment of the Concession Fees, or other sum or charge otherwise payable by Concessionaire shall not be a waiver of any Concession Fees, or other sum or charge otherwise payable by Concessionaire then due.

13.4 Application of Payments. The Port shall have the right to apply any payments made by Concessionaire to the satisfaction of any debt or obligation of Concessionaire to the Port, in the Port's sole discretion and regardless of the instructions of Concessionaire as to application of any such sum, whether such instructions be endorsed upon Concessionaire'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 Concessionaire shall in no way affect Concessionaire's liability hereunder nor shall it be deemed an approval of any assignment of this Concession Agreement or subletting by Concessionaire.

13.5 Port's Right to Perform. Upon Concessionaire's failure to perform any obligation or make any payment required of Concessionaire hereunder, the Port shall have the right (but not the obligation) to perform such obligation of Concessionaire on behalf of Concessionaire and/or to make payment on behalf of Concessionaire to such parties. Concessionaire shall reimburse the Port the reasonable cost of the Port's performing such obligation on Concessionaire's behalf, including reimbursement of any amounts that may be expended by the Port, plus interest at the Default Rate,

ARTICLE 14: ASSIGNMENT

14.1 Prohibition. Concessionaire shall not assign or transfer this Concession Agreement or any interest therein, nor shall this Concession Agreement or any interest thereunder 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 Concessionaire is anything other than an individual, Concessionaire further agrees that if at any time during the term of this Concession 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 Concession Agreement or to members of their immediate

families, such change in the ownership of Concessionaire shall be deemed an assignment of this Concession Agreement within the meaning of this Section 14.1; provided, however, that this sentence shall not apply if, and to the extent that Concessionaire is a corporation, the outstanding voting stock of which is listed on a recognized security exchange. Concessionaire's entering into any operating agreement, license or other agreement whereunder a third party is given rights or privileges to enjoy a portion of the Concession shall be an attempted assignment or subletting within the meaning of this Section.

14.1.1 If Concessionaire shall, at any time during the term of this Concession Agreement, desire to sell, assign or otherwise permanently transfer the Concession Agreement in whole or in part, Concessionaire shall, at the time the Concessionaire requests the consent of the Port, deliver to the Port such information in writing as the Port may reasonably require respecting the proposed assignee 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 Concessionaire of its election to: (a) consent to the assignment or (b) disapprove the assignment, setting forth the grounds for doing so.

14.1.2 As a condition for the Port's consent to any transfer, the Port may require that the assignee remit directly to the Port on a monthly basis, all monies due to Concessionaire by said assignee. In addition, a condition to the Port's consent to any assignment of this Concession Agreement or the Premises shall be the delivery to the Port of a true copy of the fully executed instrument of assignment and an agreement executed by the assignee in form and substance satisfactory to the Port and expressly enforceable by the Port, whereby the assignee assumes and agrees to be bound by the terms and provisions of this Concession Agreement and perform all the obligations of Concessionaire hereunder.

14.1.3 In the event of any assignment, Concessionaire and each respective assignor, waive notice of default by the then-current Concessionaire in the payment of Concession Fees or any other amount due hereunder and in the performance of the covenants and conditions of this Concession Agreement and consents that the Port may in each and every instance deal with the then-current Concessionaire, grant extensions of time, waive performance of any of the terms, covenants and conditions of this Concession Agreement and modify the same, and in general deal with the then-current Concessionaire without notice to or consent of any assignor, including Concessionaire; and any and all extensions of time, indulgences, dealings, modifications or waivers shall be deemed to be made with the consent of Concessionaire and of each respective assignor.

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

14.1.5 Concessionaire shall reimburse the Port any reasonable professionals' fees and expenses incurred by the Port in connection with any request by Concessionaire for consent to an assignment.

14.2 Assignment to Successor or Affiliate. Notwithstanding anything to the contrary in Section 14.1, the Port agrees that it will not unreasonably condition or withhold its consent to an assignment and transfer this Concession Agreement and all rights, title, and interest hereunder by Concessionaire to: (i) any corporation or other legal entity which at the time of such assignment is a parent of, subsidiary of or under common ownership and control with the Concessionaire, (ii) to any corporation or other legal entity with which the Concessionaire may merge or into which it may consolidate, or (iii) to any person, firm or corporation which may acquire all or substantially all of Concessionaire's rental car business or assets; provided in each instance the surviving, resulting or transferee corporation expressly assumes in writing all the obligations of Concessionaire contained in this Concession Agreement and the surviving, resulting or transferee corporation or other legal entity, as the case may be, has a consolidated net worth (after giving effect to such consolidation, merger or transfer) at least equal to that of the Concessionaire on: (x) the date on which Concessionaire last submitted a bid for a Concession Agreement, or (y) immediately prior to such consolidation, merger or transfer, whichever is greater. The term "Net Worth" as used in this Section means the difference obtained by subtracting total liabilities from total assets of the Concessionaire and all of its subsidiaries in accordance with generally accepted accounting principles.

ARTICLE 15: DISADVANTAGED BUSINESS ENTERPRISES; NON-DISCRIMINATION

15.1 ACDBEs; Non-Discrimination. Articles 27, 28, and 29 of the Lease Agreement are specifically incorporated in this Concession Agreement by reference. The Port shall have the same rights, and Concessionaire shall have the same obligations, with respect to Airport Concession Disadvantaged Business Enterprises and non-discrimination as the parties have under Articles 27, 28 and 29 of the Lease Agreement.

ARTICLE 16: NOTICES

16.1 Method for Notice. All notices required under this Concession Agreement shall be in writing and shall be delivered either: (i) personally, (ii) by certified or registered mail, (iii) by recognized overnight courier, or (iv) by facsimile. 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 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, or (iv) on the date transmitted by facsimile, if the facsimile is confirmed received and was received by prior to 4:30 p.m. (recipient's local time), otherwise, it will be deemed received the next business day.

16.2 Address for Notice. The address for notice under this Concession Agreement, unless one party specifically provided notice otherwise, shall be identical to the address for notice under the Lease Agreement.

ARTICLE 17: MISCELLANEOUS

17.1 Compliance with Laws. In addition to, and not in lieu of, any more specific directive in this Concession Agreement, Concessionaire shall comply with all applicable rules and regulations of the Port pertaining to the Airport or other realty of which the Premises are a part now in existence or hereafter promulgated for the general safety and convenience of the Port, its various tenants, invitees, licensees and the general public. Concessionaire shall further comply with all applicable federal, state, and municipal laws, ordinances, and regulations, including without limitation those relating to environmental matters.

17.2 Ongoing Improvements. It is understood that the Port may from time to time elect to alter, improve or remodel portions of the Airport. Concessionaire agrees that any temporary inconvenience resulting from any such work by the Port or its contractors and agents shall not be grounds for reduction of any sum or charge otherwise payable by Concessionaire if the same shall not unreasonably interfere with Concessionaire's operation of the Rental Car Concession.

17.3 Electronic Funds Transfer; Automatic Debit.

17.3.1 At any time after the fifth (5th) Agreement Year, the Port specifically has the right to require Concessionaire to remit any amounts to be remitted or otherwise payable under this Concession Agreement to be made by electronic funds transfer to an account designated by the Port from time-to-time. The Port may further, at its sole option, upon not less than sixty (60) days prior notice to Concessionaire, require Concessionaire to promptly execute and deliver to the Port any documents, instruments, authorizations, or certificates required by the Port to give effect to an automated debiting system, whereby any or all payments by Concessionaire of whatsoever nature required or contemplated by this Concession Agreement shall be debited monthly or from time to time, as provided in this Concession Agreement, from Concessionaire's account in a bank or financial institution designated by Concessionaire and credited to the Port's bank account as the Port shall designate from time to time. Concessionaire's failure to properly designate a bank or financial institution or to promptly provide appropriate information in accordance with this Section 17.3.1 shall constitute a default of this Concession Agreement.

17.3.2 Concessionaire shall promptly pay all service fees and other charges connected with its use of an automated debiting system, including, without limitation, any charges resulting from insufficient funds in Concessionaire's bank account or any charges imposed on the Port.

17.3.3 In the event that Concessionaire elects to designate a different bank or financial institution from which any fees or other charges under the Concession Agreement are automatically debited, notification of such change and the required documents, instruments,

authorizations, and certificates specified in Section 17.3.1 must be received by the Port no later than thirty (30) days prior to the date such change is to become effective.

17.3.4 Concessionaire agrees that it shall remain responsible to the Port for all payments and other charges pursuant to the Concession Agreement, even if Concessionaire's bank account is incorrectly debited in any given month. Such fees and other charges shall be immediately payable to the Port upon written demand.

17.4 Brokers. Concessionaire warrants that it knows of no broker or agent who is or may be entitled to any commission or finder's fee in connection with this Concession Agreement. Concessionaire shall 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 Concessionaire's discussions, negotiations and/or dealings with any broker or agent. This Section is not intended to benefit any third parties and shall not be deemed to give any rights to brokers or finders.

17.5 Promotion of Port Commerce. Concessionaire agrees that throughout the term of this Concession Agreement it will, insofar as practicable, promote and aid the movement of passengers and freight through facilities within the territorial limits of the Port. Concessionaire further agrees that all incoming shipments of commodities that it may be able to control or direct shall be made through facilities within the territorial limits of the Port if there will be no resulting cost or time disadvantage to Concessionaire.

17.6 Labor Disputes. Concessionaire agrees to use its best efforts to avoid disruption to the Port, its tenants or members of the public, arising from labor disputes involving Concessionaire, and in the event of a strike, picketing, demonstration or other labor difficulty involving Concessionaire, 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.

17.7 Mandatory Programs. Concessionaire 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). Concessionaire agrees to promptly comply with and carry out any and all reasonable obligations issued by the Port under such programs, as the same may exist from time to time.

17.8 Successors Bound. This Concession Agreement and each of its covenants and conditions shall be binding upon and shall inure to the benefit of the parties hereto and their respective assignees, subject to the provisions hereof. Any successor or assignee of the Concessionaire who accepts an assignment of the benefit of this Concession Agreement and enters into possession or enjoyment hereunder shall thereby assume and agree to perform and be bound by the covenants and conditions thereof. Nothing herein contained shall be deemed in any manner to

give a right of assignment to Concessionaire without the prior written consent of the Port pursuant to ARTICLE 14 hereof.

17.9 Time. Time is of the essence of each and every one of the Concessionaire's obligations, responsibilities and covenants under this Concession Agreement.

17.10 Consent. Whenever the Port's prior consent or approval is required by this Concession Agreement, the same shall not be unreasonably delayed but may, unless otherwise specifically provided by this Concession Agreement, be granted or denied in the Port's sole and absolute discretion.

17.11 Attorneys' Fees. In the event either party requires the services of an attorney in connection with enforcing the terms of this Concession Agreement or in the event suit is brought for the recovery of any Concession Fees or other sum or charge otherwise payable by Concessionaire this Concession Agreement or the breach of any covenant or condition of this Concession Agreement, or after the expiration thereof, the prevailing party will be entitled to reasonable attorneys' fees, consultants' fees, witness fees and other costs, both at trial and on appeal. 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.

17.12 Joint and Several Liability; Use of Term Concessionaire. To the extent that more than one Person executes this Concession Agreement other than in a representative capacity, under ARTICLE 18, each such Person shall be jointly and severally liable hereunder. Nothing in this Section, however, shall be understood to make any such Person liable for the obligations of any other Concessionaire under any separate Rental Car Concession agreement. It is understood and agreed that for convenience, the word "Concessionaire" and verbs and pronouns in the singular number and neuter gender are uniformly used throughout the Concession Agreement, regardless of the number gender or fact of incorporation of the party who is, or of the parties who are, the actual Concessionaire or Concessionaires under this Concession Agreement.

17.13 Captions and Article Numbers. The captions, article and section numbers and table of contents appearing in this Concession Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections or articles of this Concession Agreement nor in any way affect this Concession Agreement.

17.14 Severability. If any term, covenant, condition or provision of this Concession Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Concession Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

17.15 Survival of Indemnities. All indemnities provided in this Concession Agreement shall survive the expiration or any earlier termination of this Concession Agreement. In any

litigation or proceeding within the scope of any indemnity provided in this Concession Agreement, Concessionaire shall, at the Port's option, defend the Port at Concessionaire's expense by counsel satisfactory to the Port.

17.16 Applicable Law; Venue; Waiver of Trial by Jury. This Concession Agreement, and, the rights and obligations of the parties hereto, shall be construed and enforced in accordance with the laws of the State of Washington. Jurisdiction and venue for any action on or related to the terms of this Concession Agreement shall be exclusively in either the United States District Court for the Western District of Washington at Seattle or the King County Superior Court for the State of Washington, and the parties irrevocably consent to the personal jurisdiction of such courts over themselves for purposes of determining such action and waive any right to assert a claim of inconvenient forum. In any action on or related to the terms of this Concession 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.

17.17 Submission of Agreement. The submission of this document for examination and negotiation does not constitute an offer to grant a concession, or a reservation of or option for a concession at the Airport. This document shall become effective and binding only upon execution and delivery hereof by the Port and Concessionaire. No act or omission of any officer, employee or agent of the Port or Concessionaire shall alter, change or modify any of the provisions hereof.

17.18 Entire Agreement; Modification. This Concession Agreement, together with the Lease Agreement and the Concessionaire's entire response to any Request for Qualifications or Proposals issued by the Port and related to operations in the Consolidated Rental Car Facility, sets forth all covenants, promises, agreements, conditions and understandings between the Port and Concessionaire concerning the Premises, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between the Port and Concessionaire other than as are herein set forth. No subsequent alteration, amendment, change or addition to the Concession Agreement shall be binding upon the Port or Concessionaire unless reduced to writing and signed by the Port and Concessionaire. To the extent of any conflict between this Concession Agreement, the Lease Agreement and Concessionaire's response to any Request for Qualifications or Proposals, the terms of this Lease Agreement shall prevail over the Concession Agreement and the Concession Agreement shall prevail over the response to any Request for Qualifications or Proposals.

17.19 Relationship of the Port and Concessionaire. Nothing contained herein shall be deemed or construed as creating the relationship of principal and agent, partnership, or joint venture partners, and no provision contained in this Concession Agreement nor any acts of Concessionaire and the Port shall be deemed to create any relationship other than that of Concessionaire and the Port.

17.20 Exhibits. Attachment I and Exhibits Q and R are attached to this Concession Agreement after the signatures and by this reference incorporated herein.

ARTICLE 18: SIGNATURES

IN WITNESS WHEREOF, the parties have executed this Concession Agreement as of the date first above written.

PORT OF SEATTLE

By: _____

By: _____

Its: _____

Its: _____

ARTICLE 19: ACKNOWLEDGMENTS

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

On this ____ day of _____, 20____ before me personally appeared _____, to me known to be the _____ of the PORT OF SEATTLE, the municipal corporation that executed the within and 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 s/he was authorized to execute said instrument.

In Witness Whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

(Signature)

(Print Name)
Notary Public, in and for the State of Washington,
residing at _____
My Commission expires: _____

STATE OF _____)
) ss
COUNTY OF _____)

On this ____ day of _____, 20____ before me personally appeared _____, to me known to be the _____ of _____, the corporation that executed the within and foregoing instrument at Concessionaire, 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 s/he was authorized to execute said instrument.

In Witness Whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

(Signature)

(Print Name)
Notary Public, in and for the State of Washington,
residing at _____
My Commission expires: _____