

Item Number: <u>5b Attach 1</u>
Date of Meeting: <u>November 27, 2012</u>

**CONSOLIDATED RENTAL CAR FACILITY  
LEASE AGREEMENT**

**FOR**

**SEATTLE-TACOMA INTERNATIONAL AIRPORT**

## TABLE OF CONTENTS

	Page
ARTICLE 1 : DEFINITIONS .....	1
ARTICLE 2 : CONSTRUCTION OF PROJECT .....	1
ARTICLE 3 : ISSUANCE OF BONDS; PAYMENT FOR COST OF FACILITY .....	7
ARTICLE 4 : LEASE OF PREMISES .....	8
ARTICLE 5 : TERM.....	11
ARTICLE 6 : RENT AND OTHER FINANCIAL OBLIGATIONS .....	11
ARTICLE 7 : REMITTANCE; LATE PAYMENT .....	18
ARTICLE 8 : ACCOUNTING PROCEDURES; AUDIT .....	18
ARTICLE 9 : BOND OR OTHER SECURITY .....	19
ARTICLE 10 : USE .....	20
ARTICLE 11 : INITIAL ALLOCATION AND REALLOCATION.....	23
ARTICLE 12 : COMMON TRANSPORTATION SYSTEM.....	24
ARTICLE 13 : ALTERATIONS; OWNERSHIP OF CERTAIN INSTALLATIONS.....	26
ARTICLE 14 : REAL AND PERSONAL PROPERTY TAXES.....	27
ARTICLE 15 : REPAIR AND MAINTENANCE.....	27
ARTICLE 16 : UTILITIES AND OTHER OPERATING COSTS .....	34
ARTICLE 17 : INDEMNITY AND INSURANCE.....	36
ARTICLE 18 : COMPLIANCE WITH ENVIRONMENTAL LAWS.....	43
ARTICLE 19 : ADDITIONAL ENVIRONMENTAL OBLIGATIONS .....	47
ARTICLE 20 : DAMAGE OR DESTRUCTION .....	54
ARTICLE 21 : SURRENDER AND HOLDING OVER .....	55
ARTICLE 22 : IMPAIRMENT OF TITLE.....	56
ARTICLE 23 : DEFAULT.....	57
ARTICLE 24 : TERMINATION; EASEMENTS .....	59
ARTICLE 25 : NO WAIVER; LANDLORD'S RIGHT TO PERFORM .....	61
ARTICLE 26 : ASSIGNMENT OR SUBLEASE .....	63
ARTICLE 27 : AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISES.	65

ARTICLE 28 : NON-DISCRIMINATION .....	65
ARTICLE 29 : NON DISCRIMINATION IN CONTRACTS .....	67
ARTICLE 30 : NOTICES .....	68
ARTICLE 31 : MISCELLANEOUS.....	70
ARTICLE 32 : SIGNATURES .....	76
ARTICLE 33 : ACKNOWLEDGMENTS.....	77

# CONSOLIDATED RENTAL CAR FACILITY LEASE AGREEMENT

THIS CONSOLIDATED RENTAL CAR FACILITY LEASE AGREEMENT (the "Lease Agreement") is made as of this \_\_\_\_ day of \_\_\_\_\_, 2012 by and between the PORT OF SEATTLE, a Washington municipal corporation, and Sixt Rent A Car LLC., a Delaware 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 Lease Agreement are attached hereto as Attachment 1. Other terms may be defined in other parts of the Lease Agreement.

1.2 Interpretations. All terms defined in this Lease Agreement and all pronouns used in this Lease Agreement shall, unless the context clearly requires otherwise, be deemed to apply equally to singular and plural and to all genders. The term "or" is specifically used in its logical sense and, as such, is satisfied whenever one or more of its operands are true. The table of contents, titles and headings of the articles and sections of this Lease Agreement have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof. This Lease Agreement and all the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein and, to provide for the full and timely payment of all Bonds from time to time hereafter issued by the Port, which Bonds may be secured by a pledge of the Customer Facility Charges for which Operator has an obligation to collect and remit under this Lease Agreement. In the event of any ambiguity contained herein, it shall not be construed for or against any party hereto on the basis that such party did or did not author the same.

## ARTICLE 2: CONSTRUCTION OF PROJECT

### 2.1 The Project.

2.1.1 Construction. The Port shall construct the Project substantially in accordance with the construction documents/description identified on **Exhibit D-1**; provided, however, the Port shall have the right to make reasonable changes to the design of the Project as more specifically set forth in Section 2.3. The Port shall keep the Operators' Construction Manager reasonably apprised regarding its progress in completing the Project. The Project will specifically include those Special Building Systems identified on **Exhibit D-2**. The Port shall have the right to install, either as part of the initial construction of the Project or later, the Special Airport Systems identified on **Exhibit D-3**.

2.1.2 Costs. Except as specifically set forth in Section 2.3.2 for Operator Initiated Changes, the Operators and each of them shall have no obligation to pay for any Costs of the Project or the Special Airport Systems. All Cost of the Project and Special Airport Systems will be paid by the Port; provided, however, Operator acknowledges and agrees that the Port expects to fund the Cost of the Project (but not the Special Airport Systems) exclusively from a portion of the Customer Facility Charge and Bonds proceeds.

## 2.2 Tenant Improvements.

### 2.2.1 Made by Port.

2.2.1.1 Port-Made Improvements. The Port shall, as part of the construction of the Project, construct and install the specific tenant improvements identified on **Exhibit E** (the “Port-Made Improvements”). The Port shall, with the design-review assistance of the Operator, be responsible for the preparation of detailed plans and specifications for the Port-Made Improvements. The Operator shall, within twenty (20) days of receiving any draft plans and specifications related to the Port-Made Improvements, provide its comments; provided, however, whether to incorporate any specific comment shall be at the discretion of the Port. A failure to timely respond shall conclusively be considered an approval of the draft plans by Operator. In the event that Operator, in any subsequent review of the plans and specifications for the Port-Made Improvements, requests a change to any design element that was approved (whether by affirmative response or the failure to respond) earlier in the design process, Operator shall pay for all costs associated with that design change, unless the need for such change could not have reasonably been anticipated by the Operator at any point earlier in the design process. Operator will have the right to make reasonable changes to the Port-Made Improvements during the course of construction, only as set forth in Section 2.3.2.

2.2.1.2 Small Operator Improvements. The Port shall, as part of the construction of the Project, construct and install the specific tenant improvements identified on **Exhibit F** in the Small Operator Area (including the Small Operator Shared Area). The Costs of the Small Operator Improvements shall not be included within the Costs of the Project, but shall instead be recovered by the Port pursuant to the Small Operator Improvement Rent.

2.2.1.3 Subsequent Small Operator Improvements. After the initial construction of the Project, including the Small Operator Improvements, the Port may make additional improvements in and to the Small Operator Area as, in the Port’s sole discretion, may be necessary or desirable for the continued efficient operation of the Small Operator Area (collectively the “Additional Small Operator Improvements”). The Costs of the Additional Small Operator Improvements shall not be included within the Cost of the Project and shall not be funded by the Customer Facility Charge.

### 2.2.2 By Operator.

2.2.2.1 Design and Construction. Operator shall be responsible for designing and constructing all other improvements to Operator’s Exclusive Use Premises that Operator deems

necessary or desirable in connection with Operator's operation of a Rental Car Concession from the Consolidated Rental Car Facility ("the Initial Tenant Improvements"). Operator shall comply with the design, construction and opening procedures attached hereto as **Exhibit G** in connection with Operator's design and construction of Operator's tenant improvements. The Initial Tenant Improvements shall also be performed (i) in a good and workmanlike manner, (ii) in compliance with all Legal Requirements and the Port Standards, and (iii) in a manner that will not unreasonably interfere with or disturb the Port or its tenants.

**2.2.2.2 Port Review Does Not Relieve Operator.** Operator agrees that nothing in the Port's review or approval of Operator's plans shall create responsibility or liability on the part of the Port for their completeness, design sufficiency, or compliance with all Legal Requirements or Port Standards, all of which shall be Operator's sole responsibility. Nor shall such review or approval constitute a waiver by the Port of the right thereafter to require Operator to correct any failure by Operator to comply with any Legal Requirements (but not Port Standards) later discovered by the Port.

**2.2.2.3 As-Built Documents.** Operator shall deliver to the Port not later than ninety (90) days after the Opening Date full and complete "as built" drawings of the Initial Tenant Improvements in electronic format in full conformance with the Port's CAD Standards Manual and three (3) half-size hard copies. For any equipment installed, Operator shall deliver to the Port, two (2) copies of the complete operations and maintenance manuals.

**2.2.2.4 Deadline.**

**2.2.2.4.1 Substantial Completion.** Operator (other than a Small Operator) agrees that its Initial Tenant Improvements shall be substantially complete not later than the Deadline for Substantial Completion; provided, however, said time period may be extended to the extent of delays directly caused by the Port, the Port's contractor and/or events beyond the reasonable control of Operator.

**2.2.2.4.2 Final Completion.** Notwithstanding that Operator has substantially completed the Initial Tenant Improvements, Operator (other than a Small Operator) shall diligently pursue the Initial Tenant Improvements to final completion, and shall completely finish the Initial Tenant Improvements no later than fourteen (14) days after the Deadline for Substantial Completion. The final completion of the Initial Tenant Improvements includes, but is not limited to, the completion of construction of Operator's Initial Tenant Improvements as defined in the construction drawings and resolution of all items on the Deficiency List, prepared under and as defined in **Exhibit G**.

**2.2.2.4.3 Opening Date.** Operator – including Small Operators – specifically understands that the Port intends to commence rental car operations from the Consolidated Rental Car Facility on the Opening Date whether (or not) Operator or any particular Operator has completed its Initial Tenant Improvements and/or is ready to commence operations. Therefore, Operator – including Small Operators – shall have installed all furniture, trade fixtures

and office equipment, completed all systems/process testing, and otherwise be fully and completely ready to commence operations no later than the Opening Date. In addition, no Operator shall be permitted to operate from the Airport terminal or Airport garage on or after the Opening Date. Operator specifically acknowledges and agrees that the Opening Date established by the Port includes adequate time for construction of Operators' (and each Operator's) Initial Tenant Improvements as well as not less than forty five days for "burn-in," during which Operators (and each Operator) is expected to complete the installation of any furniture, trade fixtures and office equipment not completed as part of the Initial Tenant Improvements, complete all systems/process testing, and otherwise do anything and everything else necessary to be fully operational on the Opening Date.

2.3 Changes. The parties shall have the right to make reasonable changes to the construction of the Project or Port-Made Improvements as more specifically set forth in this Section 2.3.

2.3.1 Port Initiated Changes. The Port may, without the necessity of consent of any of the Operators, make any minor changes to the Project that will not materially affect the nature or operation of the Consolidated Rental Car Facility, Consolidated Rental Car Facility Site, Off-Site Roadway Improvements, Bus Maintenance Facility, Common Transportation System, or any particular Operator's operations within the Consolidated Rental Car Facility and that the Port considers necessary or advisable; provided, however, the Port shall generally consult with the Operators' Construction Manager before making any such change to the Project and will generally keep the Operators' Construction Manager reasonably apprised about any changes made to the Project. The Port may not, however, make any change to the Project that will materially affect the nature or operation of the Consolidated Rental Car Facility, Consolidated Rental Car Facility Site, Off-Site Roadway Improvements, Bus Maintenance Facility, or Common Transportation System without the prior written approval of a Majority-in-Interest of the Operators. Furthermore, the Port may not make any change to the Project that will materially affect the nature or operation any particular Operator's operations within the Consolidated Rental Car Facility without the prior written approval of the particular Operator. The Port shall also have the right to make reasonable changes to the Port-Made Improvements or Small Operator Improvements for purposes of facilitating the construction of or otherwise increasing the efficiency of the Port-Made Improvements or Small Operator Improvements; provided any such change does not materially and adversely affect any Operator's intended operation and use of those portions of the Consolidated Rental Car Facility or Consolidated Rental Car Facility Site in which the Port-Made Improvements or Small Operator Improvements are located.

#### 2.3.2 Operator Initiated Changes.

2.3.2.1 The Project. Operator shall not, other than with the express consent of the Port, have any right to make any changes to the Project.

2.3.2.2 Port-Made Improvements. If Operator requests any change to the Port-Made Improvements, Operator shall submit a request for change together with sufficient detail for

the Port, its architect and/or contractor to prepare revised plans and specifications for such change. The Port will, within a reasonable period of time (considering the nature of the requested change) following the receipt of such request, notify Operator of the estimated cost (specifically including costs arising from impacts to other work) that will be chargeable to, and payable by, Operator by reason of such change and any estimated delay in completion of the Port-Made Improvements caused by such change. That estimate will include the Port's cost of any delay in completion of the Port-Made Improvements resulting from such change. Any change to the Port-Made Improvements that would result in a delay to the Commencement Date will not be allowed. Within five (5) business days after receiving the Port's estimated cost, Operator shall notify the Port whether Operator desires to proceed with such change. In the absence of any notification, Operator shall be deemed to have elected not to proceed with such change. If Operator elects to proceed with such change, Operator shall, unless otherwise agreed, immediately deposit with the Port the amount of the Port's estimated cost of such change, and the Port may disburse such amounts as costs associated with the change are incurred. In the event that the deposit is inadequate to cover the actual costs associated with the change, Operator shall immediately pay to the Port the amount of such excess costs. In the event the excess costs are less than the amount of the deposit, the Port shall refund the excess promptly following the completion of construction of the Port-Made Improvements.

2.4 Permits. The Port shall obtain all necessary permits associated with the Project, Port-Made Improvements, and Small Operator Improvements including a Certificate of Occupancy prior to the Opening Date; provided that the Port shall not be responsible for permits associated with the Tenant Improvements other than the Port-Made Improvements and Small Operator Improvements (specifically including any Certificate of Occupancy associated with such Tenant Improvements), unless otherwise agreed between the Port and Operator.

2.5 Additional Special Facilities. The Port may elect to undertake such other and further improvements (the "Additional Special Facilities") to the Consolidated Rental Car Facility, the Consolidated Rental Car Facility Site, the Bus Maintenance Facility, the Off-Site Roadway Improvements, the Common Transportation System, Terminal roadway/curbside improvements and/or the Additional Special Facilities as follows:

2.5.1 Improvements as of Right. The Port may, with notice to the Operators but without the necessity of any opportunity for objection, make improvements to the Consolidated Rental Car Facility, the Consolidated Rental Car Facility Site, the Bus Maintenance Facility, the Off-Site Roadway Improvements, and/or the Common Transportation System for any of the following reasons:

2.5.1.1 The improvement is required by a federal or state agency (other than the Port) with jurisdiction over the Airport;

2.5.1.2 The improvement is of an emergency nature, which, if not made, would substantially impair the current operation of the Consolidated Rental Car Facility, Consolidated Rental Car Facility Site, Off-Site Roadway Improvements, Bus Maintenance Facility or Common Transportation System;

2.5.1.3 The improvement is to repair or replace the Consolidated Rental Car Facility, Consolidated Rental Car Facility Site, Off-Site Roadway Improvements, Bus Maintenance Facility, or Common Transportation System property damaged or destroyed by fire or other casualty;

2.5.1.4 The improvement is made to settle claims or lawsuits, satisfy judgments or comply with judicial or administrative orders against the Port arising from or relating to its design, construction, ownership, maintenance or use of the Consolidated Rental Car Facility, Off-Site Roadway Improvements, Consolidated Rental Car Facility Site, the Bus Maintenance Facility or the Common Transportation System; or

2.5.1.5 The improvement is made, at no cost to the Operators and without use of Customer Facility Charge proceeds, to any portion of the Reserved Area or to any Special Airport System.

In the event any such improvement becomes necessary, the Port shall promptly provide the Operators notice of the necessity of such improvement but the Operators shall have no formal opportunity under this Lease Agreement to object or otherwise delay the Additional Special Facility (but the Operators (and each Operator) specifically does not waive their right to petition the Port Commission regarding any such Additional Special Facility to which they object).

2.5.2 Improvements Subject to Operator Input. The Port may undertake any other improvement that is, in good faith, intended to increase the capacity and/or efficiency of the Consolidated Rental Car Facility, the Off-Site Roadway Improvements, the Consolidated Rental Car Facility Site, the Bus Maintenance Facility or the Common Transportation System as follows:

2.5.2.1 The Port shall notify all Operators in writing of any proposed improvement subject to this Section 2.5.2 and shall give the Operators an opportunity to determine whether or not to object to the proposed improvement. The Port's notice shall include (i) a description of the proposed improvement; (ii) drawings showing its location, to the extent available; (iii) estimates of its total capital cost; (iv) estimates of its operations and maintenance costs; (v) an explanation of the benefits it will provide; (vi) a schedule for its implementation; (vii) a summary of how the improvement will be funded; and (viii) an estimate of the impact the improvement will have on the Customer Facility Charge. The Port specifically agrees to consult with the Operators in developing its estimate of the impact the improvement will have on the Customer Facility Charge.

2.5.2.2 In the event a Majority-in-Interest of the Operators deliver to the Port, within thirty (30) days of the Port's delivery of its notice of the proposed Additional Special Facility, their objection to the proposed improvement subject to this Section 2.5.2, the Port shall refrain from proceeding with the Additional Special Facility for a period of ninety (90) days to allow the Majority-in-Interest to develop and present to the Port the basis of its objections to the proposed improvement. At the conclusion of that ninety (90) day period, the Port may proceed with the proposed Additional Special Facility notwithstanding any objection by the Majority-in-Interest, provided, (i) that at the time the Port elects to proceed with construction of the improvement, the

Port's then-current estimate (calculated on a consistent basis) of the improvement's capital costs does not exceed, in constant dollars, one hundred ten percent (110%) of the improvement's estimated capital cost when the Port gave its notice under Section 2.5.2.1; and (ii) there is no projected increase in the amount of the Customer Facility Charge over the remaining Lease Term due to such improvements. If the improvement's then-current estimated capital cost exceeds the estimated capital cost by more than ten percent (10%), the Port shall again provide the Operators notice of the improvement under Section 2.5.2.1 and the Operators shall have an additional opportunity to object as set forth in this Section 2.5.2.2; provided, however, in the event that a Majority-in-Interest again objects, the Port shall be required to refrain from proceeding with the Additional Special Facility for an additional period of only thirty (30) – not ninety (90) – days. In the event that the Additional Special Facility is projected to increase the amount of the Customer Facility Charge over the remaining Lease Term, then the Port shall obtain the consent of a Majority-in-Interest before proceeding with the improvement. Nothing in this Section 2.5.2 shall constitute a waiver of the Operators' (or any Operator's) right to petition the Port Commission regarding any such Additional Special Facility to which they object.

2.5.3 Costs of Additional Special Facilities. Except as may be otherwise agreed by the Operators in connection with the approval of any Additional Special Facilities under Section 2.5.2.2, the Operators and each of them shall have no obligation to pay for any Costs of the Additional Special Facilities. All Costs of the Additional Special Facilities will be paid by the Port; provided, however, Operator acknowledges and agrees that the Port expects to fund, subject to any necessary concurrence under Section 2.5.2.2, the Costs of the Additional Special Facilities exclusively from a portion of the Customer Facility Charge or Bonds proceeds.

2.5.4 Special Building Systems and Special Airport Systems. The Port may, as part of adding any Additional Special Facilities, make changes (whether by addition, subtraction or modification) to the Special Building Systems and Special Airport Systems. In the event of any change to either the Special Building Systems or the Special Airport Systems, the Port may, by notice to Operator, issue a revised **Exhibit D-2 or D-3**, as appropriate, to take account of the change.

## ARTICLE 3: ISSUANCE OF BONDS; PAYMENT FOR COST OF FACILITY

3.1 Issuance of Initial Bonds. As set forth in Section 2.1.2 and 12.4, the Operators shall have no responsibility for funding the Costs of the Project. Consistent with the Port's obligation to fund the Costs of the Project, the Port shall – subject to the terms and conditions of this Lease Agreement – use reasonable efforts to issue, sell and deliver the Initial Bonds in amounts sufficient to pay the Costs of the Project.

3.1.1 Notwithstanding that the Operators have no responsibility for funding the Costs of the Project, the Port acknowledges that the Operators – as a result of the Port's intention to pledge the Customer Facility Charge paid by Airport Customers in support of the Initial Bonds – have an interest in the terms under which the Port issues the Initial Bonds to finance the Costs of the Project.

3.1.2 Prior to signing the Lease Agreement, the Port will provide the Operators a financial forecast developed in consultation with the Operators' consultants, associated with the Initial Bonds providing (i) a description of the plan for financing, (ii) a reasonable estimate of debt service based on market rates plus a "spread" of at least 50 basis points and (iii) a forecast of Customer Facility Charge revenues and rates.

3.1.3 Subsequent to signing the Lease Agreements and prior to the Port's sale of Initial Bonds, the Port will provide the Operators an update of the financial forecast developed in consultation with the Operator's consultants. If the Operators request consideration of a financing approach that is different from that presented in the Port's financial forecast, the Port specifically agrees to cooperate with the Operators to develop and consider such an alternative.

3.2 Issuance of Additional Bonds. The Port shall have the right to issue Additional Bonds: (i) as refunding bonds which are used to achieve debt service savings or to achieve terms more beneficial than the terms of the Bonds being refunded, (ii) to pay any part of the Costs of the Project not fully funded or provided for out of the proceeds of the Initial Bonds, (iii) to pay the Costs of the Additional Special Facilities for any Additional Special Facilities, subject to the Port's covenant to the Operators in Section 6.2.5.1 of this Lease Agreement, (iv) to pay the costs associated with the purchase of additional buses for fleet expansion or replacement of any buses required for the Common Transportation System, (v) to pay any costs of the Major Maintenance or BMF Major Maintenance, and (vi) subject to any restriction under Sections 6.2.5 and 12.3.5 regarding the use of the Customer Facility Charge and applicable law, to fund any other obligation imposed on the Port under this Lease Agreement. In the event that the Port determines that it is necessary or advisable to issue Additional Bonds, the Port will deliver to Operators a financial forecast and updates associated with each such Additional Bonds offering as provided in Section 3.1.2 and 3.1.3. The Port specifically agrees to consult with the Operators regarding this financial forecast.

3.3 No Limitation on Port Commission. Nothing in this ARTICLE 3 shall be construed as a limitation of the legislative authority of the Port of Seattle Port Commission to issue bonds for any legal purpose that it elects; instead, any limitation set forth in this ARTICLE 3 shall operate exclusively to limit whether the obligations under any such bond(s) shall be considered Bond Obligations under this Lease Agreement.

## ARTICLE 4: LEASE OF PREMISES

4.1 Lease of Premises. Subject to all of the terms, covenants and conditions contained in this Lease Agreement, the Port hereby grants to Operator, and Operator hereby accepts from the Port, the following rights with respect to the Consolidated Rental Car Facility and Consolidated Rental Car Facility Site:

4.1.1 Exclusive Use Premises. The Port hereby leases to Operator the Exclusive Use Premises identified, for Operators who are not Small Operators, on **Exhibits B, C-1, C-2, C-3 and C-6** for the Lease Term and, for Small Operators, **Exhibits B, C-4 and C-6**. The Exclusive Use Premises shall be initially allocated, and are subject to reallocation, as set forth in ARTICLE 11 of

this Lease Agreement. The lease set forth in this Section 4.1.1 shall be effective on the respective Commencement Date for each portion of the Exclusive Use Premises.

4.1.2 Fuel Facilities and QTA Equipment. The Port hereby grants to Operator the exclusive right to utilize (but subject to management in common as more particularly set forth in Section 19.1.1) the Fuel Facilities and QTA Equipment located in the particular Operator's Exclusive Use Premises. The Fuel Facilities and QTA Equipment shall be initially allocated, and are subject to reallocation, in conjunction with the Exclusive Use Premises in which they are located as set forth in ARTICLE 11 of this Lease Agreement. The grant set forth in this Section 4.1.2 shall be effective on the Commencement Date for the QTA Space.

4.1.3 Common Use Area. The Port also hereby grants to Operator a nonexclusive right to use the Common Use Area (other than the Small Operator Shared Area) for the Lease Term. Unless the Port provides written notice of an earlier date, the grant set forth in this Section 4.1.3 shall be effective as follows: (i) for the Common Use Area within the Ready Return Area and QTA Space (other than the Consolidated Rental Car Facility building core), on the respective Commencement Date for the associated Ready Return Area and QTA Space, and (ii) for the remainder (including the Consolidated Rental Car Facility building core), on the day following the Deadline for Substantial Completion.

4.1.4 Small Operator Shared Area. The Port also hereby leases to each Operator who is a Small Operator, in common with all of the other Operators who are Small Operators, an undivided interest in the Small Operator Shared Area identified on **Exhibit C-4** for the Lease Term; provided, however, the Small Operator Shared Area is subject to adjustment by the Port from time to time with the allocation and reallocation of the Small Operator Areas as set forth in ARTICLE 11 of this Lease Agreement. The lease set forth in this Section 4.1.4 shall be effective on the Commencement Date for the adjoining Customer Service Building, Ready Return Area and/or QTA Space, as appropriate.

4.2 Areas Reserved to the Port. The Port specifically reserves to itself those portions of the Consolidated Rental Car Facility and Consolidated Rental Car Facility Site identified on **Exhibit C-5** (the "Reserved Area"). The Port may utilize the Reserved Area exclusively for: (i) its own personal use, or that of any Port employee, agent or contractor, engaged in the management and operation of the Consolidated Rental Car Facility or Common Transportation System, (ii) the installation and maintenance of any Special Airport Systems or other systems designed to facilitate the efficient movement and check-in of airline passengers or otherwise to promote smooth Airport operations, (iii) the operation of any concessions (specifically including advertising) operated by Non-RAC Concessionaires or (iv) the provision of any goods or services (e.g. pay phones, Internet kiosks, ATMs, etc.) for the benefit of Airport Customers that is not within the scope of an Airport concession agreement and which the Port, in its sole discretion, does not permit the Operators or their Facility Manager to provide. Provided it does not negatively affect the Operators' operation of the Rental Car Concessions, the Port further reserves to itself the right to increase or decrease the Reserved Areas (and correspondingly, the Common Use Area) on thirty (30) days written notice to the Operators.

4.2.1 Notwithstanding anything to the contrary in Section 4.2, the Port agrees that it will not grant to a Non-RAC Concessionaire the right to engage in any concession within the Consolidated Rental Car Facility that will compete directly with the Rental Car Concession or the lease and/or sale of goods and/or services reasonably incident thereto. By way of example, and not limitation, the lease of global positioning devices, ski racks, and car seats shall be considered services reasonably incident to the leasing of rental cars. However, the sale of phone cards, data services, movie rentals, timeshare sales and the like shall not.

4.2.2 Notwithstanding anything to the contrary in Section 4.2, the Port further agrees to consult with the Operators and each of them regarding the placement and construction of any improvements within any portion of the Customer Service Building that has the potential to restrict sight lines, when viewed from any public point of entry into the Consolidated Rental Car Facility, of the sign or storefront associated with any particular Operator's Exclusive Use Premises within the Customer Service Building. The Port agrees that any improvements installed in the Reserved Areas within the Customer Service Building will not unreasonably block the line of sight for rental car customers entering the building, as measured from the Customer Service Building entrance doorways (i.e. those along the common transportation drop-off curb) through the common lobby to the front of each Operator's Exclusive Use Area.

#### 4.3 Acceptance of the Premises.

4.3.1 Operators, through the Facility Manager and Fuel Facility Manager, shall participate with the Port in the pre-final and final inspections associated with the construction of the Consolidated Rental Car Facility and Consolidated Rental Car Facility Site.

4.3.2 As the Premises are turned over to Operator, Operator shall promptly examine the Premises following the date on which each portion is turned over. Likewise, Operators (and each of them) shall promptly examine the Common Use Area after it is turned over to the Operators, which turn over is expected to occur on or about the Deadline for Substantial Completion. Unless Operator provides the Port with written notice of: (i) any patent defect or problem in Operator's Exclusive Use Premises within ten (10) days of the date on which the particular portion of the Exclusive Use Premises in which the patent defect or problem exists is turned over to Operator, and (ii) any latent defect or problem in any portion of the Exclusive Use Premises or any defect or problem within the Common Use Area within one hundred eighty (180) days of the date on which the particular portion of the Exclusive Use Premises is turned over to the particular Operator or the Common Use Area is turned over to the Operators, Operator shall have accepted the Premises in their then-present condition subject only to the applicable warranties provided by the Port's contractor(s) and materials supplier(s). In the event that Operator provides the Port with written notice of any defect as set forth above, the Port shall promptly remedy any defect at its expense; provided, however, such expense shall be considered a Cost of the Project.

4.4 Rights Reserved to the Port. Operator acknowledges that the rights granted under this Lease Agreement shall all times be subject to the Port's reserved right described in Sections 24.2 and 31.10 or as otherwise described in this Lease Agreement.

## ARTICLE 5: TERM

5.1 Term. This Lease Agreement shall be effective, and binding between the parties, as of the date first signed by both of the parties. The Lease Term of this Lease Agreement, however, shall commence on the earliest Commencement Date and shall extend until the last day of the thirtieth (30<sup>th</sup>) Agreement Year; provided, however, in the event any Bonds have a maturity date in excess of this Lease Term and one or more provisions of the Bonds documents require a longer term, the Lease Term shall extend until the earlier of: (i) the date such Bonds are repaid, or (ii) the date any provision in such Bonds documents that requires a longer term is either satisfied or waived.

## ARTICLE 6: RENT AND OTHER FINANCIAL OBLIGATIONS

### 6.1 Land Rent.

6.1.1 Base Amount. For and in consideration of the rights granted by this Lease Agreement, Operator shall – commencing on the Opening Date and thereafter for the Lease Term – pay to the Port its Pro Rata Share of the Value of the Site (“Land Rent”). The Land Rent shall be divided into equal monthly amounts and paid to the Port in advance on the first day of each and every month during the Lease Term, at such place as the Port may designate, without any prior demand, and without any abatement, deduction or setoff whatsoever. If the Opening Date falls on any day other than the first day of a calendar month, Land Rent for the first fractional month prior to the commencement of the first Agreement Year shall be equivalent to the monthly amount to be paid for the first Agreement Year prorated based upon the actual number of days in such fractional month.

6.1.2 Credit for Timely Completion of Initial Tenant Improvements. In the event that Operator fully completes (as defined in Section 2.2.2.4.2) its Initial Tenant Improvements and is otherwise ready to commence operations by the Opening Date as either first established by the Port or subsequently extended by the Port for reasons not attributable to the Operators or any of them, Operator shall be entitled to credit against its Land Rent in an amount equal to its Pro Rata share of two million dollars (\$2,000,000). If the Initial Tenant Improvements are not so completed, Operator shall, subject only to delays beyond Operator’s reasonable control, forfeit ten percent (10%) of its applicable credit amount per day after the Opening Day until Operator has fully completed (as defined in Section 2.2.2.4.2) its Initial Tenant Improvements. The amount of the credit shall be divided into twelve equal monthly amounts and applied against the monthly amounts of Land Rent otherwise payable by the Operator.

6.1.3 Credit of Non-RAC Concessionaire Contract Rent. To the extent that the Port grants to any Non-RAC Concessionaire the right to operate a concession in the Reserved Area, the Port agrees to issue a credit against the total amount of Land Rent due by all of the Operators equal to the contract rent payable by (as specifically defined in the lease and concession agreement with the

Non-RAC Concessionaire) each such Non-RAC Concessionaire for the period of occupancy; provided, however, there shall be no credit for any advertising placed or otherwise displayed on any Special Airport System (e.g. the Flight Information Display). This credit shall be applied annually in arrears against the Land Rent due for the following Agreement Year. Operator shall not, however, be entitled to any refund for amounts after the expiration or earlier termination of this Lease Agreement for the prior Agreement Year.

6.1.4 Credit for North Parcel Rental Amounts. To the extent that the Port leases to any individual Operator any portion of the North Parcel, the Port agrees to issue a credit against the total amount of Land Rent due by all of the Operators equal to the total rent payable by each such Operator for the North Parcel for the period of occupancy. This credit shall, subject to adjustment during the following Agreement Year, be applied annually against the Land Rent due for that Agreement Year. Operator shall not, however, be entitled to any refund for amounts after the expiration or earlier termination of this Lease Agreement for the prior Agreement Year.

6.1.5 Calculation and Notice. Prior to commencement of each Agreement Year, the Port shall provide the Operators a statement identifying the adjusted Value of the Site and the amount of any credits under Sections 6.1.3 and 6.1.4 of the Lease Agreement. The Port shall further provide each operator a statement of its specific Land Rent as well as, for the first Agreement Year, the amount of any credit under Section 6.1.2 of this Lease Agreement. The Port shall reasonably endeavor to provide this notice not less than forty five (45) days prior to the commencement of each Agreement Year.

## 6.2 Customer Facility Charges.

6.2.1 Collection Required. Operator shall collect a daily Customer Facility Charge on all vehicle rental transactions with Airport Customers as specifically set forth in the Port of Seattle Port Commission Resolution adopting the Customer Facility Charge. The Customer Facility Charge shall be identified on a separate line below the sales tax line on the customer's rental contract, in the amount established from time to time by the Port, and shall be described as the "Customer Facility Charge" or "CFC." Each Operator must collect the Customer Facility Charge at the time the first payment is made for a qualifying vehicle rental transaction, and must remit the full amount of the Customer Facility Charge to the Port regardless of whether or not the full amount of such Customer Facility Charge is actually collected by the Operator from the person who rented the automobile.

6.2.2 Proceeds Held in Trust. Operator agrees that the CFC is not income, revenue or any other asset of Operator; that Operator has no ownership or property interest in such CFCs; and that Operator hereby waives any claim to a possessory or ownership interest in the CFCs. Operator agrees that it holds such CFCs in trust for the benefit of the Port, and that the Port (or a trustee on its behalf) has complete possessory and ownership rights to such CFCs. Consistent with the nature of the Customer Facility Charge as funds held in trust for the Port, Operator shall separately account, on its books and records, for the Customer Facility Charge proceeds collected by it. Notwithstanding the foregoing, in the event that either: (i) it is determined that the Operator must, as a matter of law,

establish a separate account into which all Customer Facility Charge proceeds must be deposited, or (ii) it is determined, by a court of competent jurisdiction, that the failure to maintain the Customer Facility Charge in a separate account imperils the trust nature of the relationship created by this Section 6.2.2 and potentially subjects any Customer Facility Charge amounts held by Operator to the claim (or potential claim) by Operator's creditors, whether in bankruptcy or otherwise, then in that event the Port shall have the right to require Operator to establish a separate account into which all Customer Facility Charge proceeds collected shall be deposited and all interest (if any) on the Customer Facility Charge proceeds held by Operator shall inure to the benefit of, and be payable to, the Port.

**6.2.3 Operator to Promptly Remit.** Operator shall remit the Customer Facility Charge proceeds held by the Operator to the Port on a monthly basis on or before the twentieth (20<sup>th</sup>) day of each month following the month in which the Customer Facility Charges were collected; provided, however, in the event that it is determined that the Operator must, as a matter of law, remit the Customer Facility Charge more frequently, Operator shall remit such funds with such frequency as required by law, but Operator shall not otherwise be required to report or reconcile the amounts remitted other than on a monthly basis on or before the twentieth (20<sup>th</sup>) day of each month. The Operator shall remit the Customer Facility Charges by electronic funds transfer or other means specifically approved by the Port in writing. When remitting such Customer Facility Charge proceeds, the Operator shall report and reconcile the Customer Facility Charge proceeds remitted by it on a form required by the Port and shall submit such other and further information as may reasonably be necessary for the Port to determine any matter related to the Customer Facility Charge.

**6.2.4 Records; Audit.** The Operator shall maintain records and controls which are sufficient to demonstrate the correctness of the Customer Facility Charge proceeds collected by the Operator and the amount of Customer Facility Charge proceeds paid to the Port. Such records shall be maintained in accordance with, and subject to inspection and audit as set forth in, ARTICLE 8 of this Lease Agreement.

**6.2.5 Amount and Determination of the Customer Facility Charge.**

**6.2.5.1** Subject only to covenants made in connection with the issuance of any Bonds, the Port shall have the sole authority to determine the amount of the Customer Facility Charge. The Customer Facility Charge may specifically be established and set at a level sufficient to cover any costs authorized by Section 14.08.120(7) of the Revised Code of Washington; provided, however, the Port agrees that it shall not use the Customer Facility Charge to pay: (i) any Costs of the Small Operator Improvements or Additional Small Operator Improvements, (ii) any Costs of Additional Special Facilities unless the Port had the right to undertake the Additional Special Facilities under Section 2.5.1 or, with respect to any Additional Special Facilities the Port did not have the right to make under Section 2.5.1, unless the Port complied with Section 2.5.2, (iii) any costs associated with the Port's maintenance of the Reserved Areas under Section 15.2.2.2, (iv) any costs associated with the Port's maintenance of the Special Airport Systems under Section 15.2.2.3, or (v) any costs for restoration of the Consolidated Rental Car Facility under ARTICLE 20 where, and to the extent, property insurance proceeds are available and paid to the Port. Without limiting

the foregoing authority, the parties acknowledge and agree that the Port expects to set the amount of the Customer Facility Charge (when multiplied by the total annual number of Transaction Days) at an annual level sufficient to cover the Bond Obligations; the Costs of the CFC Administration; subject to Section 2.5, the Cost of the Additional Special Facilities (if any); subject to Section 12.3.5, the Common Transportation Costs; plus an amount, as reasonably determined by the Port, sufficient to fund the future projected costs associated with Major Maintenance. In setting the level of the Customer Facility Charge the Port specifically has the right to establish one or more reserve funds that it reasonably believes to be prudent to either minimize significant year-over-year increases or decreases in the level of the Customer Facility Charge (e.g. a rate stabilization fund) or meet future needs associated with the Consolidated Rental Car Facility, Consolidated Rental Car Facility Site or Common Transportation System that are not best funded on a current basis (e.g. a fund to address Major Maintenance or BMF Major Maintenance). Nothing in the former sentence, however, shall permit the Port to establish a reserve fund for purposes of funding any Additional Special Facility not specifically allowed or approved under Section 2.5. The Port further agrees to consider the projected effect on demand for rental cars at the Airport when establishing the amount of the Customer Facility Charge.

6.2.5.2 The Port shall regularly, and not less than annually, establish the level of the Customer Facility Charge and provide Operators not less than forty five (45) days advance written notice of any change in the anticipated level of the Customer Facility Charge. Notwithstanding the foregoing, the Port shall have the right to make an unscheduled adjustment to the level of the Customer Facility Charge in the event that the Port believes there has been a material change in any of the assumptions utilized in the Port's calculation of the Customer Facility Charge, which change is best not addressed through deposits into or withdrawals from any reserve funds established by the Port.

#### 6.2.6   Reviews of Customer Facility Charge.

6.2.6.1 Annual Review. The Port will provide the Operators a review of the Customer Facility Charge and the method of its calculation, including but not limited to the historical and projected number of transactions and transaction days, and the amounts budgeted and collected for purposes of paying the Bond Obligations, the Costs of CFC Administration, the Costs of the Additional Special Facilities (if any), and the Common Transportation Costs. In addition, the Port will provide an accounting of the Transportation and Facility Charge collected and credited against amounts otherwise payable by the Customer Facility Charge as well as the amounts paid into and out of any reserve funds established by the Port, either as required as part of the Bond Obligations or for payment of such items as Major Maintenance or BMF Major Maintenance.

6.2.6.2 Independent Review. The Port will also secure an independent professional review of the Customer Facility Charge every five (5) years or more frequently, as required by the Bonds documents. In addition to reviewing the matters addressed in the Port's annual reviews, the independent professional review will also, to the extent required by the Parties or the Bonds documents, examine the feasibility of current and projected Customer Facility Charge levels. To the extent consistent with any covenants made by the Port in connection with the issuance

of any Bonds, the Port agrees to reasonably consult with the Operators regarding the identity and qualifications of the independent professional retained to conduct a review of the Customer Facility Charge.

6.2.7 Customer Facility Charge Resolution Controls. In the event of any dispute between this Section 6.2 and the Port of Seattle Port Commission Resolution under which the Customer Facility Charge is imposed, the terms of the Port of Seattle Port Commission Resolution under which the Customer Facility Charge is imposed shall control, unless such Resolution attempts to unilaterally amend or modify any provision of this Section 6.2 in which event the terms and provisions of this Lease Agreement shall control.

6.2.8 No Abatement or Offset. Under no circumstances – and notwithstanding any contrary language in this Lease Agreement, the Concession Agreement or otherwise – will Operator's obligation to collect and remit the Customer Facility Charge be subject to abatement, offset, deduction whatsoever. This mandate specifically includes, but is not limited to, any event of any damage or destruction subject to ARTICLE 20 of this Lease Agreement or any termination of this Lease Agreement pursuant to Section 24.1 and in the event of such termination, the Operator continues to occupy, possess and use any portion of the Consolidated Rental Car Facility.

6.2.9 No Diversion. Operator shall not, directly or indirectly, divert Airport Customers away from the Consolidated Rental Car Facility or assist any Airport Customer in avoiding payment of the Customer Facility Charge.

### 6.3 Reimbursable O&M Costs.

#### 6.3.1 Definition.

6.3.1.1 It is the intention of the parties to transfer day-to-day responsibility associated with the operations and maintenance of the Consolidated Rental Car Facility and Consolidated Rental Car Facility Site to the Operators. Nonetheless, there are certain costs and obligations associated with operation and maintenance of the Consolidated Rental Car Facility and Consolidated Rental Car Facility Site that will, subject to a right of reimbursement from the Operators, be undertaken by the Port. Excepting only the costs associated with: (i) Major Maintenance of the Consolidated Rental Car Facility or Consolidated Rental Car Facility Site, (ii) the cost of operations, maintenance or repair of the Special Airport Systems, or (iii) the cost of operations, maintenance or repair of the Reserved Areas not utilized in the management and operation of the Consolidated Rental Car Facility, Consolidated Rental Car Facility Site or Common Transportation System, the Operators shall reimburse the Port those costs incurred by the Port in connection with the operation, maintenance and repair of the Consolidated Rental Car Facility and Consolidated Rental Car Facility Site (the "Reimbursable O&M Costs"), all as more specifically described in this Section 6.3.

6.3.1.2 The Reimbursable O&M Costs specifically include the following: (a) property (including boiler and machinery, if purchased) insurance costs incurred by the Port with

respect to the Consolidated Rental Car Facility and Consolidated Rental Car Facility Site (including Additional Special Facilities, if any), where such costs shall be determined based on the schedule of values and insurance rate; (b) except to the extent attributable to any individual Operator, any Taxes paid by the Port but payable by the Operators under Section 14.1; (c) the costs of maintaining and repairing the Special Building Systems under Section 15.2.2.4; (d) except to the extent attributable to less than all of the Operators or areas that are the responsibility of less than all of the Operators, the costs of maintaining and repairing the Consolidated Rental Car Facility and Consolidated Rental Car Facility Site under Section 15.2.2.6; (e) except to the extent billed to and collected from the Facility Manager, the Utilities Costs for the Common Use Area under Section 16.2.2; (f) in the event that the Port *has not* assumed responsibility for the operation, maintenance and repair of the Consolidated Rental Car Facility and Consolidated Rental Car Facility Site as provided in Section 15.2.2.6.3, the Operations and Maintenance Cost Offset Amount, (g) in the event that the Port *has* assumed responsibility for the operation, maintenance and repair of the Consolidated Rental Car Facility, Consolidated Rental Car Facility Site and Additional Special Facilities (if any) as provided in Section 15.2.2.6.3, the actual cost of such operation, maintenance and repair (including a reasonable allocation of Port overhead), specifically including, but not limited to, the cost of a facility manager or managers and associated support staff that are responsible for supervising the operation and management of the Consolidated Rental Car Facility and Consolidated Rental Car Facility Site (specifically including the Operators compliance with the obligations imposed by this Lease Agreement); and (h) any other cost or expense incurred by the Port in connection with the Operators' operations on or occupation of the Consolidated Rental Car Facility and Consolidated Rental Car Facility Site, together with Additional Special Facilities.

6.3.2 Payment. Beginning on the commencement of "burn-in" on the day following the Deadline for Substantial Completion and continuing thereafter during the Lease Term, each Operator shall be responsible for its Pro Rata Share of the Reimbursable O&M Cost, but the Reimbursable O&M Costs shall be paid by the Operators through the Facility Manager. The Reimbursable O&M Cost shall be paid to the Port in advance on the first day of each and every month during the Lease Term, at such place as the Port may designate, without any prior demand, and without any abatement, deduction or setoff whatsoever.

6.3.3 Calculation. Prior to the Deadline for Substantial Completion and prior to the commencement of each Agreement Year thereafter, and at any other time the Port deems adjustment necessary, the Port shall submit to Operator a statement of the Operator's anticipated Pro Rata Share of the Reimbursable O&M Costs for the following Agreement Year (or for the first Agreement Year, at any point from the Deadline for Substantial Completion to the end of the first Agreement Year), and Operator shall pay one-twelfth (1/12) thereof (or for the first Agreement Year, an equal monthly amount) monthly, concurrent with the payment of Land Rent. The Port shall reasonably endeavor to provide this statement not less than forty five (45) days prior to the commencement of each Agreement Year. Within one hundred twenty (120) days after the end of each Agreement Year, the Port shall give the Operators a statement showing the total actual Reimbursable O&M Costs for the prior Agreement Year (or for the first Agreement Year, from the Deadline for Substantial Completion to the end of the first Agreement Year) and each Operator's Pro Rata Share thereof. In the event that the total of the monthly payments which Operator has made for such Agreement Year

is less than Operator's actual Pro Rata Share, Operator shall pay the difference within thirty (30) days after receipt of such statement from the Port. Any overpayment by Operator shall be credited toward the Operator's Pro Rata Share of the Reimbursable O&M Costs next becoming due or, in the event that the Lease Agreement has expired (and there is no outstanding default), refunded to Operator. Notwithstanding the above, any delay or failure of the Port in computing or billing Reimbursable O&M Costs shall not constitute a waiver of or in any way impair Operator's obligation to pay the Reimbursable O&M Costs or any other sum hereunder; provided, however, in the event the Port determines that it has materially underbilled Operator for any Reimbursable O&M Costs as a result of any error, neglect or unreasonable delay on part of the Port, the Port agrees to work with Operator to establish a mutually acceptable schedule for repayment of any unbilled amounts (which schedule shall, in no event, extend beyond the next Agreement Year). In the event of any such delay or failure, Operator shall continue paying the Reimbursable O&M Costs currently being paid until notified by the Port of the adjustment. Operator, at its cost, shall have the right to inspect, in the Port's offices during usual business hours, the Port's records regarding the Reimbursable O&M Costs referred to in the annual statement for a period of ninety (90) days following delivery of the statement. If within such ninety day period neither party delivers notice to the other a notice referring in reasonable detail to one or more errors in such statement or calculation, the information and calculation in such statement shall conclusively be deemed correct.

6.4 Additional Small Operator Responsibilities. In addition to, and not lieu of, any other amount payable under this ARTICLE 6, any Operator who is a Small Operator shall also pay the following amounts:

6.4.1 Small Operator Improvement Rent. Each Operator who is a Small Operator shall pay to the Port a rental amount associated with the Small Operator Improvements ("Small Operator Improvement Rent") calculated as set forth on **Exhibit N**. The Small Operator Improvement Rent shall be divided into equal monthly amounts and paid to the Port in advance on the first day of each and every month during the Lease Term, at such place as the Port may designate, without any prior demand, and without any abatement, deduction or setoff whatsoever. If the Lease Term commences on any day other than the first day of a calendar month, the Small Operator Improvement Rent for any fractional month shall be prorated based upon the actual number of days in such fractional month.

6.5 Additional Financial Obligations. Additional financial obligations of Operator, and each of the Operators, may appear in other provisions of this Lease Agreement, specifically including (but not limited to) ARTICLE 15 and ARTICLE 16.

6.6 Contract Rent. The Port and Operator agree that the "Contract Rent," as that term is defined in Chapter 82.29A of the Revised Code of Washington and Chapter 458-29A of the Washington Administrative Code, for the rights of possession and use of publicly owned real and personal property granted by this Agreement shall be calculated as set forth on **Exhibit P**. By approving the terms of this Lease Agreement in an open public meeting, it is the intention of the Port to declare that the "Contract Rent" as set forth in this Section 6.6 was the maximum amount

attainable for the rights and responsibilities set forth in this Lease Agreement, considering alternative uses for the Premises, and considering the condition, and any restrictions on the use, of the Premises.

## ARTICLE 7: REMITTANCE; LATE PAYMENT

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

7.2 Late Payment. If any remittance of Customer Facility Charges is not received by the Port when due, or if any payment of Land Rent, Reimbursable O&M Costs or other sum or charge otherwise payable/remittable by Operator is not received by the Port within ten (10) days of when due, Operator 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 Customer Facility Charges, Land Rent, Reimbursable O&M Costs or other sum or charge otherwise payable by Operator 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 Customer Facility Charges, Land Rent, Reimbursable O&M Costs or other sum or charge otherwise payable/remittable by Operator and late charge are not received within fifteen (15) days of when such delinquent payment was originally due, Operator shall further pay interest on such delinquent payment/remittance and late charge thereafter at the Default Rate. This provision shall not relieve Operator from payment of Land Rent, Customer Facility Charges, Reimbursable O&M Costs or other sum or charge otherwise payable/remittable by Operator at the time and in the manner herein specified.

## ARTICLE 8: ACCOUNTING PROCEDURES; AUDIT

8.1 Accounting Procedures. Operator 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 Lease Agreement) in full and complete accordance with generally accepted accounting principles and otherwise reasonably satisfactory to the Port for the determination of any Customer Facility Charges or other computations, or both, which may be necessary or essential in carrying out the terms of this Lease Agreement. Operator shall maintain its records relating to the operation permitted by this Lease 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 (prior to the expiration of the relevant retention period) request that any such records be retained for a longer period of time, in which case Operator, at its option, may deliver such records into the custody of the Port.

## 8.2 Audit.

8.2.1 Representative(s) designated by the Port shall be allowed to inspect and audit Operator's books of accounts and records with reference to the determination of any matters relevant to this Lease Agreement at all reasonable times. The Port representative shall specifically be entitled to inspect and audit any records necessary, in the auditor's professional discretion, to complete the audit consistent in a manner consistent with generally accepted auditing standards; provided, however, nothing herein shall authorize the Port to make any investigation into the expenses or expense structure of Operator except to the extent specifically necessary for the verification of any exclusion from Gross Revenues. The cost of such audit shall be borne by the Port unless the results of such audit reveal a discrepancy of more than one percent (1%) for the Customer Facility Charge or three percent (3%) for any other amount for any twelve (12) month audit period. In the event of such discrepancy, the full cost of the audit shall be borne by the Operator, and Operator shall promptly pay all additional fees owing to the Port together with interest on such sums from the date originally due until the date paid at the Default Rate.

8.2.2 In the event that Operator's books of accounts are not maintained in the Puget Sound region, they shall be made available for audit locally within twenty (20) business days of a request by the Port, or Operator shall pay in full any travel and related expenses of Port representative(s) to travel to the location outside the Puget Sound region.

8.2.3 In those situations where Operator's records have been generated from computerized data (whether mainframe, minicomputer, or PC-based computer systems), Operator agrees to provide the Port's representative with extracts of data files in a computer readable format on data disks, e-mail with attached files or suitable alternative computer data exchange formats. Operator agrees to provide appropriate work space to conduct the audit and free access to copiers; fax machines and other needed office equipment. Operator shall provide the name and telephone number of Operator's accounting manager or the like who has a thorough knowledge of the accounting system as it pertains to this Lease Agreement and who will assist the Port with its audit. Operator will also allow interviews of past and present employees who were or are involved in the financial or operational activities of Operator.

## ARTICLE 9: BOND OR OTHER SECURITY

9.1 Security. Operator shall, upon execution of this Lease Agreement, obtain and deliver to the Port a good and sufficient corporate surety company bond, irrevocable stand-by letter of credit, or other security acceptable to the Port (the "Security") to secure Operator's full performance of this Lease Agreement and the Concession Agreement, including the payment of all fees and other amounts now or hereafter payable to or required to be remitted to the Port under either this Lease Agreement or the Concession Agreement in an amount equal to the following:

9.1.1 For the period from execution of this Lease Agreement until the award of a Concession Agreement under the Request for Qualifications, an amount equal to twenty five thousand dollars (\$25,000.00);

9.1.2 From the award of a Concession Agreement under the Request for Qualifications until a date thirty (30) days prior to the earliest Commencement Date, an amount as set forth in the Port's Request for Qualifications;

9.1.3 For the period from the date thirty (30) days prior to the earliest Commencement Date through the end of the first Agreement Year, and amount equal to sixty percent (60%) of Operator's Minimum Annual Guarantee for the first Agreement Year.,

9.1.4 For the second Agreement Year and each Agreement Year thereafter, an amount equal to sixty percent (60%) of Operator's Minimum Annual Guarantee for the previous Agreement Year or the amount of the Security for the first Agreement Year, whichever is higher.

The form, provisions and nature of the Security, and the identity of the surety 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 Lease Term 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.

9.2 Application of Security. The Port may apply all or part of the Security to unpaid rent or any other unpaid sum due under this Lease Agreement or the Concession Agreement to cure other defaults of Operator. If the Port uses any part of the Security, Operator shall restore the Security to its then-currently required amount within thirty (30) 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 does not constitute a limitation on or waiver of the Port's right to seek further remedy under law or equity.

9.3 Compliance with Washington Law. 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 ARTICLE 9 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.

## ARTICLE 10: USE

### 10.1 Use of Premises.

10.1.1 Generally. Subject to Operator being awarded a Concession Agreement and otherwise subject to and in accordance with all present and future Legal Requirements and Port Standards, Operator covenants and agrees that it shall use the Premises solely for the purpose of operating a Rental Car Concession and for no other purpose or use. Operator shall not, under any circumstances, use the Premises for performing vehicle maintenance or repair, excepting only car

washing, cleaning, refueling and, with the Port's prior written consent (which will not be unreasonably conditioned or withheld), Light Vehicle Maintenance. Any such activities must be conducted within QTA Space (or such specific portion thereof as authorized in the any consent related to Light Vehicle Maintenance) leased to Operator or such other area explicitly approved in writing by the Port and as to all such locations in strict conformance with all of the requirements of this Lease Agreement and any consent as to such activities. Operator also shall not, under any circumstance, use the Premises for the retail sale of any vehicles, the storage of damaged vehicles or any heavy vehicle maintenance. Each Operator may, however, provide to its customers any telephone and communication services and other business services in the Customer Service Building if done without charge. In addition, each Operator 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 Operator's Rental Car Concession. Any revenue from such ancillary business services shall, however, be considered Gross Revenues.

10.1.2 Specific Areas. Notwithstanding anything to the contrary in Section 10.1.1, Operator and the Operators shall, unless otherwise agreed by the Port in writing, use the following portions of the Consolidated Rental Car Facility and Consolidated Rental Car Facility Site for only the following purposes:

10.1.2.1 Public Parking. Operator and the Operators shall use those portions of the fifth floor of the Consolidated Rental Car Facility (within the Common Use Area) identified for public parking solely for public parking in connection with the completion of rental car transactions by rental car customers not arriving at the Consolidated Rental Car Facility by the Common Transportation System (e.g. local renters). The Operators, through the Facility Manager, shall specifically police the public parking areas to ensure that the area is used solely for such purposes. There shall be no charge for public parking unless the Port and a Majority-in-Interest agree on such charge.

10.1.2.2 Employee Parking. Operator and the Operators shall use those portions of the fifth floor of the Consolidated Rental Car Facility (within the Common Use Area) identified for employee parking solely for employee parking in connection with the operation of a Rental Car Concession at the Airport. The Operators, through the Facility Manager, shall specifically police the employee parking areas to ensure that the area is used solely for such purposes. The Facility Manager shall determine the method and manner by which access to the employee parking area is granted and by which the employee parking area is apportioned between the Operators. In the event Operators and/or their Facility Manager elect to charge for parking in the employee parking area, the Port shall be provided a reasonable number of free parking passes to permit the Port to exercise its rights and perform its obligations under this Lease Agreement.

10.1.2.3 North Parcel. Each Operator granted a lease to use the North Parcel (and all Operators should not particular Operators be leased the North Parcel or any portion thereof) shall use the North Parcel (as identified in **Exhibit C-6**) exclusively for the storage of rental

vehicles for use in connection with a Rental Car Concession at the Airport or for such other use as may specifically be authorized or directed by the Port.

## 10.2 General Standards Governing Use.

10.2.1 Operator 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 then-applicable Legal Requirements, or (ii) violate any of the covenants, agreements, provisions and conditions of this Lease 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 Operator to obtain fire or other insurance required hereunder, or (v) as will constitute a public or private nuisance. Operator specifically agrees to comply with all present or future rules and regulations of the Port at the Airport that are promulgated for the general safety and convenience of the Port, its various tenants, invitees, licensees and the general public and which do not materially affect the use and enjoyment of the Premises for the purposes for which they are intended under this Lease Agreement.

10.2.2 Operator shall 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.

10.2.3 Operator shall not do or permit or suffer any waste, damages, disfigurement or injury to or upon the Premises or any part thereof.

10.3 Signs. Operator's Rental Car Concession shall be clearly signed and designated at all times during the Lease Term with the company's specific identification and sufficient operational signage to ensure the safe and efficient operation of the Rental Car Concession. Except as specifically permitted by the Rental Car Facility Tenant Design and Construction Standards, Operator shall not attach to or paint on or within the Premises (including the walls, windows and doors thereof) any signs or other advertising matter, symbols, canopies or awnings. At the termination or sooner expiration of this Lease Agreement, all signs, advertising matter, symbols, canopies or awnings attached to or painted by Operator shall be removed by Operator at its own expense, and Operator shall repair any damage or injury to the Premises and correct any unsightly condition caused by the maintenance and removal of said signs, etc. Operator shall not be permitted to advertise any products and/or services other than those of Operator connected to the operation of the Rental Car Concession.

10.4 Concession Agreement. Operator acknowledges that, notwithstanding anything to the contrary in this Lease Agreement, Operator will lose any right to occupy the Premises for the Lease Term if Operator is not, as part of the Request for Qualifications process, awarded a Concession Agreement for the operation of a Rental Car Concession for each Concession Term over the Lease Term. For the initial Concession Term, the Port shall employ a Concession Agreement substantially in the form attached as **Exhibit O**.

## ARTICLE 11: INITIAL ALLOCATION AND REALLOCATION

11.1 Initial Allocation. The Port shall, on or prior to the earliest Commencement Date, allocate those portions of the Consolidated Rental Car Facility and Consolidated Rental Car Facility Site designated as Exclusive Use Premises between those Operators having been awarded a Concession Agreement as more specifically set forth on **Exhibit J**.

11.2 Subsequent Reallocation. The Port shall reallocate those portions of the Consolidated Rental Car Facility and Consolidated Rental Car Facility Site designated as Exclusive Use Premises on the time intervals, and in the manner, more specifically set forth on **Exhibit K**.

11.3 New Entrants. Other than (i) in the Small Operator Area, (ii) on the termination, whether by default, in bankruptcy or otherwise, of a particular Operator's Lease Agreement and Concession Agreement, or (iii) at the beginning of a Concession Term, the Port will not allow New Entrants into the Consolidated Rental Car Facility. New Entrants in the Small Operator Area will, subject to reallocation as provided in Section 11.2, initially be accommodated in those portions of the Small Operator Area not assigned in the initial allocation (or latest reallocation) of the Small Operator Area. New Entrants in any space vacated on termination a particular Operator's Lease Agreement and Concession Agreement will, subject to reallocation as provided in Section 11.2, initially be accommodated in the space vacated. New Entrants at the beginning of any Concession Term will be allocated space as provided in Section 11.4.

11.4 Early Termination of Rental Car Concession. In the event that the Lease Agreement and Concession Agreement for a particular Operator are terminated (whether by default, in bankruptcy or otherwise), the Port will reallocate the vacated Exclusive Use Premises as follows:

11.4.1 During the first five (5) years of the initial Concession Term, the Port agrees that it will not allow any New Entrant in the vacated space. Instead, the vacated space will be allocated between the existing Operators in a manner elected by the Port in its sole discretion. Portions of the vacated space, particularly within the Customer Service Building, may not be reallocated. In determining how to reallocate the vacated space, the Port generally intends to first determine which Operators would be interested in some or all of the vacated space. Depending on the degree of interest, the Port will determine how best to reallocate the vacated space considering the current Operators, their locations and market shares, and the efficiency and effective operation of the Consolidated Rental Car Facility. The Port specifically reserves the right to completely relocate one or more Operators that may be interested in the vacated space to the vacated space and, in turn, reallocate their vacated space(s). For example, if a smaller Operator had grown its market share and was interested in space vacated by a relatively larger Operator, the Port might completely relocate the smaller Operator to the vacated space and, in turn, reallocate the space vacated by the smaller Operator.

11.4.2 At any other time during the Lease Term, the Port will generally determine whether there are any New Entrants potentially interested in the vacated space or any smaller space

within the Consolidated Rental Car Facility. The Port will then determine which Operators would be interested in some or all of the vacated space. Depending on the degree of interest by potential New Entrants and current Operators, the Port will determine how to best to reallocate the vacated space considering the current Operators, their locations and market shares, any potential New Entrants and their likely market shares, and the efficiency and effective operation of the Consolidated Rental Car Facility. The Port specifically reserves the right to completely relocate one or more Operators that may be interested in the vacated space to the vacated space and, in turn, reallocate their vacated space(s). For example, if a smaller Operator had grown its market share and was interested in space vacated by a relatively larger Operator, the Port might completely relocate the smaller Operator to the vacated space and, in turn, reallocate the space vacated by the smaller Operator. The Port agrees that in the event that it brings in any New Entrant, it will establish a Minimum Annual Guarantee for such New Entrant in a manner – considering current market shares and current market size/value – consistent with methodology for determining the minimum Minimum Annual Guarantee for the particular Allocation Block in which such vacated space falls.

11.4.3 The costs associated with reallocation following termination of particular Operator's Lease Agreement and Concession Agreement shall generally be borne as provided in **Exhibit J**; provided, however, the event that the Port elects, as part of any reallocation, to relocate one or more Operators to improve the efficiency and effective operation of the Consolidated Rental Car Facility, the costs of such relocation shall be paid by the Port and such costs may expressly be paid from Customer Facility Charge proceeds.

## ARTICLE 12: COMMON TRANSPORTATION SYSTEM

12.1 Common Transportation System. Rental car customers will be transported between the Airport terminal and the Consolidated Rental Car Facility exclusively on a Common Transportation System operated by the Port. Excepting only those customers who walk or drive themselves to the Consolidated Rental Car Facility, all customers of all Operators operating at the Airport will be required to use the Common Transportation System. No Operator will be permitted at any time under any circumstances to use its own transportation system or to contract with a third party transportation system, or use vouchers, or use its rental vehicles to pick up or drop off customers at the Airport terminal.

12.2 Double-Busing; Transportation and Facility Charge.

12.2.1 The Port will require that customers of rental car companies that are not tenants in the Consolidated Rental Car Facility will be “double-bused,” meaning that those customers will be transported between the Airport terminal and the Consolidated Rental Car Facility via the Common Transportation System and may only be picked up at a curb position at the Consolidated Rental Car Facility designated for non-tenant rental car companies. The customers will then be transported to the non-tenant rental car companies’ off-site location. Drop off of customers of non-tenant rental car companies will occur in the same manner at the same Consolidated Rental Car Facility curb.

12.2.2 The Port will also collect a Transportation and Facility Charge from each rental car company that is not a tenant in the Consolidated Rental Car Facility to compensate the Port for the use of the Common Transportation System and those portions of the Consolidated Rental Car Facility identified for access to the Consolidated Rental Car Facility and the transfer of customers for such rental car companies. All such amounts shall be applied against the Bond Obligations, Common Transportation Costs and/or Costs of CFC Administration, and on a quarterly basis, the Port shall provide a written statement to each of the Operators describing the amount of such Transportation and Facility Charges collected by it.

### 12.3 Operating Plan.

12.3.1 Initial Common Transportation System. The initial Common Transportation System shall be provided by means of buses to and from the Airport terminal to the Consolidated Rental Car Facility.

12.3.2 Port Develop Initial Plan. The Port shall, in consultation with subcommittee focused on transportation issues and staffed by Port and Operator representatives, develop a preliminary plan for Common Transportation System operations related to the transportation of customers users between the Airport terminal and the Consolidated Rental Car Facility. The Common Transportation System plan shall include, but not be limited to, specifications for the type, size and number of buses, including but not limited to service levels, and loading/unloading locations in the Airport terminal area, and shall address any other issues regarding movement of rental car customers between the Consolidated Rental Car Facility and the Airport terminal.

12.3.3 Operator Comments. The Operators will be provided with sixty (60) calendar days to review the preliminary Common Transportation System plan and to submit written comments regarding any proposed adjustments to the plan. The Port will review all comments that are received within that period of time and will make a final determination on the Common Transportation System plan, the results of which shall be distributed to the Operators.

12.3.4 Subsequent Revisions. Thereafter, the Port will meet periodically with the Operators to review the performance of the Common Transportation System, and the Port may make modifications to the Common Transportation System plan in its sole discretion.

12.3.5 Change from Busing. Notwithstanding anything to the contrary in this Lease Agreement, in the event that the Port would elect to change the Common Transportation System from buses to some other mode of transportation (including, but not limited to, an automated people mover), any such change will require the approval of a Majority-in-Interest unless the Port can clearly demonstrate that such alternative method both: (i) will provide equal or better performance (in terms of, for example, capacity and headways) than buses, (ii) will not, over the remaining Lease Term, result in an increase in the Customer Facility Charge above the levels projected at the time of such demonstration for operation of the Common Transportation System through buses, and (iii) will not result in a significant increase in costs otherwise payable by the Operators under this Lease Agreement.

12.4 Common Transportation Costs. Except as otherwise agreed between the parties, the Operators and each of them shall have no obligation to pay for any Common Transportation Costs. All Common Transportation Costs will be paid by the Port; provided, however, Operator acknowledges and agrees that the Port expects to fund Common Transportation Costs exclusively from a portion of the Customer Facility Charge proceeds.

## ARTICLE 13: ALTERATIONS; OWNERSHIP OF CERTAIN INSTALLATIONS

13.1 Alterations. After completion of the Initial Tenant Improvements pursuant to Section 2.2.2, Operator shall not make any changes, alterations, additions, substitutions or improvements (collectively referred to as "Alterations") to or upon the Premises without first obtaining the Port's prior written approval of such Alteration and subject to any and all conditions in such approval. Operator shall otherwise comply with the design, construction and opening processes attached hereto as **Exhibit G** in connection with Operator's design and construction of any such Alteration. Any Alteration shall be performed (i) in a good and workmanlike manner, (ii) in compliance with all Legal Requirements and the Port Standards, and (iii) in a manner that will not unreasonably interfere with or disturb the Port or its tenants.

13.2 Port Review Does Not Relieve Operator. Operator agrees that nothing in the Port's review or approval of Operator's plans shall create responsibility or liability on the part of the Port for their completeness, design sufficiency, or compliance with all Legal Requirements or Port Standards, all of which shall be Operator's sole responsibility. Nor shall such review or approval constitute a waiver by the Port of the right to thereafter require Operator to correct any failure by Operator to comply with any Legal Requirements or Port Standards later discovered by the Port.

13.3 As-Built Documents. Operator shall deliver to the Port, ninety (90) days after project completion, full and complete "as built" drawings of any Alterations in electronic format in full conformance with the Port's CAD Standards Manual, and three (3) half-size hard copies. For any equipment installed, Operator shall deliver to the Port, two (2) copies of the complete operations and maintenance manuals.

13.4 Trade Fixtures. Except to the extent provided in repair or substitution of any improvements provided by the Port, Operator shall retain ownership of: (i) all trade fixtures and business equipment and furnishings from time to time installed by Operator at its expense, and (ii) all Alterations and/or improvements that Operator is required to remove at the end of this Lease Agreement pursuant to Section 21.1. Operator may remove any of such fixtures; equipment or furnishings at any time during the Lease Term and shall remove all thereof prior to the expiration of the Lease Term. Any such property not removed at the expiration of the Lease Term shall, at the election of the Port, become the property of the Port without payment to Operator, or be deemed abandoned and removed by the Port, at Operator's expense. Upon any removal of such property, Operator 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 Operator and repairing

any such damage not repaired by Operator; this covenant shall survive the termination of this Lease Agreement.

## ARTICLE 14: REAL AND PERSONAL PROPERTY TAXES

14.1 Payment of Taxes by Operator. Operator shall be liable for, and shall pay throughout the Lease Term, all license fees and all taxes payable for, or on account of, the Rental Car Concession and all taxes on the personal property of Operator on the Premises. Further, Operator shall pay its proportionate share of all taxes, charges and assessments levied on the land, the buildings, any improvements, fixtures and equipment and all other property real or personal constituting or located within or upon the Premises, and any taxes levied in lieu of any such taxes, charges, or assessments, and any taxes levied on the leasing of the Premises or any portion thereof, or measured by, the rents or other charges collected hereunder, whether imposed on Operator or on the Port. With respect to any taxes imposed upon the Port which are on or measured by the rent collected hereunder, Operator shall pay to the Port with each rental installment an amount equal to the tax on, or measured by, that particular installment. All other tax amounts for which the Port is or will be entitled to reimbursement from Operator shall be payable by Operator to the Port at least fifteen (15) days prior to the due dates of the respective tax amounts involved; provided, that Operator shall be entitled to a minimum of thirty (30) days' written notice of the amounts payable by it.

14.2 Operator's Personal Property Taxes. Subject to Operator's right to protest and contest any taxes and assessments levied, Operator shall pay or cause to be paid, prior to delinquency, any and all taxes and assessments levied upon all trade fixtures, inventories and other real or personal property placed or installed in and upon the Premises by Operator. If any such taxes on Operator's personal property or trade fixtures are levied against the Port or the Port's property, and if the Port pays the taxes based upon such increased assessment, Operator shall, upon demand, repay to the Port the taxes so levied.

## ARTICLE 15: REPAIR AND MAINTENANCE

### 15.1 By Operator.

15.1.1 Generally. Beginning on the commencement of "burn-in" on the day following the Deadline for Substantial Completion and continuing thereafter during the Lease Term, the Operators shall – at the Operators' sole cost and expense and subject only to the specific obligations of the Port set forth in Section 15.2 – put and keep the Consolidated Rental Car Facility (other than those portions of the Reserved Area not utilized in the management and operation of the Consolidated Rental Car Facility or Common Transportation System) and Consolidated Rental Car Facility Site, both outside and inside, together with all Alterations, equipment and installations therein and the appurtenances thereto, in good order, maintenance and repair, and the Operators shall undertake all maintenance and make all repairs and replacements – ordinary as well as extraordinary, foreseen and unforeseen, structural or otherwise (but specifically excluding Major Maintenance, which is the Port's responsibility under Section 15.2.2.5) – which may be necessary or required so

that at all times the Consolidated Rental Car Facility, the Consolidated Rental Car Facility Site (other than those portions of Reserved Area not utilized in the management and operation of the Consolidated Rental Car Facility or Common Transportation System) and all Alterations, equipment, installations and appurtenances shall be in thorough good order, condition and repair. Without limiting the generality of the foregoing, Operator shall also: (i) keep the Premises at all times in a neat, clean, safe and sanitary condition, (ii) keep the Premises free from infestation of pests and conditions which might result in harborage for, or infestation of pests, (iii) 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, and (iv) remove all snow and ice from any work areas, parking areas, sidewalks, and all roofs within the Premises. As used in this Section, the word "pests" shall include, without limitation, rodents, insects, and birds in numbers to the extent that a nuisance is created.

15.1.2 Standards. The Operators and each Operator shall perform all maintenance, repairs, or replacements: (i) in conformance with all Legal Requirements, Port Standards and the Operations Manual, (ii) using quality materials at least equal to the original, and, if materially changed from the original, shall be subject to the prior written approval of the Port, (iii) using only qualified personnel, (iv) in a good and workmanlike manner, adhering to the highest standards of quality, and (v) otherwise in conformance with the standards and operating requirements attached hereto as **Exhibit H**.

15.1.3 Operators' Specific Obligations.

15.1.3.1 Exclusive Use Premises. Unless otherwise specifically agreed between the Operators, each Operator shall, at its sole cost and expense, have the obligations set forth in this Section 15.1 with respect to such Operator's Exclusive Use Premises; provided, however, the Port shall (in addition to any rights granted under Section 15.2) have the right to require an Operator that is a Small Operator to contract with the Facility Manager to perform the obligations set forth in this Section 15.1 with respect to some or all of the Exclusive Use Premises falling within the Small Operator Area.

15.1.3.2 Common Use Area.

15.1.3.2.1 The Operators and each Operator shall – whether through a joint venture agreement, participation agreement, limited liability company agreement or any combination thereof through which all Operators are a party – contract with a financially responsible, experienced manager (the "Facility Manager") for the operation, maintenance and repair of the Common Use Area (but specifically excluding the Fuel Facilities, the responsibility for which shall fall to the Fuel Facility Manager), the Small Operator Shared Area and those portions of the Reserved Area utilized in the management and operation of the Consolidated Rental Car Facility or Common Transportation System. In addition, the Operator(s) may elect to utilize the Facility Manager to satisfy any of Operator(s) obligations under Section 15.1.3.1. The identity of the Facility Manager and the terms of the contract between the Operators and the Facility Manager shall specifically be subject to the Port's approval, such approval not to be unreasonably withheld. In

order to involve the Facility Manager in the commissioning of the Consolidated Rental Car Facility and pre-final and final inspections, the Operators shall retain and have available the Facility Manager no later than ninety (90) days before the earliest Commencement Date. The Operators and each Operator shall, not less than one hundred twenty (120) days before the earliest Commencement Date and ninety (90) days before any date on which Operators would intend to change the identity of, or terms of any contract with, the Facility Manager, submit to the Port for its review and approval (not to be unreasonably withheld) any such information as the Port may reasonably request regarding the experience, financial strength and/or operational plan associated with any such Facility Manager and a complete copy (including all exhibits or attachments) of any proposed contract(s) between the Operators and the Facility Manager. The Port's consent to the terms of any such contract shall not be withheld or delayed provided such agreement: (i) is consistent with the provisions of this Lease Agreement and does not exceed the Lease Term; (ii) is otherwise consistent with operating agreements customary in the facilities management industry; (iii) provides that the Common Use Area be managed subject to and in accordance with the terms of this Lease Agreement; (iv) requires the Facility Manager to defend and indemnify the Port from any damages, claims or the like resulting from the Facility Manager's acts or omissions; (v) requires the Facility Manager to procure insurance of like kind and amount required of the Operator as set forth in this Lease Agreement and to cause the Port to be an additional insured under such policies; (vi) may not be cancelled or terminated without prior written notice to the Port; and (vii) may be assumed by the Port at its option in the event of a default by the Operators there under. The Port agrees to not withhold or delay its consent to any proposed Facility Manager, provided such entity has: significant experience in the management and operation of commercial facilities similar to the Consolidated Rental Car Facility, in a competent and professional manner in accordance with operating standards and policies standard in the industry; and financial strength and management competency, with personnel having appropriate experience to operate, maintain and manage the Common Use Area (and, if relevant, the QTA Equipment and any Operator Vehicle Maintenance Equipment). The contract between the Operators and the Facility Manager shall specifically bind the Facility Manager to those obligations to be performed by the Facility Manager or the Operator or Operators through the Facility Manager under this Lease Agreement, and the Port shall specifically be a third-party beneficiary of any such terms. The Operators and each Operator shall likewise submit to the Port a copy of any joint venture agreement, participation agreement, or limited liability company agreement by which they have joined together to contract with such Facility Manager.

15.1.3.2.2 The Operators shall, through the Facility Manager, have the obligations set forth in this Section 15.1 with respect to the Common Use Areas and those portions of the Reserved Area utilized in the management and operation of the Consolidated Rental Car Facility or Common Transportation System. Each Operator shall pay to the Facility Manager an amount, as determined by the Facility Manager according to the agreement between the Operators and the Facility Manager, associated with the Facility Manager's maintenance and repair of the Common Use Area.

15.1.3.2.3 Those Operators that are Small Operators shall, through the Facility Manager, have the obligations set forth in Section 15.1 with respect to the Small Operator Shared Area and, if elected by the Port pursuant to Section 15.1.3.1, those portions of the

Exclusive Use Area within the Small Operator Area. Each Operator that is a Small Operator shall also pay to the Facility Manager an amount, as determined by the Facility Manager according to the agreement between the Operators and the Facility Manager, associated with the Facility Manager's maintenance and repair of the Small Operator Shared Area and, if required by the Port pursuant to Section 15.1.3.1, the particular Operator's Exclusive Use Premises within the Small Operator Area.

15.1.3.2.4 In the event that the Port incurs or otherwise pays any costs otherwise required to be performed by the Operators through the Facility Manager, the Port shall have the right to bill the Facility Manager (rather than each Operator) for such costs, and the Facility Manager shall (without regard to whether it has collected from the Operators or any of them) pay the Port for any such costs directly on such payment terms as the Port otherwise generally extends to the Operators or other tenants on or about the Airport.

15.1.3.2.5 Operator shall, in a timely fashion, pay all amounts due by Operator under, and otherwise adhere to all covenants, conditions, or agreements to be observed or performed by Operator in, the agreement between Operator and the Facility Manager. Operator specifically agrees that any failure to pay such amounts or observe such covenants, conditions or agreements – whether or not a default has been declared by the Facility Manager – shall be a default under this Lease Agreement.

15.1.3.3 Operations and Maintenance Manual. The Operators and each Operator shall, through the Facility Manager, prepare or have prepared an operations and maintenance manual (the "Operations Manual") that addresses the operation, maintenance and repair of the Consolidated Rental Car Facility and Rental Car Facility Site other than the Fuel Facilities (which shall be the responsibility of the Fuel Facility Manager). Subject to the Port's reasonable concurrence, either the Facility Manager or the Fuel Facility Manager shall be responsible for the QTA Equipment and the Operator Vehicle Maintenance Equipment. The Operations Manual shall: (i) be consistent with the standards and operating requirements attached hereto as **Exhibit H**, (ii) be provided to the Port at least thirty (30) days before the Deadline for Substantial Completion or not more than thirty (30) days after any update, (iii) be prepared in coordination with Port staff, (iv) with respect to any equipment located in, on or about the Consolidated Rental Car Facility or Consolidated Rental Car Facility Site, be consistent with warranty requirements, manufacturer's recommendations and Best Management Practices approved by the Port, (v) be consistent with all Legal Requirements, (vi) be consistent with the Pollution Prevention Plan and Spill Pollution Control and Countermeasure Plan, (vii) be updated to address future changes in Consolidated Rental Car Facility and/or Consolidated Rental Car Facility Site activities or facilities, and (viii) in the event of any apparent overlap between the requirements of the Facility Manager and Fuel Facility Manager under this Lease Agreement, identify (subject to the requirements of Section 19.1.2.2) the party primarily responsible for satisfying any such requirement and shall (again, subject to the requirements of Section 19.1.2.2) specifically provide the party primarily responsible for each element of the Pollution Prevention Plan and the Spill Pollution Control and Countermeasure Plan. If the Facility Manager is responsible for the QTA Equipment and Operator Vehicle Maintenance Equipment, the Operations Manual shall further be consistent with Environmental Law, and without limiting the generality of the foregoing, Washington State Department of Ecology's Underground

Storage Tank Regulations (WAC 176-360), and Puget Sound Clean Air Agency Regulations and Order of Approval. The Operations Manual shall be subject to the Port's prior approval, not to be unreasonably withheld, and shall be updated as needed, not less often than annually, to address the Facility Managers', the Operators' and each Operator's operations and practices.

**15.1.4 Insurance Proceeds.** To the extent that the Port receives, or is eligible to receive, any insurance proceeds under the policy of property insurance paid for as part of the Reimbursable O&M Costs, for damage to any element(s) on or about the Consolidated Rental Car Facility or Consolidated Rental Car Facility Site for which the obligation for the repair belongs to Operator or the Operators under this Section 15.1, the Port agrees to make such insurance proceeds available to Operator or Operators as the case may be. Provided, however, in the event that Operator or Operators accept such funds, Operator or Operators shall then be required to adhere to any legal requirements by which the Port otherwise would have been bound if it had undertaken the repairs.

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

**15.2.1 Obligation of the Port.** The Port shall have the obligation to repair and maintain the Consolidated Rental Car Facility or the Consolidated Rental Car Facility Site, only as described in this Section 15.2.

### **15.2.2 Specific Port Obligations.**

**15.2.2.1 Work Request by Operator.** The Port may perform, but shall not be obligated to perform, any maintenance, repairs or restoration work that is the Operators' or any particular Operator's, responsibility under Section 15.1 if requested to do so in writing by the Operators or any specific Operator. In the event the Port performs such work, the Operator(s) requesting the work shall pay for such work (specifically including a reasonable allocation for Port overhead) within thirty (30) days of invoice by the Port. Interest shall accrue on all unpaid sums at the Default Rate.

**15.2.2.2 Reserved Area.** The Port, or any Non-RAC Concessionaire granted the right to use and occupy a particular Reserved Area, shall keep those portions of the Reserved Area not utilized in the management and operation of the Consolidated Rental Car Facility, Consolidated Rental Car Facility Site or Common Transportation System in good order, condition and repair at all times and shall undertake all maintenance and make all repairs and replacements, ordinary as well as extraordinary, foreseen and unforeseen; provided however, the Port shall have no obligation to repair and maintain the roof (both structure and covering/membrane), exterior walls, foundation and building structure associated with any portion of the Reserved Area, such responsibility (unless specifically within the scope of this Section 15.2) shall fall within the Operators' responsibility under Section 15.1.

**15.2.2.3 Special Airport Systems.** Throughout the Lease Term, the Port shall put and keep the Special Airport Systems in good order, maintenance and repair, and shall undertake all maintenance and make all repairs and replacements, ordinary as well as extraordinary,

foreseen and unforeseen, which may be necessary or required so that at all times the Special Airport Systems shall be in thorough good order, condition and repair.

15.2.2.4     Special Building Systems. Throughout the Lease Term, the Port shall put and keep the Special Building Systems in good order, maintenance and repair, and shall undertake all maintenance and make all repairs and replacements, ordinary as well as extraordinary, foreseen and unforeseen, which may be necessary or required so that at all times the Special Building Systems shall be in thorough good order, condition and repair. As provided in Section 6.4, the costs associated with the repair and maintenance of the Special Building Systems shall be a Reimbursable O&M Cost.

15.2.2.5     Major Maintenance. The Port shall have the obligation to undertake all Major Maintenance that the Consolidated Rental Car Facility or Consolidated Rental Car Facility Site may require. When the Port undertakes such work, it shall specifically notify the Operators and Facility Manager of that fact, will proceed diligently to complete such work, and will otherwise comply with the standards imposed upon the Operators set forth in Section 15.1.2.

15.2.2.6     Failure of the Operators to Comply.

15.2.2.6.1     Right to Repair. Notwithstanding Section 15.1, in the event the Operators, through the Facility Manager, or any individual Operator fail: (i) to commence within thirty (30) days after written notice from the Port to do any maintenance or repair work to the Consolidated Rental Car Facility or Consolidated Rental Car Facility Site required to be done under the provisions of this Agreement, other than preventive maintenance; (ii) to commence such work within a period of ninety (90) days if such notice specifies that the work to be accomplished involves preventive maintenance only; or (iii) to diligently continue to completion any such work as required under this Agreement; then the Port may, at its option, and in addition to any other remedies which may be available to it, enter the Consolidated Rental Car Facility and/or Consolidated Rental Car Facility Site (without such entering causing or constituting a cancellation of this Lease Agreement or an interference with the possession of the Premises), and repair, maintain, replace, or rebuild all or any part of the Consolidated Rental Car Facility and/or Consolidated Rental Car Facility Site and do all things reasonably necessary to accomplish the work required, and the cost and expense (specifically including an allocation of Port overhead in a reasonable amount) shall be payable to the Port by the Operators, each in accordance with its respective Pro Rata Share, or the respective Operator, if the responsibility of only one Operator, on written demand; provided, however, if in the reasonable opinion of the Port, the failure to perform any such repair or maintenance endangers the safety of the public, the employees or other tenants at the Airport, and the Port so states same in its notice to the Operator(s), the Port may perform such maintenance at any time after the giving of such notice.

15.2.2.6.2     No Obligation; No Responsibility. Furthermore, should the Port, its officers, employees, agents, or contractors undertake any work hereunder, the Operators hereby waive any claim for damages, consequential or otherwise, as a result there from, except for such damages resulting from the gross negligence of the Port or any of its agents, employees or

contractors. The foregoing shall in no way affect or alter the primary obligations of Operators as set forth in this Agreement, and shall not impose or be construed to impose upon the Port any obligation to maintain the Consolidated Rental Car Facility or Consolidated Rental Car Facility Site, unless otherwise specifically provided in this Lease Agreement.

15.2.2.6.3 Right to Assume Maintenance. Notwithstanding Section 15.1, in the event that the Port issues three (3) or more notices under Section 15.2.2.6.1 within an eighteen (18) month period, the Port shall have the right (but not the obligation) to assume responsibility for the repair and maintenance of the Consolidated Rental Car Facility and Consolidated Rental Car Facility Site or so much of it, whether Common Area, Exclusive Use or otherwise, by issuing notice to the affected Operator or Operators indicating its intent to, until further notice, assume responsibility for such repair and maintenance. Such notice must be issued within one hundred twenty (120) days of the issuance of the third (or any subsequent) notice under Section 15.2.2.6.1. In such event, all costs associated with the repair and maintenance shall be the responsibility of the affected Operator(s) as more particularly set forth in Section 15.2.2.6.1. The Port may also elect to address such costs, to the extent they pertain to the Common Use Area, as Reimbursable O&M Costs under Section 6.3 of this Lease Agreement. The Port shall have the right, on sixty (60) days notice to the affected Operator or Operators, to require the Operator(s) to resume responsibility for repair and maintenance as set forth in Section 15.1.

15.2.2.7 Repair Required as Result of Neglect. To the extent that repairs made by the Port pursuant to Sections 15.2.2.2, 15.2.2.4, or 15.2.2.5 are required by reason of the neglect, carelessness or misuse of any particular Operator, its employees, agents, invitees, licensees, or contractors, the Port shall perform such repairs at Operator's cost and expense. Operator shall pay for such work (specifically including a reasonable allocation for Port overhead) within thirty (30) days of invoice by the Port. Interest shall accrue on all unpaid sums at the Default Rate.

15.2.2.8 No Responsibility to Facility Manager. In the event that the Port exercises any right or performs an obligation under this Section 15.2.2, the Port shall have absolutely no responsibility or liability to the Facility Manager. In the event that the Port elects to assume responsibility for maintenance as allowed by Section 15.2.2.6.3, the Port shall, notwithstanding any contrary term of the agreement between the Operators and the Facility Manager, specifically have the right to direct the Facility Manager to vacate the Consolidated Rental Car Facility.

15.2.2.9 Damage and Destruction. In addition to, and not in lieu of, any requirement set forth in this Section 15.2, the Port shall also have the obligation of restoration and repair as set forth more specifically in ARTICLE 20.

15.2.3 Notice; Not Responsible. If this Section 15.2 imposes upon the Port an obligation, or otherwise provides to the Port a right, of repair and maintenance, the Port will perform any such repair or maintenance work called to its attention by Operator(s) within a reasonable period of time after receipt of such notice by the Port. There shall be no abatement or reduction of any

financial or other obligation of Operator under this Lease Agreement or the Concession Agreement by reason of the Port's making repairs, alterations and/or improvements to the Consolidated Rental Car Facility, Consolidated Rental Car Facility Site or otherwise.

**15.3 Quarterly Condition Surveys.** The Port and Operators together with the Facility Manager shall conduct an inspection of the Consolidated Rental Car Facility and Consolidated Rental Car Facility Site quarterly to observe and note the condition of, cleanliness of and existing damage to the Consolidated Rental Car Facility and Consolidated Rental Car Facility Site and to determine repairs and maintenance required to be performed. Not less than fourteen (14) days before a scheduled inspection, the Operators and each of them – through the Facility Manager – prepare a report documenting the preventative and corrective maintenance actions planned and performed during the prior quarter. Notwithstanding the foregoing, the Operators shall not be required to participate in the quarterly inspections so long as each Operator who elects not to participate vests the Facility Manager with authority to address the matters to be reviewed during the scheduled inspection. 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. In the event of any dispute regarding those repairs and maintenance required to be performed, the Port's decision shall be final. Responsibility for repairing any problems or defects noted shall be as provided in Sections 15.1 and 15.2.

## ARTICLE 16: UTILITIES AND OTHER OPERATING COSTS

**16.1 Generally.** Beginning on the commencement of "burn-in" on the day following the Deadline for Substantial Completion and continuing thereafter during the Lease Term, the Operators shall pay the Utilities Costs, whether billed to the Port, the Facility Manager or the Operators (or any of them) in the first instance.

### 16.2 Operators' Specific Obligations.

**16.2.1 Exclusive Use Premises.** Unless otherwise specifically agreed between the Operators, each Operator shall, at its sole cost and expense, have the obligation to pay any Utilities Costs with respect to such Operator's Exclusive Use Premises. With respect to any such Utilities Costs incurred, billed to or paid by the Port in the first instance, each Operator shall be responsible to the Port for such costs; provided, however, the Port shall have no obligation to separately bill each Operator for such Utilities Costs, instead reserving the right to bill the Facility Manager for all Utilities Costs associated with the Consolidated Rental Car Facility and Consolidated Rental Car Facility Site and requiring the Facility Manager to bill the Operator for those portions related to the Operator's Exclusive Use Premises. The Facility Manager shall (without regard to whether it has collected from the Operators or any of them) pay any such amounts on such payment terms as the Port otherwise generally extends to the Operators or other tenants on or about the Airport. Operator agrees that in the event that any utilities or other services are furnished to the Exclusive Use Premises on a consolidated or joint basis, Operator will pay a proportionate share of such utilities

where Operator's proportionate share of any such services may be computed on any reasonable basis, and separate metering or exact segregation of cost shall not be required.

16.2.2 Common Use Area. The Operators shall, through the Facility Manager, pay any Utilities Costs with respect to the Common Use Areas and those portions of the Reserved Area utilized in connection with the management and operation of the Consolidated Rental Car Facility, Consolidated Rental Car Facility Site or Common Transportation System. This obligation specifically includes the Special Building Systems but excludes the Special Airport Systems. With respect to any amounts incurred, billed to or paid by the Port in the first instance, the Operators shall, through the Facility Manager, be responsible to the Port for such costs. Operator shall pay a proportionate share of such Utilities Costs where Operator's proportionate share of any such services may be computed by the Facility Operator on any reasonable basis (specifically including by use of Pro Rata Shares), and separate metering or other exact segregation of cost shall not be required.

16.2.3 Reserved Area. To the extent consistent with the nondiscriminatory terms of any concession agreement the Port may enter into with any Non-RAC Concessionaire for the operation of a concession in the Consolidated Rental Car Facility, the Facility Manager may bill the Non-RAC Concessionaire for any Utilities Costs associated with the operations of such Non-RAC Concessionaire. Any such billing shall be done in a manner consistent with the method utilized by the Facility Operator for billing the Operators; provided, however, in no event shall the manager be inconsistent with the nondiscriminatory terms of the concession agreement between the Port and the Non-RAC Concessionaire.

16.3 Energy Conservation; Recycling. The Port shall have the right to institute such reasonable policies, programs and measures as may be necessary or desirable, in the Port's discretion, for the conservation and/or preservation of energy, energy related services or other resources, to promote considerations of sustainability, or as may be required to comply with any applicable codes, rules and regulations, whether mandatory or voluntary.

16.4 Port Not Responsible. The Port shall not be liable in any way to Operator for any failure or defect in the supply or character of electrical energy, water, sewer or other utility service furnished to the Premises by reason of any requirement, act or omission of the public utility providing such service or for any other reason. The Port shall have the right to shut down electrical or other utility services to the Premises when necessitated by safety, repairs, alterations, connections, upgrades, relocations, reconnections, or for any other reason, with respect to any such utility system (singularly or collectively, "Utility Work"), regardless of whether the need for such Utility Work arises in respect of the Premises, any other part of the building or larger premises. Whenever possible, the Port shall give Operator no less than two (2) days prior notice for such utility shutdown.

The Port shall not be liable to Operator for any losses, including loss of income or business interruption, resulting from any interruptions or failure in the supply of any utility to the Premises, except when such losses result from the Port's gross negligence.

## ARTICLE 17: INDEMNITY AND INSURANCE

### 17.1 Indemnity.

17.1.1 Except to the extent arising from (i) the sole negligence of the Port, its Commissioners, officers, agents, contractors or employees, (ii) the Port's completion of the Project after the Commencement Date and before the Opening Date, (iii) the Port's negligent act or omission when present on or about the Premises pursuant to Sections 2.2.1.3, 15.2.2, 15.3, 18.6, 19.1.6.2, 24.2 or 31.10, or (iv) the Port's negligent act or omission in the operation of the Common Transportation System, the Port, its officers, employees and agents shall not be liable for any injury (including death) to any persons or for damage to any property regardless of how such injury or damage is caused, sustained or alleged to have been sustained by Operator or by others, including but not limited to all persons directly or indirectly employed by Operator, or any agents, contractors, subcontractors, licensees or invitees of Operator, as a result of any condition (including existing or future defects in the Premises) or occurrence (including failure or interruption of utility service) whatsoever related in any way to Operator's use or occupancy of the Premises and of areas adjacent thereto.

17.1.2 Operator shall defend (with counsel approved by the Port, such approval not to be unreasonably withheld), fully indemnify, and hold entirely free and harmless the Port and its Commissioners, officers, agents and employees from any and all loss, damages, expenses, attorneys' fees, consultants' fees, court costs and other costs for or from: (a) anything arising from the condition of the Premises or out of the occupancy by the Operator or subtenant, licensee, invitee or concessionaire of Operator; and (b) any accident, injury, death or damage to any party however caused in or about the Premises or upon the sidewalks adjacent to the Premises, whether or not caused by the negligence of Operator or any third party; and (c) any fault or negligence by Operator or any sublessee, licensee, invitee or concessionaire of the Operator or of any officer, agent, employee, guest or invitee of any such person; and (d) any failure on Operator's part to comply with any of the covenants, terms and conditions contained in this Lease Agreement; *provided, however,* nothing herein shall require Operator to indemnify the Port from any accident, injury, death or damage arising from (i) the sole negligence of the Port, its Commissioners, officers, agents, contractors or employees, (ii) the Port's completion of the Project after the Commencement Date and before the Opening Date, (iii) the Port's negligent act or omission when present on or about the Premises pursuant to Sections 2.2.1.3, 15.2.2, 15.3, 18.6, 19.1.6.2, 24.2 or 31.10, or (iv) the Port's negligent act or omission in the operation of the Common Transportation System. Operator agrees that the foregoing indemnity specifically covers action brought by its own employees, and thus Operator – solely for the benefit of the Port and no other person – expressly waives its immunity under industrial insurance, Title 51 of the Revised Code of Washington, to the extent (but only to the extent) necessary to effectuate this indemnity.

17.1.3 Notwithstanding the foregoing, in the event of the concurrent negligence of Operator, its subtenants, licensees, assignees, concessionaires, agents, employees, or contractors on the one hand and the negligence of the Port, its agents, employees or contractors on the other hand,

which concurrent negligence results in injury or damage to persons or property of any nature and howsoever caused, and relates to the construction, alteration, repair, addition to, subtraction from, improvement to or maintenance of the Premises such that RCW 4.24.115 is applicable, Operator's obligation to indemnify the Port as set forth in this Section shall be limited to the extent of Operator's negligence and that of Operator's officers, sublessees, licensees, assignees, concessionaires, agents, employees, or contractors, including Operator's proportional share of costs, court costs, attorneys' fees, consultants' fees and expenses incurred in connection with any claim, action or proceeding brought with respect to such injury or damage.

17.1.4 TENANT AND PORT AGREE AND ACKNOWLEDGE THAT THIS PROVISION IS THE PRODUCT OF MUTUAL NEGOTIATION. Operator's obligations under this Section shall survive the expiration or earlier termination of this Lease Agreement.

17.2 Insurance. Operator shall obtain and keep in force, at its sole cost and expense, during the Lease Term the following types of insurance, in the amounts specified and in the form hereinafter provided for:

17.2.1 Liability Insurance. Operator shall obtain and keep in force during the Lease Term a commercial general liability policy of insurance, written on ISO Form CG 00 01 10 01 (or equivalent), protecting Operator and the Port, as an additional insured using ISO Form 20 26 (either 11 85 or 07 04 revision) or equivalent, against claims for bodily injury, personal 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. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than five million dollars (\$5,000,000.00) per occurrence. The policy shall not contain any intra-insured exclusions as between insured persons or organizations. The policy shall contain a minimum two hundred fifty thousand dollars (\$250,000.00) sub-limit that covers damage to premises rented or leased to Operator, including fire damage. Any deductibles or self-insured retentions for this coverage that exceed \$100,000 must be disclosed and approved by the Port and shown on the Certificate of Insurance which shall also include the Additional Insured Endorsement attached to it.

17.2.1.1 The Port agrees that the Operators may satisfy the requirement for commercial general liability insurance required by this Section 17.2.1 (but not other Section) through a commercial general liability policy of insurance obtained by the Facility Manager subject to the following additional requirements: (i) each Operator that would rely on the Facility Manager's policy of insurance shall be listed a named insured (and not additional insured) on the policy, (ii) the policy shall specifically include, whether by endorsement or otherwise, the Exclusive Use Premises leased to the Operator, and (iii) the annual aggregate on such policy shall be not less than ten million dollars (\$10,000,000.00).

17.2.2 Automobile Liability Insurance. Operator shall obtain and keep in force during the Lease Term an automobile liability policy of insurance, written on ISO Form CA 00 01 07 97 (or equivalent), protecting against claims for bodily injury and property damage based upon, involving or arising out of the use of "Any Auto," including non-owned, rented, hired, leased, or

borrowed autos. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than three million dollars (\$3,000,000.00) per occurrence. The policy shall not contain any intra-insured exclusions as between insured persons or organizations and shall include by way of specific endorsement a Waiver of Subrogation in favor of the Port. Any deductibles or self-insured retentions for this coverage that exceed \$100,000 must be disclosed and approved by the Port and shown on the Certificate of Insurance which shall also include the Waiver of Subrogation attached to it.

**17.2.3 Property Insurance.** Operator shall obtain and keep in force “Special Extended” or “all risk” property insurance insuring loss or damage to Operator’s Initial Tenant Improvements, Alterations (including “betterments and improvements”), trade fixtures, business equipment, furnishings, and other personal property on or about the Premises and any Alterations (specifically including “betterments” and “improvements”) made by or for Operator to the Premises. Operator is not required to carry coverage for earthquake, flood or terrorism. 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 the any property required to be covered including any undamaged sections of such property 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 equal to the full replacement cost of the Operator’s Initial Tenant Improvements, Alterations (including “betterments and improvements”), trade fixtures business equipment, furnishings, and other personal property on or about the Premises and any Alterations (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 shall be included as an Additional Insured and Loss Payee on Operator’s property insurance policy with respect to the Port’s interest in Alterations.

**17.2.4 Insurance During Construction of Initial Tenant Improvements.** During the course of construction for the Initial Tenant Improvements, Operator and Operator’s Contractor shall be required to further provide and maintain liability insurance as follows. To the extent imposing greater requirements, this section shall supersede the insurance requirements that may be set forth in the design, construction and opening processes attached as **Exhibit G**. This insurance shall extend to all contractors and sub-contractors at any tier of the construction of the Initial Tenant Improvements or subsequent Alterations. Contractor and Operator shall forward certificates of insurance and additional insured endorsements to the Port prior to the commencement of any work. Insurance required includes:

**17.2.4.1 Commercial General Liability Insurance.** Commercial general liability insurance utilizing ISO Form CG 00 01 10 01 (occurrence basis) or manuscript equivalent with equal coverage and terms, including contractual liability coverage and include:

**17.2.4.1.1** A combined single limit of five million dollars (\$5,000,000) per occurrence with the policy endorsed to add the Port of Seattle and, during construction of the Initial Tenant Improvements, Turner as Additional Insureds for both “on-going”

work and “completed operations” using ISO 20 26 11 85 or a combination of ISO 20 10 11 85 and ISO 20 37 10 01;

17.2.4.1.2 Insurance shall be primary and non-contributory;

17.2.4.1.3 Insurance shall contain a provision for separation of insureds;

17.2.4.2 Automobile Liability Insurance. Automobile insurance shall be procured in the amount of one million dollars (\$1,000,000) per occurrence, combined single limit which is to cover “any auto” including all non-owned, rented, hired, leased, or borrowed autos using ISO CA 00 01 07 97 or equivalent.

17.2.4.3 Course of Construction Insurance. During the course of construction of the Initial Tenant Improvements and any subsequent Alterations, Operator and Operator’s Contractor shall be required to provide property insurance on the improvements as they are being constructed. Coverage may be on a property insurance policy or a separate builders risk policy that covers the interests of the Contractor and the Operator. Coverage shall be “all risk” property insurance in an amount equal to the value of the improvements under construction. The policy shall include delay of opening coverage in the event a covered loss results in loss of rent and/or revenues to the Port due to a delay in completion of the improvements. The policy shall include coverage for debris removal following loss, loss to temporary structures, loss due to or resulting from water damage or interior water intrusion. The Port shall be named as an insured on the policy to the extent of the Port’s insurable interest in the improvements. Operator and Contractor shall waive subrogation rights against the Port and Turner during the construction of the improvements. Coverage shall be kept in force until the improvements are completed. Once the Project is completed, the Operator shall provide property insurance coverage on the improvements as outlined in Section 17.2.3. Prior to commencement of work on the improvements, evidence of property insurance shall be submitted to the Port and Turner.

17.2.4.4 Industrial Insurance (Workers Compensation). Operator and any contractors working for Operator must comply with Washington State’s RCW Title 51 Industrial Insurance requirements and must be current in their payments to the state fund; or be listed as a current approved self-insurer in the State of Washington. A current Employers Liability Certificate showing RCW Title 51 compliance shall be provided to the Port annually through the Lease Term.

17.2.5 Insurance During Subsequent Alterations. During the course of construction for of any subsequent Alterations, Operator and Operator’s Contractor shall be required shall procure and maintain insurance during the course of construction of the improvements as required by the then-current Port Standards.

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

### **17.3 Insurance Policies.**

**17.3.1 Insurance Companies.** 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, as set forth in the most current issue of “Best’s Insurance Guide.”

**17.3.2 Policies Primary; Deductibles; Per Location Endorsement.** All insurance to be carried by Operator shall be primary to and not contributory with any similar insurance carried by the Port, whose insurance shall be considered excess insurance only. Required insurance may be provided through a combination of primary and excess limits provided that excess coverage will drop down and respond on a primary basis should the primary limits be reduced or exhausted at the time of loss. No insurance required herein shall contain a deductible or self-insured retention in excess of one hundred thousand dollars (\$100,000) without the prior written consent of the Port. If at any time during the Lease Term, Operator shall have in full force and effect a blanket policy of commercial general liability and excess liability insurance covering the Premises and other premises and/or properties of Operator, such insurance shall satisfy the requirements hereof, provided said policy contains a specific endorsement providing a minimum amount of coverage applicable to the Premises equal to or greater than the amount required above (i.e. a “per location” endorsement).

**17.3.3 Termination; Renewal.** No policy of insurance required under this Lease Agreement shall be cancelable or subject to non-renewal or modification except after forty five (45) days prior written notice to the Port. Operator shall at least forty five (45) 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 Operator, which amount shall be payable by Operator to the Port upon demand.

**17.3.4 Evidence of Insurance.** Operator shall deliver, or cause to be delivered, to the Port, certificates of insurance, additional insured endorsements, loss payee endorsements for property insurance, waivers of subrogation and any other documentation or endorsement that provides evidence of the existence and amounts of such insurance, the inclusion of the Port as an insured as required by this Lease Agreement, and the amounts of all deductibles and/or self insured retentions. Upon request by the Port, Operator shall make available to the Port, the policies of insurance that Operator has purchased in order for the Port to verify insurance coverage, limits, and endorsements or view any exclusions to the Operator’s insurance policies; provided, however in the event the policy is not made available for inspection locally, Operator shall pay in full any travel and related expenses of Port representative(s) to travel to the location outside the Puget Sound region. If Operator fails to maintain any insurance required by this Lease Agreement, the Port shall – at any time within ten (10) days before or after the expiration or termination of any particular policy of insurance and with or without having issued a Notice of Default – have the right to purchase such insurance for the benefit of Operator, and Operator shall reimburse the Port for the full expense thereof on demand.

17.3.5 No Limitation of Liability. The limits of insurance required by this Lease Agreement or as carried by Operator shall not limit the liability of Operator nor relieve Operator of any obligation hereunder.

17.4 Self-Insurance. The Port agrees that it will reasonably consider any request by Operator to self-insure deductibles or retentions which are in excess of the any amount in excess of that allowed by Section 17.3 and/or some or all of the limits of insurance required by Section 17.2, all subject to the following terms and conditions.

17.4.1 As used in this Section 17.4, “self-insure” shall mean that Operator is itself acting as though it were the insurance company providing the insurance required under the provision hereof, and Operator shall pay all amounts due in lieu of insurance proceeds which would have been payable if the insurance policies had been carried, which amounts shall be treated as insurance proceeds for all purposes under this Lease Agreement.

17.4.2 All amounts that Operator pays or is required to pay, and all loss or damage resulting from risks for which Operator has elected to self-insure, shall be subject to the waiver of subrogation set forth in Section 17.5 and shall not limit Operators indemnification obligations set forth in Section 17.1 or elsewhere in this Lease Agreement.

17.4.3 The Port specifically conditions Operator’s right to self-insure upon Operator:

17.4.3.1 Identifying to the Port the specific required policies, deductibles or retentions, and/or limits that are to be self-insured.

17.4.3.2 Maintaining a sufficiently large tangible net worth to be able, in the Port’s reasonable discretion, to be able to absorb an annual loss in the amount Operator has elected to self-insure;

17.4.3.3 Annually providing an audited financial statement, prepared in accordance with generally accepted accounting principles, which establishes and confirms that Operator has the required net worth;

17.4.3.4 Not having suffered an event or occurrence (such as the bankruptcy of the Operator) that makes it apparent that such net worth has been diminished below the required level; and/or

17.4.3.5 Maintaining a demonstrated self-insurance program through which Operator demonstrates an ability to handle and administer claims within the amount subject to self-insurance.

In the event that Operator fails to meet or demonstrate any such requirement imposed by the Port, Operator shall immediately lose the right to self-insure and shall be required to provide the insurance specified herein as issued by a qualifying insurance company.

17.4.4 In the event that the Port permits Operator to self-insure and an event or claim occurs for which a defense and/or coverage would have been available from the insurance company, Operator shall specifically: (i) undertake the defense of any such claim, including a defense of the Port, at Operator's sole cost and expense; and (ii) use its own funds to pay any claim or replace property or otherwise provide the funding which would have been available from insurance proceeds but for such election by Operator to self-insure.

17.5 Waiver of Subrogation. Without affecting any other rights or remedies, both the Port and Operator (for itself and on behalf of anyone claiming through or under it by way of subrogation or otherwise) hereby waive any rights either may have against the other, their officers, agents and employees (whether in contract or in tort) on account of any loss or damage occasioned to the Port and covered by any property policy of insurance included within the Reimbursable O&M Costs or Operator and arising out of or incident to the perils required to be insured against under this Article. Accordingly, the Port shall cause such property insurance policy and Operator shall cause each insurance policy required by this Article 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.

17.6 Miscellaneous Insurance Provisions. The amounts and types of insurance specified in this Lease 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.

17.7 Operator Responsible for Deductibles and Retentions. Operator is solely responsible for all deductibles or self-insured retentions under any required policy of insurance, including any deductibles that are triggered by claims that the Port may submit to Operator's insurance carrier as an additional insured on any policy. This deductible responsibility extends to deductibles that are owed on any policy of insurance following termination of the Lease Agreement between the Port and Operator if the event or cause of loss occurred during the Lease Term.

17.8 Increase in Cost of Port's Insurance. Operator shall not use the Premises in such a manner as to increase the existing rates of insurance applicable to the buildings or 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 Lease Term, shall be paid by Operator to the Port with the next rental installment due thereafter.

17.9 Abatement of Fire and Other Hazards. Operator agrees that it will cooperate in the abatement of fire and other hazards in the Premises by observing the following requirements, or such modified requirements as the Port may institute from time to time:

17.9.1 Operators shall cooperate and allow Port's property insurance carriers to access all areas of the Premises upon request for the purposes of doing inspections for property loss control and prevention;

17.9.2 Operators shall comply with all insurance company loss prevention recommendations and policy loss control requirements for the protection of property on the Premises;

17.9.3 Operators, through the Fuel Facility Manager, shall inspect, repair and upgrade the Fueling Facilities, the QTA Equipment and any Operator Vehicle Maintenance Equipment as required to comply with the Uniform Fire Code;

17.9.4 Operator shall continually have in place a preventive maintenance and Best Management Practices program to eliminate gasoline fuel spills;

17.9.5 Each Operator shall not store more than two hundred (200) gallons of motor oil, whether new or used, on or about the Premises;

17.9.6 Operator shall not park or store disabled cars anywhere on or about the Premises or Airport.

## ARTICLE 18: COMPLIANCE WITH ENVIRONMENTAL LAWS

18.1 Pre-Lease Environmental Condition. The Port shall conduct a full and complete Environmental Assessment (the “Pre-Lease Environmental Evaluation”) of the Consolidated Rental Car Facility Site prior to or during construction of the Project to identify, to extent practicable, the nature and extent of Hazardous Substances, if any, present on the Consolidated Rental Car Facility Site (the “Pre-Lease Environmental Condition”). Prior to conducting the Pre-Lease Environmental Evaluation, the Port shall consult with the Operators in the preparation of the Environmental Assessment plan or plans, and shall submit the plan to the Operators no less than forty five (45) days prior to the initiation of the plan(s). The Operators shall have twenty one (21) days after submittal of a plan to review and approve or disapprove the plan, which approval shall not be unreasonably withheld. Unless a Majority-in-Interest of the Operators disapprove the plan in writing, the plan shall be deemed approved. Notwithstanding the prior sentence, if any Operator has any comments regarding the proposed assessment plan it may submit such comments to the Port within such twenty-one (21) day period, and the Port shall consider such comments prior to adopting a final plan. The results of the plan(s) will be compiled in the Pre-Lease Environmental Evaluation and shall set forth the Pre-Lease Environmental Condition. The costs associated with the Pre-Lease Environmental Evaluation and determination of the Pre-Lease Environmental Condition shall be Costs of the Project.

18.2 Hazardous Substances. Operator shall not allow the release, spill, discharge, leak, emission, injection, escape, migration, or dumping in, on, about, from or adjacent to the Premises (including, but not limited to, storm drains, sanitary sewer system, surface waters, soils, underground waters or air) of any Hazardous Substance or other deleterious substance in any manner that could be a detriment to the Premises or in violation of the Pollution and Prevention Plan, Spill Prevention Control and Countermeasures Plan, any Airport rule or regulation, any Port Environmental Permit, or

any Environmental Law. To the extent applicable, Operator shall make available to the Port upon request with copies of all Material Safety Data Sheets (MSDS) for all Hazardous Substances used or stored on the Premises, Operator's USEPA Waste Generator Number, and with Generator Annual Dangerous Waste Reports. To the extent applicable, Operator shall provide the Port with copies of any environmentally related regulatory permits or approvals (including revisions or renewals) and any material report or notice Operator receives from, or provides to, any governmental unit or agency in connection with Operator's handling of Hazardous Substances or the presence, or possible presence, of any Hazardous Substance in, on, about, from or adjacent to the Premises. Operator is responsible to report any spills or emissions of Hazardous Substances to the Port and any spills or emissions of Hazardous Substances that are above reportable quantities as defined by applicable Environmental Laws to the appropriate regulatory Agency.

**18.3 Pollution Prevention Plan.** The Operators and each Operator shall, through the Fuel Facility Manager, prepare and implement a Pollution Prevention Plan that addresses measures in effect by the Operators and each Operator to prevent pollution (specifically including storm water) through appropriate pollution prevention and good housekeeping practices, control and perform immediate removal, investigation, remediation and restoration action in the event of a release of a Hazardous Substance or other deleterious material in connection with the operation of the Consolidated Rental Car Facility Site (including, but not limited to, the Fuel Facilities) during the Lease Term. The SWPPP shall be: (i) provided to the Port not more than thirty (30) days before the Commencement Date, (ii) consistent with the Western Washington Phase II Municipal Stormwater Permit, and (iii) updated to address future changes in Consolidated Rental Car Facility Site activities or facilities. The Pollution Prevention Plan shall be updated as needed, to address the Operators' and each Operator's operations and practices. To the extent of any overlap between the areas of the responsibility between the Fuel Facility Manager and the Facility Manager, the Pollution Prevention Plan shall (subject to the requirements of Section 19.1.2.2) specifically provide the party responsible for each element of the Pollution Prevention Plan. The Pollution Prevention Plan shall specifically provide for one or more dedicated persons having responsibility to oversee each UST refill, including (i) arriving before the tank refill pipe is opened, (ii) watching the entire refill operation, and (iii) observing the fuel provider closing the refill pipes and reloading their hoses onto their truck.

**18.4 Spill Prevention Control and Countermeasure Plan.** The Operators and each Operator shall, through the Fuel Facility Manager, determine whether Section 112.7 of Title 40 of the Code of Federal Regulations is applicable to the Consolidated Rental Car Facility Site, including (but not limited to) the Fuel Facilities, the QTA Equipment and/or the Operator Vehicle Maintenance Equipment and/or their operations and the Operators and each of them are required to prepare a Spill Prevention Control and Countermeasure Plan (or "SPCC Plan"). This determination must be submitted to the Port for approval. Preparation of an SPCC Plan shall be the responsibility of the Operators through the Fuel Facility Manager. Any SPCC Plan must be certified by a licensed Professional Engineer in accordance with all applicable Legal Requirements (specifically including Environmental Laws). To the extent of any overlap between the areas of the responsibility between the Fuel Facility Manager and the Facility Manager, the SPCC Plan shall (subject to the requirements of Section 19.1.2.2) specifically provide the party responsible for each element of the Spill Prevention Control and Countermeasures Plan.

**18.5 Violation of Environmental Law.** If Operator, or the Premises (other than as a result of the Pre-Lease Environmental Condition), is in violation of any Environmental Law concerning the presence or use of Hazardous Substances or the handling or storing of hazardous wastes, Operator shall promptly take such action as is necessary to mitigate and correct the violation. If Operator does not act in such a manner, the Port reserves the right, but not the obligation, to come onto the Premises, to act in place of the Operator (Operator hereby appoint 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 Operator is in violation of any Environmental Law, or that Operator'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 reasonable and necessary costs and expenses incurred by the Port in connection with any such actions shall become immediately due and payable by Operator upon presentation of an invoice therefore. Interest shall accrue on all unpaid sums at the Default Rate.

**18.6 Inspection; Test Results.** The Port shall have access to the Premises to conduct (but shall have no obligation to conduct) environmental inspections, including (but not limited to) an Environmental Audit, and Operator shall permit the Port access to the Premises for the purpose of conducting environmental testing, whether in connection with Port action taken pursuant to Section 18.4 or for other Port purposes, provided that except in the event of an emergency (i) such environmental testing by the Port shall occur only during normal business hours, or at such other times as the Operator shall reasonably approve, (ii) the Port provides written notice to the Operator of its intention to conduct such tests, at least five business days prior to such date of testing, (iii) such testing shall not unreasonably interfere with the Operator's normal business operations, and (iv) any damages to the Premises caused by the environmental testing conducted by the Port shall be repaired by the Port at its sole cost and expense. Operator shall not conduct or permit others to conduct environmental media testing on the Premises without first obtaining the Port's written consent. Operator 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 Operator, and Operator shall provide copies to the Port.

**18.7 Removal of Hazardous Substances.** Prior to vacation of the Premises, in addition to all other requirements under this Lease Agreement, Operator shall remove and clean up any Hazardous Substances stored, released, spilled, discharged, leaked, emitted, injected, escaped or dumped in, on or about, adjacent to or migrated from the Premises during the Lease Term or Operator's possession of the Premises, and shall demonstrate that removal to the Port's reasonable satisfaction. The Port shall specifically have the right to insist, without limitation, on appropriate subsurface environmental investigations as part of any such demonstration. This removal and demonstration shall be a condition precedent to the Port's payment of any Security to Operator upon termination or expiration of this Lease Agreement. With respect to the removal and cleanup of any Hazardous Substances on the Premises, the Port agrees that it will reasonably approve cleanup criteria and investigation, monitoring, and remediation activities that comply with Environmental Laws and are consistent with both current commercial/industrial uses at the site as well as the Port's

future development plans for the site. The Port further agrees that it will not unreasonably withhold approval of any institutional control(s) consistent with the foregoing standard.

18.8 Remedies Not Exclusive. No remedy provided herein shall be deemed exclusive. In addition to any remedy provided above, the Port shall be entitled to full reimbursement from Operator whenever the Port incurs any costs resulting from Operator'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 the Lease Term.

18.9 Environmental Indemnity. In addition to all other indemnities provided in this Lease Agreement, Operator 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 reasonable 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 (other than Pre-Lease Environmental Condition) on the Premises, or the migration of any Hazardous Substance from the Premises to other properties or into the surrounding environment, caused by the Operator, whether (i) made, commenced or incurred during the Lease Term, or (ii) made, commenced or incurred after the expiration or termination of this Lease Agreement if arising out of events occurring during the Lease Term; provided, however, Operator's obligation to indemnify the Port pursuant to this Section 18.9 shall not apply with respect to either (a) Pre-Lease Environmental Condition, (ii) any Hazardous Substance released by another Operator, or the Port, its commissioners, officers, agents and employees, (iii) any release of a Hazardous Substance clearly arising from any construction defect in the Fuel Facilities, which defect is discovered within six (6) years of the Commencement Date for the QTA Space and (iv) any Hazardous Substance (for which Operator is not otherwise responsible) clearly migrating onto the Consolidated Rental Car Facility Site from some other location through no fault of Operator. Operator's obligations under this Section shall survive the expiration or earlier termination of this Lease Agreement. With respect to cleanup of any Hazardous Substances on the Premises, the Port agrees that it will reasonably approve cleanup criteria and investigation, monitoring, and remediation activities that comply with Environmental Laws and are consistent with both current commercial/industrial uses at the site as well as the Port's future development plans for the site. The Port further agrees that it will not unreasonably withhold approval of any institutional control(s) consistent with the foregoing standard.

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## ARTICLE 19: ADDITIONAL ENVIRONMENTAL OBLIGATIONS

### 19.1 Fuel Facilities and QTA Equipment.

#### 19.1.1 Operators Must Contract with Manager.

19.1.1.1 Fuel Facility Manager. In addition to, and not in lieu of, any requirement related to the general maintenance, operations and repair of the Consolidated Rental Car Facility set forth in Section 15.1, the Operators and each Operator shall – whether through a joint venture agreement, participation agreement, limited liability company agreement or any combination thereof through which all Operators are a party – contract with a financially responsible, experienced manager (the “Fuel Facility Manager”) for the operation, maintenance and repair of the Fuel Facilities. Subject to the Port’s reasonable concurrence, either the Facility Manager or the Fuel Facility Manager shall be responsible for the QTA Equipment and any Operator Vehicle Maintenance Equipment. The identity of the Fuel Facility Manager and the terms of the contract between the Operators and the Fuel Facility Manager shall specifically be subject to the Port’s approval, such approval not to be unreasonably withheld. In order to involve the Fuel Facility Manager in the commissioning of the Consolidated Rental Car Facility and pre-final and final inspections, the Operators shall retain and have available the Fuel Facility Manager no later than ninety (90) days before the earliest Commencement Date. The Operators and each Operator shall, not less than one hundred twenty (120) days before the earliest Commencement Date and ninety (90) days before any date on which Operators would intend to change the identity of, or terms of any contract with, the Fuel Facility Manager, submit to the Port for its review and approval, such approval not to be unreasonably withheld, any such information as the Port may reasonably request regarding the experience, expertise, financial strength and/or operational plan associated with any such Fuel Facility Manager and a complete copy (including all exhibits or attachments) of any proposed contract(s) between the Operators and the Fuel Facility Manager. The Port’s consent to the terms of any such contract shall not be withheld or delayed provided such agreement: (i) is consistent with the provisions of this Lease Agreement and does not exceed the Lease Term; (ii) is otherwise consistent with operating agreements customary in the facilities management industry; (iii) provides that the Common Use Area be managed subject to and in accordance with the terms of this Lease Agreement; (iv) requires the Fuel Facility Manager to defend and indemnify the Port from any damages, claims or the like resulting from the Fuel Facility Manager’s acts or omissions; (v) requires the Fuel Facility Manager to procure insurance of like kind and amount required of the Operator as set forth in this Lease Agreement and to cause the Port to be an additional insured under such policies; (vi) may not be cancelled or terminated without prior written notice to the Port; and (vii) may be assumed by the Port at its option in the event of a default by the Operators there under. The Port agrees to not withhold or delay its consent to any proposed Fuel Facility Manager, provided such entity has: significant experience in the management and operation of large commercial facilities similar to the Fuel Facilities (and, if relevant, the QTA Equipment and any Operator Vehicle Maintenance Equipment), in a competent and professional manner in accordance with operating standards and policies standard in the industry and with a proven track-record of successful, environmentally compliant operations; and financial strength and management

competency, with personnel having appropriate experience to operate, maintain and manage the Fuel Facilities (and, if relevant, the QTA Equipment and any Operator Vehicle Maintenance Equipment). The contract between the Operators and the Fuel Facility Manager shall specifically bind the Fuel Facility Manager to those obligations to be performed by the Fuel Facility Manager or the Operator or Operators through the Fuel Facility Manager under this Lease Agreement, and the Port shall specifically be a third-party beneficiary of any such terms. The Operators and each Operator shall likewise submit to the Port a copy of any joint venture agreement, participation agreement, or limited liability company agreement by which they have joined together to contract with such Fuel Facility Manager.

19.1.1.2        Prompt Payment. Operator shall, in a timely fashion, pay all amounts due by Operator under, and otherwise adhere to all covenants, conditions, or agreements to be observed or performed by Operator in, the agreement between Operator and the Fuel Facility Manager. Operator specifically agrees that any failure to pay such amounts due and owing by it or observe such covenants, conditions or agreements to be observed or performed by Operator – whether or not a default has been declared by the Fuel Facility Manager – shall be a default under this Lease Agreement.

19.1.1.3        Environmental Evaluation. Within ninety (90) days of any change in the Fuel Facility Manager (and the Facility Manager, if the Facility Manager is responsible for the QTA Equipment and Operator Vehicle Maintenance Equipment), the Operators shall, at their sole cost and expense though the in-coming or out-going Fuel Facility Manager, conduct an Environmental Assessment of the Consolidated Rental Car Facility Site and specifically the Fuel Facilities, the QTA Equipment and the Operator Vehicle Maintenance Equipment to identify, to extent practicable, the nature and extent of any Hazardous Substances, if any, present on the Consolidated Rental Car Facility Site since the Pre-Lease Environmental Evaluation or any prior Environmental Assessment pursuant to this Section 19.1.1.3. Prior to conducting the Environmental Assessment, the Operators shall consult with the Port in the preparation of an assessment plan or plans, and shall submit the plan to the Port no less than thirty (30) days prior to the initiation of the plan(s). The Port shall have fourteen (14) days after submittal of a plan to review and approve or disapprove the plan, which approval shall not be unreasonably withheld. The results of the plan(s) will be compiled in a report and shall set forth any change in the environmental condition of the Consolidated Rental Car Facility Site since the Pre-Lease Environmental Condition or any prior evaluation pursuant to this Section 19.1.1.3. Any contamination identified shall be subject to remediation as more particularly set forth in ARTICLE 18 and this ARTICLE 19.

### 19.1.2 Operators Responsible.

19.1.2.1        The Operators, through the Fuel Facility Manager, shall be entirely responsible for the proper operation, maintenance, repair and use of the Fuel Facilities. The Operators, through either the Facility Manager or Fuel Facility Manager, shall be entirely responsible for the proper operation, maintenance, repair and use of the QTA Equipment and Operator Vehicle Maintenance Equipment. The Operators, through the Fuel Facility Manager shall be entirely responsible for any spill response, the immediate or other removal, investigation, remediation,

restoration and other corrective actions or site closure associated with a release of any Hazardous Substance from the Fuel Facilities, the QTA Equipment or the Operator Vehicle Maintenance Equipment (all without regard to whether the general responsibility for the QTA Equipment and Operator Vehicle Maintenance Equipment rests with the Facility Manager or Fuel Facility Manager).

19.1.2.2 Without regard to whether the Facility Manager or the Fuel Facility Manager are responsible for the QTA Equipment, the Operator Vehicle Maintenance Equipment or any other piece of equipment on or about the Consolidated Rental Car Facility or Consolidated Rental Car Facility Site, the Fuel Facility Manager's obligations and responsibility shall in all events be primary in the event of any release of Hazardous Substances. It is specifically the Port's intention that in the event of any spill or release involving any Hazardous Substance and/or any event or mishap that directly threatens the spill or release of any Hazardous Substance, the Fuel Facility Manager's responsibility will be primary, that the Fuel Facility Manager will immediately take all necessary action to address such event, spill, release or other mishap, and that any issues of legal liability or financial responsibility will be addressed only after the event, spill, release or other mishap is addressed. Notwithstanding the foregoing, once the responsible party or parties are identified and the responsible party or parties have provided the Port with written notice that they have accepted responsibility and an acceptable plan for remediation, the Fuel Facility Manager may transfer responsibility for such event, spill, release or other mishap to the responsible party or parties.

19.1.2.3 The Operators and each Operator, through the Facility Manager or Fuel Facility Manager (as appropriate), shall manage and conduct all of their activities on, or relating to, the Fuel Facilities, the QTA Equipment and the Operator Vehicle Maintenance Equipment: (i) in compliance with Environmental Law, Washington State Department of Ecology's Underground Storage Tank Regulations (WAC 173-360), Puget Sound Clean Air Agency (PSCAA) Order of Approval and regulations, the environmental provisions of this Lease Agreement, the Airport's rules and regulations and the Port Standards, and any other applicable laws and regulations relating to the Fuel Facilities, the QTA Equipment and/or the Operator Vehicle Maintenance Equipment; (ii) in cooperation with the Port in the Port's efforts to comply with applicable Environmental Law; (iii) in adherence with Best Management Practices applicable to the Operators' use of the Premises, and (iv) the Fuel Facilities Operations Manual. In the event of a conflict between any provisions of this Lease Agreement or Environmental Law, the more stringent provisions shall govern.

19.1.2.4 The Operators, through the Facility Manager and Fuel Facility Manager (as appropriate), shall manage and, as appropriate, secure the Premises and its occupation or use of the Premises so as to prevent any violation of Environmental Law by any person on or relating to the Premises. The Operator understands that this Lease Agreement is not a substitute for, but is in addition to, those requirements already imposed upon Operator by laws and regulations applicable to the Fuel Facilities, the QTA Equipment and the Operator Vehicle Maintenance Equipment.

19.1.3 Necessary Permits. The Operators and each Operator shall, through the Facility Manager or Fuel Facility Manager (as appropriate), obtain and maintain all necessary permits

or consents required by Environmental Law throughout the operation of the Fuel Facilities, the QTA Equipment and the Operator Vehicle Maintenance Equipment. Operator shall promptly furnish the Port with copies of these permits and consents as they may be issued or renewed from time to time and all material correspondence between the Operators, any particular Operator or the Facility Manager or Fuel Facility Manager (as appropriate) and the permitting agency.

**19.1.4 Compliance with Underground Storage Tank Regulations.** As to all operations on or about the Airport, the Operators and each Operator shall, through the Fuel Facility Manager, specifically and diligently comply with all of the Washington State Department of Ecology's Underground Storage Tank Regulations (WAC 176-360). The Operators and each Operator shall, through the Fuel Facility Manager, further comply with all of the requirements set forth in the Environmental Compliance Schedule attached as **Exhibit L** and the Fuel Facilities Operations Manual. The requirements on the Environmental Compliance Schedule are in addition to (and not in lieu of or in summary of) any requirements imposed under any applicable Environmental Law, including but not limited to the Underground Storage Tank Regulations (WAC 176-360). The Operators and each Operator shall, through the Facility Manager or Fuel Facility Manager (as appropriate), maintain all records necessary to document that the Fuel Facilities, the QTA Equipment, the Operator Vehicle Maintenance Equipment and the Premises are being operated in compliance with the requirements of any applicable Environmental Law (including but not limited to the Underground Storage Tank Regulations), the Operations Manual or Fuel Facilities Operations Manual (as appropriate), the Pollution Prevention Plan and this Lease Agreement. Operator shall provide the Port with copies of such records as set forth in the Environmental Compliance Schedule attached as **Exhibit L**, the Operations Manual, Fuel Facilities Operations Manual and otherwise upon promptly following the Port's request.

**19.1.5 Operations and Maintenance Manual.** The Operators and each Operator shall, through the Fuel Facility Manager, prepare an operations and maintenance manual (the "Fuel Facilities Operations Manual") that addresses the operation, maintenance, routine and required inspections, and repair of the Fuel Facilities and, if appropriate, the QTA Equipment and the Operator Vehicle Maintenance Equipment in order to prevent, control and perform immediate removal, remediation and restoration action in the event of a release of a Hazardous Substance or other deleterious material in connection with the operation of the Fuel Facilities and, if appropriate, the QTA Equipment and the Operator Vehicle Maintenance Equipment. The Fuel Facilities Operations Manual shall: (i) be provided to the Port not more than thirty (30) days before the Commencement Date or not more than thirty (30) days after any update, (ii) be prepared in coordination with Port staff, (iii) be consistent with warranty requirements, the manufacturer's recommendations with respect to the Fuel Facilities and, if appropriate, the QTA Equipment and the Operator Vehicle Maintenance Equipment, (iv) be consistent with Environmental Law, and without limiting the generality of the foregoing, Washington State Department of Ecology's Underground Storage Tank Regulations (WAC 176-360), and Puget Sound Clean Air Agency Regulations and Order of Approval, (v) be consistent with Pollution Prevention Plan, Spill Pollution Control and Countermeasure Plan, Best Management Practices and all other Legal Requirements, and (vi) be updated to address future changes in Fuel Facility and, if appropriate, QTA Equipment and/or Operator Vehicle Maintenance Equipment activities or facilities, and (vii) in the event of any

apparent overlap between the requirements of the Facility Manager and Fuel Facility Manager under this Lease Agreement, identify (subject to the requirements of Section 19.1.2.2) the party responsible for satisfying any such requirement and shall (again, subject to the requirements of Section 19.1.2.2) specifically provide the party responsible for all elements of the Pollution Prevention Plan, Spill Pollution Control and Countermeasure Plan, and Order of Approval (i.e. air quality permit). The Fuel Facilities Operations Manual shall be subject to the Port's prior approval and shall be updated as needed, not less often than annually, to address the Fuel Facility Managers', the Operators' and each Operator's operations and practices.

#### **19.1.6 Environmental Audits.**

**19.1.6.1      Annual Environmental Audit.** The Operators and each Operator shall, through the Fuel Facility Manager, hire an independent third party to conduct an annual Environmental Audit of the entire Premises (including, but not limited to, the Fuel Facilities, QTA Equipment and Operator Vehicle Maintenance Equipment) and each Operator's and the Fuel Facilities Manager's operations, equipment, facilities and fixtures on or about the Consolidated Rental Car Facility Site. This Environmental Audit shall be conducted on or about the commencement of each Agreement Year. The Operators and each Operator shall, through the Fuel Facility Manager, review with the Port with the results of the Environmental Audit together with a draft plan (including a performance schedule) to complete all reasonable repairs, replacements, and/or upgrades of the Premises (including, but not limited to, the Fuel Facilities, QTA Equipment and Operator Vehicle Maintenance Equipment) and associated structures and/or facilities , and all modifications to the Fuel Facility Operations Manual or other operational plans and procedures associated with the Fuel Facilities, QTA Equipment or Operator Vehicle Maintenance Equipment as recommended in the Environmental Audit. These results shall be reviewed with the Port at meeting to occur no later than thirty (30) days following the commencement of each Agreement Year. The Port shall have ten (10) days within which to comment upon the draft plan. The Operators and each Operator shall, through the Fuel Facility Manager, promptly incorporate any reasonable Port comments into a final plan and complete all repairs, replacements, and/or upgrades according to the final plan (and performance schedule). The Operators and each Operator shall, through the Fuel Facility Manager, also modify the Fuel Facility Operations Manual or other operational plans and procedures associated with the Fuel Facilities, QTA Equipment or Operator Vehicle Maintenance Equipment consistent with the results of the Environmental Audit. Any Alteration on or about the Premises shall be accomplished in accordance with ARTICLE 13.

**19.1.6.2      Subsequent Port Environmental Audit.** The Port shall, as authorized by Section 18.6, have the right to conduct its own Environmental Audit of the Premises (including, but not limited to, the Fuel Facilities, QTA Equipment and Operator Vehicle Maintenance Equipment) and each Operator's and the Fuel Facilities Manager's operations, equipment, facilities and fixtures on or about the Consolidated Rental Car Facility Site. The Operators and each Operator shall, through the Fuel Facility Manager, provide the Port with a draft plan (including with a performance schedule) to complete all reasonable repairs, replacements, and/or upgrades of the Premises Fuel Facility, QTA Equipment, Operator Vehicle Maintenance Equipment and associated structures and/or facilities located on or about the QTA Space and all

modifications to the Fuel Facility Operations Manual or other operational plans and procedures associated with the Fuel Facilities, QTA Equipment or Operator Vehicle Maintenance Equipment as recommended in the Environmental Audit no later than thirty (30) days following the receipt of the results of such an Environmental Audit. The Port shall have ten (10) days within which to review and comment upon the draft plan. The Operators and each Operator shall, through the Fuel Facility Manager, promptly incorporate any reasonable Port comments into a final plan and complete all repairs, replacements, and/or upgrades according to the final plan (and performance schedule). The Operators and each Operator shall, through the Fuel Facility Manager, also modify the Fuel Facility Operations Manual or other operational plans and procedures associated with the Fuel Facilities, QTA Equipment or Operator Vehicle Maintenance Equipment consistent with the results of the Environmental Audit. Any Alteration on or about the Premises shall be accomplished in accordance with ARTICLE 13. In conducting any Environmental Audit, the Port shall not unreasonably interfere with the business operations of Operator and if it shall damage or otherwise disturb the Premises during such Environmental Audit, it shall restore the Premises to the condition in which they existed prior to the damage.

19.1.6.3        General Standards. In determining those recommendations incorporated into any Environmental Audit that are reasonable (and therefore to be implemented), all recommendations shall be presumed reasonable unless Operator can demonstrate that the costs significantly outweigh the benefits of the proposed change.

19.2        QTA Space Indemnity. The Operators, and each Operator and the Fuel Facility Manager or Facility Manager (as appropriate) shall hold the Port harmless from any damages, claims, or liability arising out of the use or occupancy of the Fuel Facilities, QTA Equipment and Operator Vehicle Maintenance Equipment on or about the Consolidated Rental Car Facility Site including, without limitation, liability for investigation and remedial action related to the following or similar activities occurring during the use and operation of the Fuel Facilities, QTA Equipment and Operator Vehicle Maintenance Equipment: (i) any releases, spills, discharges, leaks, emissions, injections, escapes, dumping, generation, transportation, storage, treatment or disposal of Hazardous Substances; (ii) any other discharge to surface or ground waters; (iii) any air emissions; and (iv) any contamination of soil or ground waters beneath or adjacent to the Consolidated Rental Car Facility Site, except for such damage, claims or liability (w) caused by the Port, its commissioners, officers, agents and employees, (x) associated with the Pre-Lease Environmental Condition, (y) clearly arising from any construction defect in the Fuel Facilities Except and discovered within six (6) years of the Commencement Date for the QTA Space, or (z) associated with any Hazardous Substance (for which Operator is not otherwise responsible) clearly migrating onto the Consolidated Rental Car Facility Site from some other location through no fault of Operator. With respect to cleanup of any Hazardous Substances on the Premises, the Port agrees that it will reasonably approve cleanup criteria and investigation, monitoring, and remediation activities that comply with Environmental Laws and are consistent with both current commercial/industrial uses at the site as well as the Port's future development plans for the site. The Port further agrees that it will not unreasonably withhold approval of any institutional control(s) consistent with the foregoing standard.

19.3 Environmental Certification. The Operators and each Operator shall, through the Fuel Facility Manager, provide to the Port at the commencement of each Agreement Year other than the first: (i) a written statement, certified by the Fuel Facility Manager as true and complete that to the best of the knowledge of Fuel Facility Manager and each of the Operators, that the Operators have, and each Operator has, with respect to the Premises and the Operators' occupation and use of the Premises, complied with (i) the Pollution Prevention Plan, the Spill Prevention and Countermeasure Control Plan, Order of Approval (i.e. air quality permit), the Fuel Facilities Operations Manual and applicable Environmental Laws during the preceding Agreement Year, and (ii) all directions and recommendations set forth in any previous Environmental Audit. If the Fuel Facility Manager is unable to provide such certification or documentation at such time, then the Operators and each Operator shall, through the Fuel Facility Manager, provide the Port with a written statement of the steps they are taking to enable them to provide the Port with a certification of compliance and all required documentation.

#### 19.4 Further Financial Assurance.

19.4.1 In addition to, and not in lieu of, any Security, the Operators and each Operator shall, through the Fuel Facility Manager, provide to the Port, and must continually maintain an irrevocable stand-by letter of credit in the form attached hereto as **Exhibit M** and drawn on a bank acceptable to the Port in the amount equal to one million dollars (\$1,000,000.00) (the "Financial Assurance"). The Financial Assurance shall secure the Operators', and each Operator's, full and faithful performance of all of the obligations under ARTICLE 18 and ARTICLE 19 of this Lease Agreement ("the Environmental Covenants"). The Port may draw upon the Financial Assurance at any time to satisfy any of the unfulfilled obligations under, to remedy any violation of, or to pay damages for violation of the Environmental Covenants. Further, the Port may draw on the entire Financial Assurance immediately, without notice to the Operators or the Fuel Facility Manager, upon receipt of a notice of non-renewal of the Financial Assurance, upon the commencement of a bankruptcy case or other insolvency proceeding in respect of the Fuel Facility Manager. If drawn upon, the Financial Assurance must be replenished, in full, within ten (10) days by the Operators and each of them, or the Operators and each of them will be deemed in violation of this Lease Agreement. In such event, the Port will have available to it all remedies for default of this Lease Agreement. If drawn upon, the proceeds of such draw shall not be considered held in trust by the Port for the benefit of the Operators or the Fuel Facility Manager.

19.4.2 The Financial Assurance required by this Lease Agreement must, unless replaced with like Financial Assurance under a new lease agreement, be maintained until ten (10) years following the end of the Lease Term; provided, however, the Operators may, through the Fuel Facility Manager, request a reduction in the amount of the Financial Assurance to a dollar amount that would be sufficient to compensate the Port for any residual environmental costs and liabilities resulting from Hazardous Substances that may remain on or about the Consolidated Rental Car Facility Site following the termination of this Lease Agreement. The burden of showing what would be sufficient to compensate the Port for any residual environmental costs and liabilities shall be on the Operators. Any such reduction of the Financial Assurance shall be at the sole discretion of the Port.

## ARTICLE 20: DAMAGE OR DESTRUCTION

20.1 Minor Damage. Should the Premises or the larger Consolidated Rental Car Facility of which the Premises are a part 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 therefore to be done during regular working hours on regular work days), the Premises (other than furniture, fixtures and equipment owned by Operator pursuant to Section 13.4) shall be repaired with due diligence by the Port, and in the meantime, the Land Rent and Minimum Annual Guarantee shall be abated in the same proportion that the untenantable portion of the Premise bears to the whole thereof, for the period from the occurrence of the damage to the completion of the repairs. In addition, the Port shall be responsible for a reasonable share of the Utilities Costs otherwise payable for the Common Use Area to account for the amounts consumed in the completion of the repairs.

20.2 Major Damage or Destruction. Should the Premises or the larger Consolidated Rental Car Facility of which said Premises are a part be completely destroyed by fire or other casualty, or should they be damaged to such an extent that the damage cannot be repaired within four (4) weeks of the occurrence, the Port shall have the option to terminate this Lease 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 shall become applicable, the Port shall advise Operator within thirty (30) days after the occurrence of any such damage whether the Port has elected to continue the Lease Agreement in effect or to terminate it. If the Port shall elect to continue this Lease Agreement in effect, it shall commence and prosecute with due diligence any work necessary to restore or repair the Premises (other than furniture, fixtures and equipment owned by Operator pursuant to Section 13.4). If the Port fails to notify Operator of its election within said thirty (30) day period, the Port shall be deemed to have elected to continue this Lease Agreement. For the period from the occurrence of any damage to the Premises to the date of completion of the repairs to the Premises (or to the date of termination of the Lease Agreement if the Port elects not to restore the Premises), the Land Rent and Minimum Annual Guarantee shall be abated in the same proportion that the untenantable portion of the Premise bears to the whole thereof. In addition, the Port shall be responsible for a reasonable share of the Utilities Costs otherwise payable for the Common Use Area to account for the amounts consumed in the completion of the repairs.

20.3 Operator's Improvements. Operator shall, at its sole cost and expense, be responsible, without regard to the cause of loss, for any and all repair or restoration of any Initial Tenant Improvements, subsequent Alterations, or furniture, fixtures and equipment owned by Operator, which repair or restoration may be necessary as a result of any casualty. If any casualty event causes damage or loss to Operator's Improvements, but has not otherwise affected the Premises or triggered Section 20.1 or 20.2 of this Lease Agreement; and such damage or loss cannot be repaired within (4) weeks, and the loss results in a stoppage or shutdown of fifty percent (50%) or more of the Operator's use of the Premises, the Operator shall give written notice to the Port within four (4) weeks of the day of the casualty of its plan to remove debris and begin restoration and repairs to the Operator's Improvements on the Premises. If after three (3) months from the day of the casualty the Operator has not begun repair or restoration efforts, or removed debris, the Port has the option to

terminate the Lease Agreement with thirty (30) days notice given to Operator. If after six (6) months, Operator's repairs or restoration efforts have not restored at least fifty percent (50%) of the damage to Operator's Improvements to their original condition, the Port has the option to terminate the Lease Agreement with thirty (30) days notice to the Operator. In the event a casualty event causes loss or damage to Operator's Initial Tenant Improvements or subsequent Alterations that forces Operator's operations to be shut down and this same event does not impact the Premises, the Common Use Area, the Rental Car Facility, or the Consolidated Rental Car Facility Site, the Operator shall continue to be responsible for Land Rent and the Minimum Annual Guarantee that is owed to the Port.

20.4 Contingent Business Interruption. Should Operator's access to or use of the Premises or the larger Consolidated Rental Car Facility of which the Premises are a part be materially impaired for a period exceeding seven (7) days under circumstances not otherwise triggering Section 20.1 nor 20.2 of this Lease Agreement, the Port agrees that in that event the Land Rent and Minimum Annual Guarantee shall be abated in the same proportion that Operator's access to or use of the Premises is impaired, for the period from the occurrence of the damage to the substantial restoration of access and use.

## ARTICLE 21: SURRENDER AND HOLDING OVER

21.1 Surrender. Upon expiration or earlier termination of this Lease Agreement, Operator shall promptly quit and surrender the Premises in good condition and repair, normal wear and tear excepted and deliver to the Port all keys that it may have to any part of the Premises or Airport. Operator shall, at its sole cost and expense, further remove the following from the Premises:

21.1.1 All of Operator's equipment and trade fixtures;

21.1.2 All of Operator's signs, including but not limited to company identifiers, operational signs, illuminated directional signs, rental/return signs and stall numbers, and backwall displays;

21.1.3 All control booths, kiosks and security devices for the benefit of Operator, whether installed by Operator, other Operators or the predecessor-in-interest of either;

21.1.4 Operator's computer and other electrical equipment;

21.1.5 Operator's telephone/data communication lines and associated equipment;

21.1.6 Any Operator Vehicle Maintenance Equipment; together with all structure, enclosure and piping associated with such systems;

21.1.7 All utilities (including, but not limited to, HVAC, electricity, water sewer, conduit and lines) installed by Operator or Operator's predecessors in interest, back to point of connection to the Port's utility systems; and

21.1.8 Any improvements, whether installed at the commencement of the Lease Term or subsequently for which the Port's consent was conditioned on Operator's removal of such improvements at the expiration or earlier termination of this Lease Agreement.

Unless otherwise specifically agreed by the Port in writing, Operator shall diligently complete such removal at or before the termination (including by expiration) of this Lease Agreement.

21.2 Holding Over. If the Premises are not surrendered as provided in this Article, Operator shall indemnify and hold the Port harmless against loss or liability resulting from the delay by Operator in so surrendering the Premises, including, without limitation, any claims made by any succeeding occupant founded on such delay. Any holding over with the consent of the Port after expiration or earlier termination of this Lease Agreement shall be construed to be a tenancy from month-to-month upon the same terms and conditions provided in this Lease Agreement. Any holding over without the consent of the Port after expiration or earlier termination of this Lease Agreement shall be construed to be tenancy at sufferance upon the same terms and conditions provided in this Lease Agreement, except that Minimum Annual Guarantee and Percentage Fees shall each be one hundred twenty five percent (125%) of that which they were immediately prior to expiration or earlier termination of this Lease Agreement.

21.3 Survival. Operator's obligations under this Article shall survive the expiration or earlier termination of this Lease Agreement. No modification, termination or surrender to the Port of this Lease Agreement or surrender of the Premises or any part thereof, or of any interest therein by Operator, shall be valid or effective unless agreed to and accepted in writing by the Port, and no act by any representative or agent of the Port, other than such written agreement and acceptance, shall constitute an acceptance thereof.

## ARTICLE 22: IMPAIRMENT OF TITLE

22.1 Liens. Operator will not directly or indirectly create or permit to be created and/or to remain a Lien upon the Premises or any Alteration, the ownership of which is retained by the Port. In the event any such Lien(s) have been created by or permitted by Operator in violation of this provision, Operator shall immediately discharge as of record, by bond or as otherwise allowed by law, any such Lien(s). Operator shall also defend (with counsel approved by the Port), fully indemnify, and hold entirely free and harmless the Port from any action, suit or proceeding, which may be brought on or for the enforcement of such lien(s). Nothing in this Section 22.1 shall, however, be interpreted as a limitation on Operator's ability to lease and/or finance its vehicle fleet and pledge, encumber or otherwise hypothecate title to its vehicles for such purpose; and the Port expressly hereby subordinates, in a favor of any such vehicle lessor or lender, any interest it may have in such vehicles, whether arising under this Lease Agreement or as a matter of law.

## ARTICLE 23: DEFAULT

23.1 Events of Default. The occurrence of any of the following events shall constitute an “Event of Default” on the part of the Operator with or without notice from the Port:

23.1.1 The vacating or abandonment of the Premises by Operator.

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

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

23.1.4 The failure by Operator to make any payment to the Facility Manager or Fuel Facility Manager required by this Lease Agreement or the agreement between the Operators and the Facility Manager or Fuel Facility Manager (as the case may be) when due.

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

23.1.6 The failure by Operator to observe or perform any covenant, condition, or agreement to be observed or performed by Operator in the agreement between the Operators and the Facility Manager or Fuel Facility Manager (as the case may be).

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

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

23.2 Remedies. In addition to, and not in lieu or to the exclusion of, any other remedies provided in this Lease 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 23.2.3:

23.2.1 Whenever any default (other than a default under Section 23.1.8 above, upon which termination of this Lease 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 Operator (or for 15 days after Notice of Default in the case of default for failure to pay any rent, fees or other required payment under Sections 23.1.3 or 23.1.4 when due),

this Lease Agreement and all of Operator'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 Operator all unpaid Land Rent, unremitted Customer Facility Charges, unpaid Reimbursable O&M Costs and other sum or charge otherwise payable by Operator, or any other payments and damages incurred because of Operator's default including, but not limited to, the reasonable and necessary costs of re-letting, including any tenant improvements reasonably required, renovations or repairs reasonably required, any advertising reasonably required, any leasing 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.

23.2.2 In addition to Termination Damages, and notwithstanding termination and reentry, Operator's liability for all Space Rent, Concession Fees, other sum or charge otherwise payable by Operator, or other charges which, but for termination of this Lease Agreement, would have become due over the remainder of the Lease Term ("Future Charges") will not be extinguished and Operator 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:

(a) An amount equal to Future Charges, less the amount of actual rent and fees, if any, which the Port receives during the remainder of the Lease Term 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 worth, or

(ii) In monthly installments, in advance, on the first day of each calendar month following termination of this Lease Agreement and continuing until the date on which the Lease Term 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

(b) An amount equal to Future Charges less the aggregate fair rental value of the Premises over the remaining Lease Term, reduced to present worth. In this case, the Rental 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.

23.2.3 If this Lease Agreement is terminated for default as provided in this Lease 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 Lease Term), for such use or uses and, otherwise on such terms and conditions as the Port, subject to the terms of this Lease Agreement but otherwise in its sole discretion, may determine, but the Port will not be liable for, nor will Operator's obligations under this Lease 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 due upon such re-letting. Notwithstanding the foregoing, the Port and each of the Operators (including Operator) agree that in the event that this Lease Agreement is terminated for default, the Port must – prior to leasing the Premises subject to this Lease Agreement to anyone other than a rental car company – first make reasonable efforts to relet the premises to one or more rental car companies. Allocation of the Premises shall generally comply with Section 11.4. In the event that the Port is unable to relet the Premise to one or more rental car companies, the Port may then lease the Premises to any other person; provided, however, the Premises may not be used for purposes of providing shuttle, limousine or other ground transportation service in competition with the rental car industry.

23.2.4 If upon any reentry permitted under this Lease 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 Operator. In the event the Port chooses to remove and store such property, it shall take reasonable steps to notify Operator of the Port's action. All risks associated with removal and storage shall be on Operator. Operator 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 30 days or more, unless Operator 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 attorneys' 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 Operator to the Port. The balance of sale proceeds, if any, will then be paid to Operator.

23.3 Remedies Cumulative. All rights, options and remedies of the Port contained in this Lease 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 Lease Agreement.

## ARTICLE 24: TERMINATION; EASEMENTS

24.1 Termination. This Lease Agreement may be terminated by the Port or Operator in advance of its scheduled expiration date on any of the following events:

### 24.1.1 By the Port.

24.1.1.1 Default. Subject to any right to cure set forth in this Lease Agreement, in the event of Operator's default under this Lease Agreement pursuant to Section 23.2.

24.1.1.2        **Major Capital Improvement.** In the event the Port, in its sole discretion, requires the Premises for a major capital improvement of the Airport, or for safety and security reasons, the Port may terminate this Lease Agreement by delivering to Operator notice of termination not less than one (1) year before the termination date specified in the termination notice and rental car facilities of at least comparable size, quality and scope to the Consolidated Rental Car Facilities shall have been provided to the Operator at no additional cost to the Operator, on or prior to such termination. In the event that the Port does not provide replacement premises as set forth in the previous sentence, the Port shall provide Operator at least thirty (30) months notice and shall pay Operator all amounts to which Operator would be entitled in the event of a condemnation under applicable law.

24.1.1.3        **Taking.** In the event that any federal, state or local government or agency or instrumentality thereof (including the Port) 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 Lease Agreement as of the date of such taking, and if Operator is not in default under any of the provisions of this Lease Agreement on said date, any rent or concession fees prepaid by Operator shall, to the extent allocable to any period subsequent to the effective date of the termination, be promptly refunded to Operator.

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

24.1.2        **By Operator.** The Operator, at its option, may declare this Lease Agreement terminated in its entirety, with no penalty to or further liability of Operator, upon the happening of any one or more of the following events:

24.1.2.1        A court of competent jurisdiction issues an injunction or restraining order against the Port preventing or restraining, in its entirety or substantial entirety, the use of the Airport for airport purposes.

24.1.2.2        The Port abandons the Airport for a period of at least thirty (30) consecutive days and fails to operate and maintain the Airport in such manner as to permit landings and takeoffs of airplanes by scheduled air carriers.

24.1.2.3        The Airport or a material portion of the Airport or Airport facilities is destroyed, resulting in material interference with Company's normal business operations

or substantial diminution of Operator's Gross Revenues at the Airport for a period in excess of sixty (60) consecutive days.

24.1.2.4 An agency or instrumentality of the United States government or any state or local government occupies the Airport or a substantial part thereof for any reason, resulting in material interference with Operator's normal business operations or substantial diminution of Operator's Gross Revenues at the Airport for a period in excess of sixty (60) consecutive days.

24.1.2.5 The Operator submits, in consideration of Operator's then-existing financial circumstances, a good faith bid for a Concession Agreement to operate a Rental Car Concession at the Airport for the initial and each subsequent Concession Term but any such bid is not accepted by the Port and the Operator is not granted or loses its right to operate a Rental Car Concession at the Airport.

## 24.2 Easements.

24.2.1 The Parties recognize that the Port facilities are continuously being modified to improve the utilities, services and premises used and provided by the Port. The Port, or its agents, shall have the right to enter the Premises of Operator, and to cross over, construct, move, reconstruct, rearrange, alter, maintain, repair and operate the sewer, water, and drainage lines, and the electrical service, fiber and communication service and all other services and facilities, all as required by the Port for its own use or benefit. The Port and its authorized utility service provider are hereby granted a continuous easement or easements that the Port believes is necessary within the Premises, without any additional cost to the Port for the purposes expressed hereinabove. *Provided, however,* that the Port by virtue of such use, does not substantially deprive Operator from its beneficial use or occupancy of the Premises for an unreasonable period of time, not to exceed ten (10) working days, without consent of Operator.

24.2.2 In the event that the Port permanently deprives Operator from such beneficial use or occupancy, then an equitable reimbursement of pre-paid rent or an adjustment in rent for any extension, or in the cost required to modify its Premises to allow the Operator to operate its business, will be negotiated and paid by the Port to Operator. In the event that such entry by the Port is temporary in nature, then the Port shall reimburse Operator for the cost required to modify its Premises for the temporary period that Operator is inconvenienced by such entry. The Port will not be responsible to Operator for any reduced efficiency or loss of business occasioned by such entry.

## ARTICLE 25: NO WAIVER; LANDLORD'S RIGHT TO PERFORM

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

**25.2 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 Lease 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 any sum (including Land Rent, Customer Facility Charges, Reimbursable M&O Costs) or charge otherwise payable by Operator, 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 Operator 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 Operator.

**25.3 No Waiver of Rent.** The receipt by the Port of any installment of the Land Rent, Reimbursable O&M Costs, Concession Fees or other sum or charge otherwise payable by Operator shall not be a waiver of any Land Rent, Reimbursable O&M Costs, Concession Fees or other sum or charge otherwise payable by Operator then due.

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

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

## ARTICLE 26: ASSIGNMENT OR SUBLEASE

26.1 Prohibition. Subject to Section 26.2, Operator shall not assign or transfer this Lease Agreement or any interest therein nor sublet the whole or any portion of the Premises, nor shall this Lease 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 Operator is anything other than an individual, Operator further agrees that if at any time during the Lease Term 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 Lease Agreement or to members of their immediate families, such change in the ownership of Operator shall be deemed an assignment of this Lease Agreement within the meaning of this Section 26.1; provided, however, that this sentence shall not apply if, and to the extent that Operator is a corporation, the outstanding voting stock of which is listed on a recognized security exchange. Operator'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.

26.1.1 If Operator shall, at any time during the Lease Term, desire to sell, assign or otherwise permanently transfer the Lease Agreement in whole or in part, or any right or leasehold interest granted to it by this Lease Agreement, Operator shall, at the time the Operator 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 Operator of its election to: (a) consent to the assignment or (b) disapprove the assignment, setting forth the grounds for doing so.

26.1.2 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 Operator by said assignee or subtenant. In addition, a condition to the Port's consent to any assignment or sublease of this Lease 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 Lease Agreement and perform all the obligations of Operator hereunder.

26.1.3 In the event of any assignment, Operator and each respective assignor, waive notice of default by the Operator in possession in the payment of rent or fees and in the performance of the covenants and conditions of this Lease Agreement and consents that the Port may in each and every instance deal with the Operator in possession, grant extensions of time, waive performance of any of the terms, covenants and conditions of this Lease Agreement and modify the same, and in general deal with the Operator then in possession without notice to or consent of any assignor,

including Operator; and any and all extensions of time, indulgences, dealings, modifications or waivers shall be deemed to be made with the consent of Operator and of each respective assignor.

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

26.1.5 No assignment, subletting or license by Operator shall relieve Operator of any obligation under this Lease Agreement, including Operator'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.

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

26.2 Assignment to Successor or Affiliate. Notwithstanding anything to the contrary in Section 26.1, the Port agrees that it will not unreasonably condition or withhold its consent to an assignment and transfer this Lease Agreement and all rights, title, and interest hereunder by Operator 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 Operator, (ii) to any corporation or other legal entity with which the Operator may merge or into which it may consolidate, or (iii) to any person, firm or corporation which may acquire all or substantially all of Operator's rental car business or assets; provided in each instance the surviving, resulting or transferee corporation expressly assumes in writing all the obligations of Operator contained in this Lease 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 Operator on: (x) the date on which Operator 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 Operator and all of its subsidiaries in accordance with generally accepted accounting principles.

26.3 Execution Prior to Request for Qualifications. The Port acknowledges that Operator may execute this Lease Agreement prior to the time at which Operator has, for purposes of the Request for Qualifications, identified the brands and/or trade names under which it would intend to operate any Rental Car Concession awarded under the Request for Qualifications. The Port further acknowledges the importance of having consistency between the Lease Agreement and the Concession Agreement in this regard. Therefore, the Port agrees that so long as any Operator executing this Lease Agreement prior to the Request for Qualification commits, as part of the Request for Qualifications process, to operate one or more Rental Car Concessions utilizing those

brands and/or trade names controlled and committed by Operator at the time Operator signed this Lease Agreement, the Port will – without penalty of any kind – allow such Operator to either execute such other and further Lease Agreements or combine two or more Lease Agreements into one Lease Agreement, all as may be necessary to ensure one-to-one correspondence between the Lease Agreements and Concession Agreements.

## ARTICLE 27: AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISES

27.1 Certification Required. It is the policy of the Port to support participation of Airport Concession Disadvantaged Business Enterprises (or “ACDBEs”), as defined in 49 CFR, Part 23, in concession activities at the Airport. To the extent Operator is required to operate the Premises as an ACDBE, Operator agrees: (i) to submit to the Port, upon execution of this Lease Agreement, certification from the State of Washington that Operator is a certified ACDBE, and (ii) at all times during the Lease Term, to be and remain certified as an ACDBE in accordance with all applicable federal, state and local laws, rules and regulations and to timely file any and all applications, together with all supporting documentation, necessary to maintain such certification. In the event that Operator is certified as an ACDBE and that certification is necessary to satisfy the requirements of this Section, prior to any change in ownership, control or organization of Operator, Operator shall (in addition to any requirements that may be imposed by Section 26.1) similarly obtain ACDBE certification for Operator as so changed and provide the Port with proof of the same. If Operator 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 Operator.

27.2 Opportunities for Participation. It is the policy of the Port to ensure that Airport Concession Disadvantaged Business Enterprises 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 Operator 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 Rental Car Concession at this Airport.

27.3 Reports. Operator shall submit quarterly ACDBE participation reports to the Port on or before the twentieth (20<sup>th</sup>) day of each month following the end of each Agreement Year quarter. Operator shall submit such reports as may be required by the Port, for the purpose of demonstrating compliance with 49 CFR Part 23.

## ARTICLE 28: NON-DISCRIMINATION

28.1 Operator 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, Operator 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.

28.2 Operator for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree: (i) 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, (ii) 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, (iii) that Operator 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.

28.3 Operator 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 Operator 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 Operator or any transferee for the longer of the following periods: (i) 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 (ii) 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.

28.4 In addition, Operator agrees that, whether or not this Lease Agreement is conducted with, or benefits from, Federal assistance, it shall in all matters pertaining to the performance of this Lease 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.

28.5 Operator will maintain open hiring and employment practices and will welcome applications for employment in all positions from all qualified individuals.

28.6 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 Lease Agreement is subject to 49 CFR Part 23 as applicable.

28.7 Operator 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.

28.8 Operator 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.

## ARTICLE 29: NON DISCRIMINATION IN CONTRACTS

29.1 Non-Discrimination. The Port of Seattle encourages Operators and each of them to create and maintain a diverse workforce, contractor, and supplier base. Operators shall not create barriers to open and fair opportunities for minority businesses enterprises (MBEs), and women's business enterprises (WBEs), small business enterprises (SBEs) and disadvantaged business enterprises (DBEs) to participate in all rental car contracts at the Airport and to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services. In considering offers from and doing business with contractors and suppliers, the rental car operator shall not discriminate on the basis of race, color, creed, religion, sex, age, nationality, marital status, sexual orientation or the presence of any mental or physical disability in an otherwise qualified disabled person.

29.2 Record Keeping. Operator is required to submit to the Port of Seattle on the twenty-fifth (25) day of the month following the end of each quarter (based on the calendar year) a document (to be supplied by the Port of Seattle) that will include the following information:

29.2.1 Type of product or service purchases and the dollar value of the total purchases made for each during the previous quarter;

29.2.2 Identify those contractors or suppliers who are MBEs, WBEs, SBEs or DBEs and their certification number or such other verification issued by the State of Washington Office of Minority and Women Owned Business (OMWBE), the United States Small Business Administration (SBA), the Port of Seattle Office of Social Responsibility, the Northwest Minority Business Council, or the Women's Business Enterprise National Council in the report;

29.2.3 Report attendance at local trade fairs, meetings and activities that reach MBEs, WBEs, SBEs and DBEs;

29.2.4 Place all MBEs, WBEs, SBEs and DBEs attempting to do business with you on a solicitation list and provide written notice of opportunities in sufficient time to allow such business to respond to the written solicitations. This information will be attached to the statistical report and submitted quarterly.

29.3 Investigation. If the Port receives a report of discrimination an investigation will take place. Operator will allow the Port of Seattle to review all documents and records as the Port feels is necessary to determine if the complaint is valid. Those documents will include but will not be limited to: advertisements, proof of attendance at community meetings where businesses interested

in doing business with airport rental operators will be reached, establishing delivery schedules that encourage participation by MBEs, WBEs, SBEs and DBEs, breaking down total requirements into smaller tasks or quantities in order to permit maximum participation by small businesses.

29.4 No Goals. No specific goals for any person or groups have been established for this Lease Agreement; however, the information you supply will be used to determine the level of participation by each racial group.

29.5 Changes in Law. The above requirements may be changed or adjusted during the life of the Lease Agreement if local, state or federal laws impose requirements that are not included here or are in conflict with those included here.

## ARTICLE 30: NOTICES

30.1 Method for Notice. All notices required under this Lease 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.

30.2 Address for Notice. All notices required under this Lease Agreement shall be addressed as follows:

To the Port:

- Mailing Address:  
Port of Seattle  
Seattle-Tacoma International Airport  
P. O. Box 68727  
Seattle, Washington 98168  
Attn: General Manager, Aviation Business Development & Management
- Street Address:  
Port of Seattle  
Seattle-Tacoma International Airport  
Airport Office Building, 4<sup>th</sup> Floor  
17801 Pacific Highway South  
Seattle, WA 98158  
Attn: General Manager, Aviation Business Development & Management
- Facsimile:  
General Manager, Aviation Business Development & Management  
(206) 787-4985

With a copy to:

- Mailing Address:  
Port of Seattle  
P. O. Box 1209  
Seattle, Washington 98111  
Attn: General Counsel
- Street Address:  
Port of Seattle  
2711 Alaskan Way  
Seattle, WA 98121  
Attn: General Counsel
- Facsimile:  
General Counsel  
(206) 787-3205

To Operator:

- Mailing and Street Address:  
Sixt Rent a Car LLC.  
1489 SE 17<sup>th</sup> Street, Unit 2A  
Fort Lauderdale, FL 33304
- Attn: Carmen Wirth, Director Business Development

Phone, Facsimile & Email:

Phone: (954) 707-5588  
Fax: (954) 333-1932  
Email: carmen.wirth@sixt.com

- Financial Issues: Audit, Annual Report  
Sixt Rent a Car LLC.  
1489 SE 17<sup>th</sup> Street, Unit 2A  
Fort Lauderdale, FL 33304

Attn:

Phone, Facsimile & Email:  
Phone: (954) 707-5588  
Fax: (954) 333-1932  
Email: carmen.wirth@sixt.com

or to such other respective addresses as either party hereto may hereafter from time to time designate in the manner for notice required under this Lease Agreement.

## ARTICLE 31: MISCELLANEOUS

31.1 Compliance with Laws. In addition to, and not in lieu of, any more specific directive in this Lease Agreement, Operator 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. Operator shall further comply with all applicable federal, state, and municipal laws, ordinances, and regulations, including without limitation those relating to environmental matters.

31.2 Update of Terms. The Port shall – without the necessity of an amendment to this Lease Agreement – have the right to periodically update those requirements set forth in Section 17.2 and **Exhibit G, Exhibit H, and Exhibit L** to reflect changes in practices for similar properties or operations either at the Airport or at other airports nationwide. The Port likewise have the right (again, without the necessity of an amendment) to make adjustments to ARTICLE 18, ARTICLE 19, ARTICLE 27 and ARTICLE 28 to account for changes in Legal Requirements applicable to the Consolidated Rental Car Facility or Consolidated Rental Car Facility Site or the operation of Rental Car Concession. Without limiting the ability of the Port to do so at other times, it is expected that the Port will make such updates every ten years at the commencement of each Concession Term.

31.3 Ongoing Improvements. It is understood that the Port may from time to time elect to alter, improve or remodel portions of the Airport. Operator 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 Operator if the same shall not unreasonably interfere with Operator's use of the Premises.

### 31.4 Electronic Funds Transfer; Automatic Debit.

31.4.1 At any time after the fifth (5<sup>th</sup>) Agreement Year, the Port specifically has the right to require Operator to remit any amounts to be remitted or otherwise payable under this Lease 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 Operator, require Operator 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 Operator of whatsoever nature required or contemplated by this Lease Agreement shall be debited monthly or from time to time, as provided in this Lease Agreement, from Operator's account in a bank or financial institution designated by Operator and credited to the Port's bank account as the Port shall designate from time to time. Operator's failure to properly designate a bank or financial institution or to promptly provide appropriate information in accordance with this Section 31.4.1 shall constitute a default of this Lease Agreement.

31.4.2 Operator 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 Operator's bank account or any charges imposed on the Port.

31.4.3 In the event that Operator elects to designate a different bank or financial institution from which any fees or other charges under the Lease Agreement are automatically debited, notification of such change and the required documents, instruments, authorizations, and certificates specified in Section 31.4.1 must be received by the Port no later than thirty (30) days prior to the date such change is to become effective.

31.4.4 Operator agrees that it shall remain responsible to the Port for all payments and other charges pursuant to the Lease Agreement, even if Operator'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.

31.5 Brokers. Operator warrants that it knows of no real estate broker or agent who is or may be entitled to any commission or finder's fee in connection with this Lease Agreement. Operator 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 Operator's discussions, negotiations and/or dealings with any real estate 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.

31.6 Promotion of Port Commerce. Operator agrees that throughout the Lease Term it will, insofar as practicable, promote and aid the movement of passengers and freight through facilities within the territorial limits of the Port. Operator 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 Operator.

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

31.8 Mandatory Programs. Operator 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). Operator 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.

31.9 Successors Bound. This Lease 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 Operator who accepts an assignment of the benefit of this Lease 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 Operator without the prior written consent of the Port pursuant to ARTICLE 26 hereof.

31.10 Access to Premises. The Port shall have the right to show the Premises at all reasonable times during business hours of Operator to any prospective purchasers, tenants or mortgagees of the same, and may at any time enter upon the Premises, or any part thereof, for the purpose of ascertaining the condition of the Premises or whether Operator is observing and performing the obligations assumed by it under this Lease Agreement, all without hindrance or molestation from the Operator. The Port shall also have the right to enter upon the Premises for the purpose of making any necessary repairs and performing any work that may be necessary by reason of Operator's failure to make any such repairs or perform any such work. The above-mentioned rights of entry shall be exercisable upon request made on reasonable advance notice to Operator (except that no notice shall be required in the event of an emergency) or an authorized employee of Operator at the Premises, which notice may be given orally.

31.11 Subordination, Attornment; Nondisturbance. Unless otherwise designated by the Port, this Lease Agreement shall be subordinate to all existing or future mortgages and deeds of trust on the Premises or the Consolidated Rental Car Facility Site, and to all extensions, renewals or replacements thereof. Within ten (10) business days of the Port's request, Operator shall execute and deliver all instrument or certificates which may be necessary or appropriate to reflect such subordination. Notwithstanding the foregoing, Operator shall not be required to subordinate to future mortgages or deeds of trust unless the mortgagee or beneficiary under the deed of trust agrees that if it becomes the owner of the property, it will recognize the Lease Agreement as long as Operator is not in default. Within ten (10) business days of the Port's request, Operator shall also execute and deliver to third parties designated by the Port an estoppel certificate or letter in the form requested by the Port or any lender the correctly recites the facts with respect to the existence, terms and status of this Lease Agreement. Operator agrees to attorn to any successor to the Port following any foreclosure, sale or transfer in lieu thereof. So long as Operator is not in Default hereunder beyond the applicable grace or cure period, its tenancy will not be disturbed, nor its rights under this Lease Agreement, be affected by any default under such ground lease or deed of trust or mortgage nor will Operator, to the extent allowed by applicable law, be named as a defendant in any foreclosure proceedings.

31.12 Time. Time is of the essence of each and every one of the Operator's obligations, responsibilities and covenants under this Lease Agreement.

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

31.14 Attorneys' Fees. In the event either party requires the services of an attorney in connection with enforcing the terms of this Lease Agreement or in the event suit is brought for the recovery of any Space Rent, Concession Fees or other sum or charge otherwise payable by Operator this Lease Agreement or the breach of any covenant or condition of this Lease Agreement, or for the restitution of the Premises to the Port and/or eviction of Operator during the Lease Term, 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.

31.15 Joint and Several Liability; Use of Term Operator. To the extent that more than one Person executes this Lease Agreement other than in a representative capacity, under ARTICLE 32, 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 Operator under any separate Rental Car Concession agreement. It is understood and agreed that for convenience, the word "Operator" and verbs and pronouns in the singular number and neuter gender are uniformly used throughout the Lease Agreement, regardless of the number gender or fact of incorporation of the party who is, or of the parties who are, the actual Operator or Operators under this Lease Agreement.

31.16 Captions and Article Numbers. The captions, article and section numbers and table of contents appearing in this Lease 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 Lease Agreement or in any way affect this Lease Agreement.

31.17 Severability. If any term, covenant, condition or provision of this Lease 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 Lease 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.

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

31.19 Applicable Law; Venue; Waiver of Trial by Jury. This Lease 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 Lease 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 Lease 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.

**31.20 Submission of Agreement.** The submission of this document for examination and negotiation does not constitute an offer to lease, or a reservation of or option for leasing the Premises. This document shall become effective and binding only upon execution and delivery hereof by the Port and Operator. No act or omission of any officer, employee or agent of the Port or Operator shall alter, change or modify any of the provisions hereof.

**31.21 Entire Agreement; Modification.** This Lease Agreement, together with the Concession Agreement and the Operator'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 Operator concerning the Premises, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between the Port and Operator other than as are herein set forth. No subsequent alteration, amendment, change or addition to the Lease Agreement shall be binding upon the Port or Operator unless reduced to writing and signed by the Port and Operator. To the extent of any conflict between this Lease Agreement, the Concession Agreement and Operator'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.

**31.22 Relationship of the Port and Operator.** 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 Lease Agreement nor any acts of Operator and the Port shall be deemed to create any relationship other than that of Operator and the Port.

**31.23 Exhibits.** Attachment 1 and Exhibits A, B, C-1, C-2, C-3, C-4, C-5, D-1, D-2, D-3, E, F, G, H, I, J, K, L, M, N, O and P are attached to this Lease Agreement after the signatures and by this reference incorporated herein.

**31.24 Port's Covenant Regarding More Favorable Terms.** In the event that any lease or other contract granted by the Port to any other Operator (other than a Small Operator) shall contain any terms and conditions more favorable to such Operator than the terms and conditions herein described (other than the number of allocated parking spaces and the location of the counter area, service facility and vehicle parking areas), then, at the option of Operator, this Lease Agreement shall be amended to include such more favorable terms and any offsetting burdens that may be imposed on any such other Operator (other than a Small Operator). The intent of this provision is to ensure that Operator will be able to compete on terms as equal as possible with all other Operators and to ensure

than no other Operator shall enjoy any rights or privileges more favorable to such Operator than those enjoyed by the Operator herein.

31.25 Cost Advancement Agreement. For purposes of that certain Cost Advancement Agreement dated March \_\_\_. 2007, this Lease Agreement shall constitute the more definitive agreement relating to, and committing the Operators to participation in, the Consolidated Rental Car Facility. The Port and Operator – to the extent one of the rental car concessionaires that was, through signature of the Chairperson of the Participating RACs under that certain Participation Agreement dated June 1, 2006, a party to the Cost Advancement Agreement – reaffirm their respective rights and responsibilities under that Cost Advancement Agreement.

*[Remainder of Page Intentionally Left Blank]  
[Signatures Appear on Next Page]*

## ARTICLE 32: SIGNATURES

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

POR T OF SEATTLE

SIXT RENT A CAR LLC

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

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

## ARTICLE 33: ACKNOWLEDGMENTS

STATE OF WASHINGTON                  )  
  )  
COUNTY OF KING                        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2012 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)  
Notary Public, in and for the State of Washington,  
residing at \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

STATE OF FLORIDA \_\_\_\_\_)  
  )  
COUNTY OF \_\_\_\_\_)

On this \_\_\_\_\_ day of \_\_\_\_\_, 2012 before me personally appeared Johannes Boeinghoff, to me known  
to be the President of SIXT RENT A CAR LLC., the corporation that executed the within and foregoing instrument at  
Operator, 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)  
Notary Public, in and for the State of Florida,  
residing at \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

**EXHIBIT O**

**-Concession Agreement-**

**RENTAL CAR CONCESSION AGREEMENT**

**FOR**

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

## TABLE OF CONTENTS

	<b>Page</b>
ARTICLE 1 : DEFINITIONS .....	1
ARTICLE 2 : GRANT OF CONCESSION; PREMISES .....	1
ARTICLE 3 : TERM .....	1
ARTICLE 4 : CONCESSION FEES .....	1
ARTICLE 5 : REMITTANCE; LATE PAYMENT .....	4
ARTICLE 6 : ACCOUNTING PROCEDURES; AUDIT .....	4
ARTICLE 7 : BOND OR OTHER SECURITY .....	5
ARTICLE 8 : USE .....	5
ARTICLE 9 : STANDARDS OF OPERATION .....	5
ARTICLE 10 : INDEMNITY AND INSURANCE .....	9
ARTICLE 11 : DEFAULT .....	9
ARTICLE 12 : TERMINATION .....	11
ARTICLE 13 : NO WAIVER; LANDLORD'S RIGHT TO PERFORM .....	11
ARTICLE 14 : ASSIGNMENT .....	12
ARTICLE 15 : DISADVANTAGED BUSINESS ENTERPRISES; NON-DISCRIMINATION	14
ARTICLE 16 : NOTICES .....	14
ARTICLE 17 : MISCELLANEOUS .....	15
ARTICLE 18 : SIGNATURES .....	19
ARTICLE 19 : ACKNOWLEDGMENTS .....	20

# RENTAL CAR CONCESSION AGREEMENT

THIS RENTAL CAR CONCESSION AGREEMENT is made as of this \_\_\_\_ day of \_\_\_\_\_, 2011 by and between the PORT OF SEATTLE, a Washington municipal corporation, and SIXT RENT A CAR LLC., a Delaware corporation.

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

## ARTICLE 34: DEFINITIONS

34.1 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 35: GRANT OF CONCESSION; PREMISES

35.1 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 36: TERM

36.1 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 37: CONCESSION FEES

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

### **37.1.1 Minimum Annual Guarantee.**

**37.1.1.1 First Agreement Year.** For the first Agreement Year, the Minimum Annual Guarantee shall be Fifty Nine Thousand and no cents (\$59,000.00).

**37.1.1.2 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 37.1.1.1, whichever is greater.

**37.1.1.3 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 therefore and without any abatement, deduction or setoff whatsoever.

**37.1.1.4 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.

**37.2 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 37.1.1.

**37.2.1 Revenue Reports; Remittance.** On or before the twentieth (20<sup>th</sup>) 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.

*37.2.2 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 39.1 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.

*37.2.3 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).

*37.2.4 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 38: REMITTANCE; LATE PAYMENT

38.1 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.

38.2 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 39: ACCOUNTING PROCEDURES; AUDIT

39.1 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 40: BOND OR OTHER SECURITY

40.1 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 41: USE

41.1 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 42: STANDARDS OF OPERATION

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

### 42.1.1 *General Standards.*

42.1.1.1 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.

42.1.1.2 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.

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

42.1.1.4 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.

42.1.1.5 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.

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

42.1.1.7 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

#### 42.1.2 *Personnel.*

42.1.2.1 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.

42.1.2.2 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.

42.1.2.3 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 established by Concessionaire.

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

42.1.2.5 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.

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

42.1.3 *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.

#### 42.1.4 *Rental Vehicles.*

42.1.4.1 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.

42.1.4.2 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 42.1.4.1.

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

42.1.4.4 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.

42.1.4.5 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.

42.2 "Multi Branding."

42.2.1 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.

42.2.2 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.

42.3 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 43: INDEMNITY AND INSURANCE

43.1 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 44: DEFAULT

44.1 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:

44.1.1 The vacating or abandonment of the Premises by Concessionaire.

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

44.1.3 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.

44.1.4 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.

44.1.5 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.

44.1.6 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.

44.2 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:

44.2.1 Whenever any default (other than a default under Section 44.1.6 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.

44.2.2 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.

44.2.3 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.

44.3 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 45: TERMINATION

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

45.1.1 *Default*. In the event of Concessionaire's default under the Concession Agreement pursuant to Section 23.2.

45.1.2 *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.

45.1.3 *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 46: NO WAIVER; LANDLORD'S RIGHT TO PERFORM

46.1 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.

46.2 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.

46.3 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.

46.4 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.

46.5 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 47: ASSIGNMENT

47.1 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 26.1; 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.

47.1.1 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.

47.1.2 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.

47.1.3 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.

47.1.4 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.

47.1.5 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.

47.2 Assignment to Successor or Affiliate. Notwithstanding anything to the contrary in Section 26.1, 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 48: DISADVANTAGED BUSINESS ENTERPRISES; NON-DISCRIMINATION

48.1 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 49: NOTICES

49.1 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.

49.2 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 50: MISCELLANEOUS

50.1 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.

50.2 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.

### 50.3 Electronic Funds Transfer; Automatic Debit.

50.3.1 At any time after the fifth (5<sup>th</sup>) 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 31.4.1 shall constitute a default of this Concession Agreement.

50.3.2 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.

50.3.3 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 31.4.1 must be received by the Port no later than thirty (30) days prior to the date such change is to become effective.

50.3.4 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.

50.4 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.

50.5 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.

50.6 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.

50.7 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.

50.8 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 47 hereof.

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

50.10 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.

50.11 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.

50.12 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 51, 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.

50.13 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.

50.14 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.

50.15 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.

50.16 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.

50.17 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.

50.18 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.

50.19 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.

50.20 Exhibits. Attachment 1 and Exhibits Q and R are attached to this Concession Agreement after the signatures and by this reference incorporated herein.

#### ARTICLE 51: SIGNATURES

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

PORT OF SEATTLE

SIXT RENT A CAR LLC.

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

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

## ARTICLE 52: ACKNOWLEDGMENTS

STATE OF WASHINGTON                         )  
  )  
COUNTY OF KING                                 )  
  )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2012 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.

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(Signature)

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

STATE OF FLORIDA \_\_\_\_\_)  
  )  
COUNTY OF \_\_\_\_\_)

On this \_\_\_\_\_ day of \_\_\_\_\_, 2012, before me personally appeared Johannes Boeinghoff, to me known to be the President of SIXT RENT A CAR LLC., 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)

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(Print Name)  
Notary Public, in and for the State of Florida,  
residing at \_\_\_\_\_  
My Commission expires: \_\_\_\_\_