

# LEASE AND CONCESSION AGREEMENT

Between

PORT OF SEATTLE

And

[TENANT]

## KEY LEASE TERMS

Agreement Date	January 1, 2015									
Concessionaire:	Airport Management Services, LLC A Washington limited liability company 123 Main Street Anytown, WA 98101 Attn: John Q. Manager, Vice President									
Premises:	Approximately ___ square feet of space commonly known as Unit(s) _____, as identified on Exhibit B.									
Occupancy Date:	January x, xxxx									
Build-Out Deadline:	xxx or xxx days following the Occupancy Date									
Midterm Deadline:	Midpoint of the XX Agreement Year									
Expiration Date:	The last day of the month in which the date ___ years from the Build-Out Deadline falls									
Rent Commencement Date:	The earlier of: (i) the Build-Out Deadline or (ii) the date on which Concessionaire first opens for business from the Premises									
Minimum Monthly Guarantee:	MMG									
First Agreement Year:	No Minimum Monthly Guarantee. Concessionaire pays percentage rent only.									
Second and Subsequent Lease Years:	Minimum Monthly Guarantee (MMG) will be an amount equal to one twelfth (1/12) of eighty percent (80%) of the total amount paid by concessionaire to the Port, whether by MMG or (percentage fees) for the prior year									
Percentage Fees:	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;"><i>Annual Gross Sales</i></th> <th style="text-align: center;"><i>Percentage of Gross Sales</i></th> </tr> </thead> <tbody> <tr> <td>Annual Gross Sales ≤ \$XXXX</td> <td style="text-align: center;">XX.%</td> </tr> <tr> <td>\$XXXX &lt; Annual Gross Sales ≤ XXXX</td> <td style="text-align: center;">XX.%</td> </tr> <tr> <td>\$XXXX &lt; Annual Gross Sales</td> <td style="text-align: center;">XX.%</td> </tr> </tbody> </table>		<i>Annual Gross Sales</i>	<i>Percentage of Gross Sales</i>	Annual Gross Sales ≤ \$XXXX	XX.%	\$XXXX < Annual Gross Sales ≤ XXXX	XX.%	\$XXXX < Annual Gross Sales	XX.%
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Annual Gross Sales ≤ \$XXXX	XX.%									
\$XXXX < Annual Gross Sales ≤ XXXX	XX.%									
\$XXXX < Annual Gross Sales	XX.%									
Security:	\$XXXXXXX									
Use of Premises:	Quick serve restaurant operating under the trade name, and otherwise selling the products of Belle's Burgers									
Initial Improvement Amount:	\$XXX per square foot									
Delay Damages:	\$XXX per day									
Exhibits to Agreement	A - Legal Description of Airport B - Premises C - Street Pricing Policy D - Operating Standards E - Additional Non-Discrimination Covenants F - Pertinent Non-Discrimination Authorities									

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THIS LEASE AND CONCESSION AGREEMENT is made as of the date set forth on the first page of this Agreement by and between the PORT OF SEATTLE, a Washington municipal corporation, and the Concessionaire identified on the first page of this Agreement. For and in consideration of the mutual promises, covenants and conditions hereinafter set forth, the parties agree:

## SECTION 1: DEFINITIONS

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

1.1 Additional Rent. “Additional Rent” shall have the meaning set forth in Section 4.4 of this Agreement.

1.2 Agreement. “Agreement” shall mean and refer to this Lease and Concession Agreement, as the same may be amended from time-to-time.

1.3 Agreement Year. “Agreement Year” shall mean each successive twelve-month period during the term of this Agreement, beginning with the first day of the first full month on or after the Rent Commencement Date.

1.4 Airport. “Airport” shall mean the Seattle-Tacoma International Airport, a legal description of which is attached as Exhibit A.

1.5 ACDBE. “Airport Concessions Disadvantaged Business Enterprise” and “ACDBE” shall mean, a business, whether it is a corporation, sole proprietorship, partnership or joint venture certified as an ACDBE by the State of Washington, of which at least fifty-one percent (51%) of the interest is owned and controlled by one or more socially and economically disadvantaged individuals as defined in the Airport and Airways Safety and Capacity Expansion Act of 1987 and the regulations promulgated pursuant hereto at 49 CFR Part 23.

1.6 Airport Terminals. “Airport Terminals” shall mean the passenger transportation facilities at the Airport, whether now existing or subsequently constructed. As of the date of this Agreement, the Airport Terminals identified include Concourse A, Concourse B, Concourse C, Concourse D, North Satellite, South Satellite, North Esplanade, South Esplanade, and Central Terminal.

1.7 Alterations. “Alterations” shall have the meaning set forth in Section 7.2.3 of this Agreement.

1.8 Annual Report. “Annual Report” shall have the meaning set forth in Section 4.7.3 of this Agreement.

1.9 Build-Out Deadline. “Build-Out Deadline” shall mean the date set forth on page 1 of this Agreement. In the event that the Build-Out Deadline is subject to extension as provided in Section 7.2.1, the Port shall confirm the extended Build-Out Deadline in the manner provided for notice in Section 23.1 of this Agreement.

1.10 Concessionaire. “Concessionaire” shall mean and refer to the party executing this Agreement, as identified on page 1 of this Agreement.

1.11 Day. “Day” or “Days” shall mean, unless otherwise specified, mean and refer to calendar day(s), not business day(s).

1.12 Default Rate. “Default Rate” shall mean the rate of eighteen percent (18%) per annum or the maximum rate provided by law for a transaction of this nature, whichever is less.

1.13 Delay Damages. “Delay Damages” shall mean and refer to the dollar amount, expressed per day, set forth on page 1 of this Agreement.

1.14 Display Allowances. “Display Allowances” shall mean the total of all display allowances, placement allowances, special purpose allowances, or other promotional incentives received by Concessionaire (or Concessionaire’s subtenant, licensee or concessionaire) from vendors, suppliers or manufacturers and any other revenue of this type, and further, if such allowances are received as a part of non-differentiated sales by Concessionaire (or Concessionaire’s subtenant, licensee or concessionaire) operating at multiple airports, the Port shall solely and reasonably designate the amount to be allocated to the Airport for the calculation of Percentage Fees due.

1.15 Enplaned Passenger. “Enplaned Passenger” shall mean all those passengers boarding flights at the Airport from scheduled or chartered flights, whether domestic or international, including non-revenue passengers (but excluding airline crew for the flight), and including those passengers connecting from arriving flights of same or another airlines.

1.16 Excluded Costs. “Excluded Costs” shall mean the (i) financing costs; (ii) interest; (iii) inventory; (iv) office equipment and furnishings; (v) pre-opening expenses; (vi) intra-Concessionaire charges related to construction; (vii) professional fees and costs related to design and engineering of Leasehold Improvements in excess of twelve percent (12%) of the initial minimum investment; and (viii) professional fees and costs related to the design and engineering of Leasehold Improvements in excess of twelve percent (12%) of the minimum mid-term refurbishment.

1.17 Expiration Date. “Expiration Date” shall mean the date on which this Agreement, unless earlier terminated, will expire, as set forth on page 1 of this Agreement. In the event that this Agreement contains one or more option periods, the Expiration Date shall be subject to extension on such terms, and subject to such conditions, as provided in this Agreement. In the event that there is not a specific Expiration Date set forth on page 1, the Port shall confirm the Expiration Date in the manner provided for notice in Section 23.1 of this Agreement.

1.18 Franchisor. “Franchisor” shall have the meaning set forth in Section 6.7 of this Agreement.

1.19 Gross Sales. “Gross Sales” shall mean the total dollar amount derived from the sale or delivery of any food, beverages, or merchandise or the performance of any services from, in, upon or arising out of the Premises, whether by Concessionaire, any subtenants, licensees or concessionaires of Concessionaire, or any other person on Concessionaire’s behalf, whether at

wholesale or retail, and whether for cash, check, credit (including charge accounts), exchange or in kind (specifically including the amount of credit allowed for any trade-ins). No deduction shall be permitted for credit card fees (e.g., interchange or processing fees) or thefts, and for uncollected or uncollectible credit or charge accounts. No deduction shall be permitted for sales discounts (such as prompt-payment discounts) that are not specifically reflected on the original invoice/receipt at the time of the sale. Gross Sales shall, without limiting the generality of the foregoing, also include:

1.19.1 Orders that originate or are accepted at the Premises, even if delivery or performance is made from or at any other place. All sales made and orders received at the Premises shall be deemed as made and completed therein, even though payment of account may be transferred to another office/location for collection.

1.19.2 Orders that result from solicitation off the Premises but which are delivered or performed from the Premises or by personnel either operating from the Premises or reporting to or under the control or supervision of any employee employed at the Premises.

1.19.3 Mail, catalog, computer, internet, telephone, or other similar order received at, ordered from, or billed from the Premises.

1.19.4 Sales originating from whatever source, and which Concessionaire (or Concessionaire's subtenants, licensees or concessionaires) in the normal and customary course of Concessionaire's (or Concessionaire's subtenant's, licensee's or concessionaire's) operations would credit or attribute to Concessionaire's (or Concessionaire's subtenant's, licensee's or concessionaire's) business conducted in the Premises;

1.19.5 Display Allowances, whether received by Concessionaire or its subtenant, licensee or concessionaire; and

1.19.6 All monies or other things of value received by Concessionaire (or Concessionaire's subtenant, licensee or concessionaire) from Concessionaire's (or Concessionaire's subtenant's, licensee's or concessionaire's) operations at, upon or from the Leased Premises which are neither included in nor excluded from Gross Sales by the other provisions of this definition, including without limitation, finance charges, late fees, and all deposits not refunded to customers.

"Gross Sales" shall not include, and may be adjusted to exclude, the following when properly recorded and accounted for:

1.19.7 Tips and gratuities paid directly to employees;

1.19.8 The exchange of merchandise between stores of Concessionaire (or Concessionaire's subtenant, licensee's or concessionaire's) where such exchanges are made solely for the convenient operation of Concessionaire's (or Concessionaire's subtenant's, licensee's or concessionaire's) business and not for the purpose of consummating a sale which has been made at, upon or from the Premises;

1.19.9 Returns to shippers or manufacturers with no mark-up;

1.19.10 Allowances or refunds allowed by Concessionaire to customers because of unacceptable or unsatisfactory goods or services to the extent such allowance or refund was actually granted and adjustment actually made;

1.19.11 Complimentary meals, the amount of any employee discount on meals, and any meals provided by Concessionaire to its employees without cost as a benefit;

1.19.12 The amount of any sales tax or other excise tax imposed upon the customer and collected by Concessionaire as agent for the taxing body imposing the tax and billed to the customer as a separate item;

1.19.13 Revenue from the sale of uniforms or clothing to Concessionaire's employees where it is required that such uniforms or clothing be worn by said employees;

1.19.14 Any sums that represent discounts so long as the amount of the discount is shown on the face of the receipt issued to the customer; and

1.19.15 Any item, such as the cost of third-party shipping, for which the Concessionaire is reimbursed at actual cost therefor; provided, however, in the event that Concessionaire charges a customer more than the actual cost of such item (specifically including through the inclusion of a "handling" or similar charge by Concessionaire), the entire amount shall be includable with Gross Sales and shall not be subject to exclusion.

1.20 Initial Improvements. "Initial Improvements" shall the meaning set forth in Section 7.2.1 of this Agreement.

1.21 Initial Improvement Amount. "Initial Improvement Amount" shall mean and refer to the dollar amount, expressed per square foot of the Premises, set forth on page 1 of this Agreement.

1.22 Legal Requirements. "Legal Requirements" shall mean and refer to all laws, statutes and ordinances including building codes and zoning regulations and ordinances and the orders, rules, regulations and requirements of all federal, state, county, city or other local jurisdiction departments, agencies, bureaus, offices and other subdivisions thereof, or any official thereof, or of any other governmental, public or quasi-public authority, including the Port, which may be applicable to or have jurisdiction over the Premises.

1.23 Lien. "Lien" shall mean and refer to any mortgage, lien, security interest, encumbrance, charge on, pledge of, conditional sale or other encumbrance on the Premises or the Initial Improvements, Midterm Refurbishment, any Alteration, fixture, improvement or appurtenance thereto.

1.24 Midterm Deadline. "Midterm Deadline" shall have the meaning set forth on page 1 of this Agreement.

1.25 Midterm Refurbishment. "Midterm Refurbishment" shall have the meaning set forth in Section 7.2.2 of this Agreement.

1.26 Minimum Monthly Guarantee. “Minimum Monthly Guarantee” shall have the meaning set forth in Section 4.1 of this Agreement.

1.27 Net Book Value of Concessionaire’s Leasehold Improvements. “Net Book Value of Concessionaire’s Leasehold Improvements” shall have the meaning set forth in Section 17.5 of this Agreement.

1.28 Occupancy Date. “Occupancy Date” shall mean the date set forth on page 1 of this Agreement. . In the event that there is not a specific Occupancy Date set forth on page 1, the Port shall confirm the Occupancy Date in the manner provided for notice in Section 23.1 of this Agreement.

1.29 Percentage Fee. “Percentage Fee” shall have the meaning set forth in Section 4.2 of this Agreement.

1.30 Port. “Port” shall mean the Port of Seattle, a Washington municipal corporation.

1.31 Port Representative. “Port Representative” shall mean the Port employee having primary responsibility for the Port’s Airport concessions program as designated (from time to time) by the Port in writing.

1.32 Port Standards. “Port Standards” shall mean the Sea-Tac Rules and Regulations, the Regulations for Airport Construction, the Tenant Design and Construction Process Manual , the CAD Standards Manual, the Airport Dining and Retail Design Guidelines, the Port’s mechanical, electrical, water and waste, and industrial waste and storm drainage standards and any other, similar document establishing requirements and/or standards for design and construction at the Airport.

1.33 Premises. “Premises” shall have the meaning set forth on the first page of this Agreement under the Key Agreement Terms.

1.34 Removable Fixtures. “Removable Fixtures” shall have the meaning set forth in Section 7.4 of this Agreement.

1.35 Rent. “Rent” shall mean and refer collectively to sums denominated as either Minimum Monthly Guarantee, Percentage Fee, Additional Rent or any other sums or charges otherwise payable by Concessionaire under the terms of this Agreement. Failure by Concessionaire to pay any sum denominated as Rent shall entitle the Port to pursue any or all remedies specified in this Agreement as well as remedies specified in RCW Chapter 59.12 or otherwise allowed by law.

1.36 Rent Commencement Date. “Rent Commencement Date” shall mean the date set forth on page 1 of this Agreement. In the event that there is not a specific Rent Commencement Date set forth on page 1, the Port shall confirm the Rent Commencement Date in the manner provided for notice in Section 23.1 of this Agreement.

1.37 Security. “Security” shall have the meaning set forth in Section 5.1 of this Agreement.



## SECTION 2: LEASED PREMISES

2.1 Premises. Effective on the Occupancy Date, the Port hereby leases to Concessionaire and Concessionaire hereby leases from the Port, the Premises.

2.2 Acceptance of the Premises. Concessionaire shall promptly examine the Premises following the Occupancy Date. Unless Concessionaire provides the Port with written notice of any defect or problem within ten (10) working days of the Occupancy Date, Concessionaire shall have accepted them in their present, "as-is" condition, and agrees to make any changes in the Premises necessary to conform to federal, state and local law applicable to Concessionaire's use of the Premises, and obtain necessary permits therefor.

2.3 Quiet Enjoyment. So long as Concessionaire is not in default under this Agreement and subject to the specific provisions, covenants and agreements contained in this Agreement, the Port covenants and agrees that the quiet and peaceful possession and enjoyment of the Premises by Concessionaire shall not be disturbed or interfered with by the Port or by any other party claiming by or through the Port.

2.4 No Warranty. The Port makes absolutely no warranty, promises or representations as to the economic viability of any concession location, including the Premises. Passenger counts, passenger flows and other customer traffic are for the most part products of airline schedules and gate utilization. Further, Federal Aviation Administration and Transportation Security Administration rules and regulations governing security and emergency situations may restrict access to the Airport or portions thereof. Except as specifically set forth in this Agreement, Concessionaire shall not be entitled to any relief in the event passenger counts, passenger flow, customer traffic, or Gross Sales are other than Concessionaire predicted or projected.

## SECTION 3: TERM

Agreement Term. Unless earlier terminated pursuant to any provision of this Agreement, the term shall commence on the Occupancy Date and continue until the Expiration Date.

## SECTION 4: RENT

Lessee shall pay to the port, for the concession rights and privileges granted herein, the following

### 4.1 Minimum Monthly Guarantee

4.1.1 *First Agreement Year*. For the first Agreement Year, there will be no Minimum Monthly Guarantee. Concessionaire will pay Percentage Fee only.

4.1.2 *Second and Subsequent Agreement Years*. For the second and each subsequent Agreement Year, the Minimum Monthly Guarantee shall be an amount equal to one twelfth (1/12) of eighty five percent (85%) of the total amount (whether by Minimum Monthly Guarantee or Percentage Fees) paid by Concessionaire to the Port for the previous Agreement Year.

4.1.3 *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, the Minimum Monthly Guarantee payment due for the next month shall automatically be adjusted downward by the percentage decrease in the number of Enplaned Passengers for the month experiencing the decrease. For example, if the number of Enplaned Passengers for the month of July 2007 declined by 25% over the number of Enplaned Passengers for the month of July 2006, then the Port will reduce the Minimum Monthly Guarantee amount payable for the month of August 2007 by 25%.

4.1.4 *Payment in Advance.* All payments of the Minimum Monthly Guarantee shall be payable in advance, on or before the first day of each and every month during the term hereof, without written notice from the Port and without setoff or deduction.

4.2 Percentage Fees. Commencing on the Rent Commencement Date, Concessionaire shall also pay the Port a percentage fee (the "Percentage Fee"), to the extent the Percentage Fee is higher than the payment of the Minimum Monthly Guarantee paid to the Port pursuant to Section 4.1.. On or before the fifteenth (15<sup>th</sup>) day of each month, Concessionaire shall submit to the Port a detailed statement showing the Gross Sales generated from the concession during the preceding month (the "Monthly Report") and shall simultaneously pay to the Port the Percentage Fee due for that preceding month less the payment of the Minimum Monthly Guarantee already paid by the Concessionaire for that month. The Monthly Report shall be filed using the technology and procedures designated by the Port and shall show such reasonable detail and breakdown as may be required by the Port. If the Port instructs Concessionaire to file the Monthly Report or any other report by computer, e-mail, or internet website, the Port shall not be obligated to furnish Concessionaire with the equipment or systems necessary to do so. The failure to timely provide the reports required by this Section shall be grounds for the imposition of liquidated damages as provided in Exhibit E.

4.3 Contract Rent. The Port and Concessionaire agree that the first seven percent (7%) of the Gross Sales paid to the Port (whether paid as part of the Minimum Monthly Guarantee or as Percentage Fees) shall be the contract rent for the Premises for purposes of the Leasehold Excise Tax Payable pursuant to Chapter 81.29A of the Revised Code of Washington. All amounts in excess of the first seven percent of the Gross Sales shall be consideration for the concession rights granted under this Agreement.

4.4 Additional Rent. During this term of this Agreement, Concessionaire shall also pay to the Port, within ten (10) days of invoice, any maintenance and repair charges required by Article \_\_, any utility charges required by Article \_\_, and such other amounts as may be owing by Concessionaire to the Port pursuant to the terms of this Agreement.

#### 4.5 Payments; Automatic Transfer.

4.5.1 All Rent due under this Agreement shall be paid in lawful money of the United States of America. Concessionaire may not pay any Rent due utilizing a credit card or other, similar instrument for which the Port must pay a commission or discount on the gross funds remitted; all payments shall be made by check, ACH credit transfer, or other form of payment approved by the Port. In the event the Concessionaire delivers a dishonored check or

draft to the Port in payment of any obligation arising under this Agreement, Concessionaire shall pay a service charge in the amount established by the Port from time to time, along with interest thereon at eighteen percent (18%) per annum from the original due date of such dishonored check or draft without further demand. In such event, the Port may require that future payments be made by cashier's check or other means acceptable to the Port.

4.5.2 Instead of requiring Concessionaire to pay Rent or other charges in a manner pursuant to Section 4.5.1, the Port may, 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 Agreement shall be debited monthly or from time to time, as provided in this 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.

4.5.3 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.

4.5.4 In the event that Concessionaire elects to designate a different bank or financial institution from which any fees or other charges under the Agreement are automatically debited, notification of such change and the required documents, instruments, authorizations, and certificates specified in Section 4.5 must be received by the Port no later than thirty (30) days prior to the date such change is to become effective.

4.5.5 Concessionaire agrees that it shall remain responsible to the Port for all payments of Rent and other charges pursuant to the 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.

4.5.6 Concessionaire's failure to properly designate a bank or financial institution or to promptly provide appropriate information in accordance with this Section 4.5.2 shall constitute a default of this Agreement.

#### 4.6 Late Charges.

4.6.1 Concessionaire hereby acknowledges that late payment by Concessionaire to the Port of Rent, or any portion thereof, or any other sums due hereunder will cause the Port to incur costs not otherwise contemplated by this Agreement. Accordingly, if any installment of Rent, or any portion thereof, or any other sum due from Concessionaire shall not be received by the Port within ten (10) days after such amount shall be due, then, without any requirement for notice by the Port to Concessionaire, Concessionaire shall pay the Port a late charge equal to five percent (5%) of such overdue amount unless such late charge is specifically waived by the Port in writing. The parties agree that such late charge represents a fair and reasonable estimate of the costs the Port will incur by reason of late payment by Concessionaire. Acceptance of such late

charge by the Port shall in no event constitute a waiver of Concessionaire's default with respect to such overdue amount, nor prevent the Port from exercising any of the other rights and remedies granted hereunder.

4.6.2 In the event that a late charge is payable in this Agreement or otherwise, whether or not collected, for three (3) installments of Rent and/or other remuneration in any 12-month period, then the Minimum Monthly Guarantee and/or other remuneration shall, upon the Port's election, become due and payable quarterly in advance, rather than monthly, notwithstanding Section 4.1.1 or any other provision of this Agreement to the contrary.

4.6.3 In addition to the late charges provided for in this Section, interest shall accrue on any unpaid Rent and/or other remuneration, or any other sums due hereunder, at the Default Rate from the date due until paid.

#### 4.7 Accounting Procedures.

4.7.1 Records. Concessionaire covenants and agrees that it will establish and maintain an accounting system (specifically including all books of account and records customarily used in the type of operation permitted by this Agreement) in full and complete accordance with generally accepted accounting principles and otherwise reasonably satisfactory to the Port for the determination of any Rent or other computations, which may be necessary or essential in carrying out the terms of this Agreement. Concessionaire shall maintain its records relating to the operation permitted by this Agreement for a period of at least three (3) years after the end of each Agreement Year (or until the close of any ongoing audit thereof being conducted by, or on behalf of, the Port); provided, however, that the Port may request that any such records be retained for a longer period of time, in which case Concessionaire, at its option, may deliver such records into the custody of the Port.

4.7.2 Daily Sales Reporting. Concessionaire shall participate in a daily sales reporting program. Under the program, Concessionaire shall report, by the close of business the following day, the amount of Gross Sales earned by Concessionaire each calendar day, including such detail as reasonably requested by the Port (including, but not limited to, such things as location and concession category). Concessionaire may, but shall not be obligated, to delegate responsibility for reporting Gross Sales generated in any subleased space to the operator of such subleased space; provided, however, Concessionaire shall nonetheless remain responsible for full compliance with the program in the event it makes such delegation. The failure to timely provide the reports required by this Section shall be grounds for the imposition of liquidated damages as provided in Exhibit E.

4.7.3 Annual Report. Concessionaire shall provide the Port with a report (the "Annual Report"), due within sixty (60) days after the close of each Agreement Year, that reflects the amount of Gross Sales for the preceding Agreement Year (or, in the case of the first Agreement Year, from the period from the Rent Commencement Date until the end of the first Agreement Year). The Annual Report shall be accompanied by a signed certificate of an independent Certified Public Accountant (CPA), Concessionaire's Chief Financial Officer or Chief Executive Officer stating specifically that (a) he/she has examined the Annual Report, (b) his/her examination included such tests of Concessionaire's books and records as he/she

considered necessary or appropriate under the circumstances, (c) such report presents fairly the information reflected for the preceding Agreement Year (or, in the case of the first Agreement Year, from the period from the Rent Commencement Date until the end of the first Agreement Year), (d) the information reflected conforms with and is computed in compliance with the definitions set forth in this Agreement, and (e), if the certificate is submitted by a CPA, the standards observed by the CPA in its audit are such that it planned and performed the audit to obtain reasonable assurances that Concessionaire's report is free from material misstatement. The Annual Report shall be provided in writing and/or electronic format as reasonably specified by the Port, and in addition to such other detail as the Port may reasonably require, the Annual Report shall breakdown Gross Sales by month, location, and product category. Any additional or unpaid Rent or fees due for the prior Agreement Year shall be submitted with the Annual Report. The failure to timely provide the reports required by this Section shall be grounds for the imposition of liquidated damages as provided in Exhibit E.

4.7.4 Other Reports. In addition to any reports otherwise required under the terms of this Agreement, Concessionaire shall provide the Port with: a statement, due within thirty (30) days of any request by the Port, which request shall not be made any more frequently than once each Agreement Year, of (i) Net Book Value of Concessionaire's Leasehold Improvements (the "NBV Report"), calculated in conformance with the rules set forth in Section 17.5; and (ii) the number of persons with employment at the Airport under this Agreement and other information related to the quality of such employment, and (iii) such other and further reports, on such frequency as the Port may reasonably require from time to time, all without any cost to the Port. All such reports shall be provided in writing and/or electronic format as reasonably specified by the Port from time to time. The failure to timely provide the reports required by this Section shall be grounds for the imposition of liquidated damages as provided in Exhibit E.

#### 4.8 Audit.

4.8.1 Right to Audit. The Port shall have the right to inspect and audit, through its accountants or representatives, Concessionaire's records with reference to the determination of any matters relevant to this Agreement, and Concessionaire shall make or cause to be made the records readily available for such examination. The Port may undertake such inspection and/or audit at any reasonable time and from time to time. In the event that Concessionaire's Records are not maintained in the Puget Sound region, they shall be made available for audit locally within five (5) business days of a request by the Port, or Concessionaire shall pay in full, any travel and related expenses of Port representative(s) to travel to the location outside the Puget Sound region. In addition, the Port shall have the right to conduct a "surprise" audit not more frequently than twice every twenty four (24) months, and, in the event that Concessionaire's books and records are not maintained locally, Concessionaire shall further pay in full, any travel and related expenses of the Port representative(s) to travel the location outside the Puget Sound region for such "surprise" audit(s).

4.8.2 Right to Review Records of Concessionaire's Other Stores. In connection with the audit, the Port or its representative will have the right to inspect the records from any other store operated by Concessionaire, but only if such inspection is reasonably necessary to verify Concessionaire's reportable Gross Sales.

4.8.3 Right to Copy Concessionaire's Records. The Port or its representatives shall have the right to copy any and all Records of Concessionaire supporting Gross Sales or any other matter the determination of which is relevant to this Agreement.

4.8.4 Concessionaire Must Reconstruct Insufficient Documentation. If upon examination or audit the Port's accountant or representative determines that sufficient documentation is not maintained, retained, or available to verify Concessionaire's actual Gross Sales or any other matter the determination of which is relevant to this Agreement, Concessionaire shall pay for the cost of such visit, and in addition, should the Port deem it necessary, Concessionaire shall reconstruct, at its sole cost and expense, all records for the determination of Gross Sales or any other matter the determination of which is relevant to this Agreement for any period being audited. If, in the Port's determination, Concessionaire fails to reconstruct all Records in accordance with this Section, then in addition to any remedies under this Agreement or at law, the Port shall be entitled to collect as Additional Rent an additional amount equal to twenty-five percent (25%) percent of the Base Rent payable by Concessionaire during the period in question.

4.8.5 If Gross Sales are Under-Reported. If any such audit discloses that the actual Gross Sales exceed those reported:

4.8.5.1 Concessionaire shall forthwith pay the Percentage Rent due along with interest at the Default Rate; and

4.8.5.2 If the audit reveals a discrepancy of more than two percent (2%) of the Percentage Rent reported in accordance with Section 4.2 above for any twelve (12) month period, Concessionaire shall forthwith pay the cost of such audit along with interest at the Default Rate; and

4.8.5.3 The Port shall have, in addition to the foregoing rights to costs and any other rights and remedies available to the Port under this Agreement or at law, the right to terminate this Agreement, if such audit discloses that said Gross Sales exceeded those reported by more than ten percent (10%).

4.8.6 If Gross Sales are Over-Reported. If Concessionaire over-reports its Gross Sales and is due a refund, Concessionaire will be granted a credit toward future rents after deducting the cost of the audit.

4.8.7 Subtenant's Records. If Concessionaire subleases, licenses, or in any manner allows the Premises to be used by another party, Concessionaire is responsible for ensuring that all of such party(ies) Records conform to the requirements of this Agreement. The failure of any such party to maintain its Records as required under this Agreement, or correctly report gross sales, will be deemed a failure on the part of Concessionaire to conform to the requirements of this Agreement.

## SECTION 5: SECURITY

5.1 Security. Concessionaire shall, upon execution of this Agreement, obtain and deliver to the Port a good and sufficient corporate surety company bond, irrevocable stand-by

letter of credit, or other security in a form approved by the Port in the amount set forth on page 1 of this Agreement (hereinafter referred to as "Security"), to secure Concessionaire's full performance of this Agreement, including the payment of all fees and other amounts now or hereafter payable to the Port hereunder. In the event that a late charge is payable under Section 4.6 (whether or not collected) for three (3) installments of Rent in any twelve (12) month period, the amount of the Security shall, at the Port's election, be doubled. The amount, form, provisions and nature of the Security, and the identity of the surety or other obligor thereunder, shall at all times be subject to the Port's approval. The Security shall remain in place at all times throughout the full term of this Agreement and throughout any holdover period. If the Security is in a form that periodically requires renewal, Concessionaire must renew the Security not less than 45 days before the Security is scheduled to expire. 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.

5.2 Return of Security. The Security is a part of the consideration for execution of this Agreement. If Concessionaire shall have fully performed all terms and conditions of this Agreement, any cash deposit security shall be paid to Concessionaire within sixty (60) days following the termination (or expiration) date without interest; otherwise the Port shall, in addition to any and all other rights and remedies available under this Agreement or at law or equity, retain title thereto.

5.3 Application of Security. The Port may apply all or part of the Security to unpaid Rent or any other unpaid sum due hereunder, or to cure other defaults of Concessionaire. If the Port uses any part of the Security, Concessionaire shall restore the Security to its then-currently required amount within fifteen (15) days after the receipt of the Port's written request to do so. The retention or application of such Security by the Port pursuant to this Section does not constitute a limitation on or waiver of the Port's right to seek further remedy under law or equity.

## SECTION 6: USE OF PREMISES

6.1 Use of Premises. Concessionaire shall use the Premises for the purpose of a nail salon with services including manicure, pedicure and foot massage. As an incidental use, not more than 25% of the Premises shall be used for body care and beauty supplies and shall not use them for any other purpose without the written consent of the Port. Concessionaire recognizes that the specific limited use prescribed herein is a material consideration to the Port in order that the Airport will, in the Port's sole discretion, maintain an appropriate tenant mix so as to efficiently serve the traveling public and to produce the maximum Gross Sales possible for all tenants.

6.2 Rights Are Non-Exclusive. Concessionaire's rights and privileges in this Agreement are non-exclusive, and nothing herein shall preclude the Port from entering into an agreement with any other parties during the term of this Agreement for the sale in any part of the Airport of the same or similar food, beverages, merchandise or service which Concessionaire is permitted to sell or offer hereunder, whether such agreements are awarded competitively or through negotiations and regardless of whether the terms of such agreements are more or less favorable than the terms of this Agreement.

6.3 First Class Operations. In addition to, and not in lieu of, any other more specific standards that may be set forth in this Agreement, Concessionaire shall maintain a first class standard of service equivalent to the highest standards within the food and retail service industry (“First Class Manner”). For the purposes of this Agreement, First Class Manner shall mean the standard of products, cleanliness, and customer service that would be reasonably expected in upscale shopping malls and other similar high-quality airport and non-airport retail and food service facilities. The Port desires to provide the air travelers and the public with facilities, service, food, beverages and retail merchandise of first class quality. For food and beverage operations, Concessionaire must ensure that the air travelers and public are provided first class quality foods with adequate portions, comparable to or better than, that offered for sale in similar food service operations in the greater Seattle-Tacoma region offering like products. To comply with these requirements, Concessionaire must regularly review or cause to be reviewed the Premises and operations at the Airport. Unless shown to be unreasonable by “clear, cogent and convincing evidence,” the Port shall be the final arbiter of what constitutes a First Class Manner.

6.4 General Operating Standards. Concessionaire shall not use or occupy or permit the Premises or any part thereof to be used or occupied, in whole or in part, in a manner which would in any way: (i) violate any present or future Legal Requirements or Port Standards, (ii) violate any of the covenants, agreements, provisions and conditions of this Agreement, (iii) violate the certificate of occupancy then in force with respect thereto, (iv) as will constitute a public or private nuisance, (v) impair, in the Port’s reasonable judgment, with the character, reputation or appearance of the Airport or the Port, or (vi) occasion discomfort, inconvenience or annoyance to either the Port or its adjoining tenants. Without limiting the foregoing, Concessionaire specifically agrees to comply with all applicable rules and regulations of the Port, whether now in existence or hereafter promulgated, pertaining to (a) the Airport and its terminals, which exist for the general safety and convenience of the Port, its various tenants, invitees, licensees and the general public, and (b) the food and beverage areas located within the Airport.

6.5 Specific Operating Standards. Concessionaire shall, at all times, comply with the operating standards set forth on Exhibit D. Without limiting any other rights that may exist under this Agreement, Concessionaire acknowledges that it is subject to inspection as set forth on Exhibit D and shall be subject to specified liquidated damages for the failure to comply with any of the specified operating standards.

6.6 Street Pricing Policy. Concessionaire shall, at all times, comply with the street pricing policy set forth on Exhibit C. Without limiting any other rights that may exist under this Agreement, Concessionaire acknowledges that it is subject to the policies, requirements and submittals as set forth on Exhibit C and shall be subject to specified liquidated damages for the failure to comply with any of the specified policies.

6.7 Security Requirements. Concessionaire acknowledges that that Airport is an environment subject to substantial security regulations and requirements that may materially increase the cost of operating at the Airport. Concessionaire shall comply at all times with all local, state and federal laws, rules, regulations and security plans relating to homeland security (collectively, “Security Laws”) applicable to Concessionaire, its operations, and the Premises. Concessionaire shall be solely responsible for all of its costs of complying with any applicable



Security Laws as well as any fines or penalties incurred (whether by Concessionaire or the Port) as result of its failure to comply with such Security Laws.

6.8 Franchise. If the Premises are operated under a franchise, Concessionaire represents and warrants to the Port that Concessionaire has been granted the right to use any trade name that may be used at the Premises for the entire term of this 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 trade name at the Premises or to conduct an operation at the Premises of the type then conducted by or under license from Franchisor under Concessionaire’s trade name, shall constitute a material breach of Concessionaire’s obligations under this Agreement. Concessionaire agrees that if such Franchise Agreement is terminated, the Port shall have the right to terminate this Agreement pursuant to SECTION 16 of this Agreement.

6.9 No Liens. Concessionaire will not directly or indirectly create or permit to be created and/or to remain, a Lien upon the Premises, including any Initial Improvements, Midterm Refurbishment, Alterations, fixtures, improvements or appurtenances thereto, except those Liens expressly permitted by in writing by the Port. In the event any such Lien(s) have been created by or permitted by Concessionaire in violation of this provision, Concessionaire shall immediately discharge as of record, by bond or as otherwise allowed by law, any such Lien(s). Concessionaire 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 brought on or for the enforcement of such lien(s). As used in this Section, “Lien” shall mean and refer to any mortgage, lien, security interest, encumbrance, charge on, pledge of, conditional sale or other encumbrance on the Premises, any Alteration, fixture, improvement or appurtenance thereto, or any larger building and/or property of which the Premises may be a part.

## SECTION 7: IMPROVEMENTS

7.1 Improvements by the Port. The Port shall have no obligation to make any improvements to the Premises whatsoever. It is, however, understood that the Port may from time to time elect to alter, improve or remodel other portions of the Airport, and Concessionaire agrees that the portion of the Premises, if any, which is visible to the general public may be altered, remodeled or improved at the Port’s expense in connection with any such work. The Port shall further have the right, at its sole discretion, to make minor modifications to the Premises to accommodate Airport operations, renovations, maintenance, or other work to be completed in the Airport Terminals, which modifications will not generally involve the recapture or disruption of more than fifty (50) square feet of the Premises. In the event of any such modifications, the Port will revise the Premises through a written notice to Concessionaire rather than a formal amendment to the Agreement. Concessionaire agrees that any inconvenience resulting from any such work or modifications by the Port or its contractors and agents shall not be grounds for reduction of rent or fee if the same shall not unreasonably interfere with Concessionaire’s use of the Premises.

7.2 Improvements by Concessionaire.

7.2.1 Initial Improvements. Concessionaire shall make a minimum investment in initial leasehold improvements for the Premises, including architectural and engineering fees, construction costs, furniture, fixtures and equipment and other expenditures (the “Initial Improvements”), in an amount not less than the Initial Improvement Amount; provided, however, the Port may, in its sole discretion, agree to a lower amount in the event that Concessionaire can nonetheless satisfy all of the requirements of the Agreement, specifically including the Port Standards. Concessionaire shall complete the Initial Improvements and commence operations not later than the Build-Out Deadline; provided, however, the Build-Out Deadline may be extended to the extent of non-concurrent delays directly caused by the Port and/or force majeure events beyond the control of Concessionaire as set forth in Section 23.3. In the event that Concessionaire has not completed the Initial Improvements and commenced operations prior to the Build-out Deadline, Concessionaire shall, in addition to (and not in lieu of) any other rights or remedies the Port may have (whether under this Agreement or in law or in equity), pay the Port liquidated damages in the amount of the Delay Damages until Concessionaire has completed the Initial Improvements and commenced operations. Concessionaire and the Port agree that the Port will incur damages as a result of the failure to timely complete the Initial Improvements and commence operations, which damages are impractical or impossible to determine, and that this amount is a reasonable forecast of the damages to be suffered by the Port.

7.2.2 Midterm Refurbishment. On or before the Midterm Deadline, Concessionaire shall completely upgrade and refurbish the Premises (the “Midterm Refurbishment”) in a manner acceptable to the Port in order to maintain an attractive and inviting appearance to customers. In order to permit the timely completion of the Midterm Refurbishment, not later than one hundred twenty (120) days before the Midterm Deadline, Concessionaire shall submit to the Port Concessionaire’s proposed plan of refurbishment, specifically identifying those repairs and Alterations, including but not limited to painting and replacement of furniture, trade fixtures and equipment, that it intends to undertake. The Midterm Refurbishment shall be of quality equal to or better than the Initial Improvements, and all work (including, but not limited to, any Alterations) shall be subject to the prior written approval of the Port, which shall not be unreasonably withheld, conditioned or delayed. Concessionaire’s investment in the Midterm Refurbishment shall be not less than fifteen percent (15%) of the Initial Improvement Amount.

7.2.3 Other Alterations. Concessionaire, after completion of the Initial Improvements, may from time to time during the term make such non-structural changes, alterations, additions, substitutions or improvements (collectively referred to as “Alterations”) to the Premises, as Concessionaire may reasonably consider necessary and desirable to adapt or equip the Premises for Concessionaire’s use and occupancy. Concessionaire shall, however, make no Alterations (including as part of the Midterm Refurbishment) that will (a) cost in excess of \$15,000; or (b) involve structural work or changes; or (c) involve work or changes to the electrical, plumbing, heating, ventilation and air conditioning systems of the Premises without the Port’s prior written consent, which shall not be unreasonably withheld or delayed.

### 7.3 Standards for Alterations and Improvements.

7.3.1 Requirements. The Initial Improvements, Midterm Refurbishment, and all other Alterations shall be done at Concessionaire's sole cost and expense and at such times and in such manner as the Port may from time to time designate. Initial Improvements, Midterm Refurbishment, and all Alterations shall: (i) be of high quality, (ii) conform to the design criteria approved by the Port Representative, (iii) be of fireproof construction according to the standards of the local rating organization, (iv) be constructed in good and workmanlike manner, (v) be in full and complete accordance with all Legal Requirements and Port Standards, and (vi) be performed in a manner that will not unreasonably interfere with or disturb the Port or other tenants of the Port.

7.3.2 Permits. Before commencing the Initial Improvements, Midterm Refurbishment, or any Alterations for which the Port's consent is required, Concessionaire shall prepare plans and specifications and otherwise comply with the Port Standards. Except as otherwise specifically provided in this Agreement, Concessionaire shall obtain all necessary permits, including any discretionary permits. In the event the Port is required or has obtained any of the necessary permits, Concessionaire will reimburse the Port for any permit fees and associated costs in obtaining said permits.

7.3.3 Coordination. Concessionaire understands that the Airport is undergoing extensive remodeling. At all times during construction and installation of the Initial Improvements, the Midterm Refurbishment, any Alterations and any furniture, trade fixtures and/or equipment by Concessionaire, Concessionaire, its agents, employees and independent contractors shall cooperate with and coordinate activities and work with the Port construction managers and other concessionaires at or near the Premises.

7.3.4 Reports. Within ninety (90) calendar days of the completion of the Initial Improvements, Midterm Refurbishment, and all Alterations for which the Port's consent is required, Concessionaire shall provide the Port with: (a) a certified statement (subject to verification, audit and approval by the Port) specifying the total construction cost (including architectural, engineering and permitting costs) in such detail as reasonably necessary to ascertain the costs of all leasehold improvements, furniture, fixtures and equipment constructed or installed by Concessionaire in the Premises; (b) a certification that the improvements have been constructed in accordance with the approved drawings and specifications and in strict compliance with all Legal Requirements and the Port Standards; (c) a certified proof in writing demonstrating that no liens exist on any or all of the construction; and (d) a reproducible final copy of the plans as-built for all improvements along with computer discs as electronic files in a format compatible with the Port's CAD Standards Manual, to enable the Port to upgrade its existing files to reflect the as-constructed changes made by Concessionaire. The failure to timely provide the reports, statements and certifications required by this Section shall be grounds for the imposition of liquidated damages as provided in Exhibit E.

7.3.5 The failure to complete the Initial Improvements, Midterm Refurbishment, and any Alterations shall subject Concessionaire to such fines and penalties identified in the Port Standards.

7.4 Ownership of Alterations and Improvements. Other than those leasehold improvements which are installed and become such a part of the Premises that they cannot be

removed without substantial injury to the Premises, which improvements shall immediately become the property of the Port following installation, Concessionaire shall retain ownership of all furniture, trade fixtures and equipment from time to time installed in the Premises by Concessionaire at its expense (the "Removable Fixtures"). Concessionaire may remove any of the Removable Fixtures at any time during the term and shall remove all thereof prior to the expiration of the term. Any Removable Fixtures or other property of Concessionaire not removed at the expiration of the term shall, at the election of the Port, become the property of the Port without payment to Concessionaire, or be deemed abandoned and removed by the Port, at Concessionaire's expense. Upon any removal of such property, Concessionaire 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 Concessionaire and repairing any such damage not repaired by Concessionaire; this covenant shall survive the termination of this Agreement.

#### 7.5 Signs.

7.5.1 No signs, promotions or other advertising matter, symbols, canopies or awnings (collectively "Signs") shall be attached to or painted on within, or outside the Premises, including the walls, windows and doors thereof, without the prior written approval of the Port. Any permitted Sign shall be professionally prepared. The Port may, without notice and without any liability therefore, enter the Premises and remove any items installed or maintained by Concessionaire in violation of the provisions of this Section 7.5. At the termination or sooner expiration of this Agreement, Concessionaire shall remove all such Signs attached to or painted by Concessionaire at its own expense, and Concessionaire shall repair any damage or injury to the Premises and correct any unsightly condition caused by the maintenance and removal of said Signs. Specific requirements with regard to signage are contained in Exhibit D.

7.5.2 If Concessionaire fails to comply with the requirements of this Section 7.5, the Port shall have the right to require Concessionaire to restore the Premises to the condition existing immediately prior to the unauthorized installation or modification of the Sign. In the event that Concessionaire fails to restore the Premises within three (3) days following notice by the Port, Concessionaire shall, in addition to (and not in lieu of) any other rights or remedies the Port may have (whether under this Agreement or in law or in equity), pay the Port liquidated damages in the amount identified on Exhibit E until Concessionaire has restored the Premises. Concessionaire and the Port agree that the Port will incur damages as a result of the failure to restore the Premises, which damages are impractical or impossible to determine, and that this amount is a reasonable forecast of the damages to be suffered by the Port.

### SECTION 8: MAINTENANCE AND REPAIR

#### 8.1 Maintenance and Repair by Port.

8.1.1 The Port shall keep and maintain the foundations, roof, common areas and common utilities up to the point of Concessionaire's connection, and structural portions of the exterior walls of the Premises (excepting any walls which are installed by or on behalf of Concessionaire) in good order, condition and repair. The Port shall perform this work at its sole cost and expense, except to the extent that any such repairs may be required as a result of

damage caused by negligence of Concessionaire or its agents, employees, invitees or licensees, in which event the work shall be at the cost or expense of Concessionaire. The Port shall perform such repair or maintenance work called to its attention by Concessionaire within a reasonable period of time after receipt of such notice by Concessionaire. There shall be no abatement or reduction of Rent, and the Port shall not be responsible for any loss or damages to Concessionaire's business, arising by reason of the Port making any repairs, alterations or improvements.

8.1.2 Absent an election as provided in Section 8.2.1, the Port shall maintain all utility services (including, but not limited to, electrical, water, gas, sewer, HVAC, etc.) installed by Concessionaire outside the Premises, and may charge Concessionaire for the cost of maintaining such services.

8.1.3 The Port shall, at Concessionaire's cost, provide pest control services to the Premises as part of the Port's Unified Pest Management Program.

## 8.2 Maintenance and Repair by Concessionaire.

8.2.1 Subject only to the specific obligations of the Port set forth in Section 8.1 and the attached Exhibit D Operations Standards, Concessionaire shall, at its sole cost and expense, keep the Premises, and every part thereof and any fixtures, facilities or equipment contained therein, in good order, condition and repair at all times. Concessionaire shall likewise comply with any preventative maintenance practices established by the Port. Concessionaire shall 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 Premises are in good order, condition and repair. Without limiting the generality of the foregoing, Concessionaire shall keep the heating, air conditioning, electrical, plumbing and sewer systems, floors, doors, security grilles, interior walls, ceilings, window frames, glass and all portions of the storefront area in a good state of repair. Concessionaire shall perform all maintenance, repairs, or replacements using quality materials equal to the original, and, if materially changed from the original, shall be subject to the prior written approval of the Port. The Port may require Concessionaire to maintain, at Concessionaire's expense, all utility services installed by Concessionaire outside the Premises.

8.2.2 Concessionaire shall also keep the Premises neat, clean and in sanitary condition and follow best practices for hygiene to keep the Premises free from infestation of pests and conditions which might result in harborage for, or infestation of, pests. Concessionaire shall reimburse the Port for the pest control services provided by the Port pursuant to Section 8.1.3 at the then-current rate set forth in Seattle-Tacoma International Airport Tariff No. 1, as the same may be revised or replaced from time-to-time. In the event that Concessionaire otherwise contracts for the provision of pest control services, any such services shall be supplemental to those provided by the Port under Section 8.1.3, and Concessionaire and its pest control contractor shall specifically coordinate its services with the Port's selected Unified Pest Management Program contractor.

8.2.3 Concessionaire shall perform all maintenance, repairs, or replacements using quality materials equal to the original, and, if materially changed from the original, shall be

subject to the prior written approval of the Port. In the event fixtures and/or equipment are installed in, affixed to, or served by, roof vents or other similar air openings serving the Premises, Concessionaire shall keep such vents and openings free from the accumulation of grease, dirt, and other foreign matter, and shall furnish and service any and all filters or similar equipment considered necessary by the Port, monthly or as often as necessary.

8.2.4 The failure to perform the maintenance and repair required by this Section shall be grounds for the imposition of liquidated damages as provided in Exhibit D.

8.3 Annual Review. On or about the commencement of each Agreement Year, the Port and Concessionaire shall tour the Premises and jointly agree upon what, if any, routine refurbishment is required to maintain the Premises in a First Class Manner, as required by Section 6.3, and Concessionaire shall, except to the extent any such work is the responsibility of the Port under Section 8.1, promptly undertake any necessary repair, maintenance, or Alterations at Concessionaire's expense. If the Port and Concessionaire cannot jointly agree upon the type and extent of refurbishment necessary, the Port may, as set forth in Section 6.3, determine the refurbishment required. For purposes of this Section, "refurbishment" shall generally be limited to the routine repainting or redecoration of concession space within the Premises, including the replacement or repair of worn carpet, tile, furnishings, fixtures, finishes, or equipment. Nothing in the requirement for an annual review, however, shall relieve Concessionaire from the obligation to maintain Premises in a First Class Manner on an ongoing basis as required by Section 6.3, and Concessionaire shall specifically perform maintenance and refurbishment as needed to continuously comply with that standard.

## SECTION 9: UTILITIES

9.1 Utilities. Concessionaire shall be liable for and shall pay throughout the term of this Agreement, all charges for all utility services furnished to the Premises, including, but not limited to, light, heat, electricity, gas, water, cable television, grease interceptor, sewerage, fire protection, recycling, garbage disposal and janitorial services. For any utility services furnished by the Port, Concessionaire shall pay the Port for such services at the then-current rate set forth in Seattle-Tacoma International Airport Tariff No. 1, as the same may be revised or replaced from time-to-time.

Connections and Meters. Without limiting the generality of the language set forth in Section 9.1, the following additional requirements related to utility services for the Premises shall apply unless otherwise expressly agreed by the Port in writing:

9.1.1 HVAC. Concessionaire shall – at its cost – furnish, install and maintain any ductwork and other connections within or leading into the Premises, and shall connect and complete the heating, ventilating and air conditioning (HVAC) from the Airport's central system. Thereafter, the Port shall, without charge, furnish normal and reasonable quantities of central air from the central HVAC system to the Premises and all necessary power and electricity for such central air circulation. Subject to conditions beyond its control, the Port shall maintain under normal conditions a temperature adequate for comfortable occupancy according to the season; provided, that Concessionaire properly maintains the ductwork and other connections within or

leading into the Premises and complies with the recommendations of the Port regarding reasonable occupancy and use of the Premises.

9.1.2 Electricity and Lighting. Concessionaire shall – at its cost – furnish, install and maintain an electric meter for the Premises at a location and of a type specified by the Port. Concessionaire shall also – at its cost – furnish, install and maintain all lighting fixtures and wiring for general illumination of the Premises. Levels of illumination and wattage requirements shall be subject to the approval of the Port.

9.1.3 Water, Natural Gas, and Sewerage. To the extent water or natural gas is required by Concessionaire for its operations, Concessionaire shall – at its cost – furnish, install and maintain a water and natural gas meter for the Premises at a location and of a type specified by the Port.

9.1.4 Cabling and Communications. Concessionaire shall use the Port’s cabling and communications system for its operations at the Airport when such cabling and communications system has been installed by the Port, and Concessionaire shall pay a user fee as will be determined by the Port. In the event Concessionaire is allowed to install communication equipment, any such installation shall be subject to the Port regulation.

9.1.5 Garbage and Recycling. Concessionaire shall use the garbage and recycling areas provided by the Port. Concessionaire is required to participate in all garbage and recycling programs. This includes, but is not limited to, composting, cardboard/mixed and glass recycling, bulk grease and any other programs that may be instituted by Port.

9.2 Common Area Maintenance. The Port shall have the right to institute and charge a monthly maintenance fee to offset the costs of maintenance and repair of common areas (whether or not public) from which Concessionaire and other concession tenants benefit. The specific amount will be established based on the specific concession type reasonably determined by the Port (e.g. retail, service or food & beverage). However, the Port shall have no right to charge Concessionaire, and Concessionaire shall have no obligation to pay, such amount until such time as not less than fifty percent (50%) of other concessions tenants at the Airport, both in both number and total Gross Sales for the particular concession type, are subject to payment of such amount.

### 9.3 Utility Interruptions.

9.3.1 The Port shall have the right to shut down electrical energy to the Premises (or portions thereof) when necessitated by safety, repairs, alterations, connections, upgrades, relocations, reconnections, or for any other reason, with respect to the Airport’s electrical system (singularly or collectively, “Electrical Work”), regardless of whether the need for such Electrical Work arises in respect of the Premises or elsewhere in the Airport. Whenever possible, the Port shall give Concessionaire no less than two (2) days prior notice for such electricity shutdown. The Port shall use all reasonable efforts to not shut down Concessionaire’s electrical energy for such Electrical Work during business hours unless such Electrical Work shall be: (a) required because of an emergency; or (b) required by the electricity company

servicing the Airport or by any governmental or quasi-government law, rule, code, directive, or order.

9.3.2 Concessionaire further acknowledges that interruptions in utility services (including, without limitation, electrical service) are not uncommon in facilities such as the Airport, and Concessionaire acknowledges that it will, at its cost and expense, protect any sensitive electronic equipment which may be used in the Premises from utility service interruptions through the use of backup power supplies, surge protectors, and other appropriate safety systems as Concessionaire deems reasonable and necessary. Concessionaire acknowledges that it has taken or will take all precautions it deems necessary to protect its equipment in, on and around the Airport, including the acquisition of insurance.

9.3.3 The Port shall not be liable to Concessionaire for any damages or losses (including, without limitation, indirect or consequential damages or attorneys' fees) sustained to any equipment installed by Concessionaire or otherwise caused by any utility service shut downs, interruptions or failures, nor shall the same constitute an eviction or disturbance of Concessionaire's use or possession of the Premises or a breach of the Port's obligations hereunder. However, if any utility interruption is within the control of the Port, the Port shall use reasonable efforts to restore utility service to Concessionaire promptly. If the Port fails to use such reasonable efforts and such interruption or failure continues for more than two (2) days, then as Concessionaire's sole and exclusive remedy, the Minimum Monthly Guarantee shall equitably abate until utility service is resumed.

9.3.4 Energy Conservation. 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 or energy related services, or as may be required to comply with any applicable codes, rules and regulations, whether mandatory or voluntary.

## SECTION 10: TAXES

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

10.2 Personal Property Taxes. Concessionaire 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 Concessionaire. If any such taxes on Concessionaire'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, Concessionaire shall, upon demand, repay to the Port the taxes so levied.

## SECTION 11: COMMON AREAS

11.1 Control of Common Areas by Port. The Port shall at all times have the exclusive control and management of the roof, walls, parking areas, access roads, driveways, sidewalks, concourses, loading docks, washrooms, elevators, escalators, stairways, hallways and other areas, improvements, facilities and/or special services provided by the Port for the general use, in common, of Airport users and tenants ("common areas and facilities"). Without limiting the Port's right of control and management, the Port specifically reserves the right to: (i) use the same for any purpose, including the installation of signs for directional, advertising or other purposes, (ii) change the area, level, location and arrangement of the common areas and facilities; (iii) provided Concessionaire is not deprived of reasonable access to its Premises, close all or any portion of the common areas and facilities; and (iv) do and perform such other acts in and to the common areas and facilities as the Port shall determine to be advisable with a view to the improvement of the convenience and use thereof by the Port and tenants of the Airport.

11.2 License. All common areas and facilities that Concessionaire is permitted to use and occupy are used and occupied under a revocable license. If the amount of such areas or facilities is revised or diminished, such revision or diminution shall not be deemed a constructive or actual eviction, and the Port shall not be subject to any liability, nor shall Concessionaire be entitled to any compensation or reduction or abatement of Rent.

11.3 Parking. While the Port may provide parking facilities to the Concessionaire's employees in common with employees of other tenants and users of the Airport, it retains the right to impose a reasonable charge for the privilege of utilizing these parking facilities. Nothing herein contained shall be deemed to require the Port to provide parking facilities to Concessionaire's employees.

## SECTION 12: MARKETING PROGRAM

12.1 Program. The Port has established a marketing program ("Program") to promote the concession offerings at the Airport. The Program generally includes print materials, print advertising and signage, public relations, promotional events and/or entertainment, customer service initiatives, website development, social media campaigns, sponsorships, television and radio commercials and videos, etc., as appropriate. For each calendar year, the Port will, in consultation with interested Airport concession tenants, develop and establish the Program's annual marketing plan, including objectives, strategies, tactics and budget.

12.2 Funding. The Program will be funded by contributions from the Concessionaire and other concessionaires at the Airport. Concessionaire will contribute an amount up to one half of one percent (0.5%) of its monthly Gross Sales, but no more than Twenty Four Thousand Dollars (\$24,000.00) per concession facility, per Agreement Year, to fund the Program. However, in the event the Port assesses a lower percentage rate for other Airport concession

tenant's contributions to the Program, with the exception of short-term or kiosk location tenants, Concessionaire's contribution rate will automatically be adjusted to the lowest percentage rate assessed by the Port for any such Airport concession tenant. Concessionaire recognizes that short-term or kiosk tenants may not be required to participate in the Program or pay a lesser rate than Concessionaire. All contributions to the Program may only be expended for the promotion of concessions and marketing-related staff activities at the Airport and for no other purposes. Concessionaire shall make its contributions to the Program monthly in arrears concurrently with its payment of the Percentage Fee under this Agreement.

## SECTION 13: INSURANCE AND INDEMNITY

### 13.1 Indemnity.

13.1.1 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 be caused, sustained or alleged to have been sustained by Concessionaire or by others, including but not limited to all persons directly or indirectly employed by Concessionaire, or any agents, contractors, subcontractors, licensees or invitees of Concessionaire, 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 Concessionaire's use or occupancy of the Premises and of areas adjacent thereto.

13.1.2 To the maximum extent permitted by law, Concessionaire shall defend (with counsel approved by the Port), fully indemnify, and hold entirely free and harmless the Port and its Commissioners, officers, agents and employees from any and all claims, loss, damages, expenses, attorneys' fees, consultants' fees, court costs and other costs arising, directly or indirectly, from: (a) the condition of the Premises or out of the occupancy by the Concessionaire or any subtenant, licensee, concessionaire, or contractor of Concessionaire; and (b) any accident, injury, death or damage, however caused, to any person or property on or about the Premises; and (c) any fault or negligence by Concessionaire or any subtenant, licensee, concessionaire or contractor of the Concessionaire or of any officer, agent, or employee of any such person; and (d) any failure on Concessionaire's part to comply with any of the covenants, terms and conditions contained in this Agreement; *provided, however*, nothing herein shall require Concessionaire to indemnify the Port from any accident, injury, death or damage arising out of the sole negligence of the Port or its Commissioners, officers, agents and employees. Concessionaire agrees that the foregoing indemnity specifically covers actions brought by its own employees, and thus Concessionaire expressly waives its immunity under industrial insurance, Title 51, as necessary to effectuate this indemnity. Such waiver shall not, however, prevent Concessionaire from asserting such immunity against any other person or entity.

13.1.3 Notwithstanding anything to the contrary in Section 13.1.2, in the event of the concurrent negligence of Concessionaire, its subtenants, licensees, concessionaires, contractors, or any officer, agent, or employee of any such person 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,

Concessionaire's obligation to indemnify the Port as set forth in this Section shall be limited to the extent of Concessionaire's negligence and that of Concessionaire's subtenants, licensees, concessionaires, contractors, and any officers, agents, and employees of any such person, including Concessionaire'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.

13.1.4 CONCESSIONAIRE AND PORT AGREE AND ACKNOWLEDGE THAT THIS PROVISION IS THE PRODUCT OF MUTUAL NEGOTIATION. Concessionaire's obligations under this Section 13.1 shall survive the expiration or earlier termination of this Agreement.

## 13.2 Insurance.

13.2.1 Required Policies. Concessionaire shall obtain and keep in force, at its sole cost and expense the following types of insurance, in the amounts specified and in the form hereinafter provided for:

13.2.1.1 *General Liability Insurance.* Concessionaire shall obtain and keep in force a commercial general liability policy of insurance in a form, on terms and conditions approved by the Port, in the minimum single limit of Two Million Dollars (\$2,000,000.00) (or, in the event that Concessionaire undertakes any operations in the Aircraft Operations Area (AOA), in the minimum single limit of Five Million Dollars (\$5,000,000.00)) on a per location basis (or equivalent satisfactory to the Port) and hereafter in such increased amounts or on such revised terms and conditions as the Port may from time to time specify. The Port shall be named as an additional insured (using ISO Form 20 26 11 85 or equivalent).

13.2.1.2 *Automobile Liability Insurance.* To the extent that Concessionaire operates motor vehicles on or about the Airport, Concessionaire shall obtain and keep in force business automobile liability insurance in a form, on terms and conditions approved by the Port, in the minimum single limit of Two Million Dollars (\$2,000,000.00) (or, in the event that Concessionaire undertakes any motor vehicle operations in the Aircraft Operations Area (AOA), in the minimum single limit of Five Million Dollars (\$5,000,000.00)) on a per location basis (or equivalent satisfactory to the Port) and hereafter in such increased amounts or on such revised terms and conditions as the Port may from time to time specify. The Port shall be named as an additional insured (using ISO Form 20 26 11 85 or equivalent).

13.2.1.3 *Property Insurance.* Concessionaire shall obtain and keep in force property insurance on a "special extended," "special causes of loss," or "all risk" form specifically including earthquake and flood coverage, insuring loss or damage to all of Concessionaire's Initial Improvements, Midterm Refurbishment, Alterations, and furniture, fixtures and equipment at, on or about the Premises. Coverage shall be provided for 100% of the full replacement cost of the property required to be covered (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), and in compliance with all laws, regulations or ordinances affecting such property. The policy shall also contain an agreed valuation provision in lieu of any coinsurance clause.

13.2.1.4 *Business Income and Extra Expense Insurance.*

Concessionaire shall obtain and keep in force business income and extra expense insurance on “special extended,” “special causes of loss,” or “all risk” form, specifically including earthquake and flood coverage. Coverage shall be provided for 80% of Concessionaire’s gross annual income from the Premises less any non-continuing expenses. The policy shall also contain an agreed valuation provision in lieu of any coinsurance clause.

13.2.1.5 *Liquor Liability Insurance.* To the extent that

Concessionaire sells an alcoholic beverages on or about the Premises (whether for consumption on the Premises or elsewhere), Concessionaire shall obtain and keep in force liquor liability insurance in a form, on terms and conditions approved by the Port, in the minimum of Two Million Dollars (\$2,000,000.00) on a per location basis (or equivalent satisfactory to the Port) and hereafter in such increased amounts or on such revised terms and conditions as the Port may from time to time specify. The Port shall be named as an additional insured (using ISO Form 20 26 11 85 or equivalent).

13.2.1.6 *Other Insurance.* Such other and further forms of insurance

required for the particular use of the Premises or as required by law; for example, worker’s compensation insurance or state fund insurance as required by any applicable federal or state statute, product liability insurance.

The limits of insurance specified in this Section 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.

13.2.2 Insurance Policies.

13.2.2.1 *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.”

13.2.2.2 *Policies Primary.* All insurance to be carried by

Concessionaire shall be primary to and not contributory with any similar insurance carried by the Port.

13.2.2.3 *Evidence of Insurance; Notice.* The Port shall be furnished

with appropriate written evidence to establish that Concessionaire's insurance obligations as herein required have been and continue to be met, and that the insurance policy or policies as herein required are not subject to cancellation, non-renewal or material reduction in coverage without at least forty-five (45) days advance written notice to the Port. The inclusion of the Port as an additional insured shall not create any premium liability for the Port. Concessionaire shall furnish a Certificate of Insurance using ACORD Form 25 S (7/97 Version) that shows evidence the Port has been added as an Additional Insured and that specifies the endorsement, which has been used to add the Port as an Additional Insured. The Certificate of Insurance shall show the types of insurance and limits as specified above, including deductible and/or self-insurance retention amounts. Any provision above notwithstanding, the Port reserves the right to reject any

insurance policy as to company, form or substance. In the event that Concessionaire maintains a blanket policy or program of insurance, the Port further reserves the right to accept, in its sole discretion, any such policy or program of insurance providing coverage equivalent to the requirements set forth in Section 13.2.1.

13.2.2.4 *Cancellation.* In the event of cancellation of any required insurance throughout the duration of this Agreement, or any change not acceptable to the Port, the Port reserves the right to provide additional insurance and charge the cost of any premiums for such coverage to the Concessionaire.

13.2.2.5 *Subtenants.* The Port may require all subtenants, at subtenant's sole cost and expense, to maintain additional insurance coverage, during the subtenant's occupancy of the Premises, and Concessionaire shall cause to be delivered to the Port, certificates which shall include but not be limited to the following: Worker's Compensation as required by Washington State law, Comprehensive General Liability Insurance, Property Insurance, Business Automobile Liability Insurance, Product and/or Liquor Liability Insurance.

13.2.2.6 *No Limitation of Liability.* The Port makes no representation that limits or forms of insurance coverage specified or required under this Agreement are adequate to cover Concessionaire's property, or Concessionaire's liabilities or obligations under this Agreement. The limits of insurance required by this Agreement or as carried by Concessionaire shall not limit the liability of Concessionaire nor relieve Concessionaire of any obligation hereunder.

13.3 Waiver of Subrogation. Without affecting any other rights or remedies, Concessionaire (for itself and on behalf of anyone claiming through or under it by way of subrogation or otherwise) hereby waives any rights it may have against the Port, its officers, agents and employees (whether in contract or in tort) on account of any loss or damage occasioned to Concessionaire arising out of or incident to the perils required to be insured against under this Agreement. Accordingly, Concessionaire shall cause each insurance policy required by this Section 13.2 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.

13.4 Increase in Port's Cost of Insurance. Concessionaire 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 term of this Agreement, may be added to the amount of Rent and shall be paid by Concessionaire to the Port upon the monthly rental day next thereafter occurring.

## SECTION 14: DAMAGE OR DESTRUCTION

14.1 Duty to Repair. If the Premises or any buildings or structures of which the Premises are a part are damaged by fire, the elements, earthquake, accident or other casualty (collectively, "Casualty"), the Port shall, except to the extent either party has the right to

terminate this Agreement under Section 14.2, use reasonable efforts to repair and restore the Premises and/or the buildings or structures of which the Premises are a part to substantially their former condition to the extent permitted by then-applicable Legal Requirements; *provided, however*, the Port's obligation to repair and restore shall not extend to any Initial Improvements, Midterm Refurbishment, Alterations or any of Concessionaire's personal property, specifically including the Removable Fixtures.

14.2 Right to Terminate. The Port may elect to terminate this Agreement in the event that the Port, in its sole judgment, concludes that the damage to the Premises or any buildings or structures of which the Premises are a part cannot be repaired within thirty (30) days of the Casualty (with the repair work and the preparations therefor to be done during regular working hours on regular work days). In the event that the Port elects to terminate this Agreement, the Port shall advise Concessionaire of that fact within thirty (30) days of the date of the Casualty and notify Concessionaire of the date, not more than ninety (90) days after the Casualty, on which the Agreement will terminate.

14.3 Abatement of Rent. Unless the casualty results from Concessionaire's negligence or breach of the terms of this Agreement, the Minimum Monthly Guarantee (if any) shall be abated in the same proportion that any portion of the Premises that is rendered untenable or inaccessible bears to the whole thereof from the period from the date of the Casualty through the date of substantial completion of the repairs to the Premises (or to the date of termination of the Agreement if either party shall elect to terminate the Agreement). Percentage Fees shall not abate. The Port shall not otherwise be liable to Concessionaire for any loss in the use of the whole or any part of the Premises (including loss of business) and/or any inconvenience or annoyance occasioned by the Casualty, by any damage resulting from the Casualty, or by any repair, reconstruction or restoration.

14.4 Concessionaire's Duty to Repair. Except to the extent either party elects to terminate this Agreement under Section 14.2, Concessionaire shall, at its sole cost and expense, be responsible for any and all repair or restoration of any Initial Improvements, Midterm Refurbishment, Alterations or any Removable Fixtures, which repair or restoration may be necessary as a result of any casualty.

14.5 Waiver. Except as specifically set forth in this Agreement, Concessionaire hereby waives any right that Concessionaire may have, under any applicable existing or future law, to terminate this Agreement in the event of any damage to, or destruction of, the Premises or any buildings or structures of which the Premises are a part.

## SECTION 15: ASSIGNMENT AND SUBLEASE

15.1 Prohibition. Concessionaire shall not, in whole or in part, assign, sublet, license or permit occupancy by any party other than Concessionaire of all or any part of the Premises, without the prior written consent of the Port in each instance. 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, subtenant or licensee including, without limitation, the name, address, nature of business, ownership, financial responsibility and standing of such proposed assignee, subtenant or licensee together with the

proposed form of assignment, sublease or license. Within thirty (30) days after receipt of all required information, the Port shall, in its sole discretion, elect one of the following: (i) to consent to such proposed assignment, sublease or license, (ii) buyout Concessionaire's interest in the Agreement as provided in Section 15.3, or (iii) disapprove the assignment, sublease or license, setting forth the grounds for doing so.

15.1.1 As a condition for the Port's consent to any assignment, sublease or license, the Port may require that the assignee, sublessee or licensee remit directly to the Port on a monthly basis, all monies due to Concessionaire by said assignee, sublessee or licensee (except with respect to excess rentals otherwise due Concessionaire pursuant to Section 15.2). In addition, a condition to the Port's consent to any assignment, sublease or license of this Agreement or the Premises shall be the delivery to the Port of a true copy of the fully executed instrument of assignment, sublease or license and an agreement executed by the assignee, sublessee or licensee in form and substance satisfactory to the Port and expressly enforceable by the Port, whereby the assignee, sublessee or licensee assumes and agrees to be bound by the terms and provisions of this Agreement and perform all the obligations of Concessionaire hereunder.

15.1.2 In the event of any assignment, Concessionaire and each respective assignor, waives notice of default by the tenant in possession in the payment and performance of the Rent, covenants and conditions of this Agreement and consents that the Port may in each and every instance deal with the tenant in possession, grant extensions of time, waive performance of any of the terms, covenants and conditions of this Agreement and modify the same, and in general deal with the tenant then in possession 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.

15.1.3 Concessionaire agrees that any sublease or license will contain a provision in substance that if there be any termination whatsoever of this Agreement or the Port should buy out Concessionaire's interest pursuant to Section 15.3, then the subtenant or licensee, at the request of the Port, will attorn to the Port and the sublessee or licensee, if the Port so requests, shall continue in effect with the Port, but the Port shall be bound to the subtenant or licensee in such circumstances only by privity of estate. Nothing herein shall be deemed to require the Port to accept such attornment.

15.1.4 No assignment, subletting or license by Concessionaire shall relieve Concessionaire of any obligation under this Agreement, including Concessionaire's obligation to pay Rent or any other sum hereunder. Any purported assignment, subletting or license 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.

15.1.5 Concessionaire shall reimburse the Port in the sum of Five Hundred Dollars (\$500.00) plus any reasonable professionals' fees and expenses incurred by the Port in connection with any request by Concessionaire for consent to an assignment, subletting or license.

15.2 Excess Rental. If in connection with any assignment, sublease or license, Concessionaire receives rent or other monetary consideration, either initially or over the term of the assignment or sublease, in excess of the Rent called for hereunder, or in case of the sublease of a portion of the Premises, in excess of such Rent fairly allocable to such portion, after appropriate adjustments to account for any improvements or alterations made by Concessionaire and to assure that all other payments called for hereunder and out-of-pocket expenditures, operating costs or concessions incurred by Concessionaire in connection with such assignment, sublease or license, are appropriately taken into account, Concessionaire shall pay to the Port seventy-five percent (75%) of the excess of each such payment of rent or other consideration received by Concessionaire after its receipt.

15.3 Buyout.

15.3.1 Within the time provided by Section 15.1, the Port shall notify Concessionaire whether it is interested in negotiating a buy-out of Concessionaire's interest in this Agreement. The Port shall have no right to buy-out Concessionaire's interest in this Agreement in the event that a proposed assignment is directly as a result of a proposed merger, acquisition or sale of substantially all of the assets of Concessionaire. If the Port is interested in a buy-out of Concessionaire's interest, the Port shall have sixty (60) days from the date of its notice to Concessionaire to enter into an agreement to buy out Concessionaire's leasehold interest in this Agreement upon substantially the same terms and conditions as proposed between Concessionaire and the third party. The purchase price to be paid by the Port under this buy-out right shall be the proposed transaction purchase price as set forth in the letter of intent or proposed agreement between Concessionaire and the third party.

15.3.2 If the Port and Concessionaire fail to enter into a written agreement for such a purchase within the period of time provided by Section 15.3.1, then the Port shall be deemed to have waived its buy-out right. Subject to the other provisions of this SECTION 15, Concessionaire may then transfer its interest in this Agreement, but only upon the same terms and conditions as reviewed by the Port.

15.3.3 If the proposed terms and conditions of any transfer by Concessionaire to a third party are at any time materially altered from the proposed terms and conditions of such sale that were presented to and reviewed by the Port, the Port's buy-out right shall be deemed applicable to the altered transfer terms, and the Port shall have sixty (60) days after the date it receives notice of the material alteration to consider and enter into a written agreement for the purchase of Concessionaire's interest in this Agreement. It is further understood that, in the event that the Port does not exercise this buy-out right, this provision shall nevertheless be applicable to any further or future transfer, which is subject to this provision.

15.4 Scope. The prohibition against assigning or subletting contained in this SECTION 15 shall be construed to include a prohibition against any assignment or subletting by operation of law. Furthermore, for purposes of this SECTION 15, any sale, transfer or other disposition in the aggregate of fifty percent (50%) or more of the equity ownership in Concessionaire (i.e. stock with respect to tenant corporation, partnership interests with respect to a tenant partnership, etc.) shall be deemed an assignment. If this Agreement be assigned, or if the underlying beneficial interest of Concessionaire is transferred, or if the Premises or any part thereof be



sublet or occupied by anybody other than Concessionaire, the Port may collect Rent from the assignee, subtenant or occupant and apply the net amount collected to the Rent herein reserved and apportion any excess Rent so collected in accordance with the terms of Section 15.2, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of this covenant, or the acceptance of the assignee, subtenant or occupant as tenant, or a release of Concessionaire from the further performance by Concessionaire of covenants on the part of Concessionaire herein contained. No assignment or subletting shall affect the continuing primary liability of Concessionaire (which, following assignment, shall be joint and several with the assignee), and Concessionaire shall not be released from performing any of the terms, covenants and conditions of this Agreement.

15.5 Concessionaire's Responsibility for Subtenants. In the event that Concessionaire subleases any portion of the Premises, Concessionaire shall be responsible for managing all of its subtenants and for ensuring that all its subtenants adhere to the terms of this Agreement. Concessionaire is responsible for ensuring all of its subtenants adhere to proper cash-handling techniques, including without limitation any point-of-sale system and cash-handling criteria required by the Port hereunder. If a subtenant fails to open its unit or goes out of business, Concessionaire is responsible to put up appropriate temporary storefront barriers, curtains, display boxes or signage as directed by the Port. And if Concessionaire fails to comply with this paragraph in the time period specified by the Port, Operator agrees to pay the Port liquidated damages in the amount identified on Exhibit \_\_ until such temporary installation is complete. Concessionaire is responsible for terminating any sublease and/or license with subtenants, locking out a subtenant (if legally permissible), instituting suit for rent or for use or occupancy or proceedings for recovery of possession when (a) subtenant defaults; or (b) Concessionaire is entitled to terminate the subtenant's sublease and/or license. All legal expenses incurred in bringing such action are Concessionaire's sole responsibility. The Port agrees not to terminate this Agreement under SECTION 16 if the event of default is a result of an action or omission of a subtenant if and only if; (i) after notification to the Port, Concessionaire has taken or is taking all legally permissible corrective action, including initiation of termination actions with respect to its sublease/subcontract with the defaulting subtenant; and (ii) Concessionaire has made the Port financially whole.

## SECTION 16: DEFAULT

16.1 Defaults. The occurrence of any one or more of the following events constitutes a default of this Agreement by Concessionaire with or without notice from the Port:

16.1.1 The vacating or abandonment of the Premises by Concessionaire.

16.1.2 The failure by Concessionaire to make any payment of Rent, or any other payment required by this Agreement, when due.

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

16.1.4 The discovery by the Port that any required report, financial statement or background statement provided to the Port by Concessionaire, any successor, grantee, or assignee was materially false.

16.1.5 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.

## 16.2 Remedies.

16.2.1 Whenever any default (other than a default under Section 16.1.5 above, upon which termination of this Agreement shall, at the Port's option, be effective immediately without further notice) continues un-remedied, in whole or in part, for: (i) ten (10) days after written notice is provided by the Port to Concessionaire in the case of default for failure to pay any Rent, or other required payment when due, or (ii) thirty (30) days after written notice is provided by the Port to Concessionaire for any non-monetary default, this Agreement and all of Concessionaire's rights under it will automatically terminate if the written 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 Rent or other payments and damages incurred because of Concessionaire's default including, but not limited to, the costs of re-letting, including tenant improvements, necessary renovations or repairs, advertising, leasing commissions, and attorney's fees and costs ("Termination Damages"), together with interest on all Termination Damages at the Default Rates from the date such Termination Damages are incurred by the Port until paid.

16.2.2 In addition to Termination Damages, and notwithstanding termination and reentry, Concessionaire's liability for all Rent or other charges which, but for termination of the Agreement, would have become due over the remainder of the Agreement term ("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 Rental Deficiency. "Rental Deficiency" means, at the Port's election, either:

16.2.2.1 An amount equal to Future Charges, less the amount of actual rent and concession fees, if any, which the Port receives during the remainder of the Agreement 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:

16.2.2.1.1 In an accelerated lump-sum payment discounted to present value; or

16.2.2.1.2 In monthly installments, in advance, on the first day of each calendar month following termination of the Agreement and continuing until the date on which the Agreement 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

16.2.2.2 An amount equal to Future Charges less the aggregate fair rental value of the Premises over the remaining Agreement 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 subparagraph, "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.

16.2.3 If this Agreement is terminated for default as provided in this Agreement, the Port shall use reasonable efforts to re-let the Premises in whole or in part, alone or together with other premises, for such term or terms (which may be greater or less than the period which otherwise would have constituted the balance of the 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 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.

16.2.4 In addition to the rights granted by Section 7.4, if upon any reentry permitted under this Agreement, there remains any personal property upon the Premises, the Port, in its sole discretion, may remove and store the personal property for the account and at the expense of Concessionaire. In the event the Port chooses to remove and store such property, it shall take reasonable steps to notify Concessionaire of the Port's action. All risks associated with removal and storage shall be on Concessionaire. Concessionaire 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 that has been stored for a period of thirty (30) days or more, unless Concessionaire 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 Concessionaire to the Port. The balance of sale proceeds, if any, will then be paid to Concessionaire.

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

## SECTION 17: RELOCATION OR TERMINATION OTHER THAN FOR DEFAULT

17.1 Relocation for Performance. In the event that Concessionaire either (a) experiences a decrease in its sales per Enplaned Passenger of more than twenty percent (20%) for the Premises, or any discrete portion thereof, for two (2) quarters in any twelve (12)-month period, (b) loses the franchise rights under which the concession for the Premises, or any discrete

portion thereof, was operated, or (c) fails to achieve Gross Sales sufficient to result in Percentage Fees greater than the Minimum Annual Guarantee allocable to the Premises, or any discrete portion thereof, for two (2) consecutive years, the Port may initiate a discussion with Concessionaire about termination of this Agreement or the discrete portion of the Premises to which such issue pertains. If the parties mutually agree, then a termination agreement shall be executed under which the Port shall agree to remarket the space and the Concessionaire shall agree to terminate the lease and vacate the space if and when a new tenant lease for the space is executed and the new tenant design for the space is approved by the Port.

17.2 Airport Operational Needs. If at any time the Port determines that the Premises (or any portion thereof) are necessary for the operation, safety, security or convenience of the Airport, the Port may require Concessionaire to close, reduce or relocate (to a location designated by the Port) the Premises, or any discrete portion thereof. In such event, the Port shall provide Concessionaire at least sixty (60) days advance written notice. Concessionaire shall have the right to accept or reject any proposed reduction or relocation of the Premises. If accepted, the Port and Concessionaire shall negotiate, in good faith, for the payment of any costs associated with such change. If Concessionaire rejects the reduction/relocation, or if the parties are unable to reach agreement regarding the payment of costs associated with such change, the Port may, at the Port's election, terminate this Agreement. If Concessionaire is not in default under any of the provisions of this Agreement on the effective date of termination, the Port shall refund any Rent prepaid by Concessionaire shall, to the extent allocable to any period subsequent to the effective date of the termination, and reimburse Concessionaire the Net Book Value of Leasehold Improvements. Concessionaire shall not be entitled to any compensation at termination for the bargain value of the leasehold or any relocation expenses.

17.3 Condemnation. In the event that any federal, state or local government or any agency or instrumentality thereof shall, by condemnation or otherwise, take title, possession or the right to possession of the Premises or any part thereof, the Port may, at its option, terminate this Agreement as of the date of such taking, and if Concessionaire is not in default under any of the provisions of this Agreement on the effective date of termination, the Port shall refund any Rent prepaid by Concessionaire, to the extent allocable to any period subsequent to the effective date of the termination. In addition, Concessionaire shall be entitled to participate in any compensation paid in the event of a taking, not to exceed the Net Book Value of Leasehold Improvements. Concessionaire shall not be entitled to any compensation at termination for the bargain value of the leasehold or any relocation expenses, except to the extent such relocation expenses may be awarded to Concessionaire as part of any condemnation proceeding.

17.4 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 obligations under this Agreement, then either party hereto may terminate this Agreement by written notice, and all rights and obligations hereunder (with the exception of any undischarged rights and obligations that accrued prior to the effective date of termination) shall thereupon terminate. If Concessionaire is not in default under any of the provisions of this Agreement on the effective date of termination, the Port shall refund any Rent prepaid by Concessionaire, to the extent allocable to any period subsequent to the effective date of the termination, and reimburse Concessionaire the Net Book Value of Leasehold Improvements.

Concessionaire shall not be entitled to any compensation at termination for the bargain value of the leasehold or any relocation expenses.

17.5 Net Book Value of Leasehold Improvements. As used in this Agreement, “Net Book Value of Leasehold Improvements” shall mean and refer to the dollar amount generated through application of the following rules:

17.5.1 Eligible Improvements. “Eligible Improvements” shall mean and refer to any permanently affixed alterations or improvements made to the Premises and to cabinetry and display fixtures that were custom designed by Concessionaire for the Premises and have no practical use or value outside the Premises: (a) for which the Port’s consent has been sought and obtained in writing, (b) for which any and all information required by Section 7.3.4 or any Port consent has been timely submitted, and (c) consistently appearing on any NBV Report requested by the Port pursuant to Section 4.7.4, and (d) then currently in use and in such condition as would warrant its continued use. Eligible Improvements shall, however, specifically exclude the Removable Fixtures (other than custom designed cabinetry and display fixtures set forth above) and any inventory maintained by Concessionaire.

17.5.2 Cost of Eligible Improvements. The “Costs of Eligible Improvements” shall mean and refer to the direct costs expended by Concessionaire for any Eligible Improvements, specifically including the cost for the demolition of any existing improvements necessary for the installation of such Eligible Improvements. The Costs of Eligible Improvements shall not, however, include any of the Excluded Costs. The Costs of Eligible Improvements” shall be determined from the information timely submitted by Concessionaire pursuant to Section 7.3.4 or any Port consent, which information is subject to verification by the Port.

17.5.3 Calculation of Net Book Value of Leasehold Improvements. For each Eligible Improvement, the Cost of that Eligible Improvement shall be amortized over the useful economic life of such Eligible Improvement, where such useful economic life shall in no instance exceed the period of time commencing on the date such Eligible Improvement is installed and terminating on the expiration of this Agreement, or any lesser period that may be specified in any consent, sublease or other writing, on a straight-line basis with no salvage value. The “Net Book Value of Leasehold Improvements” shall be the sum of the unamortized portion (as of the effective date of the applicable termination) of the Cost of Eligible Improvements for each Eligible Improvement directly affected by such deletion or termination. As used in this Section, “useful economic life” shall specifically be determined with respect to the initial investment in the Eligible Improvement, Concessionaire’s repair and maintenance of the Eligible Improvement, and Concessionaire’s custom and usage for assets similar to the Eligible Improvements, both at the Airport and elsewhere.

## SECTION 18: ACCESS; EASEMENTS

18.1 Access to Premises. The Port may, at any time, enter upon the Premises or any part thereof to ascertain the condition of the Premises or whether Concessionaire is observing and performing the obligations assumed by it under this Agreement, all without hindrance or molestation from the Concessionaire. The Port shall also have the right to enter upon the

Premises for the purpose of making any performing any necessary maintenance and repair work, for providing pest control services, for performing any work that may be necessary by reason of Concessionaire's failure to make any such repairs or perform any such work, or for any other reasonable purpose. The above-mentioned rights of entry shall be exercisable upon request made on reasonable advance notice to Concessionaire (except that no notice shall be required in the event of an emergency) or an authorized employee of Concessionaire at the Premises, which notice may be given orally.

18.2 Easements. The Port hereby reserves such continuous access and utilities easements within or upon the Premises, as may in the opinion of the Port from time to time be desirable for the purpose of enabling it to exercise any right or reservation or to perform any obligation contained in this Agreement or in connection with the Port's ownership or operation of the Airport. If the Port exercises this reservation of easement in any manner which substantially and negatively impacts Concessionaire, the Port agrees to negotiate an equitable adjustment in the Rent, or to bear reasonable costs of any permanent modifications to the Premises necessary to permit Concessionaire to continue to operate its business. In no event, however, shall the Port be responsible for any reduced efficiency or loss of business occasioned thereby.

#### SECTION 19: NONWAIVER; RIGHT TO PERFORM

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

19.2 No Waiver of Breach. The failure of the Port to insist in any one or more instances, upon a strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall not be construed as a waiver of or relinquishment for the future of the performance of such covenant, or the right to exercise such option, but the same shall continue and remain in full force and effect. The receipt by the Port of the Rent or fees, with knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver by the Port of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Port. The consent or approval of the Port to or of any act by 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.

19.3 No Waiver of Rent. The receipt by the Port of any installment of Rent or of any amount shall not be a waiver of any Rent or other amount then due.

19.4 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 Agreement or subletting by Concessionaire.

19.5 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.

## SECTION 20: SURRENDER AND HOLDING OVER

20.1 Surrender. At the expiration or sooner termination of this Agreement, Concessionaire shall promptly surrender possession of the Premises to the Port broom-clean, in their improved condition, wear and tear consistent with Section 8.2 excepted, remove all its Removable Fixtures and other property, and shall deliver to the Port all keys that it may have to any and all parts of the Premises. If the Premises are not surrendered as provided in this Section, Concessionaire shall indemnify and hold the Port harmless against loss or liability resulting from the delay by Concessionaire in so surrendering the Premises, including, without limitation, any claims made by any succeeding occupant founded on such delay.

20.2 Removal of Wires. Within ten (10) days following the expiration or earlier termination of this Agreement, the Port may elect by written notice to Concessionaire to either:

20.2.1 Retain, without necessity of payment, any or all wiring, cables, conduit, risers and similar installations installed by Concessionaire ("Wiring"), whether in the Premises or the larger building of which the Premises are a part. In the event that the Port elects to retain the wiring, Concessionaire covenants that: (i) it is the sole owner of the assets transferred or passing to the Port, (ii) it shall have right to surrender the assets transferred or passing to the Port, (iii) the Wiring transferred or passing to the Port are free from all liens and encumbrances, (iv) the Wiring transferred or passing to the Port is in good condition, working order, in safe condition and comply with the requirements of this Agreement, and (v) that all wiring or cables included within the Wiring transferred or passing to the Port is properly labeled at each end, in each telecommunications/electrical closet and junction box, and otherwise as may be required by Port regulations. OR

20.2.2 Remove, or require Concessionaire to remove, all such Wiring and restore the Premises and any larger property of which the Premises are a part to their condition existing prior to the installation of the Wiring, all at Concessionaire's sole cost and expense.

This Section shall survive the expiration or earlier termination of this Agreement.

### 20.3 Holding Over.

20.3.1 If Concessionaire, with the written consent of the Port, holds over after the expiration or sooner termination of this Agreement, the resulting tenancy will, unless otherwise mutually agreed, be for an indefinite period of time on a month-to-month basis. Any holding over by Concessionaire after the expiration or earlier termination of the Agreement with the express, written consent of the Port shall not, in any manner, constitute a renewal or extension of the Agreement or give Concessionaire any rights in or to the Premises.

20.3.2 In order to facilitate transition from Concessionaire's tenancy to that of another Concessionaire at the expiration of the term of the Agreement, the Port may request, and Concessionaire shall agree, to extend its tenancy as to some or all of the Premises on a month-to-month basis, not to exceed six (6) months. No later than nine (9) months before expiration of the Agreement, the parties shall meet to discuss the process for transitioning occupancy of the Premises in order to minimize disruption of service to the traveling public at the Airport.

20.3.3 During such month-to-month tenancy, Concessionaire shall, unless otherwise mutually agreed, pay to the Port the same Rent that was in effect immediately prior to the month-to-month tenancy. Concessionaire will continue to be bound by all of the additional provisions of this Agreement insofar as they may be pertinent.

## SECTION 21: ENVIRONMENTAL STANDARDS

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

21.2 Hazardous Substances. Concessionaire shall not allow the presence in or about the Premises of any Hazardous Substance in any manner that could be a detriment to the Premises or in violation of any Law or Regulation. Concessionaire shall not allow any Hazardous Substances to migrate off the Premises, or the release of any Hazardous Substances into adjacent surface waters, soils, underground waters or air. Concessionaire shall provide the Port with Concessionaire's USEPA Waste Generator Number, and with copies of all Material Safety Data Sheets (MSDS), Generator Annual Dangerous Waste Reports, environmentally related regulatory permits or approvals (including revisions or renewals) and any correspondence Concessionaire receives from, or provides to, any governmental unit or agency in connection with Concessionaire's handling of Hazardous Substances or the presence, or possible presence, of any Hazardous Substance on the Premises.



21.3 Violation of Environmental Law. If Concessionaire, or the Premises, is in violation of any Law or Regulation concerning the presence or use of Hazardous Substances or the handling or storing of hazardous wastes, Concessionaire shall promptly take such action as is necessary to mitigate and correct the violation. If Concessionaire does not act in a prudent and prompt manner, the Port reserves the right, but not the obligation, to come onto the Premises, to act in place of the Concessionaire (Concessionaire hereby appoints the Port as its agent for such purposes) and to take such action as the Port deems necessary to ensure compliance or to mitigate the violation. If the Port has a reasonable belief that Concessionaire is in violation of any Law or Regulation, or that Concessionaire's actions or inactions present a threat of violation or a threat of damage to the Premises, the Port reserves the right to enter onto the Premises and take such corrective or mitigating action as the Port deems necessary. All costs and expenses incurred by the Port in connection with any such actions shall become immediately due and payable by Concessionaire upon presentation of an invoice therefore.

21.4 Inspection; Test Results. The Port shall have access to the Premises to conduct an annual environmental inspection. In addition, Concessionaire shall permit the Port access to the Premises at any time upon reasonable notice for the purpose of conducting environmental testing at the Port's expense. Concessionaire shall not conduct or permit others to conduct environmental testing on the Premises without first obtaining the Port's written consent. Concessionaire 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 Concessionaire, and Concessionaire shall provide copies to the Port.

21.5 Removal of Hazardous Substances. Prior to vacation of the Premises, in addition to all other requirements under this Agreement, Concessionaire shall remove any Hazardous Substances placed on the Premises during the term of this Agreement or Concessionaire's possession of the Premises, and shall demonstrate such removal to the Port's satisfaction. This removal and demonstration shall be a condition precedent to the Port's payment of any Security to Concessionaire upon termination or expiration of this Agreement.

21.6 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 Concessionaire whenever the Port incurs any costs resulting from Concessionaire's use or management of Hazardous Substances on the Premises, including but not limited to, costs of clean-up or other remedial activities, fines or penalties assessed directly against the Port, injuries to third persons or other properties, and loss of revenues resulting from an inability to re-lease or market the property due to its environmental condition (even if such loss of revenue occurs after the expiration or earlier termination of this Agreement).

21.7 Environmental Indemnity. In addition to all other indemnities provided in this Agreement, Concessionaire agrees to defend, indemnify and hold the Port free and harmless from any and all claims, causes of action, regulatory demands, liabilities, fines, penalties, losses, and expenses, including without limitation cleanup or other remedial costs (and including attorneys' fees, costs and all other reasonable litigation expenses when incurred and whether incurred in defense of actual litigation or in reasonable anticipation of litigation), arising from the existence or discovery of any Hazardous Substance on the Premises, or the migration of any

Hazardous Substance from the Premises to other properties or into the surrounding environment, whether (1) made, commenced or incurred during the term of this Agreement, or (2) made, commenced or incurred after the expiration or termination of this Agreement if arising out of events occurring during the term of this Agreement.

## SECTION 22: ACDBE REQUIREMENTS; NON-DISCRIMINATION

### 22.1 Airport Concessions Disadvantaged Business Enterprises.

22.1.1 It is the policy of the Port to support participation of ACDBEs, as defined in 49 CFR, Part 23, in concession activities at the Airport. To the extent Concessionaire is required to operate the Premises as an ACDBE, Concessionaire agrees to submit to the Port, upon execution of this Agreement, certification from the State of Washington that Concessionaire is a certified ACDBE. Likewise, at all times during the term of this Agreement, Concessionaire shall be and remain certified as a ACDBE in accordance with all applicable federal, state and local laws, rules and regulations and shall timely file any and all applications, together with all supporting documentation, necessary to maintain such certification. In the event that Concessionaire 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 Concessionaire, Concessionaire shall (in addition to any requirements that may be imposed by Section 15.1) similarly obtain ACDBE certification for Concessionaire as so changed and provide the Port with proof of the same. If Concessionaire 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 Concessionaire. So long as Concessionaire in good faith sought certification, reasonably complied with all requirements and deadlines necessary to maintain certification, and nonetheless ceased to be so certified, the Port shall pay to Concessionaire the Net Book Value of Leasehold Improvements in the event of such termination.

22.1.2 It is the policy of the Port to ensure that Airport Concessions Disadvantaged Business Enterprises (ACDBEs) as defined in the Department of Transportation (DOT), 49 CFR Part 23, and other small businesses have an equal opportunity to receive and participate in DOT-assisted contracts. The Port encourages Concessionaire 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 concession at this Airport.

22.1.3 Concessionaire shall submit quarterly ACDBE participation reports to the Port starting on the first day of the second month after the commencement of this Agreement. Concessionaire shall submit such reports as may be required by the Port, for the purpose of demonstrating compliance with 49 CFR Part 23.

22.2 Nondiscrimination. This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 and the U.S. Department of Transportation's regulations, 49 CFR Part 21. Management Firm agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, subcontract, purchase or lease agreement or other agreement covered by 49 CFR part 21. Furthermore, during the performance

of this Agreement, Management Firm, for itself, its assignees, and successors in interest (for purposes of this Section and its referenced exhibits only, “contractor”) agrees to both (i) comply with the covenants set forth on **Exhibit D** and (ii) comply with the non-discrimination statutes and authorities set forth on **Exhibit E**.

## SECTION 23: MISCELLANEOUS

23.1 Notice. All notices hereunder shall be in writing and shall be delivered personally, by certified or registered mail, or by recognized overnight courier. For any notice directed to the Port, the address shall be as follows:

Street Address:

Port of Seattle  
Seattle-Tacoma International Airport  
17801 International Blvd.  
Seattle, WA 98158  
Attn: Gen. Manager, Business Development

Mailing Address:

Port of Seattle  
Seattle-Tacoma International Airport  
P. O. Box 68727  
Seattle, WA 98168  
Attn: Gen. Manager, Business Development

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

Port of Seattle  
P. O. Box 24507  
Seattle, WA 98124-0507

For any notice directed to Concessionaire, the address shall be as set forth on page 1 of this Agreement. Either party may, however, designate a different address from time to time by providing written notice thereof. 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; or (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. Payments may be made in the manner provided for notice or may be delivered by regular mail (postage prepaid); provided, payments made by regular mail (postage prepaid) shall be deemed delivered when actually received by the Port.

23.2 Brokers. The Port and Concessionaire each warrant to the other that it has had no discussions, negotiations and/or other dealings with any real estate broker or agent and that it knows of no other real estate broker or agent who is or may be entitled to any commission or finder’s fee in connection with this Agreement. The Port and Concessionaire each agree to indemnify and hold the other 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 such party’s discussions, negotiations and/or dealings with any real estate broker. No commission(s) or finders fee(s) shall be paid to Concessionaire, employee(s) of Concessionaire or any unlicensed representative of Concessionaire.

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

23.4 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.

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

23.6 Wireless Devices. Concessionaire shall not install any wireless devices and/or transmitters on or about the Premises without the prior written consent of the Port and subject to any and all conditions in such consent. Concessionaire specifically grants to the Port the power to regulate and control the use of unlicensed frequency bands (including, but not limited to, FCC Part 15 Subpart C, FCC Part 15 Subpart D (both asynchronous and Isochronous), IEEE 802.11 and BlueTooth (ISM), and FCC UNII 1 and UNII 2 (IEEE 802.11a)) on or about the Premises.

23.7 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, 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 obligations issued by the Port under such programs, as the same may exist from time to time.

23.8 Relationship to 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 Agreement nor any acts of Concessionaire and the Port shall be deemed to create any relationship other than that of landlord and tenant.

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

23.10 Recording. Concessionaire shall not record this Agreement or any memorandum thereof without the Port's prior written consent.

23.11 Joint and Several Liability. Each and every party who signs this Agreement, other than in a representative capacity, as Concessionaire, shall be jointly and severally liable hereunder. 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 this Agreement, regardless of the number, gender or fact of incorporation of the party who is, or of the parties who are, the actual lessee or lessees under this agreement.

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

23.13 Governing Law; Venue. This Agreement shall be construed under the laws of Washington. Exclusive jurisdiction and venue for any action relating hereto shall be in the state or federal courts located in King County, Washington.

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

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

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

23.17 Entire Agreement; Amendments. This Agreement, together with any and all exhibits attached hereto, shall constitute the whole agreement between the parties. There are no terms, obligations, covenants or conditions other than those contained herein. No modification or amendment of this agreement shall be valid or effective unless evidenced by an agreement in writing signed by both parties.

23.18 Exhibits. The exhibits identified on page 1 of this Agreement are attached to this Agreement after the signatures and by this reference incorporated herein.

SECTION 24: SIGNATURES

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

PORT OF SEATTLE

\_\_\_\_\_

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

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

DRAFT

SECTION 25: ACKNOWLEDGMENTS

ACKNOWLEDGMENT FOR CONCESSIONAIRE

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

On this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, before me, personally appeared
\_\_\_\_\_ to me known to be the
\_\_\_\_\_ of \_\_\_\_\_, a
\_\_\_\_\_ corporation, the corporation that executed the foregoing
instrument, and acknowledged said instrument to be the free and voluntary act and deed of said
corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was duly
authorized to execute the same.

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

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

ACKNOWLEDGMENT FOR THE PORT

STATE OF WASHINGTON )
) ss.
COUNTY OF KING )

On this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, before me, personally appeared
\_\_\_\_\_ to me known to be the
\_\_\_\_\_ of the PORT OF SEATTLE, a Washington municipal
corporation, the corporation that executed the foregoing instrument, and acknowledged said instrument to
be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned,
and on oath stated that he/she was duly authorized to execute the same.

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

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

EXHIBIT A

– Legal Description –

DRAFT



EXHIBIT B

– Premises –

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## EXHIBIT D

### – Additional Non-Discrimination Covenants –

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Aviation Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Aviation Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Nondiscrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
  - a. withholding payments to the contractor under the contract until the contractor complies; and/or
  - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as

the Recipient or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

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## EXHIBIT E

### – Pertinent Non-Discrimination Authorities –

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

EXHIBIT E

– Operating Standards –

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