

# SEATTLE-TACOMA INTERNATIONAL AIRPORT

## LEASE AND CONCESSION AGREEMENT FOR THE MANAGEMENT AND OPERATION OF A FULL SERVICE BANK AND AUTOMATED TELLER MACHINES

Port of Seattle  
Seattle-Tacoma International Airport  
Main Terminal  
17801 Pacific Highway South  
Seattle, WA 98158

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**DRAFT**

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

THIS LEASE AND CONCESSION AGREEMENT (hereinafter referred to as "Agreement") made as of \_\_\_\_\_ day of \_\_\_\_\_, 2011, by and between the PORT OF SEATTLE, a Washington municipal corporation as Lessor, (hereinafter referred to as "the Port"), and \_\_\_\_\_, a \_\_\_\_\_ corporation, (hereinafter referred to as "Lessee").

**WITNESSETH**

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

WHEREAS, Lessee is interested in operating, has been selected to operate, a concession for a full-service bank and automated teller machine operation at the Airport;

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

**1. GENERAL DEFINITIONS**

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

- 1.1 "Agreement Year" shall mean each successive year during the term of this Agreement, beginning \_\_\_\_\_ 2011.
- 1.2 "Airport" shall mean the Seattle-Tacoma International Airport, a legal description of which is attached as Exhibit A.
- 1.3 "Airport Concessions Disadvantaged Business Enterprise" and "ACDBE" shall mean, a business, whether it is a corporation, sole proprietorship, partnership or joint venture certified as a ACDBE by the State of Washington, of which at least fifty-one percent (51%) of the interest is owned and controlled by one or more socially and economically disadvantaged individuals as defined in the Airport and Airways Safety and Capacity Expansion Act of 1987 and the regulations promulgated pursuant hereto at 49 CFR Part 23.
- 1.4 "ATM" shall mean Automated Teller Machines.
- 1.5 "ATM Customer" shall mean and refer to any user of an ATM unit on the Premises that is a customer of Lessee in any other capacity.

- 1.6 "ATM Non Customer" shall mean and refer to any user of an ATM unit on the Premises that is not a customer of Lessee in any other capacity.
- 1.7 "ATM Transaction" shall mean and refer to any use of an ATM pursuant to a single event of access of an ATM unit, whether by an ATM Customer or ATM Non Customer, regardless of the number of individual transactions performed during that event of access. In the event Lessee's reporting system is unable to distinguish between a single access and multiple transactions performed, the higher number of uses shall be considered ATM Transactions.
- 1.8 "Bank" or "Full Service Banking Facility" shall mean and refer to the full service banking facility to be constructed by Lessee to provide banking services to Airport tenants and the general public.
- 1.9 "Bank Customer" shall mean and refer to any user of the bank on the Premises, regardless of whether the user is a customer of Lessee in any other capacity.
- 1.10 "Bank Space Rent" shall have the meaning set forth in Section 4.3 of this Agreement.
- 1.11 "Basic Occupancy Date" shall mean and refer to \_\_\_\_\_, 2011.
- 1.12 "Days" shall, unless otherwise specified, mean and refer to calendar days, not business days.
- 1.13 "Full Service Banking Facility Occupancy Date" shall mean the date on which the Port turns over to Lessee that portion of the Premises identified on Exhibit B2. The Port shall confirm the Full Service Banking Facility Occupancy Date in the manner provided for notice in Section 3.5 of this Agreement.
- 1.14 "Full Service Banking Facility Premises" shall mean and refer to that portion of the Premises identified on Exhibit B1 and designated for use as the Full Service Banking Facility. The Port and Lessee agree that the Premises for the Full Service Banking Facility Premises are and shall for all purposes deemed to be 1,374 square feet.
- 1.15 "Full Service Banking Facility Rent Commencement Date" shall mean the date on which Lessee first opens the Full Service Banking Facility for business. The Port shall confirm the Full Service Banking Facility Rent Commencement Date in the manner provided for notice in Section 3.5 of this Agreement.
- 1.16 "Gross Sales" shall mean the aggregate gross dollar amount of revenue derived by Lessee from any ATM and Bank Transactions occurring on or about the Premises by way of Transaction Surcharge, Bank Charges, and/or any amounts charged by Lessee for any Optional Services. Gross Receipts shall not, however include the amount of any sales tax or other excise tax imposed upon the customer and collected by Lessee as agent for the taxing body imposing the tax and billed to the customer as a separate item when properly recorded and accounted for.
- 1.17 "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.

- 1.18 "Optional Services" shall have the meaning set forth in Section 13.3 of this Agreement.
- 1.19 "Passenger Terminals" shall mean the Main Terminal, Central Terminal, Concourses A, B, C, and D; and the North and South Satellites. The Passenger Terminals may include current and future Airport facilities such as a Remote Check-In Facility and the Rental Car Facility.
- 1.20 "Per Transaction Fee" shall have the meaning set forth in Section 4.2 of this Agreement.
- 1.21 "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.
- 1.22 "Port Standards" shall mean the Sea-Tac Rules and Regulations, the Regulations for Airport Construction, the Tenant Design and Construction Process Manual (also known as, and referred to herein, as the "Tenant Roadmap"), the CAD Standards Manual, the Concession Design Standards 2010, 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.
- 1.23 "Premises" shall mean the spaces located within the Passenger Terminals and Rental Car Facility as identified more specifically on Exhibits B1, B2, and B3.
- 1.24 "Prohibited Services" shall have the meaning set forth in Section 13.4 of this Agreement.
- 1.25 "Rent" shall, for convenience, mean and refer collectively to sums denominated as either Minimum Annual Guarantee (as defined in Section 4.1), Per Transaction Fees (as defined in Section 4.2), Space Rent (as defined in Section 4.3) or any such other sums or charges otherwise payable by Lessee under the terms of this Agreement. Failure by Lessee to pay any sum denominated as Rent shall entitle the Port to pursue any or all remedies specified in this Agreement as well as remedies specified in RCW Chapter 59.12 or otherwise allowed by law.
- 1.26 "Rental Car Facility Occupancy Date" shall mean the date on which the Port turns over to Lessee that portion of the Premises identified on Exhibit B3. The Port shall confirm the Rental Car Facility Occupancy Date in the manner provided for notice in Section 35 of this Agreement.
- 1.27 "Required Services" have the meaning set forth in Section 13.2 of this Agreement.
- 1.28 "Terminal Space Rental Rate" shall mean the direct cost for non-airline rates calculated by the Port in conjunction with Airport-wide rate-setting. This amount may be revised from time to time at the sole discretion of the Port; provided however, any such adjustment may be made only in connection with adjustments to other terminal rental

rates applying at the Airport and in a manner reasonably consistent with the methodologies utilized in such other terminal rental rate adjustments.

- 1.29 "Transaction Surcharge" shall mean and refer to any amounts charged by Lessee to any ATM Customer for access to an ATM unit to complete an ATM Transaction, separate from any fees/charges either: (i) otherwise assessed (pursuant to agreement or published account terms and conditions) by Lessee to those ATM Customers that are Lessee's customers, or (ii) for any Optional Services.
- 1.30 "Transition Plan" shall mean the transition plan worked out and agreed between Lessee and U. S. Bank National Association, the Port's current ATM concessionaire, in order to ensure the smooth transition of operations. The Transition Plan shall specifically be subject to the Port's prior written approval. Pursuant to the Transition Plan, Lessee may take occupancy of the ATM portions of the Premises prior to the Full Service Banking Facility Occupancy Date and may even commence operations for those portions of the Premises prior to that date.

## **2. LEASED PREMISES**

- 2.1 Premises Generally. Effective on the Basic Occupancy Date, the Port hereby leases to Lessee and Lessee hereby leases from the Port, those portions of the Premises for the 20 ATM locations, as reflected on Exhibit B1.
- 2.2 Banking Facility Premises. Effective on the Full Service Banking Facility Occupancy Date, the Port hereby leases to Lessee and Lessee hereby leases from the Port, the portion of the Premises for the Bank, as reflected on Exhibit B2.
- 2.3 Rental Car Facility Premises. Effective on the Rental Car Facility Occupancy Date, the Port hereby leases to Lessee and Lessee hereby leases from the Port, the Premises for the 2 ATMs located in the Rental Car Facility, as reflected on Exhibit B3.

## **3. TERM**

Unless earlier terminated pursuant to any provision of this Agreement, the term shall commence on the Basic Occupancy Date for any portion of the Premises and continue until the last day of the month in which the date seven (7) years from the Full Service Banking Facility Occupancy Date. The term may be extended for a period of one (1) year at the Port's sole discretion.

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

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

### **4.1 Minimum Annual Guarantee.**

- 4.1.1 *First Agreement Year.* For the first Agreement Year, the Minimum Annual Guarantee shall be an amount equal to \_\_\_\_\_ Dollars (\$\_\_\_\_\_). This amount shall not be subject to adjustment based on the amount of the Transaction Surcharge.

- 4.1.2 *Second and Subsequent Agreement Years.* For the second and each subsequent Agreement Year, the Minimum Annual Guarantee shall be the amount as submitted on the Bid Submittal Form in the RFP. The Minimum Annual Guarantee shall not (subject only to relief in the event of exceptional circumstances set forth in Section 4.1.3) be less than the Minimum Annual Guarantee amount for the First Agreement Year set forth in Section 4.1.1.
- 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, then: (a) the Minimum Annual Guarantee payment due for the next month shall automatically be adjusted downward by the percentage decrease in the number of Enplaned Passengers for the month experiencing the decrease, and (b) the Minimum Annual Guarantee for the Agreement Year in which the reduced monthly payment amount falls shall also be reduced by a like dollar amount. For example, if the number of Enplaned Passengers for the month of July 2015 declined by 25% over the number of Enplaned Passengers for the month of July 2014, then the Port will: (a) reduce the Minimum Annual Guarantee amount payable for the month of August 2015 by 25%, and (b) reduce the Minimum Annual Guarantee for the Agreement Year in which August 2015 falls by a like dollar amount.
- 4.1.4 *Payment in Advance.* All monthly payments of the Minimum Annual Guarantee shall be payable in advance, on or before the first day of each and every month during the term hereof, without notice from the Port and without setoff or deduction.
- 4.2 Per Transaction Fees. Lessee shall also pay the Port a Per Transaction Fee as submitted on the Bid Submittal Form in the RFP, to the extent the total Per Transaction Fees for all ATM Transactions occurring during the prior month is higher than the monthly payment of the Minimum Annual Guarantee paid to the Port pursuant to Section 4.1. The Per Transaction Fee shall be \_\_\_\_\_ Dollars (\$) per ATM Customer Transaction and shall be \_\_\_\_\_ Dollars (\$) per ATM Non-Customer Transaction. On or before the fifteenth (15<sup>th</sup>) day of each month, Lessee shall submit to the Port a detailed statement showing the number of ATM Transactions, the number of ATM Transactions with ATM Users that are otherwise Lessee's customers, and the Gross Receipts generated from the concession during the preceding month and shall simultaneously pay to the Port the Per Transaction Fee due for that preceding month less the monthly payment of Minimum Annual Guarantee already paid by the Lessee for that month. The reports shall show such further reasonable detail and breakdown as may be required by the Port.
- 4.3 Bank Space Rent. Commencing on the Full Service Banking Facility Rent Commencement Date, Lessee shall pay to the Port monthly Bank Space Rent for the Full Service Banking Facility at one-twelfth of the product of the Full Service Banking Facility and Twenty-Five Dollars and Zero cents (\$25.00) per square foot per year. All monthly payments of the Bank Space Rent shall be payable in advance, on or before the first day of each and every month during the term hereof, without notice from the Port



and without setoff or deduction. Bank Space Rent for any partial month shall be prorated based on the actual number of days in the partial month.

- 4.4 Contract Rent. The Port and Lessee agree that the contract rent for the Premises for purposes of RCW 82.29A shall be the sum of (i) the product of the Terminal Space Rental Rate times the area occupied by the ATM locations included within the Premises (for the purposes of this calculation, each ATM shall be deemed to occupy an area of fourteen [14] square feet), and (ii) the Bank Space Rent. All amounts in excess of this amount shall be consideration for the concession rights granted under this Agreement.

## 5. REMITTANCE ADDRESS

Lessee shall pay all fees and charges and submit all reports required by this Agreement to the following:

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

or to such other address as the Port may from time to time specify in writing to Lessee.

## 6. AUTOMATIC TRANSFER

- 6.1 Instead of requiring Lessee to pay Rent or other charges in a manner pursuant to Section 4, the Port may, at its sole option, upon not less than sixty (60) days prior notice to Lessee, require Lessee 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 Lessee of whatsoever nature required or contemplated by this Agreement shall be debited monthly or from time to time, as provided in this Agreement, from Lessee's account in a bank or financial institution designated by Lessee and credited to the Port's bank account as the Port shall designate from time to time.
- 6.2 Lessee 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 Lessee's bank account or any charges imposed on the Port.
- 6.3 In the event that Lessee 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 6.1 must be received by the Port no later than thirty (30) days prior to the date such change is to become effective.
- 6.4 Lessee agrees that it shall remain responsible to the Port for all payments of Rent and other charges pursuant to the Agreement, even if Lessee'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.

- 6.5 Lessee's failure to properly designate a bank or financial institution or to promptly provide appropriate information in accordance with this Section 6 shall constitute a default of this Agreement.

## **7. ACCOUNTING PROCEDURES**

- 7.1 Lessee covenants and agrees that it will establish and maintain an accounting system (specifically including all books of account and records customarily used in the type of operation permitted by this Agreement) in full and complete accordance with generally accepted accounting principles and otherwise reasonably satisfactory to the Port for the determination of any Rent or other computations, or both, which may be necessary or essential in carrying out the terms of this Agreement. Lessee shall maintain its records relating to the operation permitted by this Agreement for a period of at least three (3) years after the end of each Agreement Year (or until the close of any ongoing audit thereof being conducted by, or on behalf of, the Port); provided, however, that the Port may request that any such records be retained for a longer period of time, in which case Lessee, at its option, may deliver such records into the custody of the Port.
- 7.2 In addition to any reports otherwise required, Lessee shall provide the Port: (i) within fifteen (15) days after the close of each month of the Term, a report (the "Monthly Report") of Gross Sales; (ii) within sixty (60) days after the close of each Agreement Year, a report (the "Annual Report") reflecting the amount of Gross Sales for the preceding Agreement Year (or, in the case of the first Agreement Year, from the period from the date Lessee first opens for business until the end of the first Agreement Year); 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 Annual Report shall be accompanied by a signed certificate of an independent Certified Public Accountant (CPA), Lessee'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 Lessee's books and records as he/she considered necessary or appropriate under the circumstances, (c) such report presents fairly the information reflected for the preceding Agreement Year (or, in the case of the first Agreement Year, from the period from the date Lessee first opens for business until the end of the first Agreement Year), (d) the information reflected conforms with and is computed in compliance with the definitions set forth in this Agreement, and (e), if the certificate is submitted by a CPA, the standards observed by the CPA in its audit are such that it planned and performed the audit to obtain reasonable assurances that Lessee's report is free from material misstatement.

## **8. AUDIT**

- 8.1 A representative designated by the Port shall be allowed to inspect and audit Lessee's books of accounts and records with reference to the determination of any matters relevant to this Agreement at all reasonable times. The cost of such audit shall be borne by the Port unless the results of such audit reveal a discrepancy of more than two percent (2%) reported in accordance with Section 4 above for any twelve (12) month period. In the

event of such discrepancy, the full cost of the audit shall be borne by the Lessee, and Lessee shall promptly pay all additional fees owing to the Port.

- 8.2 In the event that Lessee's books of accounts are not maintained in the Puget Sound region, they shall be made available for audit locally within five (5) business days of a request by the Port, or Lessee shall pay in full, any travel and related expenses of Port representative(s) to travel 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 months, and, in the event that Lessee's books and records are not maintained locally, Lessee shall further pay in full, any travel and related expenses of the Port representative(s) to travel the location outside the Puget Sound region for such "surprise" audit.

## **9. LATE CHARGES**

Lessee hereby acknowledges that late payment by Lessee to the Port of the Rent, or any other sums due hereunder will cause the Port to incur costs not otherwise contemplated by this Agreement. Accordingly, if any installment of Rent or any other sum due from Lessee shall not be received by the Port within ten (10) days after such amount shall be due, then interest shall accrue on Rent, or any other sums due hereunder, at the rate of eighteen percent (18%) per annum or the maximum rate provided by law, whichever is less, from the date originally due until paid.

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

- 10.1 Lessee shall, upon execution of this Agreement, obtain and deliver to the Port an irrevocable stand-by letter of credit or other security in a form approved by the Port in an amount equal to two thirds of the Minimum Annual Guarantee amount for the first Agreement Year as set forth in Section 4.1.1 (without adjustment) (hereinafter referred to as "Security") to secure Lessee's full performance of this Agreement, including the payment of Rent and other amounts now or hereafter payable to the Port hereunder; provided, however, in the Lessee's pays any installment of Minimum Annual Guarantee or Percentage Fees late in any twelve (12) month period, the Port shall have the right to increase the amount of the Security to one hundred percent thirds ( $\frac{2}{3}$ ) of the Minimum Annual Guarantee amount for the second Agreement Year as set forth in Section 4.1.2 (without adjustment). The amount, form provisions and nature of the Security, and the identity of the issuing bank or other obligor there under, shall at all times be subject to the Port's approval. The Security shall remain in place at all times throughout the full term of this Agreement and throughout any holdover period. No interest shall be paid on the Security and the Port shall not be required to keep the Security separate from its other accounts. No trust relationship is created with respect to the Security.
- 10.2 The Security is a part of the consideration for execution of this Agreement. If Lessee shall have fully performed all terms and conditions of this Agreement, any cash deposit security shall be paid to Lessee within thirty (30) days following the termination (or expiration) date without interest; otherwise the Port shall, in addition to any and all other rights and remedies available under this Agreement or at law or equity, retain title thereto.

- 10.3 The Port may apply all or part of the Security to unpaid Rent or any other unpaid sum due hereunder, or to cure other defaults of Lessee. If the Security is in a form that periodically requires renewal, Lessee must renew the Security not less than 45 days before the Security is scheduled to expire. If the Port uses any part of the Security, Lessee shall restore the Security to an amount acceptable to the Port within fifteen (15) days after the receipt of the Port's written request to do so. The retention or application of such Security by the Port pursuant to this Section 10 does not constitute a limitation on or waiver of the Port's right to seek further remedy under law or equity.
- 10.4 It is further agreed that in the event the laws of the State of Washington applicable hereto shall hereafter be amended, the provisions of this entire Section 10 shall be deemed likewise automatically amended upon the effective date of such statutory amendments, to the extent and in a manner necessary to comply therewith.

## **11. USE OF PREMISES**

- 11.1 Lessee shall use the Premises for the operation of a Full Service Banking Facility and ATM concession. Lessee shall operate the concession substantially in accordance with its Proposal. The Port reserves the right to approve a complete listing of services provided in the Premises. Notwithstanding any earlier Occupancy Date for any portion of the Premises, Lessee shall not other than pursuant to the Transition Plan, commence operations from any portion of the Premises prior to \_\_\_\_\_, 2011.
- 11.2 Lessee shall use the Premises identified on Exhibits B1 and B3 exclusively for the installation, operation and repair of Automated Teller Machines ("ATM" or "ATMs"). Any ATM installed under this Agreement shall provide the Required Services (Section 13.2). Any ATM installed under this Agreement may, subject to the Port's consent (which shall not be unreasonably withheld or delayed) provide some or all of the Optional Services (Section 13.3). No ATM installed under this Agreement shall provide any Prohibited Services (Section 13.4).
- 11.3 Lessee shall use the Premises identified on Exhibit B2 exclusively for the construction and operation of the Full Service Banking Facility ("Bank"). The Bank shall provide the Required Services (Section 13.2). The Bank may, subject to the Port's consent (which shall not be unreasonably withheld or delayed) provide some or all of the Optional Services (Section 13.3). The Bank shall not provide any Prohibited Services (Section 13.4).
- 11.4 Lessee'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/service in any part of the Airport of the same or similar merchandise or service which Lessee 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.
- 11.5 Lessee expressly covenants and agrees that it will not and shall not use the Premises for any other purpose than herein provided without the written consent of the Port. Lessee

shall use the Premises for the conduct of said business in a first class manner continuously during the entire term of this Agreement, with the exception of temporary closures for such periods as may reasonably be necessary for repairs or redecorating or for reasons beyond Lessee's control.

- 11.6 Lessee recognizes that the specific limited use prescribed herein is a material consideration to the Port in order that the Airport will maintain an appropriate tenant mix so as to efficiently serve the traveling public and to produce the maximum gross receipts possible for all tenants.
- 11.7 Lessee shall specifically comply with any and all applicable requirements regarding access to the secured areas (SIDA) of the Airport. Lessee acknowledges that these requirements are generally imposed by the Federal Aviation Administration and/or Transportation Security Administration, are generally beyond the control of the Port, and are subject to change from time-to-time. Lessee further acknowledges that these requirements may have substantial effect on its manner of performance under this Agreement.
- 11.8 If the Premises are operated under a franchise, Lessee represents and warrants to the Port that Lessee 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, Lessee agrees to provide the Port with a copy of the Franchise Agreement and reasonable evidence that such agreement remains in full force and effect. Lessee agrees that the termination of Lessee's right to use Lessee'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 Lessee's trade name, shall constitute a material breach of Lessee's obligations under this Agreement.
- 11.9 Lessee agrees that it will not disturb the Port or any other tenant of the Port by making or permitting any disturbance or any unusual noise, vibration or other condition on or about the Premises.
- 11.10 While the Port may provide parking facilities to the Lessee'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 Lessee's employees.

## **12. FIRST CLASS CONCESSIONS**

- 12.1 In addition to, and not in lieu of, any other standards that may be set forth in this Agreement, Lessee shall maintain the Premises in a manner of operation such that the standards for appearance, cleanliness, and customer service meet those of upscale malls and similar non-airport retail facilities ("a First Class Manner"). 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."

- 12.2 Lessee agrees to upgrade and refurbish the Premises in a manner acceptable to the Port in order to maintain an attractive and inviting appearance to customers. Unless otherwise agreed by the Port, this upgrade and refurbishment shall be completed approximately in the middle of the term provided by Section 3. Lessee shall submit to the Port a schedule of refurbishment (in conformance with Section 17) before starting any work, which shall include painting and repair attributable to ordinary wear and tear, and any replacement of furniture, trade fixtures and equipment.
- 12.3 Lessee shall continuously review and analyze new trends or concepts in the retail banking service industry and agrees to improve its operation by applying such new trends or concepts at the Airport, subject to the Port's prior written approval.

### **13. STANDARDS OF OPERATION**

- 13.1 Lessee shall ensure that the Premises are installed and operated, at the minimum, under the Preventative Maintenance Procedures and the following general standards:

- 13.1.1 The highest degree and standards of quality services must be provided to the patrons of the Airport.
- 13.1.2 Concession operations must be conducted in a safe, clean, orderly and inviting condition at all times.
- 13.1.3 The ATM Premises must be open to the public seven (7) days per week, twenty-four (24) hours per day, including holidays.
- 13.1.4 At a minimum, the Bank hours must be customary to traditional retail banking facilities. All hours are subject to prior approval by the Port.
- 13.1.5 The ATMs will be serviced and monitored in a manner that reasonably ensures the continual and uninterrupted operation of each unit. The Port shall specifically have the right to require more frequent stocking and servicing upon written notice to Tenant if reasonably required. The Port and the Lessee shall agree to, and may from time to time revise, operating procedures for entering Airport secured areas for the purposes of servicing and maintaining the ATMs. Lessee shall provide the Port with a list of contact numbers and ATM locations or serial numbers for emergency and service call purposes.
- 13.1.6 The Lessee shall comply with all applicable responsibilities of the Airport security program, any Federal Aviation Administration (FAA) or Transportation Security Administration (TSA) laws or policies. The Lessee is solely responsible for fines associated with violations of the Airport security program, the Airport certification manual, the Airport emergency program, and/or Federal Airport Regulations (FAR) by the Lessee, its agents, officers, suppliers, guests, customers, or employees while at the Airport.
- 13.1.7 Lessee shall ensure that the ATMs installed pursuant to this Agreement are fully and properly functioning. Lessee shall specifically repair or replace any ATM that is not operating reliably as soon as practicable, and in any event not more than

twenty-four (24) hours after Lessee first learns of the problem (whether or not as a result of notice from the Port).

- 13.1.7.1 In the event that the Port determines that any ATM has not been operating properly or reliably for seventy-two (72) hours or more, the Port 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), have the right to delete the specific ATM location from this Agreement. The Port may thereafter make such use of the ATM location as it, in its sole discretion, sees fit, including offering the ATM location to another ATM vendor.
- 13.1.8 Lessee shall provide and display at each ATM unit all written directions necessary to instruct customers in the operation of the ATM. Lessee shall also provide, either through the ATM's electronic display or affixed to the ATM, information for the obtaining of machine services and/or refunds.
- 13.1.9 Lessee shall not charge Transaction Surcharges except as approved in writing by the Port. The Maximum amount of any such Transaction Surcharge that may be approved shall be \$3.00 per ATM Transaction; provided, however, the Port may approve an increase in such amount in the Port's sole discretion and may specifically condition such approval on Lessee increasing any Per Transaction Fee paid to the Port by not less than a percentage equal to the percentage increase in the Transaction Surcharge over \$3.00. The amount of any such Transaction Surcharge and a clear description of the customers to which it applies must be posted in a clearly visible manner on the exterior of the ATM unit, or stated clearly through the ATM's electronic display. The electronic display must also request Customers to agree to the Transaction Surcharge prior to completing any transaction that results in a Transaction Surcharge before the Customer Use is completed. Any Transaction Surcharges charged by Tenant must be consistent throughout the Airport.
- 13.1.10 All loading and unloading of goods, the delivery or shipping of merchandise, supplies, and fixtures to and from the Premises shall be done only at such time, in the areas, and through the entrances reasonably designated for such purposes by the Port Representative, pursuant to a schedule developed by the Port from time to time.
- 13.1.11 Garbage, refuse and other debris shall be placed in trash bags or such other garbage containers as may be reasonably required by the Port Representative suitable for transportation to a designated bin or compactor in the manner and at the time and places specified by the Port Representative.
- 13.1.12 Lessee shall train its employees involved in the ATM operations on the Premises, the compliance with any applicable laws and regulations and the provisions of this Agreement, and the provision of good service to customers.

- 13.1.13 No loud, boisterous or otherwise improper actions or language shall be permitted within or around the Premises.
- 13.1.14 Lessee shall provide the Port a contract representative and his/her contact information, for emergency purposes.
- 13.1.15 All written complaints concerning Lessee's operation shall be responded to in writing by Lessee within five (5) days and shall be reported to the Port Representative along with the response.
- 13.1.16 Prices and charges shall be conspicuously displayed in a manner reasonably approved by the Port Representative. In no event shall the price/charge exceed the price displayed.
- 13.2 "Required Services" shall mean and refer to the following ATM and Bank transactions, whether or not a surcharge or other fee is permitted or levied:
- 13.2.1 Dispense United States currency.
  - 13.2.2 Provide access to network support from no less than four of the following networks: PLUS, PULSE, STAR, Cirrus, ENK, and Fastbank.
  - 13.2.3 Accept no less than four of the following credit cards: American Express, Diner's Club, MasterCard, Visa, and Discover.
  - 13.2.4 Provide a written receipt of each transaction.
  - 13.2.5 Provide display functions on user operation.
  - 13.2.6 Display transaction fee/surcharge information.
- 13.3 "Optional Services" shall mean and refer to the following ATM and Bank transactions, whether or not a surcharge or other fee is permitted or levied:
- 13.3.1 Provide access to financial networks other than those required under Section 13.2.2.
  - 13.3.2 Provide access to credit cards other than those required under Section 13.2.3.
  - 13.3.3 Dispense traveler's checks.
  - 13.3.4 Dispense United States postage stamps at face value.
  - 13.3.5 Accept deposits to accounts.
  - 13.3.6 Handle debit card transactions.
  - 13.3.7 Other services consistent with the operations of ATMs and Banks that can be demonstrated to benefit customers and the traveling public, if and as approved by the Port.



13.4 "Prohibited Services" shall mean and refer to any services, whether or not a surcharge or other fee is permitted or levied, other than Optional Services and Required Services for which the Port has not provided express authorization and which includes (without limitation):

13.4.1 Any and all sales of phone cards.

13.4.2 The dispensing or exchange of foreign currency.

13.4.3 Gambling of any kind.

13.4.4 Display advertising, except that electronic display of Tenant's services during "wait" times while transactions are processing shall not be deemed to be advertising prohibited hereunder.

13.4.5 Sales of any type of merchandise.

#### **14. QUALITY ASSURANCE AUDITS**

The Port may conduct the following regular concession performance inspections ("Quality Assurance Audits") to ensure compliance with all of the standards of operation set forth in Sections 12 and 13 as well as anywhere else they may appear in this Agreement:

14.1 The Port may, in its discretion, review each of Lessee's concession operations for quality assurance at any time and shall endeavor to do so on a quarterly basis.

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

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

14.2.2 Customer Service – Delivered as requested and receipts provided.

14.2.3 Personnel – Professionalism and appearance.

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

14.4 In the event that Lessee fails to timely correct the deficiencies noted in any Quality Assurance Audit as provided in this Section 14, the Port may issue a notice of default pursuant to Section 32; provided, however, the applicable cure period shall be fifteen (15) days notwithstanding anything to the contrary in Section 32.1.2.

- 14.5 In addition, in the event that Lessee fails to correct in a timely manner the deficiencies noted in any Quality Assurance Audit as provided in this Section 14, the Port may elect to fine Lessee an amount not to exceed three hundred dollars (\$300.00) per violation, per day. The Port's right to impose a fine pursuant to this Section 14.5 shall be 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. The Port shall have no obligation to Lessee to impose fines on or otherwise take action against any other party at the Airport. Lessee and the Port agree that the Port will incur damages as a result of the failure to promptly remedy such violations, 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.

## **15. ACCEPTANCE OF PREMISES**

Lessee shall promptly examine the Premises following the Basic Occupancy Date and Banking Facility Occupancy Date as applicable. Unless Lessee provides the Port with written notice of any defect or problem within ten (10) working days of the Occupancy Date, Lessee 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 Lessee's use of the Premises, and obtain necessary permits therefor.

## **16. IMPROVEMENTS BY THE PORT**

It is understood that the Port may from time to time elect to alter, improve or remodel portions of the Airport, and Lessee 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. Lessee agrees that any temporary inconvenience resulting from any such work by the Port or its contractors and agents shall not be grounds for reduction of rent or fee if the same shall not unreasonably interfere with Lessee's use of the Premises.

## **17. IMPROVEMENTS BY LESSEE**

- 17.1 Lessee shall provide and install new, modular, state-of-the-art, fully integrated ATMs at all locations provided under this Agreement. The Housed ATMs shall be housed within an enclosure and incorporate through the wall, recessed design. The remainder of the ATMs shall be stand-alone units; provided, however, the Port shall have the option during the term of this Agreement to require Lessee, at its sole cost and expense, to relocate and house the ATMs located on the Esplanade into enclosures, incorporating through the wall, recessed design.
- 17.2 Lessee shall design and construct a state-of-the-art Full Service Banking Facility at the location provided under this Agreement. The Bank must include a night depository.
- 17.3 Lessee shall, at its sole cost and expense, design, construct and install all structures, facades, fixtures, furnishings and equipment necessary for its operation under this Agreement. The Port will, however, provide (i) 120 volt, 20 amp power service, and (ii) Category 5 data/communications cabling, at each location. Lessee shall be responsible for configuring and connecting any equipment to these services.

- 17.4 All improvements made by Lessee shall be of high quality, shall conform to the design criteria approved by the Port Representative, shall be of fireproof construction according to the standards of the local rating organization, shall be constructed in good and workmanlike manner and shall otherwise be in full and complete accordance with all Legal Requirements and Port Standards. Construction of the Full Service Banking Facility shall be performed diligently and substantially in accordance with the terms, conditions, and schedule as set forth on Exhibit C.
- 17.5 Before any construction of any leasehold improvement is commenced on the Premises, Lessee shall prepare plans and specifications and otherwise comply with the Port Standards. Without limiting the generality of the foregoing, Lessee shall in connection with the Full Service Banking Facility, specifically comply with the terms, conditions, and schedule for design, development, and construction set forth on Exhibit C.
- 17.6 Except as otherwise specifically provided in this Agreement, Lessee shall obtain all necessary permits. In the event the Port is required or has obtained any of the necessary permits, Lessee will reimburse the Port for any permit fees and associated costs in obtaining said permits.
- 17.7 Lessee is, and shall be, fully responsible for any and all improvements and/or Alterations (including signage) constructed on or about the Premises. The Port's review or approval of Lessee's drawings and other submittals shall create no responsibility or liability on the part of the Port for their completeness, design sufficiency, or compliance with all Legal Requirements and/or Port Standards, all of which shall be Lessee's sole responsibility. Nor shall such review or approval constitute a waiver by the Port of the right to thereafter require Lessee to amend the same to correct any failure by Lessee to comply with Legal Requirements and the Port Standards, which is later discovered by the Port. Lessee shall, in addition to and not in lieu of any other indemnity set forth in the Agreement, indemnify and hold the Port harmless from and against: (i) any and all errors and omissions contained in Lessee's drawings or (ii) any losses, costs, damages or claims of whatever nature (including, but not limited to, attorney's fees and costs of any kind), arising out of or in connection with the failure to comply with Legal Requirements or the Port Standards.
- 17.8 Lessee shall construct, install, and make operational, all ATMs and the Bank under this Agreement as quickly as reasonably practicable; provided, however, in no event shall Lessee exceed the following deadlines ("the Deadlines"):
- 17.8.1 For those ATMs located within the Main Terminal, Concourses, and Satellites:
- 17.8.1.1 For the ATMs which are not Housed ATMs, not later than five (5) days following the Basic Occupancy Date.
- 17.8.1.2 For the ATMs which are Housed ATMs, not later than thirty (30) days following the Basic Occupancy Date.
- 17.8.2 For those ATMs located within the Rental Car Facility, not later than the later of (i) thirty (30) days following the Rental Car Facility Occupancy Date, or (ii) the date on which the Rental Car Facility first opens to the traveling public.

- 17.8.3 For the Bank located in the Main Terminal, not later than one hundred and twenty (120) days following the Full Service Banking Facility Occupancy Date, the leasehold improvements for the Bank shall be completed and Lessee shall commence operations; provided, however, said time period may be extended to the extent of delays directly caused by the Port and/or force majeure events beyond the control of Lessee as set forth in Section 49.
- 17.9 Lessee agrees not later than each respective Deadline, the leasehold improvements for the respective Premises shall be completed and Lessee shall commence operations; provided, however, said time period may be extended to the extent of delays directly caused by the Port and/or force majeure events beyond the control of Lessee as set forth in Section 49. In the event that Lessee has not commenced operations within the period set forth in this Section, Lessee 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 one hundred dollars (\$100.00) per day, per ATM installation that is not substantially complete and operational until such time as Lessee has substantially completed construction and commenced operations. Lessee and the Port agree that the Port will incur damages as a result of the failure to timely complete 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.
- 17.10 Within sixty (60) calendar days of the completion of construction required under this Agreement, Lessee shall provide the Port with: (a) 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; (b) a certified proof in writing demonstrating that no liens exist on any or all of the construction; and (c) 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 Lessee. With respect to those improvements made to the Full Service Banking Facility Premises, Lessee shall also deliver within the same time period, 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 Lessee to construct the Full Service Banking Facility in the Full Service Banking Facility Premises.
- 17.11 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, Lessee shall retain ownership of all furniture, trade fixtures and equipment from time to time installed in the Premises by Lessee at its expense. Lessee may remove any of such furniture, trade fixtures or equipment at any time during the term and shall remove all thereof prior to the expiration of the term. Any such property not removed at the expiration of the term shall, at the election of the Port, become the property of the Port without payment to Lessee, or be deemed abandoned and removed by the Port, at Lessee's expense. Upon any removal of such property, Lessee shall promptly repair any and all damage to the Premises caused thereby and reimburse the Port for its costs and

expenses in removing any such property not removed by Lessee and repairing any such damage not repaired by Lessee; this covenant shall survive the termination of this Agreement.

## **18. ALTERATIONS**

- 18.1 After completing the improvements required by Section 17, Lessee shall make no other alterations, additions, substitutions or improvements (collectively referred to as "Alterations") to or upon the Premises without first obtaining the written approval of the Port which approval shall not be unreasonably withheld. In any event, all such Alterations shall be done at Lessee's sole cost and expense and at such times, subject to such conditions, and in such manner as the Port may from time to time designate.
- 18.2 Any permitted Alteration shall be of high quality, shall conform to the design criteria approved by the Port Representative, shall be of fireproof construction according to the standards of the local rating organization, shall be constructed in good and workmanlike manner and shall otherwise be in full and complete accordance with all Legal Requirements and Port Standards.
- 18.3 Before any construction of any Alteration, Lessee shall prepare plans and specifications and otherwise comply with the Port Standards. Except as otherwise specifically provided in this Agreement, Lessee shall obtain all necessary permits for any Alteration. In the event the Port is required or has obtained any of the necessary permits, Lessee will reimburse the Port for any permit fees and associated costs in obtaining said permits.
- 18.4 Within ninety (90) days of the completion of any Alteration, Lessee shall provide the Port with: (a) a certification that the Alteration has been constructed in accordance with the approved drawings and specifications and in strict compliance with all Legal Requirements and the Port Standards; (b) a certified proof in writing demonstrating that no liens exist on the Alteration; and (c) a reproducible final copy of the plans as-built for the Alteration along with computer discs as electronic files in a format compatible with the Port's CAD Standards Manual, to enable the Port to upgrade its existing files to reflect the as-constructed changes made by Lessee.

## **19. UTILITIES**

- 19.1 ATM Premises. The following terms will govern the installation and supply of utilities at those portions of the Premises utilized for installation and maintenance of ATMs as designated on Exhibits B1 and B2.
- 19.1.1 The Port will, at no cost to Lessee, provide normal and reasonable quantities of electrical power to the distribution points determined by the Port at each designated ATM location.
- 19.1.2 The Port will, at no cost to Lessee, provide normal and reasonable quantities of lighting in those areas of the Airport open to and accessible by the public.

19.1.3 The Port will, at no cost to Lessee, provide normal and reasonable quantities of central air from the central HVAC system in those areas of the Airport open to and accessible by the public.

19.2 Full Service Banking Facility Premises. The following terms will govern the installation and supply of utilities at those portions of the Full Service Banking Facility Premises, as designated on Exhibit B3.

19.2.1 Lessee shall, at its expense, furnish, install and maintain any ductwork and other connections within or leading into the Full Service Banking Facility Premises, and shall connect and complete the heating, ventilating and air conditioning (HVAC) from the Airport's central system. The Port shall, at its expense, furnish normal and reasonable quantities of central air from the central HVAC system to the Full Service Banking Facility 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 seasons provided, that Lessee properly maintains the ductwork and other connections within or leading into the Full Service Banking Facility Premises and complies with the recommendations of the Port regarding reasonable occupancy and use of the Full Service Banking Facility Premises.

19.2.2 To the extent required, Lessee shall, at its expense, furnish, install and maintain a water meter for the Full Service Banking Facility Premises at a location and of a type specified by the Port and shall pay all costs for water used within the Full Service Banking Facility Premises. Lessee shall be responsible for all water hook-up of its equipment and for extending its drain lines to the point of connection identified by the Port. The Port shall furnish water from the central water source in reasonable amounts provided that Lessee complies with all water conservation programs in effect or as adopted.

19.2.3 Lessee shall, at its expense, furnish, install and maintain an electric meter, and a gas meter if required, for the Full Service Banking Facility Premises at a location and of a type specified by the Port, and shall pay all costs for electricity and gas used within the Full Service Banking Facility Premises. Lessee shall furnish, install and maintain all power circuits and connections required for equipment and mechanical systems used in the Full Service Banking Facility Premises.

19.2.4 Lessee shall, at its expense, furnish, install and maintain all lighting fixtures and wiring for general illumination of the Full Service Banking Facility Premises. Levels of illumination and wattage requirements shall be subject to the approval of the Port.

19.2.5 Lessee agrees to use the Port's cabling and communications system for its operations at the Airport when such cabling and communications system have been installed by the Port, and Lessee shall pay a user fee as will be determined by the Port. In the event Lessee is allowed to install communication equipment, any such installation shall be subject to the Port regulation.

- 19.2.6 Lessee shall be responsible for extending, at its own costs, the utility services from the distribution/connection points determined by the Port Representative.
- 19.2.7 Lessee shall pay to the Port, on a pro-rata per square foot basis or on a metered basis where metering is possible, or on any basis as the Port may establish consistent with the charges made to other tenants at the Airport, any assessments including non-discriminatory sewer use charge and/or fire protection charge assessed against the Port as a result of Lessee's occupancy of the Premises.
- 19.3 Lessee shall pay to the Port, on a pro-rata or any other reasonable basis, including administrative fees, the cost of the repair and maintenance of any utility services installed by Lessee outside the Premises but maintained by the Port pursuant to Section 20.1.2.
- 19.4 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.
- 19.5 Utility Interruptions.
- 19.5.1 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 Lessee no less than two (2) days prior notice for such electricity shutdown. The Port shall use all reasonable efforts to not shut down Lessee'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.
- 19.5.2 Lessee further acknowledges that interruptions in utility services (including, without limitation, electrical service) are not uncommon in facilities such as the Airport, and Lessee 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 Lessee deems reasonable and necessary. Lessee 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.
- 19.5.3 The Port shall not be liable to Lessee for any damages or losses (including, without limitation, indirect or consequential damages or attorneys' fees) sustained to any equipment installed by Lessee or otherwise caused by any utility service shut downs, interruptions or failures, nor shall the same constitute an eviction or disturbance of Lessee'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 Lessee promptly. If the Port fails to use such reasonable efforts and such interruption or failure continues for more than ten (10) days, then as Lessee's sole and exclusive remedy, the Minimum Annual Guarantee shall equitably abate until utility service is resumed.

## **20. MAINTENANCE AND REPAIR**

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

20.1.1 The Port will keep and maintain the foundations, roof, common areas and common utilities up to the point of Lessee's connection and structural portions of the exterior walls of the Premises (excepting any walls which are installed by or on behalf of Lessee) in good condition and repair, except for repairs required thereto by reason of the acts of Lessee, its employees, agents, invitees, licensees, or contractors. Lessee agrees to report to the Port of the necessity for repairs as promptly as possible after discovery.

20.1.2 Absent an election as provided in Section 20.2.1, the Port shall maintain all utility services (including, but not limited to, electrical, water, gas, sewer, HVAC, etc.) installed by Lessee outside the Premises, and may charge Lessee for the cost of maintaining such services.

20.1.3 The Port may temporarily enter or have access to the Premises from time to time as reasonably necessary in connection with maintenance or repair work, which the Port may elect to undertake from time to time to the foundations, roof, common utilities and exterior walls.

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

20.2.1 Subject only to the specific obligations of the Port set forth in Section 20.1.1, Lessee will keep and maintain the Premises and every part thereof and any fixtures, facilities or equipment contained therein, in good condition and repair and in a manner consistent with the Port's Preventative Maintenance Procedures, including, but not limited to, 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, and shall make any replacements thereof. The Port may require Lessee to maintain, at Lessee's own costs, all utility services installed by Lessee outside the Premises.

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

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



- 20.2.4 Lessee shall not allow the accumulation of boxes, cartons, barrels, carts, equipment, or other similar items in a public area.
- 20.2.5 Lessee shall be responsible for the complete control of all rodents and insects or other pests within the Premises.
- 20.2.6 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, Lessee 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.

## **21. OUTSIDE AREAS AND ROOF**

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

## **22. DAMAGE OR DESTRUCTION**

- 22.1 Should the Premises or the buildings or structures of which the Premises are a part be damaged by fire or other casualty, and if the damage is repairable within four (4) weeks from the date of the occurrence (with repair work and the preparations therefore to be done during regular working hours on regular work days), the Premises (other than furniture, fixtures and equipment owned by Lessee pursuant to Section 17.11) shall be repaired with due diligence by the Port, and in the meantime, the Minimum Annual Guarantee shall be abated in the same proportion that the untenable portion of the Premise bears to the whole thereof, for the period from the occurrence of the damage to the completion of the repairs.
- 22.2 Should the Premises or any buildings or structures of which said Premises are a part be completely destroyed by fire or other casualty, or should they be damaged to such an extent that the damage cannot be repaired within four (4) weeks of the occurrence, the Port and Lessee shall have the option to terminate this Agreement on thirty (30) days notice, effective as of any date not more than sixty (60) days after the occurrence. In the event that this Section 22.2 shall become applicable, either party shall advise the other within thirty (30) days after the occurrence of any such damage whether to continue the Agreement in effect or to terminate it. If the parties shall elect to continue this Agreement in effect, it shall commence and prosecute with due diligence any work necessary to restore or repair the Premises (other than furniture, fixtures and equipment owned by Lessee pursuant to Section 17.11) and in the meantime, the Minimum Annual Guarantee shall be abated in the same proportion that the untenable portion of the Premise bears to the whole thereof, for the period from the occurrence of the damage to the completion of the repairs. If either party shall fail to notify the other of its election within said thirty (30) day period, that party shall be deemed to have elected to continue this Agreement.
- 22.3 Lessee shall, at its sole cost and expense, be responsible for any and all repair or restoration of any furniture, fixtures and equipment owned by Lessee pursuant to Section 17.11, which repair or restoration may be necessary as a result of any casualty.

## 23. INDEMNIFICATION

- 23.1 To the maximum extent permitted by law, Lessee shall indemnify, defend and save harmless the Port, the commissioners, representatives, directors, officers, agents and employees of the Port, and those in privity of estate with the Port, from and against all claims, expenses (including, without limitation, attorney's fees) or liability of whatever nature: (a) arising from any default, act, omission or negligence of Lessee, or Lessee's contractors, licensees, agents, servants or employees, or the failure of Lessee or such persons to comply with any rule, order, regulation or lawful direction now or hereafter in force of any public authority, in each case to the extent the same are related, directly or indirectly, to the Premises or Lessee's use thereof; or (b) arising, directly or indirectly, from any accident, injury or damage, however caused, to any person or property on or about the Premises; or (c) arising directly or indirectly out of default by Lessee under any of the terms or covenants of this Agreement or in connection with any mechanical, electrical, plumbing, or any other equipment or installations that are to be maintained or repaired by Lessee; or (d) arising from any accident, injury or damage to any person or property occurring outside of the Premises but within the Airport or the general area of the Airport, where such accident, injury or damage results, or is claimed to have resulted from, any act, omission or negligence on the part of Lessee, or Lessee's contractors, licensees, agents, servants or employees or customers, or anyone claiming by, through or under Lessee; provided, however, nothing in this Section 23.1 shall require Lessee to indemnify the Port from injury or damage caused by the sole negligence of the Port. This indemnity and hold harmless agreement shall include indemnity against all costs, expenses (including, without limitation, reasonable attorneys' fees) and liabilities incurred in or in connection with any such claim, or any action or proceeding brought thereon. If any action or proceeding be brought against the Port by reason of any such claim, Lessee, upon notice from the Port, shall, at Lessee's expense, resist or defend such action or proceeding and employ counsel therefore acceptable to the Port.
- 23.2 In consideration of the Port's execution of this Agreement, Lessee hereby waives any immunity Lessee may have under applicable worker's compensation benefit or disability laws (including but not limited to Title 51 RCW) in connection with the foregoing indemnity. Such waiver shall not prevent Lessee from asserting such immunity against any other persons or entities. LESSEE AND PORT AGREE AND ACKNOWLEDGE THAT THIS PROVISION IS THE PRODUCT OF MUTUAL NEGOTIATION.
- 23.3 Notwithstanding anything to the contrary in Section 23.1 in the event of the concurrent negligence of Lessee, its subtenants, licensees, assignees, concessionaires, agents, employees, or contractors on the one hand and the negligence of the Port, its agents, employees or contractors on the other hand, which concurrent negligence results in injury or damage to persons or property of any nature and howsoever caused, and relates to the construction, alteration, repair, addition to, subtraction from, improvement to or maintenance of the Premises such that RCW 4.24.115 is applicable, Lessee's obligation to indemnify the Port as set forth in this Section shall be limited to the extent of Lessee's negligence and that of Lessee's officers, sublessees, assignees, agents, employees, contractors or licensees, including Lessee'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.

- 23.4 Lessee's obligations under this Section shall survive the expiration or earlier termination of this Lease.

## 24. INSURANCE PROVISIONS

- 24.1 Required Policies. Lessee 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:

24.1.1 *General Liability Insurance.* Lessee shall obtain and keep in force a commercial general liability policy of insurance, written on ISO Form CG 00 01 10 01 (or equivalent), that protects Lessee and the Port as an additional insured using ISO Form 20 26 or equivalent, against claims for bodily injury, personal injury and property damage based upon, involving or arising out of the tenancy, use, occupancy or maintenance of the Premises and all areas appurtenant thereto, and specifically including the action/inaction of any subtenant, licensee or concessionaire. Such insurance shall be on occurrence basis providing single limit coverage in an amount not less than Two million dollars (\$2,000,000) per occurrence. The policy shall not contain any intra-insured exclusions as between insured persons or organizations. The policy shall contain a minimum \$250,000 sub-limit that covers damage to premises rented or leased to Lessee, including fire damage. This limit shall be identified on the Certificate of Insurance. The Port shall be submitted upon lease inception, a copy of the additional insured endorsement that validates the Port has been added as an additional insured.

24.1.2 *Automobile Liability Insurance.* Lessee shall obtain and keep in force a commercial automobile liability policy of insurance, written on ISO Form CA 00 01 07 97 (or equivalent), that protects Lessee and the Port against claims for bodily injury and property damage based upon, involving or arising out of motor vehicle operations on or about the Premises and all areas appurtenant thereto. Lessee shall provide a Waiver of Subrogation on this policy in favor of the Port. Such insurance shall cover any "Auto" (i.e. owned, hired and non-owned) and shall be on an occurrence basis providing single limit coverage in an amount not less than one million dollars (\$1,000,000) per occurrence. The policy shall not contain any intra-insured exclusions as between insured persons or organizations.

24.1.3 *Property Insurance.* Lessee shall obtain and keep in force property insurance using an ISO CP 10 20 Cause of Loss Broad Form (or an equivalent manuscript form) insuring Lessee's personal property, Improvements, and Alterations (as defined in Sections 17 and 18) made by or for Lessee against physical damage, including loss of use of the Premises. The policy shall include coverage for any additional costs resulting from debris removal and reasonable amounts of coverage for the enforcement of any ordinance or law regulating the reconstruction or replacement of damaged property including any undamaged sections of the Premises required to be demolished or removed by reason of the enforcement of any Legal Requirement as the result of a covered cause of loss. The amount of such insurance shall be procured on a replacement cost basis (or the commercially reasonable and available insurable value thereof if, by reason of

the unique nature or age of the improvements involved, such latter amount is less than full replacement cost). The Port of Seattle shall be included as an Additional Insured and Loss Payee on Lessee's property insurance policy with respect to the Port's interest in Improvements and Alterations. The Port shall be provided a Certificate of Insurance evidencing commercial property insurance.

24.1.4 *Other Insurance.* Lessee shall further obtain and keep in force such other and further insurance as the Port may from time to time reasonably request for the protection by insurance of its interest in the Premises. Lessee also bears responsibility to provide any state or federally mandated workers compensation insurance at all times.

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.

- 24.2 *Insurance Companies.* Insurance required hereunder shall be with 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.
- 24.3 *Policies Primary.* All insurance to be carried by Lessee shall be primary to and not contributory with any similar insurance carried by the Port, whose insurance shall be considered excess insurance only. No insurance required herein shall contain a deductible or self-insured retention in excess of \$500,000 without the prior written consent of the Port. All deductibles or self-insured retentions are the sole responsibility of the Lessee at all times.
- 24.4 *Termination/Renewal.* Lessee bears the responsibility of maintaining all of the required insurance as specified in this Lease at all times during the Lease term. Failure to renew insurance or to let insurance expire is considered a default of the Lease and allows the Port but does not obligate the Port, to cancel the Lease immediately. In the event Lessee receives any notice from its insurance company that the insurance company is going to cancel or non-renew any of the insurance required under this Lease, Lessee must immediately notify the Port. Lessee bears the responsibility to put into place replacement insurance prior to the effective date of cancellation or expiration of insurance.
- 24.5 *Evidence of Insurance.* Lessee shall deliver, or cause to be delivered, to the Port, certificates of insurance, additional insured endorsements, loss payee endorsements for property insurance, waivers of subrogation and any other documentation or endorsement that provides evidence of the existence and amounts of such insurance, the inclusion of the Port as an insured as required by this Lease, and the amounts of all deductibles and/or self-insured retentions. Upon request by the Port, Lessee shall deliver or cause to be delivered to the Port, certified copies of the policies of insurance that Lessee has purchased in order for the Port to verify insurance coverage, limits, and endorsements or view any exclusions to the Lessee's insurance policies.

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

## 25. ENVIRONMENTAL STANDARDS – INDEMNITY

- 25.1 "Law or Regulation" as used herein shall mean any environmentally related local, state or federal law, regulation, ordinance or order (including without limitation any final order of any court of competent jurisdiction), now or hereafter in effect. "Hazardous Substances" as used herein shall mean any substance or material defined or designated as a hazardous waste, toxic substance, or other pollutant or contaminant, by any Law or Regulation.
- 25.2 Lessee shall not allow the presence in or about the Premises of any Hazardous Substance in any manner that could be a detriment to the Premises or in violation of any Law or Regulation. Lessee shall not allow any Hazardous Substances to migrate off the Premises, or the release of any Hazardous Substances into adjacent surface waters, soils, underground waters or air. Lessee shall provide the Port with Lessee's USEPA Waste Generator Number, and with copies of all Material Safety Data Sheets (MSDS), Generator Annual Dangerous Waste Reports, environmentally related regulatory permits or approvals (including revisions or renewals) and any correspondence Lessee receives from, or provides to, any governmental unit or agency in connection with Lessee's handling of Hazardous Substances or the presence, or possible presence, of any Hazardous Substance on the Premises.
- 25.3 If Lessee, or the Premises, due to Lessee's action or inaction, is in violation of any Law or Regulation concerning the presence or use of Hazardous Substances or the handling or storing of hazardous wastes, Lessee shall promptly take such action as is necessary to mitigate and correct the violation. If Lessee does not act in a prudent and prompt manner, the Port reserves the right, but not the obligation, to come onto the Premises, to act in place of the Lessee (Lessee hereby appoints the Port as its agent for such purposes) and to take such action as the Port deems necessary to ensure compliance or to mitigate the violation. If the Port has a reasonable belief that Lessee is in violation of any Law or Regulation, or that Lessee's actions or inactions present a threat of violation or a threat of damage to the Premises, the Port reserves the right to enter onto the Premises and take such corrective or mitigating action as the Port deems necessary. All costs and expenses reasonably incurred by the Port in connection with any such actions shall become payable by Lessee within fifteen (15) days after presentation of an invoice therefor.
- 25.4 The Port shall have access to the Premises to conduct an annual environmental inspection. In addition, Lessee shall permit the Port access to the Premises at any time upon reasonable notice for the purpose of conducting environmental testing at the Port's expense. Lessee shall not conduct or permit others to conduct environmental testing on the Premises without first obtaining the Port's written consent. Lessee shall promptly inform the Port of the existence of any environmental study, evaluation, investigation, or results of any environmental testing conducted on the Premises, whenever the same becomes known to Lessee, and Lessee shall provide copies to the Port. Any such

inspection by the Port shall be performed in such a manner as to not interfere with Lessee's operators at the Premises.

- 25.5 Prior to vacation of the Premises, in addition to all other requirements under this Agreement, Lessee shall remove and demonstrate to the Port's satisfaction that Lessee has not left any Hazardous Substances on the Premises. This demonstration shall be a condition precedent to the Port's payment of any Agreement Security to Lessee upon termination or expiration of this Agreement.
- 25.6 No remedy provided herein shall be deemed exclusive. In addition to any remedy provided above, the Port shall be entitled to full reimbursement from Lessee whenever the Port incurs any costs resulting from Lessee's use or management of Hazardous Substances on the Premises, including but not limited to, costs of clean-up or other remedial activities, fines or penalties assessed directly against the Port, injuries to third persons or other properties, and loss of revenues resulting from an inability to re-lease or market the property due to its environmental condition (even if such loss of revenue occurs after the expiration or earlier termination of this Agreement).
- 25.7 In addition to all other indemnities provided in this Agreement, Lessee agrees to defend, indemnify and hold the Port free and harmless from any and all claims, causes of action, regulatory demands, liabilities, fines, penalties, losses, and expenses, including without limitation cleanup or other remedial costs (and including attorneys' fees, costs and all other reasonable litigation expenses when incurred and whether incurred in defense of actual litigation or in reasonable anticipation of litigation), arising from the existence or discovery of any Hazardous Substance on the Premises, or the migration of any Hazardous Substance from the Premises to other properties or into the surrounding environment if resulting from Lessee's use or management of the Premises during the term of this Agreement. Provided, however, Lessee's obligation to indemnify the Port pursuant to this Section 25.7 shall not apply with respect to any Hazardous Substance either (a) first existing on the Premises; (b) first released in, on or under the Premises, or (c) first migrating from the Premises to other areas of the surrounding environment, prior to the commencement of this Agreement under Section 3.

## **26. WAIVER OF SUBROGATION**

The Port and Lessee hereby mutually release each other from liability and waive all right of recovery against each other for any loss from perils covered by their respective first party property insurance policies for all perils insured there under; provided, that no such release shall be effective unless the insurance policy or policies expressly permit such a release or contain a waiver of the insurance carrier's right to be subrogated.

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

Lessee shall not use the Premises in such a manner as to increase the existing rates of insurance applicable to the 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 Lease, may be added to the amount of rent herein above

specified and shall be paid by Lessee to the Port on the monthly rental day next thereafter occurring.

## **28. TAXES**

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

## **29. SIGNS**

29.1 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 Lessee in violation of the provisions of this Section 29. At the termination or sooner expiration of this Agreement, Lessee shall remove all such Signs attached to or painted by Lessee at its own expense, and Lessee shall repair any damage or injury to the Premises and correct any unsightly condition caused by the maintenance and removal of said Signs.

29.2 If Lessee fails to comply with the requirements of this Section 29, the Port shall have the right to require Lessee to restore the Premises to the condition existing immediately prior to the unauthorized installation or modification of the Sign. In the event that Lessee fails to restore the Premises within three (3) days following notice by the Port, Lessee 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 one hundred dollars (\$100.00) per day until Lessee has restored the Premises. Lessee 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.

## **30. COMPLIANCE**

Lessee agrees to comply with all applicable rules and regulations of the Port, whether now in existence or hereafter promulgated, pertaining to (a) the building or other realty of which the Premises are a part of, 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. Lessee further agrees to comply with all applicable federal, state, and municipal laws, ordinances, and regulations, including without limitation those relating to environmental matters and airport security. Any fees for any inspection of the Premises during or for the term of the Agreement by a federal, state or municipal officer and the fees for any so-called "Certificate of Occupancy" shall be paid by Lessee.

### 31. ASSIGNMENT OR SUBLEASE

31.1 Prohibition. Lessee shall not assign or transfer this Agreement or any interest therein nor sublet the whole or any portion of the Premises, nor shall this Agreement or any interest there under be assignable or transferable by operation of law or by any process or proceeding of any court, or otherwise without the advance written consent of the Port. If Lessee is anything other than an individual, Lessee further agrees that if at any time during the term of this Agreement more than one-half (1/2) of the outstanding voting equity interests shall belong to any persons other than those who own more than one-half (1/2) of those outstanding voting equity interests at the time of the execution of this Agreement or to members of their immediate families, such change in the ownership of Lessee shall be deemed an assignment of this Agreement within the meaning of this Section 31.1; provided, however, that this sentence shall not apply if, and to the extent that Lessee is a corporation, the outstanding voting stock of which is listed on a recognized security exchange. Lessee's entering into any operating agreement, license or other agreement where under a third party is given rights or privileges to utilize a portion of the Premises shall be an attempted assignment or subletting within the meaning of this Section.

31.1.1 If Lessee shall, at any time during the term of this Agreement, desire to sell, assign or otherwise permanently transfer the Agreement in whole or in part, or any right or leasehold interest granted to it by this Agreement, Lessee shall, at the time the Lessee requests the consent of the Port, deliver to the Port such information in writing as the Port may reasonably require respecting the proposed assignee or subtenant including, without limitation, the name, address, nature of business, ownership, financial responsibility and standing of such proposed assignee or subtenant together with the proposed form of assignment or sublease. Within thirty (30) days from receipt of the information specified above, the Port shall notify Lessee of its election to: (a) consent to the assignment, (b) buy-out Lessee's interest in this Agreement as provided in Section 31.3, or (c) disapprove the assignment setting forth the grounds for doing so.

31.1.2 As a condition for the Port's consent to any transfer, the Port may require that the assignee or subtenant remit directly to the Port on a monthly basis, all monies due to Lessee by said assignee or subtenant (except with respect to excess rentals otherwise due Lessee pursuant to Section 31.2). In addition, a condition to the Port's consent to any assignment or sublease of this Agreement or the Premises shall be the delivery to the Port of a true copy of the fully executed instrument of assignment or sublease and an agreement executed by the assignee or subtenant in form and substance satisfactory to the Port and expressly enforceable by the Port, whereby the assignee or subtenant assumes and agrees to be bound by the terms



and provisions of this Agreement and perform all the obligations of Lessee hereunder.

- 31.1.3 In the event of any assignment, Lessee and each respective assignor, waive notice of default by the Lessee in possession in the payment of rent or fees and in the performance of the covenants and conditions of this Agreement and consents that the Port may in each and every instance deal with the Lessee in possession, grant extensions of time, waive performance of any of the terms, covenants and conditions of this Agreement and modify the same, and in general deal with the Lessee then in possession without notice to or consent of any assignor, including Lessee; and any and all extensions of time, indulgences, dealings, modifications or waivers shall be deemed to be made with the consent of Lessee and of each respective assignor.
- 31.1.4 Lessee agrees that any sublease will contain a provision in substance that if there be any termination whatsoever of this Agreement or the Port should buy-out Lessee's interest pursuant to Section 31.3, then the subtenant, at the request of the Port, will attorn to the Port and the subtenancy, if the Port so requests, shall continue in effect with the Port, but the Port shall be bound to the subtenant in such circumstances only by privity of estate. Nothing herein shall be deemed to require the Port to accept such attornment.
- 31.1.5 No assignment, subletting or license by Lessee shall relieve Lessee of any obligation under this Agreement, including Lessee's obligation to pay any sums due hereunder. Any purported assignment or subletting contrary to the provisions hereof without consent shall be void. The consent by the Port to any assignment or subletting shall not constitute a waiver of the necessity for such consent to any subsequent assignment or subletting.
- 31.1.6 Lessee shall reimburse the Port any reasonable professionals' fees and expenses incurred by the Port in connection with any request by Lessee for consent to an assignment or sublease.
- 31.2 Excess Rentals. If in connection with any assignment or sublease, Lessee receives rent or other monetary consideration, either initially or over the term of the assignment or sublease, in excess of the payments called for hereunder, or in case of the sublease of a portion of the Premises, in excess of such amounts fairly allocable to such portion, after appropriate adjustments to account for any improvements or alterations made by Lessee and assure that all other payments called for hereunder and out-of-pocket expenditures, operating costs or concessions incurred by Lessee in connection with such assignment and commissions, sublease or license, are appropriately taken into account, Lessee shall pay to the Port fifty percent (50%) of the excess of each such payment of rent or other consideration received by Lessee after its receipt.
- 31.3 Buyout.
- 31.3.1 Within the time provided by Section 31.1.1, the Port shall notify Lessee whether it is interested in negotiating a buy-out of Lessee's interest in this Agreement. The

Port shall have no right to buy-out Lessee'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 Lessee. If the Port is interested in a buy-out of Lessee's interest, the Port shall have sixty (60) days from the date of its notice to Lessee to enter into an agreement to buy out Lessee's leasehold interest in this Agreement upon substantially the same terms and conditions as proposed between Lessee 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 Lessee and the third party.

31.3.2 If the Port and Lessee fail to enter into a written agreement for such a purchase within the period of time provided by Section 31.3.1, then the Port shall be deemed to have waived its buy-out right. Subject to the other provisions of this Section 31, Lessee may then transfer its interest in this Agreement, but only upon the same terms and conditions as reviewed by the Port.

31.3.3 If the proposed terms and conditions of any transfer by Lessee 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 Lessee'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.

## **32. DEFAULTS AND REMEDIES**

### **32.1 Defaults**

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

32.1.1 The vacating or abandonment of the Premises by Lessee.

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

32.1.3 The discovery by the Port that any financial or background statement provided to the Port by Lessee, any successor, grantee, or assignee was materially false.

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

32.1.5 A failure by Lessee to observe or perform any covenant, condition, or agreement to be observed or performed by Lessee under this Agreement.

## 32.2 Remedies.

32.2.1 Whenever any default (other than a default under Section 32.1.4, upon which termination of this Agreement shall, at the Port's option, be effective immediately without further notice) continues un-remedied in whole or in part for thirty (30) days after written notice is provided by the Port to Lessee (or for ten (10) days after written notice in the case of default for failure to pay any Rent, or other required payment when due), this Agreement and all of Lessee's rights under it will automatically terminate if the written notice of default so provides. Notwithstanding the foregoing, with respect to any default (other than a monetary default) that cannot reasonably be cured within the period of time provided, this Agreement shall not terminate upon the expiration of this period of time if, but only if, Lessee shall, within such period of time, commence such cure and thereafter diligently prosecute the same to completion. Upon termination, the Port may reenter the Premises using such force as may be necessary and remove all persons and property from the Premises. The Port will be entitled to recover from Lessee all unpaid rent, concession fees or other payments and damages incurred because of Lessee's default including, but not limited to, the costs of re-letting, including tenant improvements, necessary renovations or repairs, advertising, leasing commissions, and attorney's fees and costs ("Termination Damages"), together with interest on all Termination Damages at the rate of 18% per annum or the maximum rate permitted by applicable law, whichever is less, from the date such Termination Damages are incurred by the Port until paid.

32.2.2 In addition to Termination Damages, and notwithstanding termination and re-entry, Lessee's liability for all rent, concession fees or other charges which, but for termination of this Agreement, would have become due over the remainder of the term of the Agreement ("Future Charges") will not be extinguished and Lessee agrees that the Port will be entitled, upon termination for default, to collect as additional damages, a rental deficiency. "Rental Deficiency" means, at the Port's election, either:

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

- (i) In an accelerated lump-sum payment discounted to present value, or
- (ii) In monthly installments, in advance, on the first day of each month following termination of this Agreement and continuing until the date on which the term of the Agreement would have expired but for such termination,

and any suit or action brought to collect any portion of Rental Deficiency attributable to any particular month or months, shall not in any manner prejudice the Port's right to collect any portion of Rental Deficiency by a similar proceeding; or

32.2.2.2 An amount equal to Future Charges less the aggregate fair rental value of the Premises over the remaining term of the Agreement, reduced to present value. In this case, the Rental Deficiency must be paid to the Port in one lump sum, on demand, and will bear interest at a rate of 18% per annum, or the maximum rate permitted by applicable law, whichever is less, until paid. For purposes of this Section 32.2.2, "present value" is computed by applying a discount rate equal to one percentage point above the discount rate then in effect at the Federal Reserve Bank in, or closest to, Seattle, Washington.

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

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

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

### 33. RELOCATION OF SPACE

If at any time the Port determines that the Premises (or any portion thereof) are necessary for the operation or convenience of the Airport, the Port may require Lessee to close, reduce or relocate (to a location designated by the Port) the Premises. In such event, the Port shall provide Lessee at least thirty (30) days advance notice of such event in writing. Lessee shall have the right to accept or reject any such reduction or relocation of the Premises. If accepted, the Port and Lessee shall negotiate, in good faith, for the payment of any costs associated with such change. If Lessee 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. In the event of such termination, the Port shall reimburse Lessee for no more than the Net Book Value of Leasehold Improvements.

### 34. TERMINATION OF AGREEMENT

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

- 34.1 In the event of Lessee's default under the Agreement pursuant to Section 32.
- 34.2 In the event Lessee loses any necessary Airport Concessions Disadvantaged Business Enterprise certification required by Section 42, pursuant to Section 42.2.
- 34.3 In the event the Port requires the Premises for a capital improvement of the Airport, or for safety and security reasons, the Port shall give Lessee six (6) months advance notice of termination pursuant to this provision. In such event, the Port shall be obligated to reimburse Lessee no more than the Net Book Value of Leasehold Improvements.
- 34.4 In the event that any federal, state or local government or agency or instrumentality thereof shall by condemnation or otherwise take title, possession or the right to possession of the Premises or any part thereof, the Port may, at its option, terminate this Agreement as of the date of such taking, and if Lessee is not in default under any of the provisions of this Agreement on said date, any rent or concession fees prepaid by Lessee shall, to the extent allocable to any period subsequent to the effective date of the termination, be promptly refunded to Lessee. In addition, Lessee 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.
- 34.5 In the event that any court having jurisdiction in the matter shall render a decision which has become final and which will prevent the performance by the Port of any of its obligations under this Agreement, then either party hereto may terminate this Agreement by written notice, and all rights and obligations hereunder (with the exception of any undischarged rights and obligations that accrued prior to the effective date of termination) shall thereupon terminate. If Lessee is not in default under any of the provisions of this Agreement on the effective date of such termination, any rent or concession fees prepaid by Lessee shall, to the extent allocable to any period subsequent to the effective date of the termination, be promptly refunded to Lessee and the Port shall reimburse Lessee the "Net Book Value of Leasehold Improvements."

### 35. NET BOOK VALUE OF LEASEHOLD IMPROVEMENTS

"Net Book Value of Leasehold Improvements" shall mean and refer to the dollar amount generated through application of the following rules:

- 35.1 Eligible Improvements. "Eligible Improvements" shall mean and refer to any permanently affixed alterations or improvements made to the Premises and to Lessee's custom designed cabinetry, display fixtures, furnishings and equipment: (a) for which the Port's consent has been sought and obtained in writing, (b) for which any and all information required by Section 17.10 or any Port consent issued under Section 17 or 18 has been timely submitted, and (c) consistently appearing on the NBV Report required by Section 7, and (d) then currently in use and in such condition as would warrant its continued use. Eligible Improvements shall specifically exclude: (a) any furniture, fixtures and/or equipment (other than Lessee's custom designed cabinetry, display fixtures, furnishings and equipment as set forth above), the ownership of which is retained by Lessee pursuant to Section 17.11 or otherwise, and (b) any inventory maintained by Lessee.
- 35.2 Cost of Eligible Improvements. The "Costs of Eligible Improvements" shall mean and refer to the direct costs expended by Lessee 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 be determined from the information timely submitted by Lessee pursuant to Section 17.10 or any Port consent issued under Section 17 or 18, which information is subject to verification by the Port.
- 35.3 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, Lessee's repair and maintenance of the Eligible Improvement, and Lessee's custom and usage for assets similar to the Eligible Improvements, both at the Airport and elsewhere.

### 36. NONWAIVER

The acceptance of Rent by the Port for any period or periods after a default by Lessee hereunder shall not be deemed a waiver of such default unless the Port shall so intend and shall so advise Lessee in writing. Lessee shall construe no waiver by the Port of any default hereunder by Lessee to be or act as a waiver of any subsequent default.

### **37. SURRENDER OF PREMISES**

At the expiration or sooner termination of this Agreement, Lessee shall promptly surrender possession of the Premises to the Port broom-clean, in their improved condition, wear and tear consistent with Section 12 excepted, remove all its furniture, fixtures and equipment, and shall deliver to the Port all keys that it may have to any and all parts of the Premises. Lessee shall be responsible for all consequential damages to the Port as a result of Lessee's failure to surrender the Premises in accordance with this Agreement, and this clause shall survive the termination of the Agreement. Nothing herein contained shall be deemed to constitute a release or discharge of Lessee with respect to any obligation or liability incurred under the Agreement and outstanding and unsatisfied on the surrender date.

### **38. ADVANCES BY PORT FOR LESSEE**

If Lessee shall fail to perform any act required by this Agreement in a manner reasonably satisfactory to Port, including repairs to the Premises, the Port, without waiving or releasing Lessee from any obligation or default under this Agreement, may (but shall be under no obligation) at any time thereafter make such payment or perform such act for the account and at the expense of Lessee. All sums so paid by the Port and all costs and expenses incurred in connection therewith shall be paid immediately by Lessee upon invoice by the Port. The Port may, in its sole discretion, apply all or any portion of any Security toward the satisfaction of said sums.

### **39. LIENS AND ENCUMBRANCES**

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

### **40. NOTICES**

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

To Lessor:

The Port of Seattle  
Seattle-Tacoma International Airport  
P. O. Box 68727  
Seattle, WA 98168  
Attn: Director, Aviation Business Development

To Lessee:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Attn: \_\_\_\_\_

or to such other respective addresses as either party hereto may hereafter from time to time designate in writing. Notices shall be deemed delivered (a) when personally delivered; (b) 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; (c) on the date transmitted by facsimile, if the facsimile is confirmed received; or (d) 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.

#### **41. ATTORNEYS' FEES**

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

#### **42. AIRPORT CONCESSIONS DISADVANTAGED BUSINESS ENTERPRISE (ACDBE)**

42.1 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 Lessee is required to operate the Premises as an ACDBE, Lessee agrees to submit to the Port, upon execution of this Agreement, certification from the State of Washington that Lessee is a certified ACDBE. At all times during the term of this Agreement, Lessee shall be and remain certified as an ACDBE in accordance with all applicable federal, state and local laws, rules and regulations and shall timely file any and all applications, together with all supporting documentation necessary to maintain such certification. In the event that Lessee is certified as an ACDBE and that certification is necessary to satisfy the requirements of this Section, prior to any change in ownership, control or organization of Lessee, Lessee shall (in addition to any requirements that may be imposed by Section 31) similarly obtain ACDBE certification for Lessee as so changed and provide the Port with proof of the same. If Lessee shall at any time cease to be so certified, the Port may, at its sole option, terminate this lease on not less than ninety (90) days advance written notice to Lessee and, in the event of such termination, the Port shall pay to Lessee the Net Book Value of Leasehold Improvements.

42.2 It is the policy of the Port to ensure that Airport Concessions Disadvantaged Business Enterprises (ACDBEs) as defined in the Department of Transportation (DOT), 49 CFR Part 23, and other small businesses have an equal opportunity to receive and participate



in DOT-assisted contracts. The Port encourages Lessee to make every reasonable effort to maximize the contracting opportunities for ACDBEs and other small businesses in the architectural, engineering and construction of the Premises, and in the procurement of goods and services necessary for the operation of the concession at this Airport.

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

### **43. NONDISCRIMINATION**

- 43.1 Lessee for itself, its heirs, personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on the Airport for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulation may be amended.
- 43.2 Lessee for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree: (a) that no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (b) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied benefits of, or otherwise be subjected to discrimination, (c) that Lessee shall use the Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.
- 43.3 Lessee assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This Provision obligates Lessee or its transferee for the period during which Federal assistance is extended to the airport program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, the Provision obligates Lessee or any transferee for the longer of the following periods: (a) the period during which the property is used by the Port or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the Port or any transferee retains ownership or possession of the property. In the case of contractors, this Provision binds the contractors from the bid solicitation period through the completion of the contract.

- 43.4 In addition, Lessee agrees that, whether or not this Agreement is conducted with, or benefits from, Federal assistance, it shall in all matters pertaining to the performance of this Agreement conduct its business in a manner which assures fair, equal and nondiscriminatory treatment of all persons without respect to race, sex, age, color, creed, sexual preference, marital status, national origin, or the presence of any sensory, mental or physical handicap.
- 43.5 Lessee will maintain open hiring and employment practices and will welcome applications for employment in all positions from all qualified individuals.
- 43.6 It is the policy of the Department of Transportation that disadvantaged business enterprises as defined in the Airport and Airway Improvement Act, as amended, and as implemented by Federal regulations shall have the maximum opportunity to participate in the performance of services as defined in 49 CFR 23.5. Consequently, this Agreement is subject to 49 CFR Part 23 as applicable.
- 43.7 Lessee will, at the timely request of the Port, provide any information needed in preparation of necessary reports, forms, documents, and other data relative to equal employment.
- 43.8 Lessee hereby assures that it will include the above clauses in any subcontract(s) approved by the Port and cause subcontractor(s) to similarly include clauses in further subcontracts.

#### **44. MANDATORY PROGRAMS**

- 44.1 Lessee understands that, from time to time, the Port may institute certain programs that the Port believes, in its sole judgment, will be in the best interests of the Airport and its tenants. Such programs shall include, but not be limited to, trash recycling, commuter trip reduction, luggage claim token program, and Aircraft Operations Area (AOA) Clean Surface Program for FOD (Foreign Object Debris).
- 44.2 Lessee 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.

#### **45. LABOR DISPUTES**

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

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

- 46.1 The Port shall have the right to enter the Premises at any and all reasonable times throughout the duration of this Agreement for any reasonable purpose; provided that the Port shall not interfere unduly with Lessee's operations. This right shall impose no

obligation on the Port to make inspections to ascertain the condition of the Premises, and shall impose no liability upon the Port for failure to make inspections.

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

#### **47. HOLDING OVER**

- 47.1 If Lessee shall, with the consent of the Port, hold over after the expiration or sooner termination of the term of this Agreement, the resulting tenancy shall, unless otherwise mutually agreed, be on a month-to-month basis.
- 47.2 In order to facilitate transition from Lessee's tenancy to that of other Lessee at the expiration of the term of the Agreement, the Port may request, and Lessee shall agree, to extend its tenancy as to some or all of the Premises on a month-to-month basis, not to exceed six (6) months. No later than nine (9) months before expiration of the Agreement, the parties shall meet to discuss the process for transitioning occupancy of the Premises in order to minimize disruption of service to the traveling public at the Airport.
- 47.3 During any month-to-month tenancy pursuant to this Section 47, Lessee shall pay to the Port the same rent or fee as set forth herein, unless a different rent or fee shall be agreed upon, and shall be bound by all of the additional provisions of this Agreement insofar as they may be pertinent.

#### **48. INGRESS AND EGRESS**

Lessee shall possess the right of ingress to and egress from the Premises as made necessary in fulfillment of the terms of this Agreement, provided that the rights herein defined shall not be exercised in such manner and to such extent as to impede or interfere unduly with the operation of the Airport by the Port, its tenants or authorized occupants or in violation of any leases or agreements heretofore or hereafter entered into between the Port and third persons.

#### **49. FORCE MAJEURE**

- 49.1 In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lockouts, inability to procure labor or materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war, fire or other casualty or other reason of a similar or dissimilar nature beyond the reasonable control of the party, delayed in performing work, or doing acts required under the terms of this Agreement, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act

shall be extended for a period equivalent to the period of such delay. Delays or failures to perform resulting from lack of funds shall not be deemed delays beyond the reasonable control of a party.

- 49.2 After first opens for business, the provisions of this Section 49 shall not operate to excuse Lessee from the prompt payment of Rent as required by this Agreement and shall not extend the term of this Agreement.

## **50. JOINT AND SEVERAL LIABILITY**

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

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

It is understood and agreed that for convenience, the word "Lessee" and verbs and pronouns in the singular number and neuter gender are uniformly used throughout this Agreement, regardless of the number, gender or fact of incorporation of the party who is, or of the parties who are, the actual Lessee or Lessees under this Agreement.

## **52. CAPTIONS**

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

## **53. INVALIDITY OF PARTICULAR PROVISIONS**

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

## **54. SURVIVAL OF INDEMNITIES**

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

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

This Agreement shall be construed under the laws of Washington. Jurisdiction and venue for any action relating hereto shall be in King County, Washington.

## **56. BROKER'S FEE**

Lessee warrants that it has had no discussions, negotiations and/or other dealings with any real estate broker or agent other than affirmatively disclosed to the Port in connection with the

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

#### 57. ENTIRE AGREEMENT - AMENDMENTS

This Agreement, together with Exhibits A, B, B1, B2, and C, all of which are attached hereto and incorporated herein by this reference, constitute the entire agreement between the parties. There are no terms, obligations, covenants, or conditions other than those contained herein. No modification or amendment of this Agreement shall be valid or effective unless evidenced by an agreement in writing signed by both parties.

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

\_\_\_\_\_  
A \_\_\_\_\_ corporation

PORT OF SEATTLE

A Washington municipal corporation

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

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

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

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

(ACKNOWLEDGMENT FOR LESSEE)

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 2003, 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 \_\_\_\_\_, 2003, before me, personally appeared \_\_\_\_\_ to me known to be the \_\_\_\_\_ of the PORT OF SEATTLE, a municipal corporation, the corporation that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was duly authorized to execute the same.

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

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

EXHIBIT A

Airport Legal Description

DRAFT

EXHIBIT B

The ATM Premises ~ Main Terminal

DRAFT



EXHIBIT B1

The ATM Premises – Rental Car Facility

DRAFT

EXHIBIT B2

The Bank Premises

DRAFT

## EXHIBIT C

### **I. DEVELOPMENT PROCESS AND SCHEDULE**

#### **A. TENANT**

As used in this Exhibit C, the term "TENANT" shall refer, as applicable, to: (i) Lessee under the Agreement, (ii) any sublessee under this Agreement that is undertaking any improvements and/or Alterations (including signage), (iii) anyone else acting on behalf of Lessee or any sublessee to undertake any improvements and/or Alterations (including signage). Nothing herein shall, however, relieve Lessee of ultimate responsibility for compliance with any and all terms, covenants and conditions of the Agreement.

#### **B. THE PORT'S DRAWINGS**

The PORT has delivered to TENANT, by separate enclosure, the Port Standards (as they now exist) together with illustrative outline drawings and typical details of the Premises (if available). The PORT'S basic architectural electrical and mechanical criteria and other information necessary for the preparation of drawings and specifications for the Premises are contained in these documents. By execution of the Agreement, TENANT acknowledges receipt of the above and by this reference the same are incorporated herein. This package is (collectively) referred to as "The PORT'S Drawings."

#### **C. TENANT FULLY RESPONSIBLE**

TENANT is, and shall be, fully responsible for any and all improvements and/or Alterations (including signage) constructed on or about the Premises. The PORT'S review or approval of TENANT'S drawings and other submittals shall create no responsibility or liability on the part of the PORT for their completeness, design sufficiency, or compliance with all Legal Requirements and/or Port Standards, all of which shall be TENANT'S sole responsibility. Nor shall such review or approval constitute a waiver by the PORT of the right to thereafter require TENANT to amend the same to correct any failure by TENANT to comply with Legal Requirements, the Port Standards or this Exhibit C which is later discovered by the PORT. TENANT shall cause the Premises at all times to comply with all Legal Requirements and the Port Standards, and TENANT shall, in addition to and not in lieu of any other indemnity set forth in the Agreement, indemnify and hold the PORT harmless from and against: (i) any and all errors and omissions contained in TENANT'S Drawings or (ii) any losses, costs, damages or claims of whatever nature (including, but not limited to, attorney's fees and costs of any kind), arising out of or in connection with the failure to comply with Legal Requirements or the Port Standards. Except as expressly set forth in the Agreement, the PORT shall not be liable for any loss to TENANT'S property or the property of any other person during construction or otherwise.

#### **D. TENANT PROJECT MANAGER**

TENANT shall appoint a Project Manager who shall make him/herself available to the POS Project Manager (as assigned as set forth in Section I.F.1) by telephone 24 hours per day everyday including weekends and holidays. The TENANT Project Manager must have a proven track record of successful completion of commercial projects in multiple locations. TENANT

shall vest the TENANT Project Manager with the ability to make all decisions concerning the Design and Construction of the facilities and commit resources without consultation.

In addition, TENANT shall, during any period in which construction work is on-going on or about the Premises, provide a qualified on-site construction coordinator with whom the Port can interact in order to facilitate the construction of concession facilities and any Alterations (including signage).

#### **E. TENANT'S DRAWINGS AND SUBMITTALS**

TENANT shall, at TENANT'S sole cost and expense, prepare and submit to the PORT, for the PORT'S approval, all drawings and other submittals required for the completion of the Premises as provided herein and in the Tenant Roadmap. TENANT'S drawings and submittals shall be prepared in accordance with Port of Seattle CAD AFUS standards and indicate all proposed demolition, modification or reuse of existing improvements or equipment (if applicable), delineate all proposed new improvements or equipment, be to scale, be prepared stamped and signed by an architect or engineer licensed to do business in the state of Washington and be in accordance with: 1) all Legal Requirements, 2) the Port Standards, 3) the requirements of the PORT'S fire and casualty insurer, and 4) this Exhibit C, whichever is most stringent.

Prior to the preparation of TENANT'S Drawings, TENANT'S designer(s) shall visit the Premises to verify existing conditions and construction to ensure that none of TENANT'S Work shall cause conflict with any existing system or improvement installed, or construction undertaken, by the PORT or any adjacent tenant.

#### **F. WORK APPROVAL SCHEDULE**

The initial improvements and any subsequent Alterations (including signage) for which PORT consent and/or approval is required, or is desired, notwithstanding the absence of a specific requirement, shall be developed and constructed in accordance with the provisions of the Agreement, the Legal Requirements, and the Port Standards and within the milestone schedule set forth below:

1. **MILESTONE 1 - TENANT'S Proposal for Concession Concept ("Concept Package"):**

To initiate the approval process for any improvement or Alteration (including signage), TENANT shall make written request to the Port Representative containing a narrative describing the nature of the concept or proposal including, at a minimum, clear and complete documentation addressing, as applicable, the following topics:

- Thorough financial analysis showing projected comparative (existing vs. proposed) sales and revenues for the PORT of Seattle.
- Estimate of Net Book Value of Leasehold Improvements for any proposed Eligible Improvements.
- Description of the type of facility (e.g. store, kiosk, cart, etc.)
- List of the merchandise mix and menu items each with regular sale prices

- Description of intended market segment potential and how it is represented on the Airport's population.
- Number of employees projected yearly and outline of their roles.
- Rough sketches showing size and lay out of proposed concept, signage, and photographs or perspective drawings/renderings of like concepts are also requested.

### **PORT Action**

Within ten (10) calendar days of receipt of a substantially complete Concept Package, the Port Representative will schedule a meeting with TENANT to review the Concept Package. This meeting will represent an opportunity for TENANT to present the concept, improvement and/or Alteration.

The Concept Package and presentation will be analyzed at the conceptual level to assess the underlying merit of the proposal and its consistency with the Retail Concessions Master Plan. Approval at this stage is necessary to proceed to the next milestone.

The PORT shall then, within ten (10) calendar days from the meeting at which TENANT makes its presentation (or any later date on which TENANT completely submits any supplementary documentation requested in that meeting), provide TENANT with written response to the Concept Package either (i) approving the Concept Package as submitted, (ii) approving the Concept Package, subject to specified conditions and/or required revisions, or (iii) disapproving the Concept Package.

If approval of the Concept Package is granted (whether or not subject to conditions and/or required revisions), the Port Representative will assign a Port of Seattle Project Manager ("POS Project Manager") to oversee the design and construction process of the project on behalf of the Port Representative, as described in Section T1; Tab 4 of the Tenant Roadmap. TENANT shall not proceed with any part of its design development without prior contact with the POS Project Manager.

## **2. MILESTONE 2 - TENANT's Submission of Preliminary Design Package** ("Preliminary Design Package"):

After meeting with the POS Project Manager and no later than thirty (30) days after receipt of approval of its Concept Package, TENANT shall prepare and submit to the PORT a Professionally developed (by licensed Architect or Engineer), Preliminary Design Package of scaled drawings (1/4"=1'0") reflecting the location with dimensioned floor plans, utility requirements, fixture lay out and storefront elevations. These drawings shall be presented in POS CAD AFUS Standards format approved by the PORT and according to guidelines provided in Section II of this Exhibit.

Preliminary Design Package must be consistent with the Legal Requirements and Port Standards, include all elements required by the design review committee and specifically provide:

- Floor plan, at  $\frac{1}{4}"=1'-0"$  scale, indicating walls, doors and openings, fixtures, equipment, tables & chairs, display areas, cash-wrap and typical materials (wood, carpet, stone, etc.).
- Demolition Plan showing the demolition, modification or reuse of existing improvements or equipment.
- Entry elevation(s), at  $\frac{1}{4}"=1'-0"$  scale, indicating storefront, typical materials, entry closure type and signage. Perspective color rendering of the entry storefront.
- Cross-section, at  $\frac{1}{4}"=1'-0"$  scale, through the space indicating ceiling height(s), lights, partitions, fixtures and equipment.
- Reflected ceiling plan showing ceiling height(s), materials, finish, light fixture type and location and any canopies, hoods, signage or suspended display elements and dimensions.
- Materials board with actual samples of all paints, finishes and materials, coordinated with the Finish Plan and Elevation(s), as shown on Schedule "A", attached.
- Cut sheets of all manufactured equipment included in the design.
- A summary of each and all utilities required for the Concession, e.g. Electrical Feeder, Mechanical, Communications, etc. in the forms provided by the POS Project Manager or Port Standards.
- Letter of Intent from subtenant, where applicable.

TENANT shall not submit plans, shop drawings, cut sheets or other specifications prepared by contractors, subcontractors or suppliers (unless otherwise specifically required by the PORT) as such plans, shop drawings, cut sheets and specifications shall not be given consideration by the PORT and shall not serve to satisfy the obligations of TENANT provided for herein.

All materials presented shall become the property of the PORT.

#### **PORT Action**

The PORT's Review Committee shall meet no later than ten (10) calendar days after receiving TENANT'S complete Preliminary Design Package. The PORT may elect to have the TENANT's designer attend any of the preliminary design review meetings.

After reviewing the Preliminary Design Package, the PORT shall deliver a written response to the TENANT no later than fourteen (14) calendar days from the date of the PORT's Review Committee meeting.

The PORT may require one or more revisions to the Preliminary Design Package or any element within it. In the event that the PORT requests any revisions, TENANT shall deliver to the PORT a revised Preliminary Design Package resubmittal no later than ten (10) calendar days from the date of the PORT's initial request for resubmittal and no later than five (5) calendar days from the date of any subsequent request for resubmittal. The PORT will respond to each resubmittal in the same manner as prescribed in this deadline stage.

Upon the PORT's approval of the Preliminary Design Package, the Port Representative will sign the sponsoring block in the Application for Compliance of PORT Standards Certificate (COPS) form as evidence of the TENANT's preliminary design approval. TENANT shall then develop the Preliminary Design Drawings into Construction Documents for review as prescribed in the Tenant Roadmap (currently described in Section T2; Tab 5, but as it may in the future be amended).

3. MILESTONE 3 – TENANT's Construction Documents

TENANT shall deliver to the PORT complete Construction Documents (as defined in the PORT's Tenant Roadmap and Regulations for Airport Construction) no later than thirty (30) calendar days (retail facilities) or forty five (45) calendar days (food facilities) from the date the PORT approves TENANT's Preliminary Design Package.

PORT Action

The PORT will conduct technical reviews as set forth in the Tenant Roadmap (currently described Section T2; Tab 5, but as it may in the future be amended).

As part of its technical reviews, the PORT may require revisions to any element of the Construction Documents which is not consistent with the approved Preliminary Design Package, Legal Requirements and/or the Port Standards.

When any revisions, corrections or additions to the Construction Documents are required; TENANT shall deliver to the PORT revised Construction Documents no later than ten (10) calendar days from the date of receipt of the PORT's request for resubmittal.

4. MILESTONE 4 - Construction Commencement.

TENANT shall start construction for the approved improvement or Alteration (including signage) no later than: (a) the time indicated in the schedule approved in writing by the Port Representative (if any), (b) thirty (30) calendar days from the date on which the Airport Building Department approves the Construction Documents Permit (if required), or (c) when the specific premises are, in the PORT's reasonable discretion, ready for construction to begin, whichever is latest.

Prior to the start of Construction and within the timeframe set forth above; TENANT shall submit to the PORT the following:

- A certified copy of the Construction Contract signed by both TENANT and Contractor containing an AIA formatted or equally explicit Construction cost breakdown
- Bar chart (Gantt) Completion Schedule indicating activities and dates for each trade and the entire Construction project. This schedule is to be approved by the Port Representative.
- Copy of all equipment and long lead items purchase orders.
- Acknowledgement by the POS Project Manager as to the date of the Pre-Construction meeting to be attended by Contractors and Subs, as described in the Tenant Roadmap (currently described Section T4; Tab 6, but as it may in the future be amended).

5. MILESTONE 5 – Completion of Construction

TENANT shall complete construction of the approved improvement or Alteration (including signage) within the time provided in the Completion Schedule in Milestone 4 above, or in absence of a Completion Schedule no later than one hundred twenty (120) calendar days from the date on which Construction was required to commence pursuant to Milestone 4 above.

The PORT shall reasonably extend the time limitations set forth in this Milestone (without incurring any liability to either TENANT or Contractor) in the event that: (a) TENANT is delayed or prevented from completing the construction as a result of the PORT's actions, including, for example, delay by the PORT in turning over New Concession areas after TENANT's award of construction contract, or a delay in completing work that is the responsibility of the PORT, (b) the discovery of unknown or differing site conditions, such as the discovery of regulated materials requiring removal, or (c) the PORT, in its discretion, otherwise elects to grant TENANT an extension as requested and explained by TENANT in writing. TENANT shall, within seven days of the discovery of any condition or event that might warrant an extension under any of the circumstances set forth above, submit to the PORT written notification of the condition or event and an estimate of the delay occasioned (or to be occasioned) by the condition or event.

Once construction is substantially completed TENANT shall abide by and execute the provisions set forth in the Tenant Roadmap (currently described Section T4; Tab 7, but as it may in the future be amended).

6. MILESTONE 6 - Pre-Opening Training/Inventory

TENANT shall promptly open for business and/or put any new improvement or Alteration (including signage) to use following the completion of construction and issuance of a Certificate of Occupancy (if required). Notwithstanding the foregoing, TENANT shall have seven (7) calendar days for a concession single unit or ten (10) calendar days for multiple concept food service facilities (e.g., food courts and large restaurants) from the date of completion of construction and receipt of the Certificate



of Occupancy (if required) to complete pre-opening activities and fully open the facility for business.

## **G. FINES SCHEDULE**

If TENANT fails to comply with any of the requirements of Milestones set forth in Section I.F above or otherwise fails to comply with the Port Standards or the Agreement, TENANT shall be liable for fines and/or penalties prescribed in the Sea-Tac International Airport Schedule of Rule and Regulations. Any fines imposed are due and payable to the PORT by certified check no later than five (5) calendar days from the date of receipt of the written notification issued by the PORT.

In the event that TENANT fails, within ten (10) calendar days, to remedy any violation for which a fine and/or penalty has been imposed, that violation shall (whether or not it otherwise would constitute a default under the Agreement) represent a default under the Agreement and the PORT may exercise any of the remedies set forth in the Agreement on, notwithstanding any longer period of time that may be specified in the Agreement (including Section 32.2), on ten (10) days written notice to TENANT.

## **H. SPECIAL PROVISIONS**

### **1. Terrazzo Floors.**

TENANT may, subject to PORT approval, replace at TENANT's sole expense any terrazzo floor with an alternative floor covering provided a written approval is received from the PORT. The TENANT shall provide, at its cost, the prescribed finishes on the exterior of the Premises as described in the Port Standards, including the decorative cladding of structural columns and piers that may fall within the Premises.

### **2. PORT Property.**

In the event TENANT'S use requires the removal/demolition of any portion of the PORT'S building, TENANT shall remove, catalog, crate and deliver to the POS Project Manager the removed appurtenances specifically identified by the PORT and, if further directed by the PORT, retrieve from the PORT and restore them at TENANT'S cost to their previously found condition prior to vacating the Premises. Otherwise, any portion of the existing construction or equipment (including, without limitation, conduit, ductwork, piping and HVAC) and any open connections below the finished floor or behind the finished walls or in the ceiling space shall be demolished in accordance with the PORT'S requirements.

## **II. PREPARATION OF DRAWINGS**

### **A. EXISTING CONDITIONS**

In the event TENANT'S store design requires revisions to the PORT'S building, mechanical, electrical or HVAC system(s), TENANT shall request, in writing, approval for such revision(s) and, if approved by the PORT, the PORT shall perform the necessary work to accommodate TENANT'S request. TENANT shall reimburse the PORT for the cost of such work as provided herein.

### **B. UTILITY SERVICES**

All utility services are subject to the limitation and capacities of existing Airport Terminal facilities and equipment and the availability of service from the local serving utilities. TENANT shall, at TENANT'S expense and subject to the PORT'S prior written approval, provide and install any equipment necessary to adapt such existing services to TENANT'S requirements.

In connection with Construction Documents required under Section I.F.2 and I.F.3 above, the PORT shall make available its existing terminal utilities as set forth in the Agreement and to the extent and amount available at the time. Any upgrade, reconfiguration or otherwise alteration of the existing utilities necessary to satisfy TENANT'S requirements shall be the sole responsibility of the TENANT. Said utilities shall include but are not limited to electrical service, water, sewer, natural gas (if deemed cost effective at the PORT'S sole discretion), air conditioning/ventilation, broadband (cable television) and other communication services, fire alarm and sprinkler lines. TENANT shall include in its Construction Documents and shall bear the sole expenses for electrical distribution, circuit breakers, water/waste pipes, natural gas pipe, air conditioning/ventilation ductwork and fire sprinkler apparatus for the Concession.

### **C. ACCESS TO EXISTING EQUIPMENT**

TENANT shall, at TENANT'S expense, provide doors, panels and catwalks as needed to permit access for servicing, maintenance and replacement of existing equipment, facilities and/or utilities within or immediately adjacent to the Premises, or where access to the same is effected by TENANT'S construction and/or improvements. The PORT'S representative shall determine the location and type of such access.

### **D. STRUCTURAL CRITERIA**

All of TENANT'S construction, equipment and fixtures shall be supported in accordance with the PORT'S Drawings or as specifically noted herein. TENANT shall request, in writing, the PORT'S prior written approval for the construction and installation of any improvements, which could exceed 75 lbs. per square foot. TENANT shall not be permitted to attach or hang any item to or from the PORT'S ceiling, soffit, fascia, neutral piers, piping ductwork, metal roof deck or lateral structural bracing and bridging unless otherwise specifically permitted herein. TENANT may attach and/or hang items from the PORT'S overhead beams, joists and trusses in accordance with the PORT'S criteria.

## E. ARCHITECTURAL CRITERIA

1. TENANT shall design and configure the Premises in whole accordance with the PORT'S Concession Design Standards (as they now exist or may in the future be amended).
2. Structure.
  - (a) Rooftop Projections. None of TENANT'S HVAC equipment, or any other rooftop construction shall be visible above the exterior wall parapet. In addition, TENANT shall, at TENANT'S expense, paint all such HVAC equipment, or construction and/or provide screening for same as may be required by the PORT.
3. Floors.
  - (a) Concrete slab, structural slab and topping. TENANT shall, at TENANT'S expense, and in accordance with the PORT'S requirements, provide a concrete slab on grade or structural slab with troweled surface and topping within the Premises if necessary for TENANT'S use up to the finished floor elevation as indicated on the PORT'S Drawings.
  - (b) Entrance floor. Unless otherwise approved by the PORT, TENANT shall, at TENANT'S expense, install the floor finish material (or if required by the PORT, other common finish material as indicated on the PORT'S Drawings) from the storefront lease line out to where it meets the PORT'S finished floor. TENANT shall provide same level (<1/4") finishes and transition strips suitable to the traffic between floors.
  - (c) Finishes.
    - (i) Unless otherwise required below, carpeting shall not be used in sales areas except in such instances where equivalent types of floor covering materials are specifically approved by the PORT (vinyl tile and vinyl composition tile are not considered acceptable finish materials).
    - (ii) For food or similar type uses, such tenants shall utilize the Airport floor finish material or other hard surface finish material (e.g., quarry tile, stone, ceramic tile, etc.) in the customer seating and service area (Note: vinyl tile or vinyl composition tile will be permitted if not visible from the customer area). Exposed or painted concrete floors will not be permitted; stone and ceramic material must be sealed with penetrating sealer prior to being open to traffic.
  - (d) Multiple floors. Mezzanines, basements or any type of raised or recessed sales or storage floor will not be approved unless otherwise specifically permitted herein.

- (e) Waterproofing. TENANT shall install waterproof membranes in all food handling, restroom and other water usage areas (including the customer seating and service area for food or similar type uses) in accordance with the PORT'S Drawings. Waterproofing shall extend a minimum of six inches (6") up the face of any adjoining wall.
  - (f) Penetrations. All penetrations through floors shall be saw cut or core drilled by the PORT and paid by TENANT. Penetrations into lower levels or basements in excess of twelve inches (12") on any one side shall be framed in accordance with the PORT'S Drawings.
  - (g) Expansion joints. Should a building expansion joint, control joint or construction joint, exist in the Premises, TENANT shall be responsible for the construction of the floor material effected by such joint in a manner consistent with the PORT'S Drawings.
4. Walls and doors.
- (a) Demising partitions. Unless already existing (or otherwise indicated on the PORT'S Drawings) demising partition(s) shall be rated not less than a one-hour assembly to separate the Premises from other storerooms and shall consist of a minimum of 25 gauge (25 ga.) metal stud construction including drywall slip joint at the PORT'S roof deck.
  - (b) TENANT'S exit door. If required by code or indicated on the PORT'S Drawings, TENANT shall furnish and install a hollow metal service door with finish frame and hardware at a location as approved by the PORT on TENANT'S drawings.
  - (c) Interior partitions. TENANT shall furnish and install all interior partitions within the Premises. Interior partitions shall consist of noncombustible materials. Concrete block walls will not be approved unless otherwise specifically permitted in writing, by the PORT.
  - (d) Wall finishes and displays.
    - (i) Exposed concrete or block walls will not be permitted in the sales area of the Premises.
    - (ii) Concrete or block walls must be covered with gypsum board throughout the entire Premises for food or similar type uses.
    - (iii) All wall finishes shall be furnished and installed by TENANT.
    - (iv) All products, advertising or displays mounted to walls, ceilings, railings, etc (e.g. posters, pictures, merchandise) shall be contained within the Premise's fixtures, racks or frames specifically designed to display the item(s) professionally. (Display items must not give the appearance of being "tacked" or "taped" to walls.)

- (e) Storage area. If a finished ceiling is not required and not installed in TENANT'S storage area, then the partition wall dividing the remainder of the Premises from said storage area must be finished on one (1) side with a minimum of one (1) layer of five-eighths inch (5/8") fire code gypsum board, taped with spackled joints, from the floor slab sealed airtight to the underside of the upper level floor or roof (including drywall slip joint at roof deck and air transfer grille) in accordance with the PORT'S Drawings. If required, air transfer openings in fire rated walls shall be equipped with approved fire dampers.

5. Ceilings.

TENANT'S ceilings shall be designed for a natural transition from the entrance to the sales area, complement the overall aesthetic design of the Premises, fixture and equipment layout and conform to the Concessions Design Standards Manual and the following:

- (a) Entrance ceiling. TENANT'S entrance ceiling or soffit shall be finished to complement the storefront adjoining material and color. A lay-in acoustical tile type ceiling will not be permitted in the storefront entrance area unless otherwise specifically approved by the PORT.
- (b) Sales ceiling. TENANT shall, unless otherwise specifically approved by the PORT, provide as a minimum sales ceiling finish, a regular or grooved/recessed lay-in tile ceiling throughout the entire sales area (standard flat monolithic two foot [24"] by four foot [48"] ceiling systems will not be acceptable in sales areas). TENANTS shall provide twenty-four inch (24") square access area or panels to access PORT'S systems.
- (c) Combustibles. Toxic or combustible materials and materials with a smoke developed rating of greater than fifty (50) shall not be permitted above TENANT'S finished ceiling.
- (d) Fire rated ceiling. If required by code or the PORT'S FIRE DEPARTMENT, TENANT shall provide a Class 1 fire rated ceiling throughout the Premises to comply with such requirements.
- (e) Expansion joint. Should a building expansion joint or control joint be required in the Premises, TENANT shall be responsible for the construction of the ceiling affected by such joint in a manner consistent with the PORT'S Drawings.

6. Storefront.

TENANT will follow the guidelines and specifications set forth in the Concession Design Standards Manual, as it may be amended. The face of TENANT'S storefront shall be built in multiple planes to present a three (3) dimensional appearance and shall incorporate angular relationships that take the best possible advantage of the sight lines, traffic patterns, and approach lanes to the Premises.

- (a) Neutral piers. The PORT may provide vertical neutral piers and an overhead horizontal design element to delineate the maximum width and height of TENANT'S storefront as shown on the PORT'S Drawings.
- (b) FF&E. No Furniture, Fixtures or customer service Equipment (FF&E) shall be permitted within the distances as set forth in the PORT'S Drawings.
- (c) Security systems. TENANT'S entrance security system/equipment shall be designed as an integral part of the storefront construction and subject to the PORT'S approval with regard to aesthetics. Freestanding stanchion or pedestal type devices must be located where they will not be visible from the Concourse public area.
- (d) Storefront projection. No storefront or any part thereof (except for the sign) shall project beyond the storefront building line as shown on the PORT'S Drawings unless otherwise approved by the PORT in writing.
- (e) Structural support. TENANT'S storefront shall be floor supported so as not to impose excessive suspended weight from the PORT'S structure. No portion of the storefront shall be suspended from the PORT'S ceiling, soffit, neutral piers or roof. TENANT may laterally brace to the PORT'S existing columns or superstructure for stability only.
- (f) Light boxes. TENANT shall not install surface mounted light boxes, photo transparencies or built in, illuminated box-constructed graphic display boxes within six (6) feet of the front lease line or Concourse public area unless otherwise approved in writing by the PORT.
- (g) Entrance doors.
- (i) Door tracks. All sliding glass door tracks shall have an anodized finish to match the surrounding materials and shall be recessed into their respective wall, soffit, or floor elements so as to be flush with the surrounding finishes. Sliding glass door systems consisting of three (3) or more floor tracks shall not be permitted.
- (ii) Pocket areas. All sliding glass doors and sliding grills shall have pocket areas with a door on the pocket area flush with and finished to match the adjacent construction and materials.
- (iii) Overhead rolling grille(s). Overhead rolling grille(s) shall be equipped with panic release hardware. The bottom bar and guides shall be anodized and finished to match the surrounding materials.
- (iv) Key switches. All key switches shall be recess mounted so as to be flush with the adjacent construction and shall not be higher than

eighteen inches (18") above the Terminal finished floor. TENANT is to follow the PORT'S guidelines for key brands and models.

- (h) Glazing. All glass used in conjunction with the Premises shall be either tempered plate or safety glass in compliance with Consumer Product Safety Commission requirements and UBC.
- (i) Wood. All wood used in conjunction with the storefront shall be kiln-dried, architectural grade and fire treated as required by code.
- (j) Plastic laminate. Plastic laminate will be strictly reviewed for quality of appearance and methods of application.
- (k) Paint. Paint used on storefront surfaces shall not contain a sheen factor of less than 15% nor greater than 35% unless otherwise specifically approved by the PORT, in writing.
- (l) Mirrors. All mirrors shall be glass. Plexiglas and other types of imitation mirror material shall not be permitted.
- (m) Base. TENANT shall install a non-porous durable base on the storefront.

#### F. ELECTRICAL CRITERIA

##### 1. The Port's Responsibility.

Unless already existing, the PORT shall provide electrical service for the Premises at a location and of a size and voltage as indicated in the PORT'S Drawings and in accordance to Sea-Tac's Electrical System Standards.

##### 2. TENANT'S Responsibility.

TENANT shall, at TENANT'S expense, extend electrical service(s) to the Premises and provide all work which shall include but not be limited to furnishing and installing the following electrical equipment and services in the Premises as designed by a registered Electrical Engineer and in accordance with all governing codes and include:

- (a) Transformers, Main breaker or fuses, meter base and meter (brand and model specified by PORT's Drawings), panel boards (door-within-door with twenty percent [20%] spare capacity), conduits, branch wiring, outlet boxes, and final connection to electrical devices including equipment necessary to provide a complete and operating system and the wiring and connection to the electrical demand panel (if applicable).
- (b) Light fixtures and lamps, time clocks, clocks and signs.
- (c) Exit lighting and emergency lighting (with battery pack[s]) with self-test feature and according to the PORT's Drawings.

- (d) TENANT shall make all arrangement for metering for each and every separate space as shown in the PORT'S Drawings. Multiple spaces may not be metered from a single source.
- (e) TENANT understands and acknowledges that the PORT, without any liability therefore, shall have the right to install a central electrical demand control (CEDC) system to control the peak electrical demand of the Airport by means of load shedding the Airport and TENANT'S electrical equipment. If, in the sole opinion of the PORT, any of TENANT'S electrical equipment should warrant connection to the PORT'S CEDC system, TENANT shall install the PORT'S CEDC panel and wire its equipment in accordance with the PORT'S Drawings.
- (f) In General, Electrical material standards for the Premises shall be as described in the PORT'S Electrical Systems Standards (as they may now exist or may in the future be amended).

#### **G. COMMUNICATIONS CRITERIA**

- 1. TENANT shall abide by the PORT's Drawings with regards to Wireless/ Wired/Telephone/ Data/Cable/TV/ Broadband/Satellite Communications service or any other Communications device of any kind.
- 2. All use of wireless devices (such as radios, computers, etc.) must be approved by the PORT regardless of the type, size, power or reach.
- 3. In the event that an approved device causes interference to other users or is interfered by other users, TENANT shall, at TENANTs expense, correct the problem within 24hrs of the interference being reported to the PORT. The PORT may, at its sole discretion, choose to cancel the license to operate this and any other wireless device at any time without any liability incurred to the TENANT or any other party in conjunction thereof.
- 4. Unless already existing, TENANT shall install telephone equipment to service the Premises in a manner and location as designated in the PORT'S Drawings. TENANT shall make arrangements for all telephone service for the Premises as well as the installation of equipment from the PORT'S equipment location to and within the Premises as may be required to accommodate TENANT'S use thereof.

#### **H. HVAC CRITERIA**

- 1. Miscellaneous Requirements.
  - (a) All TENANTs must operate under "negative pressure" conditions
  - (b) Restaurants, food service, beauty salons, barber shops and any other occupancies which, in the sole opinion of the PORT, produce odors, shall provide an exhaust system which will prevent such odors from entering the Terminal, other tenant spaces or any other portion of the Airport. In the event



such exhaust system is required, TENANT shall, unless otherwise permitted in writing by the PORT, include an automatic "wash down" cycle exhaust hood and provide tempered make-up outside air up to ninety percent (90%) of all such exhaust.

- (c) When Food and Beverage Tenant's roof mounted equipment accumulates grease, TENANT shall, at TENANT'S expense, furnish and install grease collection and elimination facilities in accordance with the PORT'S Drawings. Such facilities may include, but not be limited to, a grease collection pan with a drain connected to TENANT'S grease waste line and a source of hot water on the roof for use in cleaning grease accumulation within such pan. TENANT will be subject to the maintenance procedures outlined in the Tenant Operations Manual and be fined if not found in compliance.
- (d) In all cases an air balance report at Tenant's cost must be completed by an NEBB certified air balance contractor prior to designing the space; the report shall indicate the availability of enough capacity in the existing system for the TENANT's requirements.
- (e) In the event that TENANT wishes to reuse all or a portion of any existing HVAC system(s) existing within the Premises (or any portion), TENANT shall indicate this on TENANT'S Drawings for the PORT'S review. In the event the PORT permits TENANT to reuse old systems, TENANT shall employ a PORT approved contractor to verify, by written confirmation to the PORT, that such HVAC system(s) is fully operable and in conformance with the PORT'S design criteria as provided in the PORT'S Drawings (said written confirmation shall include, but not be limited to an air balance report at TENANT'S cost completed by an NEBB certified air balance contractor and shall indicate, at a minimum, any discrepancies between design quantities and tested quantities). If any portion of TENANT'S HVAC system(s) is not fully operable or does not conform to the PORT'S DRAWINGS, TENANT shall, at TENANT'S expense, have its contractor repair or replace same to comply therewith and thereafter provide the PORT with written confirmation thereof.

## **I. PLUMBING CRITERIA**

### **1. Pipe Material**

Polyvinyl Chloride (PVC) or Acrylonitrile-Butadiene-Styrene (ABS) pipe shall not be acceptable unless otherwise specifically permitted or required in the PORT'S Water /Sanitary/Sewer or Mechanical Systems Standards.

### **2. Sanitary Sewer**

Unless already existing, subject to the PORT'S prior written approval, the PORT may permit TENANT to provide a sanitary sewer branch line for the Premises from a location approved by the PORT and shown on the PORT'S Drawings. TENANT shall design and install all facilities and extensions of service to and within the Premises in accordance with the PORT'S Drawings and the following:

- (a) Plumbing vent risers shall be cast iron with a ninety-degree (90 ) offset at the roof as shown in the PORT'S Drawings. In the event the PORT has provided a vent riser branch connection for the Premises, TENANT shall, at TENANT'S expense, design and install all extensions of vent lines to such connections and, if required by the PORT, shall provide an additional capped connection of the same type at the vent riser branch for future use.
- (b) TENANT will connect to the PORT'S Grease interceptors in food preparation and dishwashing and serving areas or as may be required by code or otherwise directed by the PORT. The PORT will assess a pro-rata share of the cost of periodical maintenance clean up.
- (c) If in the PORT'S opinion TENANT'S use of the Premises require hair and/or solids interceptors, TENANT shall install same at points where such materials are being introduced into the plumbing system servicing the Premises.
- (d) All horizontal sanitary piping installed in lower level plenum areas shall be insulated to prevent condensation damage.

### 3. Domestic Water.

Unless already existing, subject to the PORT'S prior written approval, the PORT may permit TENANT to provide a domestic water line for the Premises from a location approved by the PORT and shown on THE PORT'S Drawings. TENANT shall design and install all extensions and facilities to and within the Premises in accordance with the following:

- (a) TENANT shall install a hot water heater with a maximum energy usage of 6KW and energy efficiency as required by code with safety controls and piping from the PORT'S Mechanical rooms including a relief valve to TENANT'S nearest floor drain in accordance with the PORT'S requirements. TENANT may, at TENANT'S expense, extend existing steam supply and return lines and install Steam to Hot Water Converters as an alternate method to obtain hot water beyond the prescribed limit.
- (b) Water supplied to fixtures shall be valved at such fixtures.
- (c) Domestic water piping shall be insulated with a minimum of one-half inch (1/2") fiberglass insulation having an all service vapor barrier jacket with sealed joints.
- (d) Water meter. TENANT shall make all arrangements for the installation of TENANT'S use meter for domestic cold water; hot water; steam and any other type of fluid supplied by the PORT for TENANT'S as shown in the PORT'S Drawings.
- (e) All water piping installed in plenum areas shall be insulated to prevent heat loss and condensation damage.

4. Gas service.

In the event natural gas service is made available and the PORT has approved TENANT'S use of natural gas, TENANT shall, if TENANT elects to use such service, at TENANT'S expense, design and install extensions of service to and within the Premises in accordance with governing codes and the following:

- (a) All of TENANT'S piping shall be band-coded as per PORT'S Drawings and be black steel schedule forty (40) with malleable type fittings and shall incorporate capped dirt type legs at all equipment.
- (b) Gas piping shall be supported in accordance with the PORT'S Drawings and shall not be permitted in any plenum area unless otherwise approved by the PORT, in writing. Piping run outside the building shall be painted as required by the PORT.
- (c) Gas shall not be used for water heating unless specifically permitted by the PORT.
- (d) TENANT shall make all arrangements with the PORT or Puget Sound Energy for metering.

**J. SIGN CRITERIA**

The PORT, as prescribed by the PORT'S Drawings, shall provide graphics and signs guidelines identifying location and standards for signage. Decorative graphics on or near the storefronts of individual concession facilities shall be designed and provided by the TENANT, subject to approval by the PORT.

1. Exterior signs.

No exterior sign shall be permitted unless specifically approved by the PORT. If permitted, all exterior signs shall conform to the criteria below.

2. Storefront sign.

TENANT shall, at TENANT'S expense, provide identification signage for the Premises; which shall be limited to TENANT'S trade name ("dba") only. The PORT'S approval of TENANT'S SIGNAGE shall be contingent upon the height and width of TENANT'S sign, logo and sign letters being appropriately styled and sized in relationship to the sign background area, the height and width of the storefront, and the location of the Premises within the Airport, the design criteria as indicated on the PORT'S Drawings and the following:

- (a) All illuminated or electric sign assemblies, outline neon shall be capable of obtaining Underwriter's Laboratory (hereinafter "U.L.") approval.

## K. FIRE SPRINKLER CRITERIA

### 1. The PORT'S system.

In the event applicable codes require fire sprinkler protection, the PORT shall provide a sprinkler connection for the Premises to the PORT'S bulk main at a location designated in the PORT'S Drawings. TENANT shall design and install all extensions and facilities to and within the Premises from the PORT'S connection.

### 2. TENANT'S system.

If, at any time during the term of the Agreement, applicable codes of governing authorities require fire sprinkler protection for the Premises or a modification to the existing protection and the PORT has provided a connection for the Premises as provided above, TENANT shall, at TENANT'S expense, install, extend to the Premises, modify or revise within the Premises the sprinkler system to include cross mains, branch lines, drops, heads, facilities for proper drainage and any necessary test valves, orifices or other fire protection equipment (e.g., fire extinguishers as may be required for the Premises, all of which shall comply with the requirement of the PORT'S fire and casualty insurer, all applicable codes and ordinances, National Fire Protection Association (NFPA) No. 13 for ordinary hazard occupancies, the applicable INSURANCE services Bureau, and the PORT'S Drawings, whichever is more stringent. TENANT'S system shall be separated/isolated from other TENANT systems via a separate connection to the PORT'S bulk main and shall be water tested at pressure of two hundred (200) psig for a period of two (2) hours in the presence of the PORT'S representative.

## A. GENERAL CONDITIONS

Prior to the commencement of and all times during, construction, TENANT shall fulfill the following requirements:

### 1. TENANT'S contractors.

The following criteria are applicable to the selection and conduct of TENANT'S contractors:

- (a) TENANT agrees that it will immediately disengage the services of contractors or subcontractors: (i) whose labor relations are such that there will be a work stoppage or other interference with the scheduled construction, opening or operation of the Premises, other storerooms or the Airport; or (ii) who fail to observe the PORT of Seattle Rules and Regulations and Tenant Manual or as established for appropriate, ethical and safe conduct at the Airport. If in the event TENANT, TENANT'S contractors or subcontractors fail to comply with the requirements of items (i) or (ii) above, the PORT may, upon twenty-four (24) hours notice to TENANT and without any liability therefore, deny

such contractor(s) or subcontractors(s) any further access to the Premises for construction.

- (b) TENANT, its contractors, and subcontractors shall maintain in the Premises at all times during the construction of the Premises one (1) set of TENANT'S Drawings as approved by the PORT.
- (c) Roof work. TENANT shall use only those contractors approved by the PORT and listed in the Tenant Roadmap (included in the PORT'S Drawings) for the completion of TENANT'S roof work.
- (d) In the event that any of TENANT'S contractors violates the Agreement such that the contractor's acts or omissions may be injurious to persons or property, the PORT may, without notice or any liability therefore, order such contractor to vacate the Premises and the Airport and to remove any of its equipment there from.
- (e) TENANT shall cause its general contractor and major subcontractors to meet with the PORT'S designated representative at the PORT'S Project Management office. At that time, TENANT'S contractor shall furnish the PORT with the following:
  - (i) Evidence of approval of TENANT'S working drawings by the appropriate governmental authorities and copy of the Building Permit
  - (ii) Certificate(s) of insurance evidencing insurance naming the Port of Seattle as beneficiary and of the type and with the limits set forth in Article 24 of the Agreement and such other insurance as may be required by the PORT.
  - (iii) Contact information setting forth the name, address and telephone number of TENANT'S general contractor and subcontractors as approved by the PORT.

## 2. Temporary Barricade

TENANT shall supply artwork and schedule of completion for the PORT to fabricate project signage. A dustproof temporary barricade is required for the Premises; TENANT shall, at TENANT'S expense, install a temporary barricade built as prescribed in the PORT'S Drawings or as the PORT may direct. TENANT shall, at TENANT'S expense and only after receiving the PORT'S permission, dismantle and dispose of the barricade off-site at TENANT'S sole cost.

- 3. TENANT and TENANT'S contractors will abide by the provisions of the Tenant Roadmap Section T3 and shall permit the PORT or other tenants of the PORT and their respective representative to make such use of the Premises during and after the completion of TENANT'S construction as may be reasonably required to permit the construction of the PORT'S improvements and the installation of necessary improvements in adjacent storerooms.

- (a) During construction, TENANT shall permit the Premises to be inspected periodically by the PORT to verify TENANT'S compliance with TENANT'S Drawings (as approved by the PORT), the PORT Standards and the requirements as set forth in the Agreement. TENANT shall immediately correct any discrepancies or unauthorized construction at TENANT'S expense, and to the PORT'S satisfaction.
- (b) The PORT or the PORT'S designee shall have the right to install roof drainage lines, utility pipes, conduit, ductwork and/or component parts of mechanical, electrical and structural systems where necessary or desirable, through ceiling area, floor columns, walls, (or as close to same as may be reasonably practicable) of the Premises and to thereafter repair, alter, replace or remove same, and repair any TENANT improvements affected thereby.
- (c) Delivery of material and equipment. Except as provided below, all construction or retail sales materials and equipment shall be delivered and transported to the Service Area(s) and service corridor(s) serving the Premises and in the manner approved by the POS Project Manager. The PORT, at its sole discretion, may elect to permit TENANT to use the Terminal area for the delivery of such materials or equipment and, in such event, TENANT shall confine such deliveries to hours when the Airport experiences its minimum passenger activity (except when the portion of work is not yet open to the Public) and shall provide all protection of existing construction and improvements as may be required by the PORT.
- (d) Storage of material and equipment. All construction materials and equipment shall be confined to the Premises. The storage of materials or equipment in other storerooms shall not be permitted.

#### **IV. STORE OPENING REQUIREMENTS**

As set forth in the PORT'S Drawings, prior to TENANT being permitted to remove the temporary barricade and to open (or re-open, as the case may be) for business, TENANT'S Work in the Premises shall be subject to the approval of the PORT. Such approval shall be contingent upon TENANT'S compliance with the following:

##### **A. DEFICIENCY LIST**

Five (5) business days prior to the completion of TENANT'S Work, TENANT shall request the PORT'S representative to conduct a final inspection of the Premises and compile a "punch list" to enumerate any areas of construction, fixturing or merchandising that are not in accordance with TENANT'S Drawings (as approved by the PORT), the Legal Requirements and Port Standards or otherwise not in conformance with the Agreement. Except as provided below, TENANT shall correct all such punch list items prior to the removal of the temporary barricade. The PORT, at its sole discretion, may elect to permit TENANT to remove the temporary barricade at TENANT'S expense prior to TENANT'S correction of all such items and, in such event, TENANT shall, within fourteen (14) calendar days after receiving the PORT'S punch list,

correct all such remaining items or the PORT may, in addition to any other rights and remedies it may have, after giving five (5) calendar days notice to TENANT of its intention to do so, correct such items as the PORT may elect for and on TENANT'S behalf, the cost of which shall be reimbursed to the PORT by TENANT plus a fifteen percent (15%) administrative charge due and payable upon demand.

## **B. LICENSES AND PERMITS**

TENANT shall, at TENANT'S expense, obtain all licenses and permits (including an occupancy permit) to open the Premises for business and provide the PORT with copies thereof.

# **V. MISCELLANEOUS**

## **A. STANDARDS OF QUALITY**

All of TENANT'S fixtures, equipment and materials shall be new or of first-class quality. Manufacturer's trade names in the Exhibit are used to indicate type and quality and, subject to the PORT'S prior written approval, do not preclude the use of other manufacturers' products that are of equal or better quality.

## **B. IDENTIFICATION NUMBERS**

TENANT shall, at TENANT'S expense, obtain identification numbers from the PORT'S on site representative for TENANT'S main door, interior doors and service doors; Electrical switchgear and all rooftop equipment.

## **C. PROOF OF PAYMENT**

Within thirty (30) calendar days (or any longer period provided in the Agreement) after opening the Premises for business, TENANT shall submit to the PORT TENANT'S affidavit of payment, TENANT'S general contractor's affidavit of payment and final lien waiver, and lien waivers from all subcontractors for amounts of \$2,500.00 or more, as may be required by the PORT.

## **D. DEMOLITION OR CONSTRUCTION**

All demolition or construction, which, in the sole opinion of the PORT, disturbs the normal operation the Airport or other tenants, shall be performed from 11:00 p.m. to 5:00 a.m. Any noisy work, as solely determined by the POS Project Manager or PORT Tenant Construction Inspector shall be stopped immediately upon request by the POS Project Manager or PORT Tenant Construction Inspector.

## **E. AS BUILT DRAWINGS**

TENANT'S Designer shall provide electronic and hard copies of the As Built drawings in POS CAD AFUS standards no later than thirty (30) calendar days after obtaining Certificate of Occupancy (or any longer period provided in the Agreement).

## **VI. COSTS TO BE PAID BY TENANT FOR UNIT IMPROVEMENTS**

In the event the PORT has constructed or installed any special improvements not included in the PORT's Drawings specifically related to the Premises, TENANT shall reimburse the PORT as specified in the Agreement or as provided herein at the PORT'S cost plus a fifteen percent (15%) administrative charge so long as the PORT has not been previously reimbursed for the same by a former tenant. Any amounts due to the PORT, whether by way of reimbursement for services performed by the PORT at the request of TENANT or which are undertaken on TENANT'S behalf by the PORT and any and all charges to be paid to the PORT by TENANT pursuant to the provisions of this Exhibit, shall be due and payable to the PORT upon demand. In the event that the same are not paid within thirty (30) calendar days following billing by the PORT, the PORT shall be entitled to exercise any and all of the remedies as set forth in the Agreement.

**DRAFT**



## Schedule "A"

### Materials Sample Board Schedule

TENANT shall use this schedule as a guideline for preparation of the Concept Package to meet the PORT'S requirements; no substitutions or replacements will be allowed. Failure to include any of the requested materials samples will result in the automatic rejection of the whole presentation without any further recourse. The Boards prepared shall remain property of the PORT for the duration of the project; two copies of all boards should be prepared with materials descriptions and signature blocks provided in the back to approve the single materials names, sizes/finishes and manufacturers model/series. TENANT shall keep one copy of all boards approved by the PORT for reference by its Contractor at all times.

#### Fabrication Material:

¼" x 8 ½" x 11" Gator foam board, cardboard, plywood or any other lightweight but resilient material, painted flat black.

#### Samples required:

Minimum size 4" x 4"

Sign Letters  
Sign Background Materials  
Sign color palette  
Sign Fill material

Storefront mullions  
Storefront glass (if other than clear safety)  
Storefront base  
Storefront awnings  
Storefront Specialties

Entry ceiling  
Main ceiling  
Accent ceiling  
Specialty ceiling

Floor finishes  
Floor bases  
Grouts  
Paint colors

Wood species and finishes  
Fabrics, upholstery  
Exterior finishes  
Seating furniture cut sheets

Wall Finishes  
Fixture & cabinet materials/finishes  
Graphics, murals  
Doors, gates

