

# SEATTLE-TACOMA INTERNATIONAL AIRPORT

## LEASE AND CONCESSION AGREEMENT HUDSON MARKETPLACE

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

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**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 Airport Management Services, LLC, a Delaware limited liability company, (hereinafter referred to as "Lessee").

**W I T N E S S E T H**

WHEREAS, the Port, as owner and operator of Seattle-Tacoma International Airport, desires to provide a wide range of 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 retail concession in 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 with the first day of the first full month on or after the Rent Commencement Date.
- 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 an ACDBE by the State of Washington, of which at least fifty-one percent (51%) of the interest is owned and controlled by one or more socially and economically disadvantaged individuals as defined in the Airport and Airways Safety and Capacity Expansion Act of 1987 and the regulations promulgated pursuant hereto at 49 CFR Part 23.
- 1.4 "Alterations" shall have the meaning set forth in Section 19.1 of this Agreement.
- 1.5 "Central Terminal" shall mean the area in the center of the Main Terminal of the Airport.

- 1.6 "Days" shall mean, unless otherwise specified, mean and refer to calendar days, not business days.
- 1.7 "Enplaned Passenger" shall mean all those passengers boarding flights at the Airport from scheduled or chartered flights, whether domestic or international, including non-revenue passengers (but excluding airline crew for the flight), and including those passengers connecting from arriving flights of same or another airlines.
- 1.8 "Gross Sales" shall mean the total dollar amount derived from the sale, lease, license or delivery of any goods or other merchandise or the performance of any services from, in, upon or arising out of the Premises, whether by Lessee or any other person on its behalf, or any subtenants, licensees or concessionaires of Lessee, whether at wholesale or retail, and whether for cash, check, credit (including charge accounts), exchange or in kind (specifically including the amount of credit allowed for any trade-ins). No deduction shall be permitted for credit card discounts or thefts, and for uncollected or uncollectible credit or charge accounts. Gross Sales shall, without limiting the generality of the foregoing, also include:
- 1.8.1 Orders that originate at or are accepted in the Premises, even if delivery or performance there is made from or at any other place. All sales made and orders received in or at the Premises shall be deemed as made and completed therein, even though payment of account may be transferred to another office/location for collection.
- 1.8.2 Orders that result from solicitation off the Premises but which are delivered or performed from the Premises or by personnel either operating from the Premises or reporting to or under the control or supervision of any employee employed at the Premises.
- 1.8.3 Mail, catalog, computer, internet, telephone, telegraph or other similar order received at, ordered from, or billed at or from the Premises.
- 1.8.4 Sales originating from whatever source, and which Lessee (or Lessee's subtenants, licensees or concessionaires) in the normal and customary course of Lessee's (or Lessee's subtenant's, licensee's or concessionaire's) operations would credit or attribute to Lessee's (or Lessee's subtenant's, licensee's or concessionaire's) business conducted in the Premises;
- 1.8.5 All monies or other things of value received by Lessee (or Lessee's subtenant, licensee or concessionaire) from Lessee's (or Lessee's subtenant's, licensee's or concessionaire's) operations at, upon or from the Leased Premises which are neither included in nor excluded from Gross Sales by the other provisions of this definition, including without limitation, finance charges, late fees, and all deposits not refunded to customers.
- "Gross Sales" shall not include the following when properly recorded and accounted for:
- 1.8.6 The exchange of merchandise between stores of Lessee (or Lessee's subtenant, licensee's or concessionaire's) where such exchanges are made solely for the

convenient operation of Lessee's (or Lessee's subtenant's, licensee's or concessionaire's) business and not for the purpose of consummating a sale which has been made at, upon or from the Premises;

- 1.8.7 Returns to shippers or manufacturers with no mark-up;
  - 1.8.8 Refunds allowed by Lessee to customers because of unacceptable or unsatisfactory goods or services to the extent such refund was actually granted and adjustment actually made;
  - 1.8.9 Any discounts actually granted; and
  - 1.8.10 The amount of any sales tax or other excise tax imposed upon the customer and collected by Lessee as agent for the taxing body imposing the tax and billed to the customer as a separate item.
- 1.9 "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.
  - 1.10 "Master Retail Lease" shall mean the separate Lease and Concession Agreement between the Port and Lessee (by assignment) for operation of a master retail concession at the Airport, as the same may have been amended through the date of this Agreement or thereafter. The Master Retail Lease is dated January 28, 2003.
  - 1.11 "Minimum Annual Guarantee" shall have the meaning set forth in Section 4.1 of this Agreement.
  - 1.12 "Net Book Value of Leasehold Improvements" shall have the meaning set forth in Section 36 of this Agreement
  - 1.13 "Occupancy Date" shall mean the date on which the Port turns over to Lessee the Premises. The Port shall confirm the Occupancy Date in the manner provided for notice in Section 41 of this Agreement.
  - 1.14 "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.
  - 1.15 "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 Guidelines, the Port's mechanical, electrical, water and waste, and industrial waste and storm drainage standards and any other, similar document establishing requirements and/or standards for design and construction at the Airport.

- 1.16 "Premises" shall mean approximately 3,432 square feet of space located within the Central Terminal and identified as CT-10 on Exhibit B.
- 1.17 "Rent" shall mean and refer collectively to sums denominated as either Minimum Annual Guarantee (as defined in Section 4.1), Percentage Fees (as defined in Section 4.2) 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.
- 1.18 "Rent Commencement Date" shall mean the earlier of: (i) ninety days following the Occupancy Date or (ii) the date on which Lessee first opens for business. The Port shall confirm the Rent Commencement Date in the manner provided for notice in Section 41 of this Agreement.
- 1.19 "Specialty Carts" shall mean freestanding merchandising units, which the Port may authorize to be installed in the Passenger Terminals.

## **2. LEASED PREMISES**

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

## **3. TERM**

Unless earlier terminated pursuant to any provision of this Agreement, the term shall commence on the Occupancy Date and continue until the last day of the month in which the date seven (7) years and ninety (90) days from the Occupancy Date falls.

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

Commencing on the Rent Commencement Date, 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 will be Eight Hundred Thousand Dollars and No Cents (\$800,000.00).

4.1.2 *Second and Subsequent Agreement Years.* For the second and each subsequent Agreement Year, the Minimum Annual Guarantee shall be an amount equal to eighty five percent (85%) of the total amount (whether by Minimum Annual Guarantee or Percentage Fees) paid by Lessee to the Port for the previous Agreement Year; provided, however, 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 for the first Agreement Year as set forth in Section 4.1.1. The Minimum Annual Guarantee amount shall be divided into equal monthly payments. If necessary, the Minimum Annual Guarantee for the final, partial Agreement Year shall be prorated based on



the actual number of months occurring within the final, partial Agreement Year. For example, if the Agreement Years run from May 1 to April 30, but the Agreement is set to expire on June 30, 2015, the Minimum Annual Guarantee for the final, partial Agreement Year running from May 1, 2015 through June 30, 2015 shall be two-twelfths of ninety percent of the total amount (whether by Minimum Annual Guarantee or Percentage Fees) paid by Lessee to the Port for the period May 1, 2014 through April 30, 2015.

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 2007 declined by 25% over the number of Enplaned Passengers for the month of July 2006, then the Port will: (a) reduce the Minimum Annual Guarantee amount payable for the month of August 2007 by 25%, and (b) reduce the Minimum Annual Guarantee for the Agreement Year in which August 2007 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 Percentage Fees. Commencing on the Rent Commencement Date, Lessee shall also pay the Port a percentage fee (the "Percentage Fee"), to the extent the Percentage Fee is higher than the monthly payment of the Minimum Annual Guarantee paid to the Port pursuant to Section 4.1, according to the following schedule:

<u>Gross Sales Level</u>	<u>Percentage of Gross Sales</u>
Gross Sales <= \$2.0 million	15.0%
Gross Sales > \$2.0 million but <=\$4.0 million	17.0%
Gross Sales > \$4.0 million	17.5%

On or before the fifteenth (15<sup>th</sup>) day of each month, Lessee shall submit to the Port a detailed statement showing the Gross Sales generated from the concession during the preceding month and shall simultaneously pay to the Port the Percentage 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 reasonable detail and breakdown as may be required by the Port.

4.3 Contract Rent. The Port and Lessee agree that the first seven percent (7%) of the Gross Sales paid to the Port (whether paid as part of the Minimum Annual Guarantee or as Percentage Fees) shall be the contract rent for the Premises for purposes of the Leasehold Excise Tax Payable pursuant to Chapter 81.29A of the Revised Code of Washington. All

amounts in excess of the first seven percent of the Gross Sales shall be consideration for the concession rights granted under this Agreement.

## **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 with (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 Rent Commencement Date until the end of the first Agreement Year) (iii) within sixty (60) days after the close of each Agreement Year, a statement of net book value (the "NBV Report") of the Eligible Improvements (as defined in Section 36.1 calculated in conformance with the rules set forth in Section 36; and (iv) 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 Rent Commencement Date until the end of the first Agreement Year), (d) the information reflected conforms with and is computed in compliance with the definitions set forth in this Agreement, and (e), if the certificate is submitted by a CPA, the standards observed by the CPA in its audit are such that it planned and performed the audit to obtain reasonable assurances that Lessee's report is free from material misstatement.
- 7.3 Lessee shall, in addition to any other requirement set forth in the Lease, participate in a daily sales program to be implemented by the Port. Under the program, Lessee shall report, by a stated time each day, the amount of Gross Sales earned by Lessee that calendar day, including such detail as reasonably requested by the Port (including, but not limited to, such things as location and concession category). Lessee may, but shall not be obligated, to delegate responsibility for reporting Gross Sales generated in any subleased space to the operator of such subleased space; provided, however, Lessee shall nonetheless remain responsible for full compliance with the program in the even it makes such delegation.

## **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 the unpaid 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. MARKETING PROGRAM**

- 10.1 The Port may establish a marketing program ("Program") to promote the concessions at the Airport. The Program may include advertising, media placements, special events, promotional events, brochures, videos and catalogs, etc., promotion and monitoring as appropriate. During the first quarter of each calendar year, the Port will develop and establish the Program's annual business plan, objectives, evaluation methodology, and budget for the calendar year based in part on an analysis of the effectiveness of each previous year's Program elements.
- 10.2 The Program will be funded by contributions from the Lessee and other concessionaires at the Airport. Lessee will contribute an amount up to one half of one percent (0.5%) of its monthly Gross Sales (but no more than Twenty Four Thousand Dollars (\$24,000.00) per concession facility, per Agreement Year) to fund the Program; provided, however, in the event the Port assesses a lower percentage rate for other Airport Lessees' contribution to the Program, Lessee's contribution rate will be no higher than the lowest percentage rate assessed by the Port..
- 10.3 All contributions to the Program may only be expended for the promotion of concessions and marketing-related staff activities at the Airport and for no other purposes. Lessee shall make its contributions to the Program monthly in arrears concurrently with its payment of the Percentage Fee under this Agreement.

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

- 11.1 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 one third ( $\frac{1}{3}$ ) of the Minimum Rent (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 event that a late charge is payable under Section 9 (whether or not collected) for three (3) installments of rent in any twelve (12) month period, the amount of the Security shall, at the Port's election, be increased to two thirds ( $\frac{2}{3}$ ) of the Minimum Rent. 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.
- 11.2 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.
- 11.3 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 11 does not constitute a limitation on or waiver of the Port's right to seek further remedy under law or equity.
- 11.4 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 11 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.

## **12. USE OF PREMISES**

- 12.1 Lessee shall use the Premises for the operation of a Hudson Media & Marketplace substantially in accordance with the proposal provided by Lessee on or about September 21, 2011. The Port reserves the right to approve a complete listing of goods and/or merchandise to be sold in the Premises.
- 12.2 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 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. This specifically includes the award to other concessionaire(s) of the right to operate Specialty Carts in and about the Passenger Terminals.

- 12.3 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.
- 12.4 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 Sales possible for all tenants.
- 12.5 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. Lessee agrees that if such Franchise Agreement is terminated, the Port shall have the right to terminate this Agreement pursuant to Section 34 of this Agreement.
- 12.6 No amusement devices (including specifically, but without limitation, so-called pinball machines and similar devices) shall be maintained on the Premises without permission from the Port.
- 12.7 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.
- 12.8 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.

### **13. FIRST CLASS CONCESSIONS**

- 13.1 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.

- 13.2 Lessee agrees to review the Premises every three (3) years for upgrade or repairs in order to maintain an attractive and inviting appearance to customers. Lessee shall submit to the Port a schedule of upgrades and repairs (in conformance with Article 19) 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.
- 13.3 Lessee shall continuously review and analyze new trends or concepts in the retail 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.

#### **14. STANDARD OF OPERATIONS**

Lessee shall ensure that the Premises are installed and operated, at the minimum, under the Preventative Maintenance Guidelines and Concession Tenant Operations Manual and the following general standards:

- 14.1 The highest degree and standards of quality of products and services must be provided to the patrons of the Airport.
- 14.2 Concession operations must be conducted in a safe, clean, orderly and inviting condition at all times.
- 14.3 Sufficient and current-season merchandise must be carried in the Premises at all times, but only such quantities of merchandise as are reasonably required to facilitate sales from the Premises shall be stored and/or stocked therein.
- 14.4 Use of such space as office, clerical or other non-selling purposes shall not be permitted except as is reasonably required for Lessee's business therein (not including any other business of Lessee in locations other than the Premises).
- 14.5 The Premises must be open to the public seven (7) days per week, for such hours as directed by the Port Representative from time to time to adequately serve the traveling public. The opening hours shall be conspicuously posted at the Premises in a manner approved by the Port Representative.
- 14.6 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 designated for such purposes by the Port Representative, pursuant to a schedule developed by the Port from time to time.
- 14.7 Garbage, refuse and other debris shall be placed in such containers in non-broken, non-punctured, new 3-mil trash bags or such other garbage containers as may be 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. The Port will

provide the bin or compactor and Lessee will be charged a pro-rata share of the cost of the service.

- 14.8 Trash or debris shall not be allowed to accumulate or be stored on any portion of the Premises, nor deposited in Port's trash containers without the Port Representative's prior consent.
- 14.9 Traveler's checks and at least three (3) major credit cards must be allowed for any purchase over \$5.00.
- 14.10 The concession shall be adequately equipped with cash registers, sales slips, invoicing machines and other automatic accounting equipment or devices required to properly and accurately record the Gross Sales on all sales, by type, services, and other business transactions made.
- 14.11 Lessee shall train all its employees in the proper operation of its business, the compliance with any applicable laws and regulations and the provisions of this Agreement, and the provision of good service to customers. In the event that the Port initiates one or more customer service programs for employees of tenants in the Retail Area, Lessee shall fully participate (and cause its employees to participate) in such programs and shall pay immediately to the Port its share of such costs upon invoice by the Port.
- 14.12 The concession shall be supervised at all times by an active, qualified, competent manager or a qualified assistant manager, who shall have full authority to make day-to-day business and operational decisions. The concession must be adequately staffed with sufficient and well-trained sales personnel who shall be neat, clean and courteous at all times. All employees must wear their nametag and Airport Identification badge at all times while performing their duties if required in the area in which the employee is working.
- 14.13 No loud, boisterous or otherwise improper actions or language shall be permitted within the Premises. No radio or television or other similar device shall be installed without first obtaining the written approval of the Port. Also, no antenna or aerial shall be erected on the roof, interior walls or exterior walls of the Premises without first obtaining the written approval of the Port.
- 14.14 Service must be provided promptly, efficiently, and on a fair, equal and not unjustly discriminatory basis to all patrons of the Airport.
- 14.15 Lessee shall provide the Port a list of representatives and their telephone numbers, for emergency purposes.
- 14.16 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.
- 14.17 Lessee shall not charge prices for products or services that exceed "Street Prices", which shall be determined as follows:



- 14.17.1 The Street Price will be the price charged for the products and/or services sold by a company with the same trade name commonly recognized by the public (e.g., Made in Washington and National Geographic). The price charged at the Premises shall be within the range of the prices charged for such goods and services by up to five (5) mutually agreeable comparable locations trading under the same name in the Seattle-Tacoma area.
- 14.17.2 If any products and/or services are sold by a company which does not operate under the same trade name in the Seattle-Tacoma area then the Street Price shall be within the range of the prices charged for such goods and services by up to five (5) mutually agreed upon locations. This Section is intended to govern the Street Price of all goods and services, which do not otherwise fall within Sections 14.17.1 or 14.17.3.
- 14.17.3 If the product or service offered is neither sold by businesses with the same trade name in non-airport locations nor readily available from comparable business in Seattle-Tacoma area, and does not fall within any other category described in this Section 14.17, the Street Price shall be based on reasonable comparisons mutually agreed to by the Port and Lessee. If the parties are unable to reach an agreement for the comparable locations or prices provided in this Section 14.17, the Port shall have the right to select the comparable locations or establish the price.
- 14.17.4 For the purposes of establishing the Street Price of an item, comparisons shall be made with products or services (as applicable) of the exact same size and quality. Differences in size or quality of a product or service shall, all other things being equal, be considered a price differential.
- 14.17.5 In selecting comparable locations for purposes of Sections 14.17.1, 14.17.2, 14.17.3 above, locations that are partially or fully protected from competition, such as hotel lobby shops or sports arenas, and locations that operate using an off-price or discount pricing structure shall not be included as comparable locations.
- 14.17.6 Lessee shall submit to the Port no later than ninety (90) days prior to the Rent Commencement Date, for Port review and approval, comparable locations and prices for all products and services sold or offered in the Premises that comply with the provisions of this Section 14.17. If Lessee changes any of its prices, Lessee shall be required to submit to the Port, for its review and approval, those proposed changes along with a justification. At any time the Port may require a pricing report and Lessee agrees to submit such report to the Port.
- 14.18 Prices and charges for all items sold or offered from the Premises shall be conspicuously displayed in such area of the Premises in a manner approved by the Port Representative. In no event shall the price charged exceed an advertised price or the price marked on the item being sold. If, in the opinion of the Port the prices or product quality does not meet the requirements of this Section 14, the prices or product quality shall be adjusted accordingly.

- 14.19 There shall be no auction, fire bankruptcy, close out, distress, liquidation or going-out-of-business sales conducted in the Premises; provided, however, that the Port may not preclude periodic seasonal, promotional or clearance sales, nor shall the Premises operate as an outlet/surplus store.

## **15. 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 13 and 14 as well as anywhere else they may appear in this Agreement:

- 15.1 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.
- 15.2 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:
- 15.2.1 Premises – General upkeep, signage, pricing, maintenance, equipment, and cleanliness.
- 15.2.2 Products – Delivered as represented, general quality and mix.
- 15.2.3 Personnel – Professionalism, appearance, customer service, receipts provided and activity.
- 15.3 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.
- 15.4 In the event that Lessee fails to timely correct the deficiencies noted in any Quality Assurance Audit as provided in this Section 15, the Port may issue a notice of default pursuant to Section 33; provided, however, the applicable cure period shall be fifteen (15) days notwithstanding anything to the contrary in Section 33.2.1.
- 15.5 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 15, 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 15.5 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.

## **16. ACCEPTANCE OF PREMISES**

Lessee shall promptly examine the Premises following the Occupancy Date. 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.

## **17. IMPROVEMENTS BY THE PORT**

- 17.1 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.

## **18. IMPROVEMENTS BY LESSEE**

- 18.1 Lessee shall make minimum investments in leasehold improvements including architectural and engineering fees, construction costs, furniture, fixtures and equipment and other expenditures for the Premises in an amount not less than Two Hundred Fifty Dollars (\$250.00) per square foot; provided, however, the Port may, in its sole discretion, agree to a lower amount in the event that Lessee can nonetheless satisfy all of the requirements of the Agreement, specifically including the Port Standards.
- 18.2 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.
- 18.3 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.
- 18.4 Except as otherwise specifically provided in this Agreement, Lessee shall obtain all necessary permits, including any discretionary 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.
- 18.5 Lessee understands that the Airport is undergoing extensive remodeling. At all times during construction and installation of improvements, Alteration, furniture, trade fixtures and/or equipment by Lessee, Lessee, its agents, employees and independent contractors shall cooperate with and coordinate activities and work with the Port Construction Managers and other concessionaires at or near the Premises.

- 18.6 Lessee agrees not later than ninety (90) days following the Occupancy Date, the leasehold improvements 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 50. 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 eight hundred and fifty dollars (\$850.00) per day until Lessee has 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.
- 18.7 Within sixty (60) calendar days of the completion of construction required under this Agreement, Lessee shall provide the Port with: (a) a certified statement (subject to verification, audit and approval by the Port) specifying the total construction cost (including architectural, engineering and permitting costs) in such detail as reasonably necessary to ascertain the costs of all leasehold improvements, furniture, fixtures and equipment constructed or installed by Lessee in the Premises; (b) a certification that the improvements have been constructed in accordance with the approved drawings and specifications and in strict compliance with all Legal Requirements and the Port Standards; (c) a certified proof in writing demonstrating that no liens exist on any or all of the construction; and (d) a reproducible final copy of the plans as-built for all improvements along with computer discs as electronic files in a format compatible with the Port's CAD Standards Manual, to enable the Port to upgrade its existing files to reflect the as-constructed changes made by Lessee.
- 18.8 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.

## **19. ALTERATIONS**

- 19.1 Lessee, after completion of the leasehold improvements provided for in Section 18, may from time to time during the term make such non-structural changes, alterations, additions, substitutions or improvements (collectively referred to as "Alterations") to the Premises, as Lessee may reasonably consider necessary and desirable to adapt or equip

the Premises for Lessee's use and occupancy. All such Alterations shall be done at Lessee's sole cost and expense and at such times and in such manner as the Port may from time to time designate.

- 19.2 Lessee shall make no Alterations that will (a) cost in excess of \$15,000; or (b) involve structural work or changes; or (c) involve work or changes to the electrical, plumbing, heating, ventilation and air conditioning systems of the Premises unless Lessee shall first deliver plans and specifications therefore to the Port and obtain the Port's prior written consent, which shall not be unreasonably withheld or delayed.
- 19.3 Any Alteration (whether permitted of right or subject to approval) 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.
- 19.4 Before any construction of any Alteration, Lessee shall prepare plans and specifications and otherwise comply with the terms, conditions and schedule for design, development and construction set forth on Exhibit C. Except as otherwise specifically provided in this Agreement, Lessee shall obtain all necessary permits, including any discretionary permits, for any Alteration. In the event the Port is required or has obtained any of the necessary permits, Lessee will reimburse the Port for any permit fees and associated costs in obtaining said permits.
- 19.5 Within ninety (90) days of the completion of any Alteration, Lessee shall provide the Port with: (a) a certified statement (subject to verification, audit and approval by the Port) specifying the total construction cost in such detail as reasonably necessary to ascertain the costs of the Alteration constructed or installed by Lessee in the Premises; (b) 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; (c) a certified proof in writing demonstrating that no liens exist on the Alteration; and (d) 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.

## **20. UTILITIES**

- 20.1 Lessee shall, at its expense, furnish, install and maintain any ductwork and other connections within or leading into the Premises, and shall connect and complete the heating, ventilating and air conditioning (HVAC) from the Airport's central system. The Port shall, at its expense, furnish normal and reasonable quantities of central air from the central HVAC system to the Premises and all necessary power and electricity for such central air circulation. Subject to conditions beyond its control, the Port shall maintain under normal conditions a temperature adequate for comfortable occupancy according to the season; provided, that Lessee properly maintains the ductwork and other connections within or leading into the Premises and complies with the recommendations of the Port regarding reasonable occupancy and use of the Premises.

- 20.2 To the extent required, Lessee shall, at its expense, furnish, install and maintain a water meter for the Premises at a location and of a type specified by the Port and shall pay all costs for water used within the 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.
- 20.3 Lessee shall, at its expense, furnish, install and maintain an electric meter, and a gas meter if required, for the Premises at a location and of a type specified by the Port, and shall pay all costs for electricity and gas used within the Premises. Lessee shall furnish, install and maintain all power circuits and connections required for equipment and mechanical systems used in the Premises.
- 20.4 Lessee shall, at its expense, furnish, install and maintain all lighting fixtures and wiring for general illumination of the Premises. Levels of illumination and wattage requirements shall be subject to the approval of the Port.
- 20.5 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.
- 20.6 Lessee shall be responsible for extending, at its own costs, the utility services from the distribution/connection points determined by the Port Representative.
- 20.7 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.
- 20.8 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 21.1.2.
- 20.9 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.
- 20.10 Utility Interruptions.
- 20.10.1 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.

20.10.2 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.

20.10.3 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 two (2) days, then as Lessee's sole and exclusive remedy, the Minimum Annual Guarantee shall equitably abate until utility service is resumed.

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

## **21. MAINTENANCE AND REPAIR**

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

21.1.1 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.

- 21.1.2 Absent an election as provided in Section 21.2.1, 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.
- 21.1.3 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.

21.2 Maintenance and Repair by Lessee.

- 21.2.1 Subject only to the specific obligations of the Port set forth in Section 21.1.1, 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.
- 21.2.2 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.
- 21.2.3 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.
- 21.2.4 Lessee shall not allow the accumulation of boxes, cartons, barrels, carts, equipment, or other similar items in a public area.
- 21.2.5 Lessee shall be responsible for the complete control of all rodents and insects or other pests within the Premises.
- 21.2.6 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.



## **22. 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.

## **23. DAMAGE OR DESTRUCTION**

- 23.1 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 18.8) 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.
- 23.2 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 23.2 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, the 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 18.8) , 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.
- 23.3 Lessee shall, at is 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 18.8, which repair or restoration may be necessary as a result of any casualty.

## **24. INDEMNIFICATION**

- 24.1 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 24.1 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.

- 24.2 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.
- 24.3 Notwithstanding anything to the contrary in Section 24.1 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.

## **25. INSURANCE**

- 25.1 At all times, Lessee shall at its own expense maintain in full force, and in carriers rated A+, A or A- by Best's Insurance Rating Guide, the following policies of insurance:
- 25.1.1 Commercial General Liability insurance in a form, on terms and conditions approved by the Port, in the minimum single limit of Two Million Dollars (\$2,000,000.00) (or, in the event that Lessee undertakes any operations in the

Aircraft Operations Area (AOA), in the minimum single limit of Five Million Dollars (\$5,000,000.00)) on a per location basis (or equivalent satisfactory to the Port) and hereafter in such increased amounts or on such revised terms and conditions as the Port may from time to time specify, to indemnify both the Port and Lessee against any liability or expense relating to this Section 24. The Port shall be named as an additional insured (using ISO Form 20 26 11 85 or equivalent).

- 25.1.2 To the extent that Lessee operates motor vehicles on or about the Airport Business Automobile liability insurance in a form, on terms and conditions approved by the Port, in the minimum single limit of Two Million Dollars (\$2,000,000.00) (or, in the event that Lessee undertakes any motor vehicle operations in the Aircraft Operations Area (AOA), in the minimum single limit of Five Million Dollars (\$5,000,000.00)) on a per location basis (or equivalent satisfactory to the Port) and hereafter in such increased amounts or on such revised terms and conditions as the Port may from time to time specify, to indemnify both the Port and Lessee against any liability or expense relating to this Section 24. The Port shall be named as an additional insured (using ISO Form 20 26 11 85 or equivalent).
- 25.1.3 Property Insurance, on “special extended,” “special causes of loss” or “all risk” form, specifically including earthquake and flood coverage, insuring loss or damage to all of Lessee’s furniture, fixtures and equipment at, on or about the Premises. Coverage shall be provided for 100% of the full replacement cost of the property required to be covered (or the commercially reasonable and available insurable value thereof if, by reason of the unique nature or age of the improvements involved, such latter amount is less than full replacement cost), and in compliance with all laws, regulations or ordinances affecting such property. The policy shall also contain an agreed valuation provision in lieu of any coinsurance clause.
- 25.1.4 Business Income and Extra Expense Insurance on “special extended,” “special causes of loss” or “all risk” form, specifically including earthquake and flood coverage. Coverage shall be provided for 80% of Lessee’s gross annual income from the Premises less any non-continuing expenses. The policy shall also contain an agreed valuation provision in lieu of any coinsurance clause.
- 25.1.5 To the extent that Lessee sells any alcoholic beverages on or about the Premises (and whether for consumption on the Premises or elsewhere), Liquor Liability insurance in a form, on terms and conditions approved by the Port, in the minimum of Two Million Dollars (\$2,000,000.00) on a per location basis (or equivalent satisfactory to the Port) and hereafter in such increased amounts or on such revised terms and conditions as the Port may from time to time specify, to indemnify both the Port and Lessee against any liability or expense relating to this Section 24. The Port shall be named as an additional insured (using ISO Form 20 26 11 85 or equivalent).

25.1.6 Such other and further forms of insurance required for the particular use of the Premises or as required by law; for example, worker's compensation insurance or state fund insurance as required by any applicable federal or state statute, product liability insurance.

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

- 25.2 In the event of cancellation of any required insurance throughout the duration of this Agreement, or any change not acceptable to the Port, the Port reserves the right to provide additional insurance and charge the cost of any premiums for such coverage to the Lessee.
- 25.3 The Port makes no representation that limits or forms of insurance coverage specified or required under this Agreement are adequate to cover Lessee's property, or Lessee's liabilities or obligations under this Agreement. The Port may require all subtenants, at subtenant's sole cost and expense, to maintain additional insurance coverage, during the subtenant's occupancy of the Premises, and Lessee shall cause to be delivered to the Port, certificates which shall include but not be limited to the following: Worker's Compensation as required by Washington State law, Comprehensive General Liability Insurance, Property Insurance, Business Automobile Liability Insurance, Product and/or Liquor Liability Insurance.
- 25.4 Any provision above notwithstanding, the Port reserves the right to reject any insurance policy as to company, form or substance. In the event that Lessee maintains a blanket policy or program of insurance, the Port further reserves the right to accept, in its sole discretion, any such policy or program of insurance providing coverage equivalent to the requirements set forth in Section 25.1.
- 25.5 All insurance policies shall be endorsed to state that Lessee's policy is primary and not contributory with any insurance carried by the Port.

## **26. ENVIRONMENTAL STANDARDS – INDEMNITY**

- 26.1 "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.

- 26.2 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.
- 26.3 If Lessee, or the Premises, is in violation of any Law or Regulation concerning the presence or use of Hazardous Substances or the handling or storing of hazardous wastes, Lessee shall promptly take such action as is necessary to mitigate and correct the violation. If Lessee does not act in a prudent and prompt manner, the Port reserves the right, but not the obligation, to come onto the Premises, to act in place of the Lessee (Lessee hereby appoints the Port as its agent for such purposes) and to take such action as the Port deems necessary to ensure compliance or to mitigate the violation. If the Port has a reasonable belief that Lessee is in violation of any Law or Regulation, or that Lessee's actions or inactions present a threat of violation or a threat of damage to the Premises, the Port reserves the right to enter onto the Premises and take such corrective or mitigating action as the Port deems necessary. All costs and expenses reasonably incurred by the Port in connection with any such actions shall become payable by Lessee within fifteen (15) days after presentation of an invoice therefor.
- 26.4 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.
- 26.5 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.
- 26.6 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).

- 26.7 In addition to all other indemnities provided in this Agreement, Lessee agrees to defend, indemnify and hold the Port free and harmless from any and all claims, causes of action, regulatory demands, liabilities, fines, penalties, losses, and expenses, including without limitation cleanup or other remedial costs (and including attorneys' fees, costs and all other reasonable litigation expenses when incurred and whether incurred in defense of actual litigation or in reasonable anticipation of litigation), arising from the existence or discovery of any Hazardous Substance on the Premises, or the migration of any Hazardous Substance from the Premises to other properties or into the surrounding environment, whether (a) made, commenced or incurred during the term of this Agreement, or (b) made, commenced or incurred after the expiration or termination of this Agreement if resulting from Lessee's use or management of the Premises during the term of this Agreement. Provided, however, Lessee's obligation to indemnify the Port pursuant to this Section 26.7 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.

## **27. 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.

## **28. 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 Agreement, may be added to the amount of rent or fee hereinabove specified and shall be paid by Lessee to the Port upon the monthly rental day next thereafter occurring.

## **29. 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.

### **30. SIGNS**

- 30.1 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 30. 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.
- 30.2 If Lessee fails to comply with the requirements of this Section 30, 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.

### **31. 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.

### **32. ASSIGNMENT OR SUBLEASE**

- 32.1 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 32.1; 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.

- 32.1.1 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 32.3, or (c) disapprove the assignment, setting forth the grounds for doing so.
- 32.1.2 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 32.2). 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.
- 32.1.3 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.



- 32.1.4 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 32.3, 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.
- 32.1.5 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.
- 32.1.6 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.
- 32.2 Excess Rentals. If in connection with any assignment or sublease, Lessee receives rent or other monetary consideration, either initially or over the term of the assignment or sublease, in excess of the payments called for hereunder, or in case of the sublease of a portion of the Premises, in excess of such amounts fairly allocable to such portion, after appropriate adjustments to account for any improvements or alterations made by Lessee and assure that all other payments called for hereunder and out-of-pocket expenditures, operating costs or concessions incurred by Lessee in connection with such assignment, sublease or license, are appropriately taken into account, Lessee shall pay to the Port fifty percent (50%) of the excess of each such payment of rent or other consideration received by Lessee after its receipt.
- 32.3 Buyout.
- 32.3.1 Within the time provided by Section 32.1.1, 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.
- 32.3.2 If the Port and Lessee fail to enter into a written agreement for such a purchase within the period of time provided by Section 32.3.1, then the Port shall be deemed to have waived its buy-out right. Subject to the other provisions of this

Section 32, Lessee may then transfer its interest in this Agreement, but only upon the same terms and conditions as reviewed by the Port.

32.3.3 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.

### **33. DEFAULTS AND REMEDIES**

#### **33.1 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:

33.1.1 The vacating or abandonment of the Premises by Lessee.

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

33.1.3 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.

33.1.4 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.

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

33.1.6 Any event of default by Lessee under the Master Retail Lease.

#### **33.2 Remedies.**

33.2.1 Whenever any default (other than a default under Section 33.1.4, 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.

33.2.2 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:

33.2.2.1 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

33.2.2.2 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 33.2.2, "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.

33.2.3 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.

33.2.4 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.

33.2.5 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.

#### **34. PERFORMANCE/RELOCATION OF SPACE**

34.1 In the event that the Premises either (a) experiences a decrease in its sales per Enplaned Passenger of more than twenty percent (20%) for two (2) quarters in any twelve (12)-month period, (b) loses the franchise rights under which the concession was operated, or (c) fails to achieve Gross Sales sufficient to result in Percentage Fees greater than the Minimum Annual Guarantee for two (2) consecutive years, the Port may initiate a discussion with Lessee about termination of this Agreement. If the parties mutually agree, then a termination agreement shall be executed under which the Port shall agree to remarket the space and the Lessee shall agree to terminate the lease and vacate the space if and when a new tenant lease for the space is executed and the new tenant design for the space is approved by the Port.

- 34.2 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.

### **35. TERMINATION OF AGREEMENT**

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

- 35.1 In the event of Lessee's default under the Agreement pursuant to Section 33.
- 35.2 In the event Lessee loses any necessary Airport Concessions Disadvantaged Business Enterprise certification required by Section 43, pursuant to Section 43.2.
- 35.3 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.
- 35.4 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.
- 35.5 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."

### **36. 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:

- 36.1 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 18.7 or any Port consent issued under Section 18 or 19 has been timely submitted, and (c) consistently appearing on the NBV Report required by Section 6, 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 18.8 or otherwise, and (b) any inventory maintained by Lessee.
- 36.2 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 18.7 or any Port consent issued under Section 18 or 19, which information is subject to verification by the Port.
- 36.3 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.

### **37. 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.

### **38. 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 13 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.

### **39. 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 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.

### **40. LIENS AND ENCUMBRANCES**

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

### **41. 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, Washington 98168  
Attn: General Manager, Business Development

To Lessee:

Airport Management Services, LLC  
One Meadowlands Plaza, Suite 902  
East Rutherford, NJ 07073

Attn: Joe DiDomizio

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.

#### **42. 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.

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

43.1 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 a ACDBE in accordance with all applicable federal, state and local laws, rules and regulations and shall timely file any and all applications, together with all supporting documentation, necessary to maintain such certification. In the event that Lessee is certified as a ACDBE and that certification is necessary to satisfy the requirements of this Section, prior to any change in ownership, control or organization of Lessee, Lessee shall (in addition to any requirements that may be imposed by Section 32) 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.

43.2 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.

- 43.3 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.

**44. NONDISCRIMINATION**

- 44.1 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.
- 44.2 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.
- 44.3 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.
- 44.4 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.

- 44.5 Lessee will maintain open hiring and employment practices and will welcome applications for employment in all positions from all qualified individuals.
- 44.6 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.
- 44.7 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.
- 44.8 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.

#### **45. MANDATORY PROGRAMS**

- 45.1 Lessee understands that, from time to time, the Port may institute certain programs that the Port believes, in its sole judgment, will be in the best interests of the Airport and its tenants. Such programs shall include, but not be limited to, trash recycling, commuter trip reduction, luggage cart token program, and Aircraft Operations Area (AOA) Clean Surface Program for FOD (Foreign Object Debris).
- 45.2 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.

#### **46. 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.

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

- 47.1 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.

- 47.2 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.

#### **48. HOLDING OVER**

- 48.1 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.
- 48.2 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.
- 48.3 During any month-to-month tenancy pursuant to this Section 48, 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.

#### **49. 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.

#### **50. FORCE MAJEURE**

- 50.1 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.

50.2 After the Rent Commencement Date the provisions of this Section 50 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.

**51. 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.

**52. "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.

**53. CAPTIONS**

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

**54. 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.

**55. 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.

**56. 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.

**57. 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.

#### **58. OPTION TO DELETE PREMISES FROM MASTER RETAIL LEASE**

As material consideration to the Port for executing this Lease, Lessee specifically represents, warrants, covenants and agrees that it will, upon written request from the Port, execute an amendment to the Master Retail Lease that will delete units CT-6 (currently operated as "Discover Puget Sound") and/or CB-6 (currently operated as "Hudson News & Gift") from the Premises. The Port shall not be required to pay the Net Book Value of Leasehold Improvements for any improvements to such units (or any other amount associated with Lessee's otherwise unexpired leasehold interest in such units). In addition, there shall be no adjustment to the Minimum Annual Guarantee then in effect (or for any future Agreement Year) to account for the deletion. This option to terminate Lessee's leasehold interest in these two units may be exercised by the Port either separately or collectively, and the effective date for the termination of Lessee's leasehold interest may (without regard to the manner in which exercised) be different for each unit; provided, however, the Port shall be required to provide Lessee not less than ninety (90) days' written notice of the date on which it wishes to terminate Lessee's leasehold interest in each unit and shall thereafter promptly prepare an amendment to the Master Retail Lease effecting the deletion of the particular unit or units to be effective on such date and otherwise in conformance with this Section. Subject to a right to reasonably review the amendment for conformance with the terms of this Section, Lessee agrees that it will promptly execute such an amendment following its receipt and that its failure to do shall constitute a material default of this Agreement.

#### **59. ENTIRE AGREEMENT - AMENDMENTS**

This Agreement, together with the Exhibits A and B, 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.

AIRPORT MANAGEMENT SERVICES, LLC  
A Delaware limited liability company

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

PORT OF SEATTLE  
A Washington municipal corporation

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

(ACKNOWLEDGMENT FOR LESSEE)

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 2011, 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 \_\_\_\_\_, 2011, 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

## LEGAL DESCRIPTION

### MAIN TERMINAL

THE WEST 2115 FEET OF THE EAST 3300 FEET OF THE NORTH 1/4 SECTION 28, TOWNSHIP 23 NORTH, RANGE 4 EAST, 1/4 W. KING COUNTY, WASHINGTON.

THE WEST 800 FEET OF THE NORTH 1/4 SECTION 33, TOWNSHIP 23 NORTH, RANGE 4 EAST, 1/4 W. KING COUNTY, WASHINGTON.

THE WEST 800 FEET OF THE EAST 1/4 SECTION 23, TOWNSHIP 23 NORTH, RANGE 4 EAST, 1/4 W. KING COUNTY, WASHINGTON.

THE WEST 800 FEET OF THE EAST 1/4 SECTION 33, TOWNSHIP 23 NORTH, RANGE 4 EAST, 1/4 W. KING COUNTY, WASHINGTON.

### NORTH SATELLITE

THE NORTH 800 FEET OF THE SOUTH 1/4 SECTION 28, TOWNSHIP 23 NORTH, RANGE 4 EAST, 1/4 W. KING COUNTY, WASHINGTON.

THE NORTH 800 FEET OF THE SOUTH 1/4 SECTION 33, TOWNSHIP 23 NORTH, RANGE 4 EAST, 1/4 W. KING COUNTY, WASHINGTON.

THE NORTH 800 FEET OF THE SOUTH 1/4 SECTION 23, TOWNSHIP 23 NORTH, RANGE 4 EAST, 1/4 W. KING COUNTY, WASHINGTON.

THE NORTH 800 FEET OF THE SOUTH 1/4 SECTION 33, TOWNSHIP 23 NORTH, RANGE 4 EAST, 1/4 W. KING COUNTY, WASHINGTON.

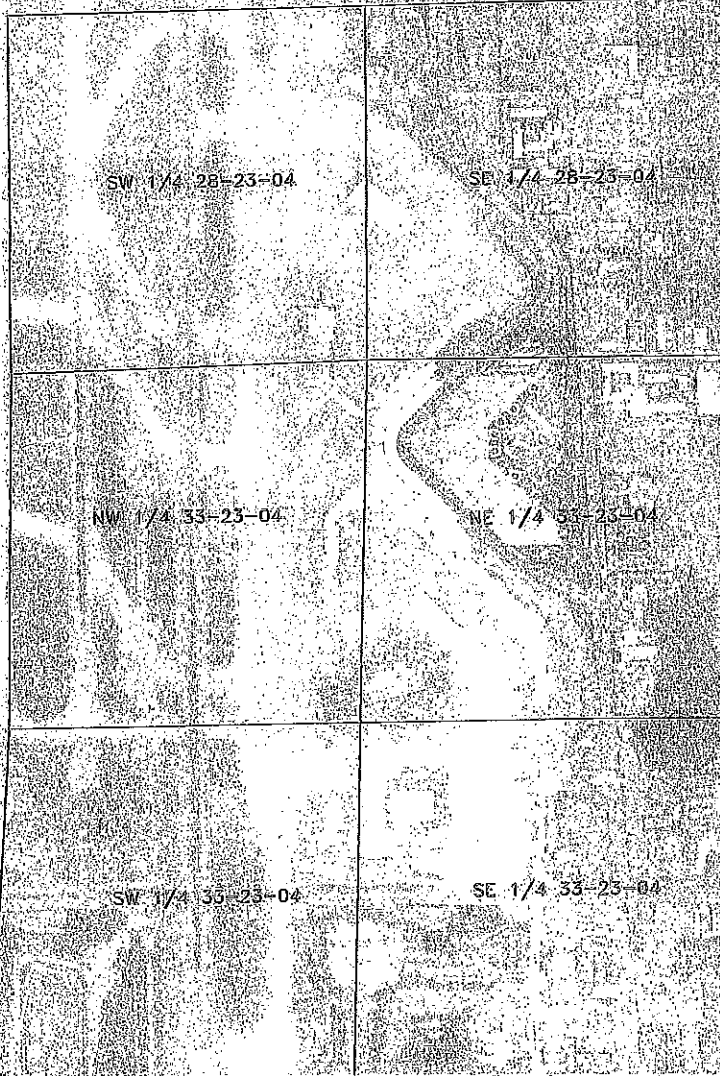
### SOUTH SATELLITE

THE NORTH 200 FEET OF THE WEST 900 FEET OF THE SOUTH 1/4 SECTION 28, TOWNSHIP 23 NORTH, RANGE 4 EAST, 1/4 W. KING COUNTY, WASHINGTON.

THE NORTH 200 FEET OF THE WEST 900 FEET OF THE SOUTH 1/4 SECTION 33, TOWNSHIP 23 NORTH, RANGE 4 EAST, 1/4 W. KING COUNTY, WASHINGTON.

THE NORTH 200 FEET OF THE WEST 900 FEET OF THE SOUTH 1/4 SECTION 23, TOWNSHIP 23 NORTH, RANGE 4 EAST, 1/4 W. KING COUNTY, WASHINGTON.

THE NORTH 200 FEET OF THE WEST 900 FEET OF THE SOUTH 1/4 SECTION 33, TOWNSHIP 23 NORTH, RANGE 4 EAST, 1/4 W. KING COUNTY, WASHINGTON.



CALL 40 HOURS  
BEFORE YOU DIG  
1-800-424-3555

DATE	BY	REVISION

DATE	BY	REVISION

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# EXHIBIT B

## HUDSON MARKETPLACE CT-10

3,432 SF

