

Order 274-08/09

Passage: 5/18/09 9-0

JILL C. DUSON (MAYOR)  
KEVIN J. DONOGHUE (1)  
DAVID A. MARSHALL (2)  
DANIEL S. SKOLNIK (3)  
CHERYL A. LEEMAN (4)

**CITY OF PORTLAND**  
IN THE CITY COUNCIL

JOHN R. COYNE (5)  
JOHN M. ANTON (A/L)  
DORY RICHARDS WAXMAN (A/L)  
NICHOLAS M. MAVODONES (A/L)

**ORDER APPROVING RENTAL CAR  
CONCESSION AGREEMENTS AT  
PORTLAND INTERNATIONAL JETPORT**

**ORDERED**, that rental car concessions agreements with the following rental car companies are hereby approved, substantially in the form attached hereto:

Hertz  
Avis/Budget  
Vanguard d/b/a Alamo & National  
Enterprise

Orders:\Car Rental Concession  
05.18.2009

Contract:\Lease\Car Rental Concession  
05.06.2009



**NON-EXCLUSIVE CONCESSION AGREEMENT  
FOR ON-AIRPORT AUTOMOBILE RENTAL OPERATIONS  
BETWEEN  
CITY OF PORTLAND  
AND  
(CONCESSIONAIRE)**

This Concession Agreement (“Agreement”) is made and entered into as of this 26<sup>th</sup> day of May, 2009, by and between the City of Portland (“CITY”), a public body corporate and politic of the State of Maine and \_\_\_\_\_ (“CONCESSIONAIRE”), a \_\_\_\_\_ corporation with a principal office at \_\_\_\_\_ and authorized to do and doing business in the State of Maine.

**WITNESSETH:**

**WHEREAS**, the CITY owns and operates the Portland International Airport (the “Airport”), located in the CITY of Portland, Cumberland County, Maine; and

**WHEREAS**, on-airport automobile rental services at the Airport are necessary for the proper accommodation of passengers arriving at and departing from the main terminal building at the Airport (hereinafter the “Terminal”); and

**WHEREAS**, the CITY requested proposals for on-airport automobile rental services by R.F.P. No. 6209, dated March 15, 2009, including any addenda; and

**WHEREAS**, CONCESSIONAIRE desires to make on-airport automobile rental services available at the Airport, and CONCESSIONAIRE is qualified, ready and able to perform said services, and to furnish proper facilities in connection therewith;

**NOW, THEREFORE**, in recognition and reliance upon the foregoing recitals, and in consideration of the mutual covenants and promises hereinafter set forth, and in exchange for other good and valuable consideration, the receipt and sufficiency of all of which is hereby acknowledged by the parties hereto, CITY and CONCESSIONAIRE agree as follows:

**ARTICLE I.**  
**DEFINITIONS**

**Section 1.1** Definitions. For the purpose of this Agreement, the following terms shall, unless the context requires otherwise, have the following meanings (terms defined in the singular shall have the same meaning when used in the plural and vice versa):

*Agreement* shall mean this Concession Agreement, those documents and agreements referenced in Section 2.1, and all amendments, modifications and supplements hereto and thereto.

*Airport* shall mean the Portland International Airport located in the City of Portland, Cumberland County, Maine.

*Airport Facility Charge* shall mean, collectively, the fees and rentals in Section 5.4.

*Car Rental Facility* shall mean the facility adjacent to the parking garage specifically designed to accommodate car rental services, including both the Car Rental Facility Premises and the Ready Return spaces, which may also be referred to herein as the “Facility” or “Facilities”.

*Car Rental Facility Premises* shall mean the counter space leased to CONCESSIONAIRE to conduct its rental car operations, as provided in Section 5.1 below, which may also be referred to herein as the “Premises”.

*CONCESSIONAIRE* shall mean “named concessionaire”, a corporation, its officers, agents and employees.

*DBE/WBE* DBE shall mean Disadvantaged Business Enterprise as defined in 49 CFR Part 23, and shall include Small Business Concerns which are owned and controlled by Socially and Economically Disadvantaged Individuals; WBE shall mean Women Business Enterprises and shall include Small Business Concerns which are owned and controlled by women, who are presumed to be Socially and Economically Disadvantaged Individuals under Section 8(a) of the Small Business Act (15 U.S.C. section 637) and relevant regulations promulgated pursuant thereto.

*DBE/WBE Participation Goals* shall mean CITY's goals for participation by DBE/WBEs under the Airport's Federal Aviation Administration program. CITY's goal for combined DBE/WBE participation is given in the City of Portland Airport Concession Disadvantaged Business Program.

*Director* shall mean the Director of the Portland International Airport, and his or her authorized designee, also referred to herein as "Airport Director".

*Dual Branding* shall mean owning or operating two brand names from the same car rental facility.

*FAA* shall mean the Federal Aviation Administration, an agency of the United States Government, and any successor thereto.

*Gross Revenues* shall mean any and all time and mileage charges, excluding CONCESSIONAIRE authorized discounts, whether for cash, credit, exchange or otherwise, for the rental of automobiles and rental transactions of every kind by CONCESSIONAIRE within the legal boundaries of the Airport and shall also include all sums received by CONCESSIONAIRE from customers by reason of their acceptance of personal accident insurance or other insurance coverage. Gross revenue further includes all additional driver and youthful driver charges, child restraint seat, ski and luggage rack charges and any equipment rental charge retained by CONCESSIONAIRE, any allowance for bad debts and inter-city revenues.

The term Gross Revenues shall not mean or include: (i) any sums received from customers for gasoline or refueling service; (ii) the amount of federal, state, county or municipal sales or other similar taxes separately stated and collected and/or reimbursed from customers of CONCESSIONAIRE now or hereafter levied or imposed; (iii) any sums received as insurance or otherwise for damage to automobiles or other property of CONCESSIONAIRE, or for the loss, conversion, or abandonment of such automobiles, or any charges collected from a customer for damages to the automobile rented; (iv) any sums received for waiver by CONCESSIONAIRE of its right to recover from customers for damages to any automobile rented, (v) any sums received by reason of the CONCESSIONAIRE's disposal of operating facilities or personal property (capital assets), including vehicle sales, manufacturer rebates, and franchise rebates, OR (vi)

carbon offsets based entirely upon proven amount paid on behalf of a car rental customer to 3<sup>rd</sup> party carbon offset provider.

*Minimum Annual Guarantee (MAG)* shall mean the minimum amount of concession fees paid on Gross Revenues as provided in Section 5.4.1 (exclusive of any other charges or rentals for Terminal or other space leased to CONCESSIONAIRE under this or other agreements) due to CITY annually from CONCESSIONAIRE in consideration of the concession rights herein granted to CONCESSIONAIRE.

*Ready/Return Premises* shall mean the parking space areas to be used by CONCESSIONAIRE as a ready/return area for its automobile rental fleet, all as more specifically set forth in Section 5.2.

*Service Facility* shall mean a facility that will enable car rental agencies to service their vehicles in close proximity to the passenger terminal.

*Small Business Concern* shall have the meaning such term has under Section 3 of the Small Business Act (15 U.S.C. section 632) or such other laws or regulations as may be applicable, from time to time, to this transaction.

*Socially and Economically Disadvantaged Individuals* shall have the meaning such term has under Section 8(a) of the Small Business Act (15 U.S.C. section 637) and relevant regulations promulgated pursuant thereto.

*Terminal* shall mean the main terminal building at the Airport.

**Section 1.2. References.** For the purposes of this Agreement, the following references shall, unless the context requires otherwise, have the following meanings:

- (a) The words “hereof,” “herein,” “herewith,” “hereunder” and words of similar meaning shall refer to this Agreement as a whole and not to any particular provision of the Agreement, unless otherwise specified.
- (b) Where the context requires, the use of singular numbers or pronouns shall include the plural and vice versa, and the use of pronouns of any gender shall include any other gender.

## **ARTICLE II**

### **AGREEMENT**

**Section 2.1. Documents.** The Agreement between the parties shall consist of this instrument and the following documents, which are incorporated herein as if copied at length:

- (a) All insurance certificates and performance and payment bonds or letters of credit required by the terms of this Agreement; and
- (b) All exhibits to this Agreement; and
- (c) CITY R.F.P. 6209 and Addenda, and CONCESSIONAIRE Response dated, 2009, on file in the Office of the Finance Director, Portland City Hall, 389 Congress Street, Portland, Maine 04101.

**Section 2.2. Conflict in Terms.** In the event of any conflict between the terms or provisions of this Agreement and the terms or provisions of any of the documents referenced in Section 2.1, the more restrictive on CONCESSIONAIRE shall control.

### **ARTICLE III**

#### **TERM**

Section 3.1. The term of this Agreement shall be for sixty one (61) months beginning on June 1, 2009 and terminating at 11:59 p.m. on June 30, 2014.

### **ARTICLE IV**

#### **RIGHTS AND PRIVILEGES**

CONCESSIONAIRE shall have the following rights and privileges during the term of this Agreement:

**Section 4.1. Automobile Rentals.** CONCESSIONAIRE shall have the non-exclusive right and privilege to conduct an on-airport automobile rental concession at the Airport from the Car Rental Facilities for the convenience of passengers utilizing the Airport, and patrons and tenants of the Airport. Such right includes the right to rent automobiles to the general public at or on the Airport; provided, however, that said rentals of automobiles shall be consistent with all applicable standards and policies of

Airport as such standards and policies may be developed and amended. Such right shall not include the right to sell gasoline or to offer maintenance and/or repair service for automobiles to the general public, to other concessionaires at the Airport, or to any other firm, or individual, except as required to maintain automobiles used by the CONCESSIONAIRES's automobile rental customers.

**Section 4.2** Counter Space Area. CONCESSIONAIRE shall have the right to the use and occupancy of the Car Rental Facilities together with the right to construct and install any improvements in and upon the Car Rental Facilities Premises as may be reasonably necessary for the customary operation of an on-airport automobile rental service operation at the Airport, subject to the following conditions:

- (a) Any construction or installation in the Car Rental Facilities Premises shall be in accordance with CITY regulations and rules and CONCESSIONAIRE shall obtain, at its own cost and expense, all required CITY permits and approvals therefore, including without limitation a building permit;
- (b) CONCESSIONAIRE shall submit to the Airport Director for prior written approval, which approval shall not be unreasonably withheld, detailed plans, drawings and specifications for any construction and installation of improvements, or alternations thereto, in and upon the Car Rental Facilities Premises;
- (c) All structural improvements, equipment and interior design and décor constructed or installed in the Car Rental Facility Premises shall be in accord with the approved design of the Car Rental Facility and shall be harmonious with the décor of the parts of the Car Rental Facility of which the Car Rental Facility Premises are a part and shall meet or exceed the quality of such Car Rental Facility;
- (d) CONCESSIONAIRE shall submit to the Airport Director for prior written approval, which approval shall not be unreasonably withheld, a copy of any proposed written construction agreement with respect to construction

or installation of any improvements, or alterations thereto, on the Car Rental Facility Premises;

- (e) CONCESSIONAIRE shall commence construction on the Car Rental Facility Premises within a period of ten (10) days from and after the approval of the plans and specifications therefore by or on behalf of CITY, and shall prosecute such construction to completion with all due diligence;
- (f) CONCESSIONAIRE shall construct, install and make alterations to the Car Rental Facility Premises at CONCESSIONAIRE's sole cost and expense;
- (g) All improvements made by CONCESSIONAIRE to the Car Rental Facility Premises shall be of high quality, safe, fire resistant and attractive in appearance;
- (h) At all times during the construction or installation of any improvements in or upon the Car Rental Facilities Premises, CONCESSIONAIRE shall cooperate with and coordinate activities and work with CITY and other Concessionaires at or near the Car Rental Facility Premises;
- (i) CONCESSIONAIRE shall assume full responsibility for any and all damages, injuries and claims which may result to any person or persons or to their property by reason of the construction or installation of any improvements on or in the Car Rental Facility Premises, and, in addition to any other indemnities provided hereunder, CONCESSIONAIRE shall defend, indemnify and hold the CITY, its officers, agents and employees, harmless from any such claim or claims, judgments or decrees resulting there from, and the expenses related thereto, including without limitation costs and reasonable attorneys' fees; CONCESSIONAIRE shall further defend and hold the CITY harmless from any liens by any person by reason of such construction or installation of improvements;

- (j) The Car Rental Facility Premises shall be used by CONCESSIONAIRE only to conduct its on-airport automobile rental operations at the Airport and for such other purposes as may be reasonably ancillary in connection with such services; the use of such Premises by others or for other purposes is expressly prohibited; and
- (k) All improvements made to the Car Rental Facility Premises and additions and alterations thereto shall be the property of CITY; provided, however, that any trade fixtures, signs and other personal property of CONCESSIONAIRE not permanently affixed to the Car Rental Facility Premises shall remain the property of CONCESSIONAIRE and shall so remain unless CONCESSIONAIRE shall fail within the (10) days following the expiration or earlier termination of this Agreement to remove such trade fixtures, signs and other personal property not permanently affixed to the Car Rental Facility Premises, in which event, at the option of CITY, title to same shall vest in CITY, at no cost to CITY. In the event CITY does not choose to take title, CITY shall have the right to remove and dispose of all such trade fixtures, signs and other personal property and the costs of such removal shall be the responsibility of CONCESSIONAIRE, less any amounts obtained by CITY from sale or disposal of said property; and
- (l) All contractors and subcontractors of CONCESSIONAIRE doing work on the Airport shall name the CITY as an additional insured on its commercial general liability insurance in the amount required hereunder and shall provide evidence to CITY of Automobile liability insurance in said minimum amount and workers compensation insurance in the statutory amount; and
- (m) CONCESSIONAIRE shall not place any advertising, including pricing information and credit card applications, pamphlets, temporary signs or other materials on the Car Rental Facilities counter space. Drop off boxes

and items necessary for the services of customers are allowable subject to prior approval of the Airport Director or his/her designee.

**Section 4.3. No Service Facility.** Service Facility Premises are not covered by this Agreement. Each CONCESSIONAIRE must operate, maintain, or share a service area facility.

**Section 4.4. Ready/Return Parking Areas.** CONCESSIONAIRE shall have the right to the exclusive use of a proportionate share of parking spaces to be used for automobile rental parking as provided in Section 5.2 below.

**Section 4.5. Signs.** CONCESSIONAIRE shall have the right to install and maintain standard corporate identifying signs and graphics in areas designated by the Airport Director. All other signs and graphics in the Car Rental Facilities Premises and the Ready/Return Premises designated for use by CONCESSIONAIRE shall be subject to the prior written approval of the Airport Director. All signage shall conform to any applicable state, CITY, or Airport ordinance or rules.

**Section 4.6. Ingress/Egress.** CONCESSIONAIRE shall have the non-exclusive right of ingress to and egress from the Car Rental Facility Premises and the Ready/Return Premises over Airport roadways, including common-use roadways, subject to any rules or regulations which may have been established, or may be established in the future, by the CITY, the United States (including, without limitation, the FAA), the County of Cumberland and/or the State of Maine. Such right of ingress and egress shall apply to CONCESSIONAIRE'S employees, guests, patrons, invitees, suppliers and other authorized individuals. Such right of ingress and egress shall likewise apply to the transport of equipment, material, machinery and other property of CONCESSIONAIRE.

## **ARTICLE V.**

### **CAR RENTAL FACILITY PREMISES, RENTAL FEES, AND OTHER CHARGES**

**Section 5.1. Car Rental Facility Premises.** CITY hereby leases, lets, and demises unto CONCESSIONAIRE, and CONCESSIONAIRE hereby leases from CITY, **(NUMBER OF SQUARE FEET)** in the Car Rental Facility Premises, all as more

specifically indicated on Exhibit A attached hereto and made a part hereof, to be used by CONCESSIONAIRE for its counter space to conduct its on-airport rental operations at the Airport.

**Section 5.2. Ready/Return Premises.** CITY hereby grants CONCESSIONAIRE the exclusive use of (**NUMBER OF AUTOMOBILE PARKING SPACES**) near the Car Rental Facility Premises, all as more fully set forth on Exhibit B attached hereto and made a part hereof, to be used by CONCESSIONAIRE as ready/return area for its automobile rental fleet. There are currently a total of two hundred thirty eight (238) parking spaces. Each on-Airport concessionaire's proportionate share of the parking area, for the first year of the term of the Agreement, shall be in direct proportion to the percentage that the CONCESSIONAIRES' Minimum Annual Guarantee, for the first year of the Concession Agreement bears to the total Minimum Annual Guarantee of all on-airport concessionaires for the first year of the Agreement. The number and locations of the parking spaces allocable to each of the on-Airport concessionaires shall be re-determined, while maintaining the east/west alignment, effective November 1 of each year following the first full year during the term of the concession Agreement ("Adjustment Date"). As of each Adjustment Date, the number of parking spaces allocable to each of the on-airport concessionaires shall be re-determined such that each concessionaire will be entitled to a portion of the total parking spaces which bears the same ratio as the concessionaire's Gross Revenues during the preceding 12 month period ending June 30 of each year bears to the total Gross Revenue of all on Airport concessionaires during such period. The precise location of each concessionaire's parking spaces shall be determined first, by agreement of all on-Airport concessionaires, but if no such agreement, then they will be assigned to each concessionaire by the Airport Director.

**Section 5.3. Premises "As Is."** CONCESSIONAIRE understands and agrees that it has had the full opportunity to inspect all premises conveyed hereunder and it is explicitly understood and agreed that the Car Rental Facilities Premises and the Ready Return Premises are taken "as is" with no warranty of any type whatsoever from CITY.

**Section 5.4. Fees and Rentals.** For the privilege of operating its on-airport automobile rental services at the Airport and for the use of the premises hereinabove

described, CONCESSIONAIRE agrees to pay to CITY concession fees and rentals as follows:

- 5.4.1.** (a) *Concession Fees.* CONCESSIONAIRE shall pay monthly to CITY, in addition to any other fees or rentals due hereunder, a monthly fee equal to Ten Percent (10%) of CONCESSIONAIRE'S prior monthly Gross Revenues ("Monthly Fee:"). Said payments on an annual basis shall not be less than the Minimum Annual Guarantee as provided herein.

<b>CITY FISCAL YEAR</b>	<b>MINIMUM ANNUAL GUARANTEE</b>
7/1/09 – 6/30/10*	\$
7/1/10 – 6/30/11	\$
7/1/11 – 6/30/12	\$
7/1/12 – 6/30/13	\$
7/1/13 – 6/30/14	\$

\* The 10% payment will be paid on each month of the term of the Agreement beginning as of June 1, 2009, but the MAG will be based on the City's fiscal year.

- (b) *Payment.* CONCESSIONAIRE shall absolutely and unconditionally pay the Monthly Fee to CITY, in lawful money of the United States, on or before the twentieth (20th) business day of each calendar month of the term of this Agreement, beginning on July 20, 2009. Along with the payment, CONCESSIONAIRE shall furnish CITY a written statement certifying the Gross Revenues derived from CONCESSIONAIRE'S Airport operations, accompanied by a full payment of the percentage fee due CITY for the preceding month. Said payment shall be made without need for invoice and shall be delivered to the Office of the Airport Director at the address in Article XIX below. A detailed monthly gross revenues statement of all gross revenues received by

CONCESSIONAIRE shall be kept on file for three (3) years at the Airport office of CONCESSIONAIRE for review by the Airport Director or his or her designee during regular business hours.

- (c) *Annual Reconciliation.* CONCESSIONAIRE shall furnish CITY a sworn statement certified by a public accountant showing all Gross Revenues derived from CONCESSIONAIRE'S operation of the automobile rental concession at the Airport for said contract year. Said financial statement shall be accompanied by a certified public accountant's report expressing his/her opinion as to the fairness of presentation of the Gross Revenues on the basis specified in this Agreement. Within ninety (90) days after the close of each fiscal year, the CITY will reconcile the annual payments. If the aggregate payments made for the fiscal year are less than the MAG, then the CONCESSIONAIRE shall pay the CITY the difference between the amounts previously paid for the prior year and the MAG.
- (d) *CITY right to audit.* CITY and/or its designated representatives reserve the right to review and/or audit CONCESSIONAIRE'S books and records at any time during regular business hours for the purpose of verifying the Gross Revenues hereunder, upon reasonable notice. CITY and/or its designated representatives further reserve the right to review the work papers and files of the certified public accountant which were generated or relied upon in expressing his/her opinion as required by this Agreement. If, as a result of such an audit, it is established by CITY that CONCESSIONAIRE has understated the Gross Revenues received by it by four percent (4%) or more (after the deductions and exclusions provided for herein), the entire expense of said audit shall be borne by CONCESSIONAIRE. Any additional percentage payments due shall forthwith be paid by CONCESSIONAIRE to CITY with interest thereon at the rate of

one and one-half percent (1 ½%) per month from the date such additional percentage fee originally was due.

**5.4.2. Car Rental Facility Premises rental.** For use and occupancy of the Car Rental Facility Premises and for the rights and privileges herein granted, CONCESSIONAIRE absolutely and unconditionally agrees to pay, in lawful money of the United States of America, rent to CITY at the rate of Forty-four Dollars and Eighty Three Cents (\$44.83) per square foot per annum, which totals **(RATE MULTIPLIED BY CAR RENTAL FACILITY SQUARE FOOTAGE)** for the Car Rental Facilities Premises per annum. Such annual rent shall be paid in equal monthly installments of **(RATE MULTIPLIED BY CAR RENTAL FACILITY SQUARE FOOTAGE DIVIDED BY TWELVE)** and shall be due and payable on the first business day of each calendar month of the term of this Agreement.

**5.4.3. Customer Facility Charge.** A Customer Facility Charge (C.F.C.) will be assessed at one dollar (\$1.00) per day for each car rental, up to five days. The amount collected shall be between \$400,000 and \$425,000 per year, which covers the car rental portion of the garage bonds. Annually, on November 1, the C.F.C. will be adjusted, either upward or downward, to account for the previous year shortfall or overage.

**Section 5.5. Abatement of Minimum Annual Guarantee.** In the event that one of the following conditions exists during the term hereof, the Minimum Annual Guarantee shall be reduced as follows:

**5.5.1. Passenger Reduction.** If the total scheduled passengers at the Airport during any contract year during the term of this Agreement is less than ninety percent (90%) of the average total passengers at the Airport during calendar years 2006 (1,408,537 passengers), 2007 (1,648,568 passengers), and 2008 (1,736,431 passengers) (the “Base Years”), (90% of 1,597,845) passengers or 1,438,061 passengers the Minimum Annual Guarantee for such contract year of reduced passenger traffic shall be

abated in its entirety during such period of reduced passengers. All other fees due to the Airport shall apply, including but not limited to the 10% of Gross Revenues concession fee.

**5.5.2** *Shortage or Disruptions.* If the operation of CONCESSIONAIRE'S automobile rental business at the Airport becomes impractical or impossible because of shortages or other interruptions in the supply of automobiles, gasoline, or other goods necessary for the operation thereof, which persist for at least thirty (30) consecutive days and which are not attributable to conditions within CONCESSIONAIRE'S control or caused by the actions or inactions of CONCESSIONAIRE, the Minimum Annual Guarantee may be equitably adjusted accordingly; provided, however, that CONCESSIONAIRE shall submit to CITY proof and substantiation of such shortages or disruptions and the causes thereof and CITY determines such reduction is necessary and the causes claimed are not attributable to conditions within CONCESSIONAIRE'S control.

**Section 5.6.** Payment. CONCESSIONAIRE shall pay the fees and charges and shall submit all reports and statements mandated in Section 5.4 above, without notice or demand, within the time limitations set forth in Section 5.4 above, at the place designated by CITY pursuant to Article XIX below.

**Section 5.7.** Cancellation or Termination of Agreement. In the event of a cancellation or termination of this Agreement based upon circumstances described in Section 13.1, the CONCESSIONAIRE shall be refunded any credit due at the time of such termination or cancellation.

**Section 5.8.** Delinquency Charge. In the event any payment due the CITY under this Agreement is late, CONCESSIONAIRE shall pay a late charge of one and one-half percent (1 and ½ %) per month on all sums due and unpaid.

## **ARTICLE VI.**

### **CITY'S COVENANTS**

CITY covenants, warrants and agrees that:

- (a) CITY has lawful possession of the Car Rental Facilities Premises and the Ready/Return Premises and is authorized to execute this Agreement;
- (b) CITY shall maintain all public and common or joint use areas of the Airport in good repair, and shall make such repairs, replacements or additions thereto as it considers, in its sole discretion, necessary for the safe and efficient operation of the Airport;
- (c) CITY shall provide for, install and construct, and, throughout the term of this Agreement, maintain and keep in repair, and open to traffic, a road or roads suitable for vehicular traffic connecting the Ready/Return Premises with the Car Rental Facility, which road or roads CONCESSIONAIRE is hereby given the right to use, in common with others, for movement of its vehicles throughout the term of this Agreement; and
- (d) Throughout the term hereof, CONCESSIONAIRE may have, hold and enjoy peaceful and uninterrupted possession of the Car Rental Facilities Premises and the rights herein leased and granted, subject to performance by CONCESSIONAIRE of its obligations herein.

## **ARTICLE VII.**

### **CONCESSIONAIRE'S COVENANTS**

CONCESSIONAIRE covenants, warrants and agrees that:

- (a) CONCESSIONAIRE is a corporation duly organized and validly existing, authorized to do and doing business in the State of Maine;
- (b) CONCESSIONAIRE is authorized by its directors and shareholders, as appropriate, to enter into this Agreement and consummate the transactions contemplated hereby;
- (c) CONCESSIONAIRE shall pay the rents, fees and other charges herein provided, and submit all documentation required hereunder, at such times and places as the same are due;

- (d) CONCESSIONAIRE shall comply with the provisions of Sections 4.2 and 4.5 and 8.13 when making any alterations or additions to the Car Rental Facility Premises;
- (e) CONCESSIONAIRE shall keep and maintain the Car Rental Facilities Premises in good condition, order and repair during the term of this Agreement and shall surrender the same upon the expiration or earlier termination thereof in the condition in which they are required to be kept, reasonable wear and tear excepted;
- (f) CONCESSIONAIRE shall observe and comply with all present and future laws, ordinances, orders, directives, rules and regulations of CITY of Portland, Maine, and the respective agencies, departments, authorities or commissions of each which may either directly or indirectly affect CONCESSIONAIRE or its operations on, or in connection with, the Airport and any other rights and privileges herein granted, including but not limited to all federal, state and local environmental protection laws regulations, rules and ordinances;
- (g) CONCESSIONAIRE shall furnish good, prompt and efficient service, adequate to meet all reasonable demands for car rental service at the Airport on a competitive basis; and all rental automobiles made available hereunder shall be maintained at CONCESSIONAIRE'S sole cost and expense, in good operative order, free from known mechanical defects, and in clean, neat and attractive condition, inside and outside;
- (h) All personnel of CONCESSIONAIRE shall be neat, clean and courteous and shall not conduct business in a loud, noisy, offensive or objectionable manner, nor solicit business outside the space assigned in any manner whatsoever;
- (i) CONCESSIONAIRE agrees that the maintenance of good business ethics and public relations in the conduct of a satisfactory automobile rental

service are of utmost importance and shall so conduct the services authorized hereunder;

- (j) CONCESSIONAIRE shall timely pay for all licenses and permits necessary for, and promptly satisfy all costs and expenses associated with, CONCESSIONAIRE'S operations at the Airport and shall timely pay all fees, taxes and charges assessed or imposed by any governmental authority, insofar as they are applicable to CONCESSIONAIRE'S business, property and/or operations;
- (k) CONCESSIONAIRE shall at all times keep accurate and complete records of CONCESSIONAIRE'S operations at the Airport, which records shall show, in addition to other things, Gross Revenues and services rendered for cash and/or credit by CONCESSIONAIRE at the Airport. CITY, or any of its agents, upon reasonable notice, shall have the right to inspect, audit, check and make extracts from any of the books, records, journals, orders, correspondence, and other data relating to CONCESSIONAIRE'S operations at the Airport, without interference or delay and at CITY cost at reasonable intervals determined by CITY and during regular business hours. CONCESSIONAIRE shall, and upon execution of this Agreement has, notified CITY of the place or places of CONCESSIONAIRE'S records. CITY shall have the right to discuss such records and matters of CONCESSIONAIRE'S business with CONCESSIONAIRE'S officers and accountants at all times. CONCESSIONAIRE shall promptly furnish CITY such information and reports regarding CONCESSIONAIRE'S business at the Airport as CITY shall from time to time reasonably request;
- (l) CONCESSIONAIRE shall undertake an affirmative action program as may be required by Title 14, Code of Federal Regulations, Part 152, Subpart E, to insure that no person shall, on the grounds of race, creed, color, national origin or sex, be excluded from participation in any employment activities covered in Title 14, Code of Federal Regulations, Part 152, Sub-

part E, or from participation in or receiving the services or benefits of any program or activity covered by said Sub-part E;

- (m) No person on the grounds of race, color or national origin, religion, disability or sexual orientation shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of the Car Rental Facilities Premises or the Ready/Return Premises or in the provision of CONCESSIONAIRE'S services; no person on the grounds of race, color or national origin, religion, disability or sexual orientation shall be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination in the construction of any improvements on, over or under the Car Rental Facility Premises the Ready/Return Premises or the furnishing of services thereon; and CONCESSIONAIRE shall use the Car Rental Facilities and the Ready/Return Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Part 21, Non-discrimination in Federally Assisted Programs of the Department of Transportation, as amended, and the State of Maine's Human Rights Act;
- (n) CONCESSIONAIRE shall exercise all reasonable and necessary steps to meet the CITY'S Participation Goals for the Concession are met through partnership or joint venture with, subcontracting to, procuring materials, equipment or supplies from or other reasonable means of ensuring DBE/WBE participation; and
- (o) CONCESSIONAIRE shall include the provisions of the above clauses related to nondiscrimination in all contracts or other agreements related to or connected with this Agreement and shall cause all contractors to include such provisions in any future contracts or other such agreements.

## **ARTICLE VIII. OPERATING STANDARDS**

**Section 8.1. Rental Services.** CONCESSIONAIRE shall furnish automobile rental services on a fair, reasonable and non-discriminatory basis to all users and patrons

of the Airport seven (7) days per week with its customer service counter in the Car Rental Facilities Premises being open and operated at all times required to meet scheduled flights at the Airport. CONCESSIONAIRE shall provide prompt, clean, courteous and efficient services adequate to meet all the reasonable demands for its services at the Airport. CONCESSIONAIRE shall maintain and operate its automobile operations in a first-class manner and shall keep the Car Rental Facilities Premises in a safe, clean, orderly and inviting condition at all times satisfactory to CITY.

**Section 8.2. Operations.** CONCESSIONAIRE shall conduct its operations in an orderly and proper manner so as not to annoy, disturb or be offensive to customers, patrons and other tenants at the Airport.

**Section 8.3. Manager.** CONCESSIONAIRE shall select and appoint a full-time manager of its automobile rental operations herein authorized. Such person shall be qualified and experienced, vested with full power and authority to act in the name of CONCESSIONAIRE with respect to the method, manner and conduct of the operation of CONCESSIONAIRE's automobile rental operations at the Airport. Such manager or supervisor shall be available at the Airport during regular business hours, and during such manager's absence, a duly authorized subordinate shall be in charge and be available at the Airport.

**Section 8.4. Conduct.** CONCESSIONAIRE shall control the conduct, demeanor and appearance of its officers, agents, employees and representatives. All such officers, agents and employees and representatives, while on duty, shall wear uniforms or identification badges clearly identifying themselves as working for CONCESSIONAIRE, which uniforms shall at all times be maintained in a neat, orderly and clean condition and shall be subject to the prior written approval of the CITY. CONCESSIONAIRE shall train its officers, agents, employees and representatives to render a high degree of courteous and efficient service, and it shall be the responsibility of CONCESSIONAIRE to maintain close supervision over such persons to assure the rendering of a high standard of service to the public and the patrons of CONCESSIONAIRE'S automobile rental operations. Upon objection from CITY concerning the conduct, demeanor or appearance of such persons, CONCESSIONAIRE shall forthwith take all steps necessary to remove the cause of the objection.

**Section 8.5. Rental Fleet.** CONCESSIONAIRE shall at all times maintain on the Airport, at CONCESSIONAIRE's cost and expense, an adequate supply of automobiles to meet the reasonable public demand therefore. Such automobiles shall at all times be maintained by CONCESSIONAIRE, at its own cost and expense, in good operating order and free from known mechanical defects and shall be kept in a clean, neat and attractive condition, inside and out. CONCESSIONAIRE agrees that it will at no time use automobiles whose year model is more than three (3) years older than the current year model; except that CONCESSIONAIRE shall have until March 31 of each year to eliminate from inventory and use those automobiles whose year model is more than two (2) years older than the current year model. CONCESSIONAIRE agrees that it shall register a minimum of two hundred and fifty (250) passenger motor vehicles as provided in Section 8.6 below.

**Section 8.6. Licensing and Taxation.** CONCESSIONAIRE shall strictly comply with the licensing and taxation laws of the State of Maine with respect to businesses engaged in the rental of motor vehicles. Any vehicles principally used in connection with rentals to and from the Airport shall be registered in the CITY of Portland and the excise tax paid thereto; provided, however, that such registration and excise tax paid to the CITY of Portland shall not be less than the minimum number of 250 vehicles annually. Nothing herein shall prevent the temporary use of its vehicles which have been registered elsewhere and left at the Airport as a direct result of a contract for hire.

**Section 8.7. Solicitation.** CONCESSIONAIRE shall not permit its officers, agents, employees or representatives to engage in the solicitation of the services offered by CONCESSIONAIRE at the Airport outside of the Car Rental Facilities Premises. CITY shall be the sole judge on the question as to whether the conduct of CONCESSIONAIRE in the solicitation of business constitutes a violation of this Section, and, upon notice from CITY, CONCESSIONAIRE shall forthwith take all lawful steps necessary to promptly eliminate the condition giving rise to the complaint.

**Section 8.8. Relationships With Others.** CONCESSIONAIRE shall so conduct and carry on its automobile rental operations at the Airport as to maintain a friendly, cooperative, though competitive, relationship with its competitors, if any, engaged in like

business at the Airport and shall not engage in open, notorious or public disputes, disagreements or conflicts tending to deteriorate the quality of the service of CONCESSIONAIRE or its competitors or be incompatible to the best interest of the public at the Airport. CITY shall have the right, but not the obligation, to resolve all such disputes, disagreements or conflicts, and its determination thereof, or the manner in which CONCESSIONAIRE shall thereafter operate, shall be binding on CONCESSIONAIRE.

**Section 8.9. Invoices.** CONCESSIONAIRE shall operate its business so that a duplicate rental agreement invoice shall be issued with each automobile rental transaction, whether for cash or credit, separately showing CONCESSIONAIRE's receipts or extensions of credit. Any deviation of this requirement shall require the prior written approval of CITY, whose decision in that regard shall be final and absolute.

**Section 8.10. Credit Card Payments.** CONCESSIONAIRE, if compliance with the requirements applicable to the Payment Card Industry Data Security Standard, shall not be required to use any network other than its own private network, to ensure that customer credit card information is not compromised.

**Section 8.11. Janitorial and Cleaning Services.** CONCESSIONAIRE shall provide at its own expense such janitorial and cleaning services and supplies as may be necessary or required for the operation and maintenance of the Car Rental Facilities Premises and the Ready/Return Spaces. CONCESSIONAIRE shall keep and maintain the Car Rental Facilities Premises in a clean, neat and sanitary condition, and attractive in appearance. Notwithstanding the above, CITY may require CONCESSIONAIRE to participate in any recycling program which CITY may adopt for all Airport tenants or as required by law.

**Section 8.12. Garbage.** CONCESSIONAIRE shall provide and use suitable covered or sealed receptacles for all garbage, trash and other refuse in the Car Rental Facilities Premises. Piling of boxes, cartons, barrels and similar items shall not be permitted.

**Section 8.13. Repairs.** Any repairs performed at the Car Rental Facilities Premises by CONCESSIONAIRE, or on its behalf, shall be of the highest quality in both materials and workmanship. All repairs shall be made in conformity with all laws, rules,

regulations and ordinances prescribed from time to time by federal, state or local authorities having jurisdiction over Car Rental Facilities Premises, and shall be subject to prior written approval of the Airport Manager.

## **ARTICLE IX.**

### **INSPECTION**

**Section 9.1. Right to Inspect.** CITY and its authorized officers, employees, agents, contractors, sub-contractors and other representatives shall have the right to enter upon the Car Rental Facilities Premises for the following purposes:

(a). To inspect the Car Rental Facilities Premises at reasonable intervals during regular business hours (or at any time in case of emergency) to determine whether CONCESSIONAIRE has complied and is complying with the terms and conditions of this Agreement; and

(b). To perform essential maintenance, repair, relocation or removal of existing underground or overhead wires, pipes, drains, cables, conduits and other facilities now or hereafter located on or across the Car Rental Facilities Premises, and to construct, maintain, repair, relocate and remove such facilities in the future if necessary to carry out the master plan of development of the Airport; provided, however, that said work shall in no event unduly disrupt or interfere with the operations of CONCESSIONAIRE, and provided further, that the entire cost of such work, including but not limited to the cost of rebuilding, removing, relocating, protecting or otherwise modifying any improvement at any time erected or installed in or upon the Car Rental Facilities Premises as a result of the exercise by CITY of its right hereunder, and the repair of all damage due to such improvement caused thereby, shall be borne solely by CITY. Notwithstanding the foregoing, CONCESSIONAIRE shall be responsible for the cost of any repairs required as a result of the act or omission of CONCESSIONAIRE.

## **ARTICLE X**

### **ASSIGNMENT AND SUB-LEASING**

**Section 10.1. Assignment.** CONCESSIONAIRE shall not assign or sublet this agreement or allow the same to be assigned by operation of law or otherwise, or sublet the Car Rental Facilities Premises, the Ready/Return spaces or any portions thereof without the prior written consent of CITY. CITY reserves the right to deny any assignment or subletting by CONCESSIONAIRE for any reason it deems in the best interest of the CITY. Any purported assignment or sublease in violation hereof shall be void.

**Section 10.2. Continued Obligations.** In the event CITY consents to any assignment or subletting on the part of CONCESSIONAIRE of any rights or privileges granted in this Agreement, CONCESSIONAIRE shall continue to remain responsible for any and all payments due CITY as a result of operations following the assignment or subletting.

**Section 10.3. Default.** In no case may the activities, uses, privileges and obligations authorized herein on the Airport, the Car Rental Facilities Premises, the Ready/Return Spaces or any portions thereof be assigned for any period or periods after a default by CONCESSIONAIRE of any of the terms, covenants and conditions of this Agreement.

## **ARTICLE XI**

### **INDEMNIFICATION**

**Section 11.1** CONCESSIONAIRE shall protect, defend, indemnify and hold CITY, its officers, agents and employees, completely harmless from and against any and all liabilities, demands, suits, claims, losses, damages, fines, penalties, costs and judgments arising by reason of the injury or death of any person or damage to any property of any nature, including but not limited to injury or damage to CITY employees or property, (including but not limited to those relating to or arising out of the violation of any federal, state, or local environmental protection, health or safety law, regulation, rule or ordinance), including all reasonable costs of investigation and defense thereof (including but not limited to attorneys' fees and court costs), arising out of or incidental to any acts, omissions of CONCESSIONAIRE, its officers, employees, agents, representatives, contractors, sub-contractors, licensees or invitees related to (i)

this agreement, (ii) CONCESSIONAIRE's use or occupancy of, or operations on or in connection with, the Airport, the Car Rental Facilities Premises, the Ready/Return Spaces, or any portions thereof, or (iii) CONCESSIONAIRE's rights, responsibilities or duties under this Agreement; except to the extent such injury, death or damage is caused by the gross negligence or willful misconduct of CITY, its officers, agents or employees. CITY shall give CONCESSIONAIRE reasonable notice of any such claims or actions. CONCESSIONAIRE, in carrying out its obligations hereunder, shall use counsel reasonably acceptable to, and cooperative with, CITY. The provisions of this Article XI shall survive the expiration or earlier termination of this Agreement.

Section 11.2. CONCESSIONAIRE agrees to procure and maintain throughout the term of this Lease Agreement, an endorsement to its Workers Compensation coverage waiving any and all rights of subrogation against the CITY. CONCESSIONAIRE hereby, expressly and without reservation, waives any defense or immunity to which it might otherwise be entitled under Workers' Compensation laws, the general statutes of Maine or judicial decisions, disallowing or limiting such indemnification, and consents to a cause of action for indemnity. In the event such waiver is not reasonably commercially available, CONCESSIONAIRE shall defend, indemnify and hold the CITY harmless from any such subrogated claims.

## **ARTICLE XII**

### **INSURANCE AND PERFORMANCE BOND**

#### **Section 12.1. Insurance:**

**12.1.1. *Required Insurance.*** CONCESSIONAIRE shall obtain and maintain continuously in effect at all times during the term of this Agreement, and for a period of not less than two (2) years thereafter if written on a claims-made basis, at CONCESSIONAIRE's sole cost and expense, the following insurance:

- (a) Comprehensive general liability insurance protecting CITY against any and all liability (whether due to an injury or death to any person or damage to any property of any nature) arising out of or incidental to any acts or omissions of CONCESSIONAIRE, its officers, employees, agents, representatives, contractors, sub-contractors, licensees or invitees related to this Agreement; CONCESSIONAIRE's use or occupancy of, or operations on or in connection with, the Airport, the Car Rental Facilities Premises, the Ready/Return Spaces or any portions thereof; and CONCESSIONAIRE's rights, responsibilities or duties under this Agreement, in the minimum amount of One Million Dollars (\$1,000,000.00);
- (b) Workers Compensation insurance and employer's liability insurance insuring against accidental death and disease with limits of not less than Five Hundred Thousand (\$500,000.00) each accident and Five Hundred Thousand Dollars (\$500,000.00) per disease (per employee and aggregate) or such greater amount as may be required by the laws of the State of Maine;
- (c) Fire and extended coverage, with special cause of loss form, insurance on all improvements erected by CONCESSIONAIRE on or about the Car Rental Facilities Premises including the contents thereof, in an amount not less than the then-current appraised value thereof determined on an annual basis; and
- (d) Contractual liability insurance to insure CONCESSIONAIRE's obligation to defend, indemnify, and hold CITY harmless in accordance with the indemnification provisions of this agreement, in the minimum amount of One Million Dollars (\$1,000,000.00);
- (e) Comprehensive automobile liability insurance, including hired and non-owned vehicles, in an amount not less than One Million

Dollars (\$1,000,000.00), covering death, bodily injury and property damage.

**12.1.2. Insurance Certificate Requirements.** All insurance certificates required herein shall be issued by a solvent insurance company or companies licensed or admitted to write such insurance in the State of Maine; all liability certificates shall name CITY as an additional insured; and shall be conditioned upon thirty (30) days prior to written notice to CITY before such policies may be altered or canceled.

CONCESSIONAIRE shall provide to CITY certificates of insurance evidencing CONCESSIONAIRE's compliance with the provisions of Agreement. All certificates of insurance provided hereunder shall contain the following endorsement:

It is hereby agreed and understood that the CITY of Portland is named as an additional insured, and that the coverage afforded to CITY of Portland under this certificate shall be primary insurance. If CITY of Portland has other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis. The amount of the insurer's liability under this certificate shall not be reduced by the existence of such other insurance.

**12.1.3. Self-insurance; Deductibles.** CONCESSIONAIRE may meet its insurance requirement hereunder in whole or in part through an authorized self-insurance program to the extent that CONCESSIONAIRE provides all such coverage through self-insurance and not solely for this Agreement. All conditions herein shall apply to such self-insurance program, including without limitation adding the City as an additional insured to such program. All insurance certificates may include a reasonable deductible, not to exceed \$100,000.

**12.1.4. Effects of Noncompliance.** Failure to keep the insurance required pursuant to this Agreement in force or to provide CITY with evidence of such insurance shall constitute a default under the terms of this Agreement entitling CITY, in addition to all other remedies available hereunder, the right to immediately suspend CONCESSIONAIRE's right to access and

use of the Car Rental Facilities Premises and the Ready/Return Spaces. In addition, if CONCESSIONAIRE shall at any time fail to insure or to keep insured as aforesaid, CITY may, but shall not be required to, do all things necessary to effect or maintain such insurance and all monies expended by it for that purpose shall be repaid to CITY by CONCESSIONAIRE as additional rentals in the month or months the premium or premiums are paid by the CITY.

**12.1.5. Modifications.** CITY shall have the right to change the insurance coverage and the insurance limits required of CONCESSIONAIRE, without any cost to the CITY, if such changes are reasonable and are recommended or imposed by CITY's insurers.

**12.1.6. Notice.** CITY agrees to notify CONCESSIONAIRE in writing as soon as possible of any claim, demand or action arising out of any occurrence covered hereunder of which CITY has knowledge, and to cooperate with CONCESSIONAIRE in the investigation and defense thereof. CONCESSIONAIRE agrees to notify CITY in writing as soon as possible of any claim, demand or action arising out of any occurrence covered hereunder of which CONCESSIONAIRE has knowledge, and to cooperate with CITY in the investigation and defense thereof.

**Section 12.2. Performance and Payment Bond.** CONCESSIONAIRE shall deliver to CITY, and maintain throughout the term hereof, a performance and payment bond in the amount of six (6) months of the MAG. Said performance and payment bond shall insure the full and faithful performance of CONCESSIONAIRE of all the covenants, terms and conditions of this Agreement and stand as security for payment by CONCESSIONAIRE of all valid claims by the CITY.

**Section 12.3. Letter of Credit.** In lieu of a performance and payment bond and at CITY's sole option, CONCESSIONAIRE may establish and maintain, throughout the term hereof, an irrevocable letter of credit payable to CITY, in the amount of One Hundred Twenty-Five Thousand Dollars and No Cents (\$125,000.00), with a local

banking institution and in a form acceptable to CITY, subject to the conditions stated above in Section 12.2.

**Section 12.4. Successors.** CITY reserves the right to require any permitted successor, assignee, subtenant or other transferee of CONCESSIONAIRE as tenant under this Lease, as a condition of CITY consent to such succession, assignment, sublease or transfer, to provide CITY with a Surety as provided in Subsections 12.2 and 12.3 above.

**Section 12.5. No Waiver of Rights.** Notwithstanding the reimbursement of any amounts owed through the bond or letter of credit, CITY reserves the right to declare CONCESSIONAIRE in default under the Lease for the underlying failure of CONCESSIONAIRE to pay any amounts or undertake any obligation required herein, which failure resulted in CITY drawing upon the letter of credit.

### **ARTICLE XIII**

#### **CANCELLATION BY CONCESSIONAIRE**

**Section 13.1. Events.** CONCESSIONAIRE shall have the right upon thirty (30) days prior written notice to CITY to cancel and terminate this Agreement upon the happening of one or more of the following events if said event or events shall then be continuing:

- (a) Any court of competent jurisdiction shall issue an injunction, order or decree preventing or restraining the use by CONCESSIONAIRE of all or any substantial part of the Airport, or preventing or restraining the use of the Airport for usual airport purposes, or the use of any portion thereof which may be used by CONCESSIONAIRE and which is necessary for CONCESSIONAIRE's operations at the Airport, which remains in force for a period of at least ninety (90) consecutive days; provided, however, that any such injunction, order or decree shall not have resulted from any wrongful action or any fault of CONCESSIONAIRE;

(b) CITY shall default in fulfilling any of the terms, covenants or conditions to be fulfilled by it under this Agreement and shall fail to cure said default within

fifteen (15) days following receipt of written demand from CONCESSIONAIRE to do so, except that if the default cannot be cured within said fifteen (15) days by reason of the nature of such default, CONCESSIONAIRE shall then have the right to cancel this Agreement only if CITY shall have failed to commence to remedy such default within said fifteen (15) days following receipt of such written demand, or having so commenced, shall fail thereafter to continue with diligence the curing thereof;

(c) All or a material part of the Airport shall be destroyed by fire, explosion, earthquake, other casualty, acts of God or the public enemy; or

(d) The United States Government or any agency, department or bureau thereof shall occupy the Airport or any substantial part thereof to such an extent as to materially interfere with CONCESSIONAIRE's operations for a period of ninety (90) consecutive days or more.

**Section 13.2. Payments.** In the event of a cancellation or termination of the Agreement, as described in 13.1., the CONCESSIONAIRE's rents and MAGs will be equitably abated retroactively back to the original commencement of the event leading to the cancellation circumstances.

**Section 13.3. Litigation.** In the event of any litigation to determine if a condition of default has occurred, CONCESSIONAIRE shall pay the rentals, fees and charges due hereunder into the court having jurisdiction over such litigation, or to CITY, but shall not be relieved from such obligation unless and until a final determination on such litigation is made in CONCESSIONAIRE's favor. Upon final determination, the court having control of such rentals, fees and charges shall pay monies as it deems appropriate,

without interest. In the event CITY has received such rentals, fees and charges, CITY shall forthwith return such disputed monies, without interest, to CONCESSIONAIRE to the extent ordered by the court.

**ARTICLE XIV**  
**CANCELLATION BY CITY**

Section 14.1. Events. CITY shall have the right to immediately cancel and terminate this Agreement in its entirety, upon or after the happening of one or more of the following events, if such event or events is then continuing:

- (a) CONCESSIONAIRE shall make a general assignment for the benefit of creditors;
- (b) To the extent permitted by law, CONCESSIONAIRE shall file a voluntary petition in bankruptcy or a petition seeking its reorganization or the readjustment of its indebtedness under the Bankruptcy Code (Title 11 of the United States Code) as now in effect or hereafter amended;
- (c) An involuntary petition in bankruptcy shall be filed against CONCESSIONAIRE and CONCESSIONAIRE is thereafter adjudicated bankrupt hereunder;
- (d) CONCESSIONAIRE shall consent to the appointment of a receiver, trustee or liquidator of all or substantially all of the property of CONCESSIONAIRE;
- (e) CONCESSIONAIRE shall default in fulfilling any of the terms, covenants or conditions required of it under this Agreement, or any other agreement executed between CITY and CONCESSIONAIRE and CONCESSIONAIRE shall fail to remedy the default within fifteen (15) days following receipt by CONCESSIONAIRE of written demand from CITY to do so, except that if the default cannot be cured within said fifteen (15) days by reason of the nature of such default, CITY shall then have the right to cancel this Agreement only if CONCESSIONAIRE shall have failed to commence to remedy such default within fifteen (15) days following receipt of such written demand, or having so commenced, shall fail hereafter to continue with diligence the curing thereof.  
Notwithstanding the foregoing, CONCESSIONAIRE shall cure any

failure to pay any rent, fee or charge due hereunder within fifteen (15) days of notice of such default.

- (f) Without limiting 14.1.(e), CONCESSIONAIRE shall fail to comply in any material respect with the operating standards set forth in Article VIII;
- (g) CONCESSIONAIRE shall abandon all or any part of the Car Rental Facilities Premises or shall discontinue the conduct of its operations in all or any part of the Car Rental Facilities Premises for a period in excess of forty eight (48) consecutive hours, except where such abandonment is due to events which are beyond the reasonable control of CONCESSIONAIRE.

**Section 14.2. Repossession.** In the event any condition of default shall occur (notwithstanding any waiver, license or indulgence granted by CITY), then, while such condition is continuing, CITY shall have the right, at its election, either to terminate this Agreement as aforesaid or to enter upon and take possession of the Car Rental Facilities Premises and the Ready/Return Spaces or any part thereof, without demand or notice, and repossess the same, expelling CONCESSIONAIRE and those claiming under CONCESSIONAIRE, without prejudice to any remedy for arrears of rent or preceding breach of covenant and without any liability to CONCESSIONAIRE or those claiming under CONCESSIONAIRE for such repossession.

**Section 14.3. No Forfeiture.** CITY's repossession of the Car Rental Facilities Premises and/or the Ready/Return Spaces shall not be construed as an election to terminate this Agreement nor shall it cause a forfeiture of rents or other charges remaining to be paid during the balance of the term thereof unless a written notice of such intention is given to, or unless such termination is decreed by a court of competent jurisdiction. Notwithstanding any reletting without termination by CITY because of any default by CONCESSIONAIRE, CITY may at any time after such reletting elect to terminate this Agreement for any such default.

**Section 14.4. Reletting.** Upon repossession, CITY shall in good faith attempt to relet the Car Rental Facilities Premises and/or the Ready/Return Spaces, or any part thereof, for such period or periods (which may extend beyond the term of this Agreement) at such rentals or rents and upon such other terms and conditions as CITY may, in good faith, deem advisable. CITY shall in no event be liable and

CONCESSIONAIRE's liability shall not be affected or diminished in any way whatsoever for failure to relet the Car Rental Facilities Spaces, or in the event same are relet, for failure to collect any rental or other sums due under such reletting.

**Section 14.5. Application of Rents.** In the event that CITY shall elect to relet, then rentals received by CITY from such reletting shall be applied: first, to the payment of any indebtedness other than rent due hereunder from CONCESSIONAIRE to CITY; second to the payment of any cost of reletting; third, to the payment of rent due and unpaid hereunder; and the residue, if any, shall be held by CITY and applied in payment of rent as the same may become due and payable hereunder. Should that portion of such rentals received from such reletting during any month, which is applied to the payment of rent hereunder, be less than the rent payable during that month by CONCESSIONAIRE hereunder, CONCESSIONAIRE shall forthwith pay such deficiency to CITY. Such deficiency shall be calculated and paid monthly. CONCESSIONAIRE shall also pay to CITY, as soon as ascertained, any cost and expenses incurred by CITY in such reletting not covered by the rentals received from such reletting of the Car Rental Facilities Premises and/or the Ready/Return Spaces.

**Section 14.6. Removal of Personal Property.** If CITY shall terminate this Agreement or take possession of the Car Rental Facilities Premises and/or the Ready/Return Spaces by reason of a condition of Default, CONCESSIONAIRE, and those holding under CONCESSIONAIRE, shall forthwith remove their personal property from the Car Rental Facilities Premises and/or the Ready/Return Spaces, as the case may be. If CONCESSIONAIRE or any such claimant shall fail to effect such removal within the applicable time limitations set forth in Section 4.2 (k), CITY may, at its option, remove such goods and effects and may (a) store the same for the account of CONCESSIONAIRE or of the owner thereof at any place selected by the CITY, (b) retain such goods as the property of CITY free and clear of any claims thereto from or by CONCESSIONAIRE or (c) upon giving fifteen (15) days written notice to CONCESSIONAIRE of the date, time, and location of sale, sell such goods at public auction or private sale on such terms and conditions as to price, payment and otherwise as CITY may in good faith deem advisable. If, in CITY's judgment, the cost of removing and selling any such goods and effects exceeds the value thereof or the probable sales

price thereof, as the case may be, CITY shall have the right, without liability for doing so, to dispose of such goods in any manner CITY may deem advisable.

**Section 14.7. Costs.** CONCESSIONAIRE shall be responsible for all costs of removal, sales, storage and sale and CITY will have the right to reimburse itself from the CITY proceeds of any sale for all such costs paid or incurred by the CITY. If any surplus sale proceeds shall remain after such reimbursement, CITY may deduct from each surplus any other sum due to CITY hereunder and shall pay over to CONCESSIONAIRE any remaining balance of such surplus sale proceeds.

**Section 14.8. Waiver.** If CITY shall enter into and repossess the Car Rental Facilities Premises and/or the Ready/Return Spaces for reason of default of CONCESSIONAIRE in the performance of any of the terms, covenants or conditions herein contained, then and in that event, CONCESSIONAIRE hereby covenants and agrees that CONCESSIONAIRE will not claim the right to redeem or re-enter the repossessed areas to restore its operations hereunder and CONCESSIONAIRE hereby waives the right to such redemption and re-entrance under any present or future law and hereby further, for any party claiming through or under CONCESSIONAIRE, expressly waives its right, if any, to make payment of any sum or sums of rent, or otherwise, of which CONCESSIONAIRE shall have made default under any of the covenants thereof by reason of such payment.

**Section 14.9. Remedies Cumulative.** Any and all remedies of CITY herein created or otherwise existing at law are cumulative and the exercise of one or more rights or remedies shall not be taken to exclude or waive the right to the exercise of any other. All such rights and remedies may be exercised and enforced concurrently and whenever and as often as deemed advisable.

**Section 14.10. Settlement.** If proceedings shall at any time be commenced for recovery of possession as aforesaid and compromise or settlement shall be effected either before or after judgment whereby CONCESSIONAIRE shall be permitted to retain possession of the Car Rental Facilities Premises and/or the Ready/Return spaces, as the case may be, then such proceeding shall not constitute a waiver of any condition or agreement contained herein or of any subsequent breach thereof.

**Section 14.11. Additional Rent.** Any amount paid or expense or liability incurred by CITY for the account of CONCESSIONAIRE may be deemed to be additional rental and the same may, at the option of CITY, be adding to any rent then due or thereafter due hereunder.

**Section 14.12. Cooperation.** Upon the termination of this Agreement, through passage of time or otherwise, CONCESSIONAIRE shall aid CITY in all reasonable ways possible in continuing the business of operating an on-airport automobile rental concession at the Airport uninterruptedly.

## **ARTICLE XV**

### **SECURITY**

**Section 15.1. Federal Regulations.** CONCESSIONAIRE agrees to observe all security requirements of Federal Aviation Regulations, amended hereafter, as approved by the FAA, and to take such steps as may be necessary or directed by CITY to ensure that all officers, employees, representatives, invitees, and guests observe such requirements.

**Section 15.2. Fines/Penalties.** If CITY incurs any fines and/or penalties imposed by the Federal Aviation Administration or any expense in enforcing the regulations of Federal Aviation Regulations, Part 107, and/or the Airport security program, as a result of the acts or omissions of CONCESSIONAIRE, CONCESSIONAIRE agrees to pay and/or reimburse all such costs and expenses. CONCESSIONAIRE further agrees to rectify any security deficiency as may be determined as such by CITY or the FAA. CITY reserves the right to take whatever action necessary to rectify any security deficiency, at CONCESSIONAIRE'S cost and expense.

## **ARTICLE XVI**

### **HOLDING OVER**

**Section 16.1. No Extension.** Any holding over by CONCESSIONAIRE after the expiration or earlier termination of this Agreement, without the written consent of CITY, except for the period provided for herein for removal of property, shall not be deemed to operate as an extension or renewal of this Agreement. In the event of such holding over,

CONCESSIONAIRE shall be subject to all of the terms of this Agreement, other than term, during such period.

**Section 16.2. Rentals.** In the event CITY approves holding over by CONCESSIONAIRE, CONCESSIONAIRE shall continue to pay CITY in accordance with the terms and conditions applicable herein to the final year of this Agreement until such time as a new agreement is negotiated or until such time as the month-to-month tenancy is terminated by CITY.

## **ARTICLE XVII CASUALTY**

If the Car Rental Facility or any part thereof shall be destroyed or damaged by fire or other unavoidable casualty, so that the same shall be thereby rendered unfit for use by CONCESSIONAIRE, then, and in such case, the Rent hereinabove stated or a just and proportional part thereof, according to the nature and extent of injuries sustained, shall be suspended or abated, until the Facility shall have been put in proper condition for use by CONCESSIONAIRE; provided, however, in the event of such destruction or damage as to render such Facility unusable for a period of ninety (90) days or more, either CITY or CONCESSIONAIRE shall have the right to terminate this Lease by giving the other party written notice of such termination, and upon the giving of such notice, the term of this Agreement shall cease and come to an end as of the date of such damage or destruction and any unearned rent shall be returned to CONCESSIONAIRE.

The parties hereby waive any and all rights of action for negligence against the other which may hereafter arise on account of damage to the premises or to property, resulting from any fire, or other casualty of the kind to the extent they are covered by standard fire insurance policies with extended coverage, regardless of whether or not, or in what amounts, such insurance is now or hereafter carried by the parties, or either of them.

## **ARTICLE XVIII TAXES**

**Section 18.1. Payments.** CONCESSIONAIRE shall pay, on or before their respective due dates, to the appropriate collecting authority, all federal, state and local taxes and fees, which are now or may hereafter be levied upon CONCESSIONAIRE, upon CONCESSIONAIRE'S operations conducted at the Airport, or upon any of CONCESSIONAIRE'S property used in connection therewith; and shall maintain in current status all federal, state, and local licenses and permits required for the operation of the business conducted by CONCESSIONAIRE.

**Section 18.2. Documentation.** CONCESSIONAIRE shall furnish to CITY promptly upon request, proof of the payment of any tax, assessment, and other governmental or similar charge, which is payable by CONCESSIONAIRE as provided herein.

## ARTICLE XIX

### NOTICES: PAYMENT ADDRESS

**Section 19.1. Notices.** Any notice given hereunder shall be given in writing, signed by the party giving such notice, and shall be sent by facsimile, overnight courier (courier prepaid), or United States certified mail, return receipt requested, with proper postage and registration fees prepaid, addressed to the party for whom intended at the following address:

CITY OF PORTLAND

CONCESSIONAIRE

Airport Director  
Portland International Jetport  
1001 Westbrook Street  
Portland, Maine 04101  
(207) (Tel)  
(207) (Fax)

With a copy to:  
CITY Manager  
389 Congress Street  
Portland, Maine 04101

or such other address as the party being given such notice shall from time to time designate to the other by notice given in accordance herewith. Notices sent by facsimile

shall be deemed received at the time and date shown on the sender's facsimile machine-generated confirmation report, unless such date is not a business day, in which event the notice shall be deemed received on the next following business day. Notices sent via overnight courier shall be deemed received on the following business day. Notices sent by United States certified mail shall be deemed received on the fifth (5th) day following deposit in the United States mail, correctly addressed to the party for whom intended with all postage and registration fees paid.

**Section 19.2. Payments.** All payments required hereunder shall be made out to the CITY of Portland and shall be mailed or hand-delivered to the Airport Director, Portland International Jetport, 1001 Westbrook Street, Portland, Maine 04102.

## **ARTICLE XX GENERAL PROVISIONS**

**Section 20.1. Independent Contractor.** CONCESSIONAIRE shall, at all times, be regarded as an independent contractor and shall at no time act as agent for CITY. Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint ventures or any other similar such relationship between the parties hereto. The parties understand and agree that neither the method of computation of fees or rentals, nor any other provision contained herein, nor any acts of the parties hereto creates a relationship other than the independent relationship of CITY and CONCESSIONAIRE.

**Section 20.2. Approvals.** Where this Agreement calls for approval by CITY, such approval shall be evidenced by the written approval of the Airport Director or his/her designee.

**Section 20.3. Non-Exclusive Right.** It is not the intent of this Agreement to grant to CONCESSIONAIRE the exclusive right to provide car rental services at the Airport at any time during the term of this Agreement. CITY reserves the right, at its sole discretion, to grant certain rights and privileges upon the Airport to others which are identical in part or in whole to those granted to CONCESSIONAIRE.

**Section 20.4. United States Requirements.** This Agreement is subject and subordinate to the provisions of any agreement hereof or hereafter made between CITY

and the United States Government relative to the operation or maintenance of the Airport, the execution of which has been required or is required as a condition precedent to the transfer of federal rights or property to CITY for Airport purposes, or the expenditure of federal funds for the improvement or development of the Airport.

**Section 20.5. No Waiver.** No delay or omission by CITY in exercising any right, power or remedy hereunder or otherwise afforded by contract, at law, in equity or by statute, shall constitute an acquiescence therein, impair any other right, power or remedy hereunder, or otherwise afforded by contract, at law, in equity or by statute, or operate as a waiver of such right, power or remedy. No waiver by CITY of any default by CONCESSIONAIRE hereunder shall operate as a waiver or any other default or the same default on a future occasion.

**Section 20.6. Headings.** The article and section headings contained in this Agreement are inserted for convenience of reference only, and shall not be construed as defining, limiting, extending or describing the scope of this Agreement, any article or section hereof, or the intent of any provision hereof.

**Section 20.7. Severability.** If any provision of this Agreement, or the application thereof to any person or circumstance, shall be held invalid or unenforceable under any applicable law, such invalidity or unenforceability shall not affect any other provision of this Agreement that can be given effect without the invalid or unenforceable provision, or the application of such provision to other persons or circumstances, and, to this end, the provisions hereof are severable.

**Section 20.8. Aerial Approaches.** CITY reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction or interference, together with the right to prevent CONCESSIONAIRE from erecting, or permitting to be erected, any building or other structure on or adjacent to the Airport, the Car Rental Facilities Premises or the Ready/Return Spaces, which in the opinion of CITY, would limit the usefulness of the Airport or constitute a hazard to aircraft.

**Section 20.9. Waiver of Claims.** CONCESSIONAIRE hereby waives any claim against CITY and its officers, directors, agents, servants, or employees for loss of anticipated profits caused by any suit or proceedings directly or indirectly attacking the validity of this Agreement or any part thereof, or by any judgment or award in any suit or

proceeding declaring this Agreement null, void, voidable, or delaying the same or any part thereof, from being carried out. Without limiting the foregoing, in no case shall the CITY be liable to CONCESSIONAIRE or to any third party for any incidental, indirect, consequential, special or punitive damages, including without limitation lost profits, arising out of or relating to this Agreement or compliance with its terms.

**Section 20.10. Incorporation of Exhibits.** All exhibits referred to in this Agreement are intended to be and hereby are specifically made a part of this Agreement.

**Section 20.11. Binding Effect.** All terms, covenants, and conditions of this Agreement shall be binding upon and inure to the respective benefit of CITY and CONCESSIONAIRE, their respective officers, employees, agents and representatives, all as the case may be.

**Section 20.12. Right to Amend.** In the event that the FAA or any other federal or state agency, department or bureau having jurisdiction over CITY or the Airport requires modifications or changes in this Agreement as a condition precedent to the granting of funds for the improvement of the Airport, or otherwise, CONCESSIONAIRE shall make such amendments, modifications, revisions, supplements or deletions of any other the terms, conditions or requirements of this Agreement as may be reasonably required and any expenses resulting from such amendments, modifications, revisions, supplements or deletions shall be borne solely by the CONCESSIONAIRE.

**Section 20.13. Time.** Time is of the essence with regard to each and every provision of this Agreement.

**Section 20.14. Force majeure.** Neither CITY nor CONCESSIONAIRE shall be deemed in violation of this Agreement if prevented from performing any of the obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortages of material, acts of the public enemy, acts of superior governmental authority, weather conditions, riots, rebellion, sabotage or any other circumstances for which it is not responsible or which are not within its control. The party claiming “force majeure” shall provide prompt written notice to the other party of such claim and the reason(s) therefore.

**Section 20.15. Employee Parking.** CITY may provide parking facilities to CONCESSIONAIRE’S employees in common with employees of other concessionaires

and users of the Airport and retains the right to institute a nondiscriminatory charge for the privilege of utilizing such parking facilities.

**Section 20.16. Additional Space.** If space is available, and at the sole option of CITY, CONCESSIONAIRE may lease from CITY additional storage, office, and other space identified by CITY as available for such purposes, on terms to be negotiated by CITY and CONCESSIONAIRE.

**Section 20.18. Revenue Diversion Prohibited.** CONCESSIONAIRE shall not cause or allow to be diverted from the Airport any of its automobile rental business in any manner to avoid or reduce its Gross Revenues upon which its financial obligations owed to CITY are calculated. In the event CONCESSIONAIRE establishes, owns, operates or manages during the term hereof any automobile rental business within three (3) miles of the Airport, it agrees to make all books, records and other pertinent documents of such automobile rental business available for audit by CITY and/or its designated representative to ensure compliance with this provision.

**Section 20.19. Governing Law.** This Agreement and the rights and obligations of the parties hereunder shall be constructed in accordance with and governed by the laws of the State of Maine without regard to the principles of conflict of law, and CONCESSIONAIRE hereby agrees and submits to the personal jurisdiction of the state and federal courts within the state of Maine for the purpose of enforcing or construing this Agreement.

**Section 20.20. Understanding.** The parties hereto acknowledge that they have thoroughly read this Agreement, all exhibits or attachments hereto, and have sought and received competent advice and counsel necessary for them to form a full and complete understanding of all rights and obligations herein.

**Section 20.21. Other Use.** CONCESSIONAIRE shall not use or permit the use of the Car Rental Facilities Premises or the Ready/Return Premises, or any part thereof, for any purpose or use other than as authorized by this Agreement.

**Section 20.22. Liens.** Throughout the term of this Lease, CONCESSIONAIRE shall not cause nor permit any lien against the Premises, any portion thereof or any CITY property wherever located, or any improvements thereto, to arise out of or accrue from any action, omission or use thereof by CONCESSIONAIRE. CONCESSIONAIRE may

in good faith, however, contest the validity of any alleged lien. CONCESSIONAIRE shall defend and indemnify and hold the CITY harmless from any cost, expense, attorney's fees or other liability arising out of or resulting from any such lien or liens, and shall promptly discharge such lien or stay or prevent its foreclosure by bond or other appropriate legal procedure which is acceptable to the CITY. So long as CONCESSIONAIRE defends CITY in any action concerning any such lien, CONCESSIONAIRE shall not be required to post a bond with respect to such lien prior to the commencement of a foreclosure action against the CITY. This provision shall survive termination or expiration of this Lease Agreement. CITY may, at its sole discretion, pay any amounts secured by any such lien and in such case, CONCESSIONAIRE shall repay all such payments to CITY immediately upon CITY's demand therefore.

**Section 20.23. Entire Agreement.** This Agreement contains the entire agreement between the parties relating to the subject matter hereof and supersedes all oral statements and prior writings with respect thereto and may be altered, amended, or modified only by written document executed by CITY and CONCESSIONAIRE.

**Section 20.24. Attorney's Fees.** If an action shall be brought to recover any sum due under this Agreement, or an account of any breach of or to enforce or interpret any of the terms, covenants, or conditions of this Agreement, CITY shall be entitled to recover from CONCESSIONAIRE, as part of CITY's cost, reasonable attorney's fee.

**Section 20.25. Interpretation.** This Agreement shall not be construed or interpreted in favor of or against either party on the basis of draftsmanship or preparation of the Agreement.

**Section 20.26. Approval of Plans and Specifications.** No approval by CITY of any plans and specifications required herein shall refer to or be implied to include the approval of architectural or engineering design or compliance with applicable laws or codes. CITY, by approving such plans and specifications, assumes no liability or responsibility therefore or for any defect in any structure or improvement constructed according to such plans and specifications.

**Section 20.27. Bankruptcy.** If at any time proceeding in bankruptcy or under the Bankruptcy Code (Title 11 of the United States Code) as now in effect or as hereafter

amended shall be instituted by CONCESSIONAIRE, or if a petition for relief is granted against CONCESSIONAIRE in any involuntary bankruptcy proceeding, CONCESSIONAIRE shall pay in adequate protection payments the rentals and fees due under this Agreement until such time CONCESSIONAIRE elects to assume or reject this Agreement. If CONCESSIONAIRE defaults thereunder and fails to make any such payment due hereunder, (i) this Agreement shall be deemed to be rejected so that the Agreement will be terminated and CITY shall have a claim against CONCESSIONAIRE for the rentals, fees, and other sums then due CITY under this Agreement, and (ii) CITY shall be entitled to relief from the automatic stay to enforce its rights under the terms of this Agreement.

**Section 20.28.** “Most Favored nations”. CITY agrees that if it contracts with any car rental CONCESSIONAIRE operating at the Airport for any more favorable term in regard to permitted and required uses, or in regard to the fixed and percentage rents payable hereunder (other than the MAG), then CITY agrees, upon CONCESSIONAIRE’S request, to offer such term or terms to CONCESSIONAIRE as an amendment to this Agreement. No more than four (4) car rental CONCESSIONAIRES, plus dual branding as permitted herein, shall be allowed “on-airport” during the term of this Agreement.

**Section 20.29.** Dual Branding. (Note: One of the following will be inserted, as applicable).

Dual branding is not included in this Agreement.

**Or**

The CONCESSIONAIRE is the parent company of \_\_\_\_\_ (“\_\_\_\_\_”) and \_\_\_\_\_ (“\_\_\_\_\_”) and has proposed dual branding at the Car Rental Service Facility with each of these brands located at the Facility on CONCESSIONAIRE’S Premises. Separate MAG’s have been proposed for each of the dual brands. CONCESSIONAIRE will require each brand to keep separate records and accounts of gross receipts under this Agreement and all such records and accounts shall be subject to the CITY’S right to inspect, review and audit such records and accounts as provided in this Agreement. Each brand shall pay to the CITY the monthly concession fees. Notwithstanding the foregoing, CONCESSIONAIRE is and shall remain fully

responsible for payment of each concession fee in full for each of the brands on a monthly basis and for payment of the annual MAG for each of the brands. CONCESSIONAIRE shall be responsible for ensuring compliance with all the terms of this Agreement by each of its brands and default by one of the two brands may result in termination of this Agreement in whole or in part, such termination and its extent to be solely at the CITY's option.

**Section 20.30. War.** During any time of war or national emergency, CITY shall have the right to lease the Airport or any part thereof to the United States Government for military use, and if any such lease or agreement is executed, the provisions of this Lease Agreement insofar as they are inconsistent with the lease or agreement with the Government shall be suspended, and in that event, a just and proportionate part of the rent hereunder shall be abated.

**IN WITNESS WHEREOF**, the parties hereto have executed this Concession Agreement on the day and year first written above.

WITNESS

**CITY OF PORTLAND**

\_\_\_\_\_

\_\_\_\_\_  
Joseph E. Gray, Jr., City Manager

**CONCESSIONAIRE**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Print Name and Title