

04545-J

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No. 645455

COURT OF APPEALS, DIVISION 1,  
OF THE STATE OF WASHINGTON

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BRANDON APELA AFOA, Appellant,

v.

PORT OF SEATTLE, Respondent.

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BRIEF OF APPELLANT

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## I. INTRODUCTION

On December 26, 2007, Plaintiff / Appellant Brandon Afoa was rendered a paraplegic from a workplace accident at the Seattle-Tacoma International Airport ("STIA"), which is owned and operated by Defendant / Respondent Port of Seattle ("the Port"). At the time of the incident, Mr. Afoa was operating a powered industrial truck, or "PIT" as defined in WAC 296-863-700. This PIT, known as a "pushback," is used to move commercial jet aircraft about the tarmac. Mr. Afoa alleges the brakes and steering on the pushback failed, causing him to lose control of the vehicle. Subsequently, the pushback collided with a broken cargo loader that had been left on the tarmac. The cargo loader fell on him, crushing his spine and internal organs. Mr. Afoa alleges the collision resulted from the Port's failure to establish and maintain proper safety and maintenance practices as required by law.

At the time of the collision, Mr. Afoa was acting in the course and scope of his employment with Evergreen Aviation Ground Logistics Enterprises, Inc. ("EAGLE"), which contracted to provide ground support services to four different airlines. Each of these airlines was operating at STIA pursuant to a standard contract it had with the Port, which was drafted by the Port. In order for EAGLE to

operate at STIA, The Port required EAGLE enter into a contract with the Port called a “Ground Service Operator Licensing Application and Agreement.”

Mr. Afoa alleges the Port retained control of the jobsite including the manner in which he and other EAGLE employees performed their work. Under the Port’s standard contracts with the airlines, the Port explicitly retained **“exclusive control and management”** of the “Airfield area,” which includes the area where Mr. Afoa was working at the time of the collision. This area is fenced and guarded and requires Port issued badges to enter. Requirements to obtain these badges include passing tests administered by the Port. Mr. Afoa presents evidence of the Port’s control over EAGLE employees that shows constant radio contact, frequent safety checks, and specific examples where the Port intervened to correct equipment maintenance issues.

Mr. Afoa alleges the Port breached at least one of three duties. The first is the Port’s statutory duty to protect him from violations of safety regulations promulgated under the Washington Industrial Safety and Health Act of 1973 (“WISHA”). The second is the Port’s common law duty to provide a safe workplace under the doctrine of retained

control, which pre-existed the statutory duty. The third is the common law duty owed by a possessor of land to an invitee.

The Port's statutory duty under WISHA is established by the specific duty clause of RCW 49.17.060 as explained in Stute v. P.B.M.C., 114 Wn.2d 454, 788 P.2d 545 (1990) and applied to jobsite owners under Weinert v. Bronco Nat. Co., 58 Wn. App. 692, 795 P.2d 1167 (Div. 1, 1990). This duty applies to jobsite owners who retain the right to control the manner in which work is performed on the jobsite, so long as the owner is an employer as defined by WISHA. To breach this duty, such a jobsite owner must violate or allow to be violated one or more specific WISHA regulations. This duty runs to all employees on the jobsite over which the owner retains control, with no privity of contract required between the owner and the worker. Mr. Afoa alleges the Port is an employer as defined by WISHA, that the Port retained control of the jobsite, and that his injuries were caused by violations of specific WISHA regulations pertaining to the operation and maintenance of powered industrial trucks.

The Port also owes Mr. Afoa a common law duty to provide a safe workplace under the retained control doctrine. This common law duty is described in Kelley v. Howard S.

Wright Const. Co., 90 Wn.2d 323, 582 P.2d 500 (1978).

This duty was recognized prior to the enactment of WISHA and prior to the Stute and Wienert decisions. Unlike the statutory duty, the common law duty does not require a specific violation of a WISHA regulation, nor does it require the defendant be an employer subject to WISHA. The common law duty requires a higher level of control, including the affirmative assumption of responsibility for safety. The common law duty historically required privity of contract between the jobsite owner and the worker. The statutory duty never has. Privity is no longer required to sustain an action in tort.

Finally, Mr. Afoa alleges the Port breached common law duties owed by a possessor of land to an invitee on premises. He alleges he was a business visitor invitee as he was on premises for a purpose connected with the Port's business and the Port breached its duty of ordinary care by allowing unsafe clutter on the tarmac.

The Port denies these duties apply. It contends privity of contract between the Port and Mr. Afoa must exist for duties under WISHA or the retained control doctrine to apply. The Port also argues Mr. Afoa was a licensee, not an

invitee on premises, and that his claims are barred by the “public duty doctrine.”

Mr. Afoa contends that no such privity requirement exists for the statutory duty under WISHA to apply, and that any privity requirement under the common law “retained control” doctrine should be abrogated as it has been in other tort contexts. Mr. Afoa contends he was a “business visitor” invitee and not a licensee on premises. As Mr. Afoa alleges the Port breached duties that apply to every jobsite owner in Washington, public or private, the public duty doctrine does not apply because no public duty is implicated.

## II. ASSIGNMENTS OF ERROR

### a. Assignments of error

1. The trial court erred in granting the Port’s motion for summary judgment dismissing Mr. Afoa’s claims in its Nov. 20, 2009 order.
2. The trial court erred in denying Mr. Afoa’s motion for reconsideration in its Nov. 30, 2009 order.

### b. Issues pertaining to assignments of error

1. Whether the Port owed Mr. Afoa statutory duties under the specific duty clause of RCW 49.17.060 as interpreted in case law including Stute and Wienert to protect Mr. Afoa from violations of

WISHA safety regulations when the Port explicitly retained “exclusive control and management” of the jobsite and where it exercised control over the manner in which Mr. Afoa performed his work.

2. Whether the Port owed Mr. Afoa common law duties to provide a safe workplace under the retained control doctrine where the Port exercised control over the manner in which Mr. Afoa performed his work.
3. Whether Mr. Afoa was an invitee or a licensee on the Port’s premises and whether he was owed the common law duty to an invitee of ordinary care.
4. Whether the public duty doctrine shields the Port from liability for Mr. Afoa’s injuries.
5. Whether the exhibits provided by the Port in support of its motion include sufficient admissible evidence to set forth material facts, as opposed to conclusions and opinions, required to carry the Port’s burden on summary judgment.

### III. STATEMENT OF THE CASE

#### a. Facts of the collision

Brandon Afoa was catastrophically injured in a collision while he was operating a heavy equipment unit

known as a “pushback” or “tug,” on the airplane ramp, which is within the Air Operations Area at STIA.<sup>1</sup> He alleges the brakes and steering on the pushback failed,<sup>2</sup> causing him to collide with a broken piece of heavy equipment known as a cargo-loader that had been left on the tarmac, which subsequently fell on him, crushing his spine and internal organs and rendering him a paraplegic. Mr. Afoa alleges the Port breached its duties by failing to provide him with a safe workplace and by violating or allowing to be violated applicable safety laws and regulations including specific WISHA regulations.<sup>3</sup>

At the time of the collision, Mr. Afoa was in the course and scope of his employment with EAGLE,<sup>4</sup> who was operating at the airport pursuant to a contract titled “Ground Service Operator Licensing Application and Agreement.”<sup>5</sup> EAGLE contracted with British Airways, EVA airlines (cargo and passenger), Hawaiian Airlines and China Air to provide ground support services.<sup>6</sup>

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<sup>1</sup> CP 1-10 (Plaintiff’s Complaint ¶4); CP 285-339 (Declaration of Brandon Afoa)

<sup>2</sup> See CP 384 (June 4, 2009 Deposition of Alvin Luna, page 108-111) (Mr. Luna heard Plaintiff screaming “brakes, brakes, brakes” and twisting the steering wheel, which appeared to not be steering correctly.)

<sup>3</sup> CP 1-10 (Plaintiff’s Complaint ¶6); See also Id. ¶ 5 (Defendant’s control of workplace)

<sup>4</sup> Id. ¶ 4.5

<sup>5</sup> CP 202-213 (Exhibit C to the Declaration of Mark Coates in Support of Defendant’s Motion)

<sup>6</sup> CP 377 (June 4, 2009 Deposition of Alvin Luna, pages 54-55).

**b. Facts pertaining to the Port and its contracts.**

On its website, the Port describes STIA as the “major airport serving Washington State and the northwest United States” and as a “24-hour-day, 365-days-a-year operation run by the Aviation Division of the Port of Seattle.”<sup>7</sup> The Port lists its “Primary Goals,” which include “to expand the airport to complete internationally.”<sup>8</sup> It boasts it is “A Significant Employer” with “22,000 airport employees” and “14,000 airport related jobs, off-site,” and “An Economic Driver” with “**\$4.3 billion in business revenue** generated by the airport, airlines and related businesses employees.”<sup>9</sup>

The Port’s standard contract with the airline is the Port of Seattle Signatory Lease and Operating Agreement 2006-2012 (“2006 Contract”). This standard contract is signed by both the Port and each airline doing business at STIA.<sup>10</sup> This standard contract was newly created by the Port in 2006 and superseded a previous standard contract

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<sup>7</sup> CP 363-364, <http://www.portseattle.org/business/airport> (last visited November 8, 2009)

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* (Emphasis in original. Defendant’s web site also distinguishes “\$166 million in state and local taxes generated by Sea-Tac Airport and related businesses” from the \$4.3 billion in business revenue.)

<sup>10</sup> See CP 451, § 24.23. This section, entitled “Agreement Not to Grant More Favorable Terms” prohibits the Port from granting more favorable terms to “any other Air Carrier” operating at the airport.

that was effective in 2004.<sup>11</sup> In this contract, the Port earns money from airlines through complex fee schedules for both landing fees and terminal rents.<sup>12</sup> The “Sample Landing Fee Calculation Based on 2006 budget” provided by the Port in the contract shows a “Landing Fee Rate” of \$2.43 per 1,000 pounds of gross landed rate.<sup>13</sup> Numerous other contract terms provide for sharing of both each airline’s revenues and the Port’s expenses between the Port and each airline.<sup>14</sup>

**c. Facts pertaining to the Port’s control of the jobsite.**

In the plain language of the 2006 Contract, the Port retains “**exclusive control and management**” of the Airfield area, which includes the area where Mr. Afoa was working at the time of the collision.<sup>15</sup> The 2006 Contract

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<sup>11</sup> CP 450, § 24.15. (“This agreement supersedes the Signatory Lease and Operating Agreement between the parties dated January 1, 2004.”)

<sup>12</sup> See CP 418-427 (Port of Seattle Signatory Lease and Operating Agreement 2006-2012 as signed by China Airlines, Article 8, Compensatory Rents and Charges). This agreement as signed by China Airlines is identical in all provisions material to this action to the agreement as signed by each of the other airlines who contracted with EAGLE for ground support services.

<sup>13</sup> CP 552, Exhibit J.

<sup>14</sup> See CP 418-427 (Article 8, Compensatory Rents and Charges). This article describes provisions that incorporate the Port’s capital costs, debt expense, and operating costs into the payments the Port receives from each airline, as well as charges to each airline that vary with each airline’s usage, volume, and revenue.

<sup>15</sup> “The Port grants to Airline a nonexclusive license to use the Airfield area, in common with others, subject at all times to the **exclusive control and management** by the Port.” CP 402, § 2.1 (emphasis added); The “‘Airfield or Airfield Area’ means all landing areas, runways, taxiways, ramps, aprons, adjacent field areas and related support facilities (e.g. field lighting, navigational aides and cart roads.)” CP 397, §

gives the Port the right to “conduct an inspection of [the] Airline’s operations at the Airport to confirm that such operations comply with the requirements set forth in [the] Agreement.”<sup>16</sup> Those requirements include that the airline comply with all applicable “laws, rules, regulations, and ordinances,” including those relating to “health and safety.”<sup>17</sup> Further, the agreement by its terms extends to the airlines’ employees and others, stating “Airline shall not use the Premises or cause or permit its employees or others to use the Premises for any other purpose than specified in this Agreement.”<sup>18</sup>

The Airfield area is fenced and guarded by security,<sup>19</sup> with Port-issued badges required to enter.<sup>20</sup> In addition to

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1.2; “The Port shall retain exclusive control of the use of all Common Use Gates.” CP 409 § 4.7

<sup>16</sup> CP 433, §12.6; “Airport” is broadly defined to encompass the entire STIA premises. CP 397-398.

<sup>17</sup> CP 433. Article 13 also requires compliance by the airlines with the Port’s own rules and regulations.

<sup>18</sup> CP 403, §3.1

<sup>19</sup> CP 345-346 (Declaration of Toiva Gaoa ¶ 16); CP 357 (Warning sign reads: “Section 4, Airport Rules and Regulations pertaining to vehicular traffic, the Air Operations Area, and Air Movement Area is strictly enforced ... Runways, taxiways, and adjacent safety areas are off-limits to all vehicles not specifically authorized to enter by the Director of Aviation.”); CP 358 (“No Trespassing” sign requires “authorized personnel” with “identification badge[s] required” to pass beyond that point.)

<sup>20</sup> A red badge will allow entry the Airport Operations Area, but will not allow you to drive there, even if you have a valid Washington driver’s license. To drive, you must have a blue badge. Blue badges are issued by the Port, who requires you pass a test administered by the Port, who provides training including workbooks and study guides. You must have an “AMA” seal on your blue badge to drive on the Air Movement Area, which is also issued by the Port and requires passages of an additional Port administered test. CP 355-356. (Declaration of Toiva Gaoa ¶ 35,

security<sup>21</sup> and training,<sup>22</sup> the Port interacted with Mr. Afoa and his co-workers on a constant basis by maintaining radio contact during operations<sup>23</sup> and by performing safety checks through its Ramp Patrol.<sup>24</sup> Mr. Afoa and another EAGLE employee, Toiva Gaoa, describe specific examples of the Port intervening to correct equipment maintenance issues.<sup>25</sup>

On or about September 20, 2006, approximately 3 months before Mr. Afoa's collision, there was another incident involving brake failure of a pushback on the tarmac. This pushback was operated by Swissport, another ground service company that occasionally lent pushback equipment to EAGLE.<sup>26</sup> The pushback was driven by Joshua Tuani of Swissport, and no injuries were reported; the tug eventually stopped after running through the Port's perimeter fence.<sup>27</sup> The Port's response to this incident included: 1) suspending

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36); CP 376, 378-381, 383, (June 4, 2009 Deposition of Alvin Luna, pages 50-51, 59-68, 76-79). Plaintiff had a blue badge at the time of the accident, and was not operating in the Air Movement Area. CP 286-287 (Declaration of Brandon Afoa, ¶¶ 4-6); CP 290-334, Exhibits A, B, and C.

<sup>21</sup> CP 345-346 (Declaration of Toiva Gaoa ¶¶ 16, 34-35)

<sup>22</sup> CP 355-356 (Declaration of Toiva Gaoa ¶¶ 36).

<sup>23</sup> CP 346-348 (Declaration of Toiva Gaoa ¶¶ 17-20).

<sup>24</sup> CP 348-352 (Declaration of Toiva Gaoa ¶¶ 21-29).

<sup>25</sup> CP 289 (Declaration of Brandon Afoa ¶¶ 12); CP 352 (Declaration of Toiva Gaoa ¶¶ 28-29).

<sup>26</sup> CP 382 (June 4, 2009 Deposition of Alvin Luna, page 73)

<sup>27</sup> See CP 366-367 (Letter dated September 26, 2006 from Patrick Clancy of the Port to Dion Fatafehi of Swissport Corporation as provided by the Port); See CP 369-371 (Hard Copy of Email Dated September 20, 2006 from Dave Richardson to Patrick Clancy and Mark Coates of the Port regarding "Swissport Tug Accident," with 1 photograph of tug); CP 373 (Letter dated September 20, 2006 from Joshua Tuani, Swissport Ramp Supervisor regarding Swissport Tug Accident)

Mr. Tuani's driving privileges until he completed a Port of Seattle training course; 2) requesting Swissport conduct an "emphasis briefing ... stressing the importance of vehicle inspections;" and 3) requested "verification from Swissport of the complete repair" of the vehicle's brake system.<sup>28</sup>

**d. Procedural history**

Mr. Afoa filed suit against the Port on February 5, 2009 in King County Superior Court.<sup>29</sup> The case was initially assigned to Judge Richard McDermott,<sup>30</sup> but was transferred to Judge Cheryl Carey upon motion of the Port.<sup>31</sup> The Port filed its Answer on April 15, 2009.<sup>32</sup>

The Port's Answer included two affirmative defenses that were based in part on allegations that Mr. Afoa's employer, EAGLE, was at fault for Mr. Afoa's injuries.<sup>33</sup> On April 28, 2009, Mr. Afoa moved to strike these affirmative defenses on the basis that RCW 4.22.070(1) prohibits allocation of fault to entities immune under Title 51 RCW,

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<sup>28</sup> CP 366-367 (Letter Dated September 26, 2006 from Patrick Clancy of the Port to Dion Fatafehi of Swissport Corporation as provided by the Port)

<sup>29</sup> CP 1-11 (Summons and Complaint)

<sup>30</sup> CP 11-16 (Order Setting Case Schedule)

<sup>31</sup> CP 28-29 (Defendant's Motion for Change of Judge); CP 39 (Order Granting Defendant's Motion for Change of Judge)

<sup>32</sup> CP 17-22 (Defendant's Answer)

<sup>33</sup> CP 21 (Defendant's Answer, affirmative defenses 8.4 and 8.5)

which includes Mr. Afoa's employer.<sup>34</sup> A hearing with oral argument on the motion to strike was held on July 10, 2009.<sup>35</sup> The court denied the motion to strike, but ordered that the jury shall not be instructed to allocate any fault to EAGLE on the verdict form.<sup>36</sup>

At the hearing on Mr. Afoa's motion to strike, the Port, through counsel, admitted and / or alleged that EAGLE was negligent and that EAGLE's negligence was a proximate cause of the accident.<sup>37</sup>

The Port subsequently moved for summary judgment to dismiss Mr. Afoa's claims.<sup>38</sup> Following a hearing with oral argument on November 20, 2009,<sup>39</sup> the trial court granted the Port's motion for summary judgment to dismiss Mr. Afoa's claims. Mr. Afoa promptly filed a motion for

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<sup>34</sup> CP 23-27 (Plaintiff's Motion to Strike); See also CP 30-34 (Defendant's Response) and CP 35-38 (Plaintiff's Reply).

<sup>35</sup> RP pages 4-24.

<sup>36</sup> CP 54-55 (Order Denying Plaintiff's Motion to Strike)

<sup>37</sup> Mark Northcraft, counsel for the Port stated:

We're gonna say that EAGLE, the employer, was negligent. We're not going to allocate fault to them, but we're going to say they're negligent. And that their negligence was a proximate cause or the sole proximate cause of this accident. So I didn't want to leave out the part that they're negligent.

RP, page 12, lines 7-12. See also RP at 13, lines 3-5 ("I just wanted to make sure that they understood, um, and there wasn't any question that we're going to assert that the employer was negligent here, and a proximate cause")

<sup>38</sup> CP 215-231 (Defendant's Motion for Summary Judgment); CP 260-284 (Plaintiff's Response); CP 558-564 (Defendant's Reply)

<sup>39</sup> RP 26-53

reconsideration of summary judgment,<sup>40</sup> which was denied.<sup>41</sup> At the time summary judgment was decided, discovery was in its early stages, with one deposition having been taken,<sup>42</sup> and without confirmation of joinder. CP 56-57.

#### IV. ARGUMENT

The Port owed Mr. Afoa a statutory duty under WISHA, Stute, and Weinert to protect him from specific WISHA violations where it retained control of Mr. Afoa's workplace. The Port is an employer as defined by WISHA, and Mr. Afoa alleges his injuries resulted from violations of WISHA regulations governing PITs. These allegations are either uncontested or questions of fact. The Port owes this duty to all workers on the jobsite where it retains control. There is no requirement of privity of contract between the Port and Mr. Afoa for the statutory duty to apply, although the Port seeks to impose it. Even if such a requirement were imposed, the contracts between the Port and the airlines, for whom Mr. Afoa was working, would satisfy it.

The Port also owed Mr. Afoa common law duties under the doctrine of "retained control," which pre-existed

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<sup>40</sup> CP 569-587 (Plaintiff's Motion for Reconsideration)

<sup>41</sup> CP 588-590 (Order Denying Plaintiff's Motion for Reconsideration)

<sup>42</sup> See CP 11-16 (Order Setting Case Schedule), which established discovery cutoff date of June 7, 2010; See CP 375-385 (June 4, 2009 Deposition of Alvin Luna).

WISHA and still applies where a jobsite owner is not subject to WISHA or where no specific WISHA violations are implicated. The common law duty requires a higher showing of control than does the statutory duty. The common law duty historically required privity as to one who engages an independent contractor. Mr. Afoa has shown at least a genuine question of material fact that the Port's level of control met the standards of the common law duty as well as the lower standards of the statutory duty.

The Port demands privity of contract between it and Mr. Afoa exist before liability can attach. The statutory duty has never required privity of contract between the jobsite owner and the worker. Under the common law, privity is no longer required to sustain an action in tort.

Additionally, the Port owed Mr. Afoa the duty of ordinary care as he was a business visitor invitee on premises. The Port has also failed to set forth material facts required to carry the Port's burden on summary judgment.

**a. Standard of review and elements of negligence**

Summary judgment is appropriate only if, from all the evidence, reasonable persons could reach but one conclusion. Wilson v. Steinbach, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982). In an action for negligence a plaintiff

must prove four basic elements: (1) the existence of a duty, (2) breach of that duty, (3) resulting injury, and (4) proximate cause. Tincani v. Inland Empire Zoological Soc'y, 124 Wn.2d 121, 127-28, 875 P.2d 621 (1994). While the existence of a legal duty is generally a question of law, Degel v. Majestic Mobile Manor, Inc., 129 Wn.2d 43, 48, 914 P.2d 728 (1996), where duty depends on proof of certain facts that may be disputed, summary judgment is inappropriate. Sjogren v. Props. of Pacific N.W., LLC, 118 Wn. App. 144, 148, 75 P.3d 592 (Div. 2, 2003). "A duty can arise either from common law principles or from a statute or regulation. A duty can also arise contractually." Kennedy v. Sea-Land Service, Inc., 62 Wn. App. 839, 816 P.2d 75 (Div. 1, 1991). The facts and reasonable inferences from those facts are considered in a light most favorable to the nonmoving party. Babcock v. Mason County Fire Dist. No. 6, 144 Wn.2d 774, 784, 30 P.3d 1261 (2001).

"It is well settled under Washington law that [the appellate court] reviews a summary judgment de novo." Fell v. Spokane Transit Auth., 128 Wn.2d 618, 625, 911 P.2d 1319 (1996). When reviewing a motion for summary judgment, the appellate court engages in the same inquiry as the trial court. Marks v. Wash. Guar. Ass'n, 123 Wn.

App. 274, 277, 94 P.3d 352 (Div, 2. 2004). “Like the trial court[s], [appellate courts] consider facts submitted and all reasonable inferences from those facts in the light most favorable to the nonmoving party.” Id. The trial court's findings and its reasoning are entitled to no deference on appeal. Chelan County Deputy Sheriffs Ass'n v. Chelan County, 109 Wn.2d 282, 294 n.6, 745 P.2d 1 (1987). Statutory construction is also a question of law to be reviewed de novo. Pacheco v. Ames, 149 Wn.2d 431, 436, 69 P.3d 324 (2003).

**b. Under *Stute*, *Weinert*, and RCW 49.17.060, the Port owed Mr. Afoa a non-delegable duty to provide a safe workplace free of WISHA violations.**

Mr. Afoa alleges he was injured as a result of the Port's breach of its duty to provide him with a workplace free of violations of specific regulations promulgated under the Washington Industrial Safety and Health Act of 1973 (WISHA). Under RCW 49.17.060(2), an employer owes a duty to every worker at a job site, including workers employed by others, to ensure that it and its workers' employers comply with WISHA regulations. Mr. Afoa alleges the Port owed this duty to him under Washington law, including Stute v. P.B.M.C. Inc., 114 Wn.2d 454, 788 P.2d 545 (1990) and Weinert v. Bronco Nat. Co., 58 Wn. App.

692, 795 P.2d 1167 (Div. 1, 1990) because the Port retained control of the job site and was in the best position to ensure compliance with safety regulations.

This Stute / Weinert duty applies when (1) a plaintiff's injuries are caused by a specific WISHA violation, when (2) either the defendant is a general contractor or retains control over the jobsite, and (3) when a defendant is an employer as defined by RCW 49.17.020.

**1. Under RCW 49.17.060(2), employers owe a duty to all workers on a job site, not just their own, to protect them from specific WISHA violations.**

The "specific duty" clause of RCW 49.17.060 provides a duty for an employer to protect all employees on a job site from specific WISHA violations. RCW 49.17.060 applies to "each employer" and includes two clauses.<sup>43</sup> The first clause provides a general duty to "furnish to each of his employees a place of employment free from recognized hazards." As discussed by the Washington Supreme Court

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<sup>43</sup> RCW 49.17.060 provides:

Each employer:

(1) Shall furnish to each of his employees a place of employment free from recognized hazards that are causing or likely to cause serious injury or death to his employees: PROVIDED, That no citation or order assessing a penalty shall be issued to any employer solely under the authority of this subsection except where no applicable rule or regulation has been adopted by the department covering the unsafe or unhealthful condition of employment at the work place; and

(2) Shall comply with the rules, regulations, and orders promulgated under this chapter.

in both Stute v. P.B.M.C. Inc., 114 Wn.2d 454, 457-58, 788 P.2d 545 (1990) and Adkins v. Aluminum Co. of America, 110 Wn.2d 128, 152-53, 750 P.2d 1257, 1272 (1988), this “general duty clause” applies only to an employer’s direct employees.

The second clause “imposes a specific duty to comply with WISHA regulations” Stute, 114 Wn.2d at 457 and “extends to employees of independent contractors when a party asserts that the employer did not follow particular WISHA regulations.” Id. The Washington Supreme Court in both Stute and Adkins followed its decision in Goucher v. J.R. Simplot Co., 104 Wn.2d 662, 709 P.2d 774, 780 (1985).

In Goucher, the court adopted the reasoning of the federal Sixth Circuit Court of Appeals in Teal v. E.I. DuPont de Nemours & Co., 728 F.2d 799 (6th Cir.1984). The Teal court examined 29 U.S.C. § 654(a), the federal OSHA counterpart to RCW 49.17.060, and found its specific duty clause established a duty for an employer to protect all employees on its premises, not just its own, from violations of specific safety regulations. The Goucher court described the Teal court’s reasoning as:

When a party relies on the general duty clause, only those parties who are employees of the employer are protected. On the other hand, when a party relies on the specific duty clause on the ground that the

employer failed to comply with a particular OSHA standard or regulation, then *all* of the employees who work on the premises of another employer are members of the protected class.

Goucher v. J.R. Simplot Co., 104 Wn. 2d 662, 672-673, 709 P.2d 774 (1985) (emphasis in original). The Goucher court found “this rationale to be sound and [held the plaintiff], in alleging the violation of particular WISHA regulations, [was] a member of the protected class.” Id. at 673. Because Mr. Afoa was working on the Port’s premises when he was injured, Mr. Afoa is a member of the protected class. This class includes all employees working on the premises, regardless of whether they are employed by the Port.

**2. Under *Stute*, a general contractor has a non-delegable duty to protect all workers on its premises from WISHA violations.**

In Stute v. P.B.M.C. Inc., 114 Wn.2d 454, 788 P.2d 545 (1990) the Washington Supreme Court found RCW 49.17.060(2) established a “**nondelegable** duty on general contractors to provide a safe place to work for employees of subcontractors” by ensuring its subcontractors comply with WISHA regulations. Stute, 114 Wn.2d at 463 (emphasis added). The Court explained a “general contractor’s supervisory authority is per se control over the workplace, and the duty is placed upon the general contractor as a matter of law.” Id. at 464. The Court held “the general

contractor should bear the primary responsibility for compliance with safety regulations because the general contractor's **innate supervisory authority** constitutes sufficient control over the workplace." Id. (emphasis added). This responsibility is justified as a "general contractor's supervisory authority places the general in the best position to ensure compliance with safety regulations." Id. at 463.

3. **Under *Weinert*, the non-delegable duties to protect workers from WISHA violations described in *Stute* extend to job site owners that retain control or hold innate supervisory authority over the site.**

The non-delegable duty recognized in Stute applies to job site owners who retain control over a workplace. See e.g. Weinert v. Bronco Nat. Co., 58 Wn. App. 692, 795 P.2d 1167 (Div. 1, 1990); Kinney v. Space Needle Corp., 121 Wn. App. 242, 85 P.3d 918 (Div. 1, 2004). In applying this duty, Washington sees no significant distinction between a job site owner and a general contractor where the owner's position is comparable to that of a general contractor. In Weinert v. Bronco Nat. Co., this Court wrote:

We do not overlook the fact that Bronco is an owner/developer rather than a general contractor hired by an owner. We see no significance to this factor insofar as applying Stute to the facts of this case. The owner/developer's position is so comparable to that of the general contractor in Stute that the reasons for the holding in Stute apply here.

**The purpose of the statutes and regulations relied upon in Stute is to protect workers.**

The basis for imposing the duty to enforce those laws on a general contractor exists with respect to an owner/developer who, like the general contractor, **has the same innate overall supervisory authority and is in the best position to enforce compliance with safety regulations.**

Weinert, 58 Wn. App. at 696. (emphasis added). Similarly,

the Kinney court wrote:

While jobsite owners are not *per se* liable under the statutory requirements of RCW 49.17, they may retain a similar degree of authority to control jobsite work conditions and subject themselves to WISHA regulations. This is true where a jobsite owner is in a better position to ensure WISHA compliance.

Kinney, 121 Wn. App. at 248-249. (emphasis in original). In

distinguishing the facts in Kinney from those in the

Washington Supreme Court's decision in Kamla v. Space

Needle Corp., 147 Wn. 2d 114, 52 P.3d 472 (2002) where

the Space Needle Corporation was found not to have

retained control, the Kinney court explained, "where the

jobsite owner does retain control it has a duty under WISHA

to comply with the rules, regulations, and orders of that

statute." Kinney, 121 Wn. App. at 248, n. 12. There is

ample evidence to show the Port retained enough control of

the workplace to have the duty to protect Mr. Afoa from

violations of WISHA regulations.

**4. As Mr. Afoa's injuries resulted from specific WISHA violations, the Port's duties under *Stute, Weinert* and RCW 49.17.060(2) apply.**

The Port's duties under *Stute, Weinert*, and the specific duty clause of RCW 49.17.060 apply as Mr. Afoa alleges his injuries resulted from the Port violating or allowing to be violated specific regulations promulgated under WISHA.<sup>44</sup> These regulations include Chapter 296-863 of the Washington Administrative Code, which governs forklifts and other powered industrial trucks ("PITs"), including the pushback he was operating at the time of the accident.<sup>45</sup> Under this chapter, PITs must meet design and construction requirements. WAC 296-863-20005. They must protect operators from falling objects. WAC 296-863-20025. PITs must be maintained in safe working condition; any PITs not in "safe operating condition" must be removed from service. WAC 296-863-30005. PITs must be inspected according to the manufacturer's instructions daily and after each shift if used on a continuous basis. WAC 296-863-30010. PITs must be properly maintained, clean and free of excess lint, oil, and grease. WAC 296-863-30020. PIT

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<sup>44</sup> CP 1-10 (Plaintiff's Complaint ¶ 6.5)

<sup>45</sup> WAC 296-863-100 provides: "This chapter [Chapter 296-863] applies to powered industrial trucks that use electric motors or internal combustion engines. This includes, but is not limited to: [fork trucks,

operators must be properly trained. WAC 296-863-60005. Employers must make sure PIT “operators keep PITs under control at all times, including [driving] at a speed that allows the PIT to be stopped safely.” WAC 296-863-40010. Mr. Afoa alleges these regulations were violated as he was injured as a result of brake and steering failures from an improperly maintained PIT when it collided with a cargo-loader, which subsequently fell on him.

**5. As the Port is an employer as defined in RCW 49.17.020, it owes duties under *Stute* and *Wienert* to protect all workers on its premises from WISHA violations.**

Statutory duties under RCW 49.17.060, Stute and Wienert apply to “employers” as defined in RCW 49.17.020.<sup>46</sup> As the definition of “employer” in RCW 49.17.020 specifically includes “all municipal corporations, public corporations, political subdivisions of the state,” the

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forklifts, tractors, platform lift trucks, motorized hand trucks, and] other specialized industrial trucks.”

<sup>46</sup> RCW 49.17.020 (4) provides:

The term "employer" means any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and employs one or more employees or who contracts with one or more persons, the essence of which is the personal labor of such person or persons and includes the state, counties, cities, and all municipal corporations, public corporations, political subdivisions of the state, and charitable organizations: PROVIDED, That any person, partnership, or business entity not having employees, and who is covered by the industrial

Port's status as a local government entity does not exempt it from this duty.

The "employer" requirement does not require the Port have any "personal labor contract" or any formalistic employer-employee-independent contractor relationship with Mr. Afoa as demanded by the Port.<sup>47</sup> The purpose of the employer requirement is to separate sophisticated entities, such as businesses and governments, who are expected to be knowledgeable about safety laws and risk allocation, from entities such as consumers and homeowners who are not charged with such knowledge and responsibility. For example, courts have held Stute and Weinert duties do not apply to homeowners renovating their personal residences who were not "employers" under the statute because they were "not engaging in an activity for gain or livelihood." Rogers v. Irving, 85 Wn. App. 455, 463, 933 P.2d 1060 (Div. 2, 1997); Smith v. Myers, 90 Wn. App. 89, 950 P.2d 1018 (Div. 2, 1998). The Rogers court explained:

Homeowners, not being business enterprises, are typically ill-equipped to assume the duties that Rogers' interpretation of 'employer' would impose upon them. They are unlikely to know how to provide features such as fall arrest systems, or how to contract for indemnity.

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insurance act shall be considered both an employer and an employee.

<sup>47</sup> See CP 559 (Defendant's Reply)

Rogers, 85 Wn. App. at 463. Here, the Port contracted for indemnity both with EAGLE and with each airline. The 2006 Contract provides that each airline indemnify the Port for the airline's liability and that the airline provide general liability insurance covering the Port as a named insured "against any liability or expense relating to" the 2006 Contract.<sup>48</sup> This contract specifically requires such insurance cover "all 'mobile equipment' utilized by the Airline" at STIA.<sup>49</sup> Likewise, the Port's contract with EAGLE requires EAGLE hold the Port harmless from claims in connection with EAGLE's activities and that EAGLE also maintain liability insurance with the Port as a named insured.<sup>50</sup>

Because the Port is clearly an employer engaging in business for gain, including its multi-million dollar contracts with the airlines, it cannot be compared with homeowners who are exempt from these statutory duties when "not engaging in an activity for gain or livelihood." So long as the job site owner is a sophisticated entity, such as the Port, which is expected to have the knowledge and experience to maintain a safe workplace, it has a duty to do so.

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<sup>48</sup> CP 434-436 (Article 14, Indemnification – Liability Insurance).

<sup>49</sup> Id at 435.

<sup>50</sup> CP 205-206 (Exhibit C to the Declaration of Mark Coates in Support of Defendant's Motion, ¶¶ 6 "Liability" and ¶ 7 "Insurance")

6. **The Port's statutory duties under *Stute* and *Wienert* protect all workers on premises from WISHA violations where the Port retains control; no privity of contract between the Port and Mr. Afoa is required.**

Statutory duties under RCW 49.17.060, Stute and Wienert apply to all workers on a jobsite owner's premises where the owner is an "employer" under 49.17.020 and where the owner retains control of the work. The statutory duties require no privity between the jobsite owner and the worker in the form of an employer-employee-independent contractor status or a "personal labor contract" or similar formulation. While the existence and terms of any contracts related to the work are relevant to determining whether the owner retained control, they are not required under the statutory duty.

To the contrary, the Stute court held "**all employees working on the premises** are members of the protected class." Stute, 114 Wn.2d at 457. (emphasis added). The Stute court cited Adkins, which explained "**all employees who work on the premises of another employer** are members of the protected class." Adkins, 110 Wn.2d at 153. (emphasis added).

Further, as observed by the Washington Supreme Court in 2007, "the privity requirement in tort law has been

abandoned not just in Washington but in all United States jurisdictions.” Davis v. Baugh Indus. Contractors, Inc. 159 Wn.2d 413, 150 P.3d 545 (2007) *citing* Stuart v. Coldwell Banker Commercial Group, Inc., 109 Wn. 2d 406, 418, 745 P.2d 1284 (1987). In abolishing the “completion and acceptance doctrine” in a personal injury case, the Davis court quoted Judge (later Justice) Benjamin Cardozo’s 1916 opinion in MacPherson v. Buick which abolished the privity requirement in the context of product liability, as follows:

[w]e have put aside the notion that the duty to safeguard life and limb, when the consequences of negligence may be foreseen, grows out of contract and nothing else. We have put the source of the obligation where it ought to be. We have put its source in the law.

MacPherson v. Buick Motor Co., 217 N.Y. at 390, 111 N.E. 1050 (1916). Here, the sources of the Port’s duties owed to a worker on the jobsite by an owner who retains control of the work are statutory and common law, not contract.

**7. Even if privity of contract were required, it would be satisfied as Mr. Afoa was working on premises in furtherance of the Port’s contracts with the airlines.**

At the time of his injury, Mr. Afoa was working for EAGLE, a subcontractor to the airlines, who in turn had contracts with the Port under which the Port retained “exclusive control and management” of the area in which Mr.

Afoa was injured. By explicitly retaining control, the Port acquired the duties that come with this control. These duties may be “based in common law, statute, and contractual assumption of duty.” Kelley, 90 Wn.2d at 330.

While Stute and Adkins involved plaintiffs employed by independent contractors directly retained by the defendants, the rule is not limited to those facts. This Court soundly rejected similar interpretations in both Wienert and Husfloen v. MTA, 58 Wn. App. 686, 794 P.2d 859 (Div. 1, 1990). In Weinert, the court found both the jobsite owner and the contractor that hired the worker’s employer had duties to protect the worker from WISHA violations even though the jobsite owner did not hire the worker’s employer directly. In Husfloen, the defendant maintained Stute was “distinguishable because it involved two rather than three levels of employers.” Husfloen, 58 Wn. App. 689-690. This Court again refused to restrict duties to a specific contractual formula, finding “This factual distinction is without consequence.” Id. Likewise, the Washington Supreme Court held duties of more than one party under RCW 49.17.060(2) and Stute are “concurrent responsibilities to workers.” Gilbert H. Moen v. Island Steel Erectors, Inc. 128 Wn.2d 745, 757, 912 P.2d 472 (1996).

The facts here compare to those in Husfloen, Weinert, and Gilbert H. Moen because Mr. Afoa was working on the Port's premises in furtherance of the Port's contracts with the airlines. This satisfies any requirement for Mr. Afoa to have been working at STIA pursuant to a contractual relationship. Regardless, the Port's non-contractual duties protect all employees working on the premises. As in Husfloen, any factual distinctions here regarding the relationships between the Port, the airlines, and EAGLE are also "without consequence." Husfloen, 58 Wn. App. 689-690

**8. The Port retained control by contract, conduct, and other factors.**

"Whether a right to control has been retained depends on the parties' contract, the parties' conduct, and other relevant factors. One such factor is a principal / employer's interference in the work of the independent contractor; however, a right to control can exist even in the absence of that factor." Phillips v. Kaiser Aluminum, 74 Wn. App. 741, 875 P.2d 1228 (Div. 2, 1994).

While the source of the Port's statutory duty is found in the law, with no privity required, the contracts between the Port and the airlines are useful to show the level of control retained by the Port. In the 2006 Contract, the standard contract between the Port and each airline, the Port

specifically retains “exclusive control and management” of the area where Mr. Afoa was working at the time of the accident. Numerous other provisions as described in the Statement of the Case illustrate the degree to which the Port explicitly retained control. These show at least a genuine issue of fact that the Port retained control by contract.

The Port’s retained control through contractual language was supported by its actions. Also as described in the Statement of the Case, the Port fenced and secured the jobsite. The Port provided and administered testing and training to Mr. Afoa and every other ground service worker on the tarmac. Following Swissport driver Joshua Tuani’s September 20, 2006 pushback incident, the Port suspended his driving privilege “until his completion of the AOA training course conducted by POS [the Port] Airport Operations Training.”<sup>51</sup> Mr. Afoa and EAGLE employee Toiva Gaoa testify to extensive contact with the Port through security checks, radio contact, training, and safety checks. It is undisputed that the Port promulgates and enforces a set of rules and regulations pertaining to vehicles on the tarmac. These actions show at least a genuine issue of material fact that the Port retained control of the manner in which Mr.

Afoa performed his work. Likewise, the Port's response to the Swissport pushback's previous brake failure specifically shows the Port took an active role in the operation and maintenance of such equipment.

Finally, other factors as described in the Statement of the Case herein, including the sheer size, scope, and complexity of airport operations, coupled with the intense regulation and security of the premises and the amount of money involved, places the Port in the best position to enforce safety on the site.

**9. The Port cannot delegate non-delegable duties; disclaimers and indemnity provisions do not apply.**

The Port may claim provisions in its Rules & Regulations and its Ground Service Operator Licensing Application and Agreement with EAGLE shield it from liability or shift responsibility from the Port to its contractors. Such provisions cannot delegate the non-delegable duties imposed under Stute and Weinert. Nor can they extinguish the Port's duties to Mr. Afoa, especially where Mr. Afoa is not a party to the contract. In Gilbert H. Moen v. Island Steel Erectors, Inc., 128 Wn.2d at 757, the court discussed the indemnification agreement between the general contractor

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<sup>51</sup> CP 367 (Letter dated September 26, 2006 from Patrick Clancy of the

and the subcontractor and explained that both are concurrently negligent when a subcontractor fails to follow a WISHA regulation. The effects of such provisions relate to indemnification and the determination of who ultimately pays for the damages and who defends any actions. Such determinations are to be made in an indemnification proceeding outside the context of the injured worker's direct action. Id. at 759-760.

**10. Fact questions exist to show the Port was acting in concert with EAGLE and / or the airlines, and thus would be jointly liable for their negligence.**

In alleging fault on EAGLE's part,<sup>52</sup> the Port admits there is at least a fact question as to whether Mr. Afoa's injuries were caused by WISHA violations. Such violations would have been directly caused, at least in part, by EAGLE and / or the airlines that hired EAGLE. Because it is undisputed that these airlines, and each of them, directly retained EAGLE as an independent contractor, the airlines would also owe Mr. Afoa duties under Stute. Reasonable inferences from the record support fact questions as to whether the Port was acting in concert with the airlines and / or EAGLE. Thus the Port would be jointly liable, as RCW

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Port to Dion Fatafehi of Swissport Corporation as provided by the Port)  
<sup>52</sup> RP, page 12, lines 7-12. See also RP at 13, lines 3-5

4.22.070 (a)<sup>53</sup> provides for joint liability against defendants who were acting in concert. Yong Tao v. Heng Bin Li, 140 Wn. App. 825, 166 P.3d 1263 (Div. 3 2007), *review denied*, 163 Wn.2d 1045, 187 P.3d 271 (2008). To be liable for “acting in concert” they must be consciously acting together in an unlawful or negligent manner which was a proximate cause of the plaintiff’s injuries; intent to harm the plaintiff is not required.<sup>54</sup> A party acting in concert with an immune entity in a negligent manner may also be liable to the injured plaintiff for the immune entity’s share of negligence. See 16 Wash. Prac., Tort Law And Practice § 12.22 (3d ed.).

The level of involvement and control retained and exercised by the Port and from the contract between the Port and the airlines show fact questions to whether the Port was acting in concert with EAGLE and / or the airlines by consciously under-enforcing WISHA requirements that PITs on the jobsite be safe and properly maintained.

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<sup>53</sup> RCW 4.22.070 (a) provides:

A party shall be responsible for the fault of another person or for payment of the proportionate share of another party where both were acting in concert or when a person was acting as an agent or servant of the party.

<sup>54</sup> RCW 4.22.070(1)(a); Yong Tao v. Heng Bin Li, 140 Wn. App. 825, 166 P.3d 1263 (Div. 3 2007), *review denied*, 163 Wn.2d 1045, 187 P.3d 271 (2008); Kottler v. State, 136 Wash.2d 437, 448, 963 P.2d 834 (1998); Gilbert H. Moen Co. v. Island Steel Erectors, Inc., 75 Wn. App. 480, 487-88, 878 P.2d 1246 (1994), *rev'd on other grounds*, 128 Wn.2d 745, 912 P.2d 472 (1996)).

**c. The Port owed common law duties to provide Mr. Afoa with a safe workplace under the retained control doctrine; privity is not required.**

Prior to Stute, Wienert, and the enactment of WISHA, Washington recognized a common law duty “to provide a safe place of work” where one who engaged an independent contractor “retained control” over some part of the work. Kelley v. Howard S. Wright Const. Co. 90 Wn.2d 323, 330, 582 P.2d 500, 505 (1978) *citing* Restatement (Second) of Torts § 409 (1965). This duty arises where “one who engages an independent contractor retains actual control over the workplace and affirmatively assumes responsibility for project safety.” Smith v. Myers, 90 Wn. App. 89, 95, 950 P.2d 1018 (Div. 2, 1998). Here the Port’s exclusive control and management of the jobsite and its affirmative assumption of responsibility over PIT maintenance meet this standard as well.

Although the common law duty and the statutory duty both share similar fact patterns and similar inquiries, such as the degree of control retained by a principal over a contractor, they are separate and distinct duties with different elements and standards which must not be commingled. Specifically, the statutory duty requires the jobsite owner be an employer for as defined by WISHA, and

that a specific WISHA violation be implicated, where the common law duty does not. The common law duty requires actual control and the affirmative assumption of safety responsibility where the statutory duty does not. Unlike the statutory duty, no specific WISHA violation is required.

**d. As Mr. Afoa was a business visitor on the Port's premises, he was owed the duties of an invitee; a fact question exists as to whether this duty was breached.**

It has been observed that "In the background [of jobsite injury cases] is the property owner's common law duty to protect invitees from harm." Kamla v. Space Needle Corp., 147 Wn. 2d 114, 129, 52 P.3d 472 (2002) (Chambers, J., Dissent). The "legal duty owed by a landowner to a person entering the premises depends on whether the entrant [is] a trespasser, licensee, or invitee." Iwai v. State, 129 Wn. 2d 84, 90-91, 915 P.2d 1089 (1996). As the undisputed owner of the jobsite, the Port owed Mr. Afoa the duty of an invitee on premises. A landowner owes invitees an "affirmative duty to use ordinary care to keep the premises in a reasonably safe condition" Degel v. Majestic Mobile Manor, Inc., 129 Wn.2d 43, 49, 914 P.2d 728 (1996). See also Younce v. Ferguson, 106 Wn.2d 658, 667, 724 P.2d 991 (1986) *citing* McKinnon v. Washington Fed. Sav. & Loan Ass'n, 68 Wn.2d 644, 650, 414 P.2d 773 (1966) ("An

invitee is owed a duty of ordinary care.”) Under the Restatement (Second) of Torts § 343A (1965) as adopted in Washington, “a landowner is liable for harm [to an invitee] caused by an open and obvious danger if the landowner should have anticipated the harm, despite the open and obvious nature of the danger.” Kamla, 147 Wn.2d at 126

Because Mr. Afoa was on the Port’s premises for a purpose connected with the Port’s business dealings, he is a business visitor, which is an invitee. The Restatement (Second) of Torts § 332 (1965), as adopted in Washington, defines an invitee as follows:

- (1) An invitee is either a public invitee or a business visitor.
- (2) A public invitee is a person who is invited to enter or remain on land as a member of the public for a purpose for which the land is held open to the public.
- (3) A business visitor is a person who is invited to enter or remain on land for a purpose directly or indirectly connected with business dealings with the possessor of the land.

Restatement (Second) of Torts (1965) § 332 as quoted in Younce v. Ferguson, 106 Wn.2d 658, 667, 724 P.2d 991 (1986). “A licensee includes a social guest, that is, a person who has been invited but does not meet the legal definition of invitee.” Id. In contrast, “[e]mployees of independent contractors hired by landowners are invitees on the landowners’ premises.” Kamla, 147 Wn.2d at 126.

Like in the Stute analysis, it should not matter whether there was a direct contract between the Port and EAGLE in defining the Port's duties. At the very least, there are fact questions as to whether Mr. Afoa was on the premises "for a purpose directly or indirectly connected with business dealings" of the Port. As Mr. Afoa testifies in his declaration, and as shown by aerial photographs, the tarmac was cluttered with broken equipment including the loader that fell on him. As such, there is a genuine issue of material fact as to whether the Port breached its duty of ordinary care under the circumstances by allowing these conditions to exist.

**e. The public duty doctrine does not absolve the Port of liability.**

The public duty doctrine does not bar Mr. Afoa's claims because he is not alleging breach of a public duty. The doctrine in no way limits duties of a government entity that would be owed by a private entity, it merely recognizes the lack of an actionable duty to provide good government. "At common law, 'it is not a tort for government to govern' or, conversely, not to govern." Linville v. State, 137 Wn. App. 201, 208, 151 P.3d 1073 (Div. 2, 2007) *quoting* Evangelical United Brethren Church v. State, 67 Wn.2d 246, 253, 407 P.2d 440 (1965). The Washington Supreme Court in

Babcock v. Mason County Fire Dist. No. 6 described the public duty doctrine as follows:

The threshold determination in a negligence action is whether a duty of care is owed by the defendant to the plaintiff. Whether the defendant is a governmental entity or a private person, to be actionable, the duty must be one owed to the injured plaintiff, and not one owed to the public in general. This basic principle of negligence law is expressed in the 'public duty doctrine'. Under this doctrine, there is no liability for a public official's negligence unless it is shown that the duty breached was owed to the individual rather than the public in general.

Babcock v. Mason County Fire Dist. No. 6, 144 Wn.2d 774, 784-85, 30 P.3d 1261 (2001) *quoting* Taylor v. Stevens County, 111 Wn.2d 159, 163, 759 P.2d 447 (1988). This has also been expressed in the maxim, "a duty to all is a duty to no one." J & B Dev. Co. v. King Cy., 100 Wn.2d 299, 303, 669 P.2d 468 (1983); Chambers-Castanes v. King Cy., 100 Wn.2d 275, 284, 669 P.2d 451 (1983). As discussed above, Mr. Afoa is not alleging a breach of a "duty to all" or a breach of a duty to provide a governmental function. He claims the Port breached specific statutory and common law duties owed to him as an individual worker on a job site over which the Port retained control and as an individual invitee.

1. **The public duty doctrine does not reinstate sovereign immunity or otherwise bar tort claims against government entities.**

Under RCW 4.96.010, local government entities are liable for damages in tort “to the same extent as if they were a private person or corporation.”<sup>55</sup> As stated by the Washington Supreme Court in its 2006 opinion in Cummins v. Lewis County, “[t]he public duty doctrine does not serve to bar a suit in negligence against a government entity.” Cummins v. Lewis County, 156 Wn.2d 844, 853, 133 P.3d 458 (2006). In Osborn v. Mason County, also in 2006, it noted “the public duty doctrine does not – cannot – provide immunity from liability.” Osborn v. Mason County, 157 Wn.2d 18, 27, 134 P.3d 197 (2006). In Osborn, it reaffirmed its 1987 observation in Bailey v. Town of Forks that it had “almost universally found it unnecessary to invoke the public duty doctrine to bar a plaintiff’s lawsuit.” Id. quoting Bailey v. Town of Forks, 108 Wn.2d 262, 265-266, 737 P.2d 1257, 1259 (1987). Cases examining the public duty doctrine typically involve obvious government functions, such as duties of police and fire fighters to respond and duties

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<sup>55</sup> RCW 4.96.010 (1) provides in relevant part:  
All local governmental entities, whether acting in a governmental or proprietary capacity, shall be liable for damages arising out of their tortious conduct, or the tortious conduct of their past or present officers, employees, or volunteers while performing or in good faith purporting to perform their official duties, to the same extent as if they were a private person or corporation.

arising from regulatory functions.<sup>56</sup> In contrast, Mr. Afoa alleges the Port breached statutory duties under Stute and Weinert and duties owed by a possessor of land that apply to every job site owner in Washington, public or private.

**2. The Port's duty to protect workers on its site from WISHA violations is not comparable to the Department of Labor and Industries lack of duties to enforce WISHA to protect the public.**

As applied to WISHA statutes, there is a distinction between the private duty of a job site owner to protect workers from WISHA violations and the public duty to the Department of Labor and Industries ("the Department") to enforce WISHA. While the Department has been found to have no public duty to enforce, Garibay v. State, 131 Wn. App. 454, 459-460, 128 P.3d 617, 620 (Div. 3, 2005), the

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<sup>56</sup> See Babcock v. Mason County Fire Dist. No. 6.; 144 Wn.2d 774, 784-85, 30 P.3d 1261 (2001) (No duty of firefighters to save home when no exception applies); Linville v. State, 137 Wn. App. 201, 208, 151 P.3d 1073 (Div. 2, 2007) (No duty to provide private daycare liability insurance coverage for sexual abuse claims); Taylor v. Stevens County, 111 Wn.2d 159, 163, 759 P.2d 447 (1988) (No public duty from issuing building permits, *overruling* J & B Dev. Co. v. King County, 100 Wn.2d 299, 303, 669 P.2d 468 (1983)); Vergeson v. Kitsap County, 145 Wn. App. 526, 535, 186 P.3d 1140, 1145 (Div. 2, 2008) (No public duty to remove quashed warrant from database.); Chambers-Castanes v. King Cy., 100 Wn.2d 275, 284, 669 P.2d 451 (1983) (Duty for police to respond to calls when public duty exception applies, *But see* Cummins v. Lewis County, 156 Wn.2d 844, 853, 133 P.3d 458 (2006) (No duty to respond to 911 call when no exception applied)); Osborn v. Mason County, 157 Wn.2d 18, 27, 134 P.3d 197 (2006) (No duty to warn of presence of sex offender); Bailey v. Town of Forks, 108 Wn.2d 262, 265-266, 737 P.2d 1257, 1259 (1987) (Duty of police to take drunk driver into custody); Ravenscroft v. Wash. Water Power Co., 136 Wn.2d 911, 930, 969 P.2d 75 (1998) (No duty of county to warn boaters of submerged tree stumps); Hoffer v. State, 110 Wn.2d 415, 422, 755 P.2d 781 (1988) (No duty to enforce securities regulations)

Stute and Wienert line of cases demonstrate that a job site owner has a private duty to prevent WISHA violations on the jobsite it controls. The Garibay court explained, “The reason for rejecting this type of claim is based on the unintended result that would follow if allowed: the Department suing itself and prosecuting an action as both plaintiff under RCW 51.24.060 and defendant pursuant to RCW 51.24.030.” Id. Here, the Port is an entirely separate entity from the Department, and would not be “suing itself.” In fact, the Department claims an interest in Mr. Afoa’s case against the Port. CP 48-50 (Notice of Interest in Recovery). Further, the Port of Seattle is subject to the Department’s jurisdiction as demonstrated in Awana v. Port of Seattle, 121 Wn. App. 429, 432, 89 P.3d 291 (Div. 1, 2004), where the facts show the Department fined the Port for WISHA violations.

**3. Although the public duty doctrine does not apply, genuine issues of fact exist as to whether Mr. Afoa’s claims fall within one or more exceptions.**

Even if the public duty doctrine applied, Mr. Afoa’s claims would fall within one of the exceptions. The “legislative intent” exception applies when the regulation establishing a duty purposely identifies and protects a particular and defined class of persons. Ravenscroft v. Wash. Water Power Co., 136 Wn.2d 911, 930, 969 P.2d 75

(1998). As discussed above, Mr. Afoa, as a member of the class of all employees on the job site, is protected by RCW 49.17.060 and WISHA regulations.

Similarly, material fact questions exist as to whether the Port has a duty to enforce WISHA regulations under the “failure to enforce exception,” though an additional element of actual knowledge of a violation is required. Alexander v. County of Walla Walla, 84 Wn. App. 687, 929 P.2d 1182 (Div. 3, 1997). EAGLE employee Toiva Gaoa describes specific examples of the Port’s personnel intervening to correct equipment maintenance issues, from which a jury could reasonably infer it had actual knowledge of WISHA violations related to EAGLE’s poor maintenance practices.

There are also alleged facts supporting a “special relationship,” which requires direct contact or privity between the plaintiff and the government entity, and reliance upon express or implied assurances of protection. Direct contact may be established by examining the manner and extent of the contact between them. See e.g. Babcock, 144 Wn. 2d at 785. As discussed above, the Port’s alleged control of the site, fencing and securing of the jobsite, administration or provision of training, and contracts or agreements with EAGLE and the airlines, support direct contact with Mr.

Afoa. These facts support the element of express or implied assurances of protection.

**4. The public duty doctrine does not apply because the Port was performing in a proprietary capacity as a business.**

The courts have recognized that the “public duty doctrine does not apply where the government is performing a proprietary function.” Dorsch v. City of Tacoma, 92 Wn. App. 131, 135-136, 960 P.2d 489 (Div. 2,1998); Moore v. Wayman, 85 Wn. App. 710, 715, 934 P.2d 707, *review denied*, 133 Wn. 2d 1019, 948 P.2d 387 (1997). “A government acts in a proprietary capacity when it engages in a business-like venture as opposed to acting in a governmental capacity.” Dorsch v. City of Tacoma, 92 Wn. App. at 135-136 *citing* Hoffer v. State, 110 Wn.2d 415, 422, 755 P.2d 781 (1988). As shown by Defendant’s admitted “4.3 billion in business revenue” derived, in part by lucrative contracts with the airlines, at the very least a genuine issue of material fact exists as to whether the government was engaging in a business-like venture.

**f. The Port failed to meet its burden of an initial showing that it is entitled to summary judgment, as it failed to set forth such facts as would be admissible in evidence.**

On a motion for summary judgment, the moving party has the burden of showing the absence of a genuine issue

of material fact and an entitlement to judgment as a matter of law. CR 56. If the moving party makes this initial showing, the burden shifts to the nonmoving party to set forth specific facts evidencing a genuine issue of material fact for trial. Shaaf v. Highfield, 127 Wn.2d 17, 21, 896 P.2d 665 (1995). CR 56 (e) requires that affidavits supporting summary judgment “be made on personal knowledge [and] set forth such facts as would be admissible in evidence.” In order for a moving party to make its initial showing, its motion must be “made and supported as provided in this rule.” Id. Statements that present only “conclusions and opinions” without setting forth facts that “describe an event, an occurrence, or that which took place” fail to satisfy the requirements of CR 56 (e). Grimwood v. Univ. of Puget Sound, 110 Wn.2d 355, 359-360, 753 P.2d 817 (1988).

Mr. Afoa presents evidence that he was injured as a result of specific WISHA violations and unsafe practices and conditions the Port had a duty to prevent. The Port argues based solely on Mr. Redifer’s admitted assumption that the accident was caused by Mr. Afoa hitting the gas instead of the brake,<sup>57</sup> and that subsequent biased testing showed “the

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<sup>57</sup> CP 238-259 (Declaration of Roger Redifer, Exhibit 2, Page “PORT 168d”) (“From what it appears is that Brandon pushed on the throttle pedal instead of the brakes (this is an assumption at this point.)”); Alvin

brakes were working well.”<sup>58</sup> These are fact questions to be resolved in Mr. Afoa’s favor on summary judgment.

Mr. Afoa also presented declarations and testimony showing specific examples of how the Port controlled the job site. In contrast, the Declaration of Mark Coates in support of the Port’s Motion is riddled with conclusory statements such as “The Port of Seattle did not and does not employ, manage, or supervise EAGLE or any of its employees, including Brandon Afoa, either directly or indirectly.”<sup>59</sup>

Likewise, the Declaration of Roger Redifer does not set forth any material facts, with the possible exception of the reported relative positions of the loader and the pushback shortly after the accident noted on the attached photograph.<sup>60</sup> In addition to the photographs, he includes his “typed and handwritten” notes as well as the EAGLE

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Luna in his deposition testified that the pushback was going the same speed before the accident, and was not speeding up. CP 385  
<sup>58</sup> CP 217 (Defendant’s Motion) Defendant submits the inspection report of L&L Equipment / Aircraft de-icing services, CP 96-105 (Exhibit 9 to The Declaration of Mark S. Northcraft in Support of Defendant’s Motion) However, even this report shows problems that may have caused the accident, including steering problems, parking brake components wet with hydraulic fluid, brake pressure that is “slow to build,” numerous leaks, inoperative gauges, and other issues. From this report alone, the jury could properly infer the tug was poorly maintained and one or more of these problems caused the brakes and / or steering to fail.  
<sup>59</sup> CP 125-126 (Declaration of Mark Coates); See also CP 127-128, all or nearly all of which consists of conclusory statements. Mr. Coates assertion at CP 124, line15 that marked pathways on the tarmac are “comparable to city streets” is also a legal conclusion without basis. Although most of the content in pages 2-5 of his declaration involves quotes from and references to exhibits A, B, and C, attached to his declaration, his declaration fails to authenticate these exhibits.

Injury / Incident report.<sup>61</sup> With the exception of the positions of the equipment, he does not swear to the truth or accuracy of any of the information contained in the exhibits. With respect to his notes, he declares, "The information contained in my notes is either based upon information about which I have personal knowledge or was obtained from others."<sup>62</sup>

While arguably Exhibit 3 to Mr. Redifer's declaration may be admissible as a business records exception to the hearsay rule under RCW 5.45.020, Mr. Redifer's notes, and the hearsay contained within, are not. See ER 801-805. However, ER 801(d)(2) allows Mr. Afoa to offer statements contained in Mr. Redifer's declaration and exhibits *against* the Port. Admissibility of evidence under business records exception to hearsay rule hinges upon the opinion of the court that the sources of information, method and time of preparation were such as to justify its admission. State v. Quincy, 122 Wn. App. 395, 95 P.3d 353 (Div. 1, 2004) *review denied* 153 Wn.2d 1028. A cursory examination of these notes, with typographical errors and handwritten corrections shows they are not the routine products of an efficient clerical system such as accounting records, bills of

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<sup>60</sup> CP 240 (Declaration of Roger Redifer, page 2:1-4)

<sup>61</sup> CP 238-259 (Declaration of Roger Redifer)

<sup>62</sup> CP 238 (Declaration of Roger Redifer, page 1:24-26)

lading, and so forth as contemplated by the statute. Young v. Liddington, 50 Wn.2d 78, 309 P.2d 761 (1957).

Opinions and assumptions in Mr. Redifer's notes, including Mr. Redifer's admitted assumption that Mr. Afoa stepped on the throttle instead of the brakes, are inadmissible. Records are not admissible under business record exception to hearsay rule if they express opinion, conjecture or speculation. Id.; Erickson v. Robert F. Kerr, M.D., P.S., Inc., 69 Wn. App. 891, 851 P.2d 703 (Div. 1, 1993). Admissibility under the statute is based on the presumption that person charged with making record will do his duty, and, absent apparent motive to falsify, record will be reliable. State v. Rutherford, 66 Wn.2d 851, 405 P.2d 719 (1965). This presumption does not apply here.

Discussions with Mr. Afoa's attorney and potential claims against EAGLE described in these notes show an apparent motive to falsify. Further, hearsay in a business record should be rejected if it goes to the heart of an issue at trial so that, if believed by the jury, it could be regarded as proof on that issue. State v. Barringer, 32 Wn. App. 882, 650 P.2d 1129 (Div 1, 1982); State v. White, 72 Wn.2d 524, 433 P.2d 682 (1967). As the statute does not make inadmissible evidence admissible when submitted as a business record,

Mr. Redifer's declaration and notes should not be considered. Jarstad v. Tacoma Outdoor Recreation, Inc. 10 Wn. App. 551, 519 P.2d 278 (Div. 2, 1974), *review denied*.

In support of the Port's reply to Mr. Afoa's summary judgment response, the Port submitted the declaration of Isabel R. Safora. CP 563-564. In her declaration, Ms. Safora identifies herself as Port counsel involved in drafting the 2006 Contract. She explains how the plain language of "**exclusive control and management**" in the agreement is intended to mean something other than "exclusive control and management." While such extrinsic evidence of a contract's meaning may be admissible "to prove omitted but not inconsistent terms, or to determine the intent of the parties," this can only be done when the language is ambiguous. Berg v. Hudesman, 115 Wn. 2d 657, 662, 801 P.2d 222 (1990). There is nothing ambiguous about "exclusive control and management." Furthermore, as this Court recently observed in Bloome v. Haverly,

[A]dmissible extrinsic evidence does *not* include: Evidence of a party's unilateral or subjective intent as to the meaning of a covenant word or term; Evidence that would show an intention independent of the instrument; or Evidence that would vary, contradict or modify the written word."

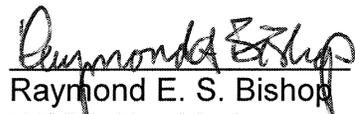
Bloome v. Haverly, \_\_ Wn. App. \_\_, \_\_, \_\_ P.3d. \_\_, 2010  
WL 60108, 4 (Div. 1 No. 62974-3-I, Jan. 11, 2010)  
(emphasis in original) *citing* Hollis v. Garwall, Inc., 137  
Wn.2d. 683, 697, 974 P.2d 836 (1999). Ms. Safora's  
declaration must not be considered under this standard.

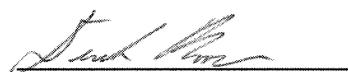
## VI. CONCLUSION

Mr. Afoa alleges he was injured as a result of the Port's breaches of statutory and common law duties as described above. No privity of contract is required under the statutory duty where the Port retains control of the jobsite. The Port also breached duties to Mr. Afoa as a business visitor invitee on premises. The public duty doctrine does not shield the Port from liability as Mr. Afoa is not alleging breach of a public duty. While Mr. Afoa supports his allegations with ample evidence to support his claims under the summary judgment standard, the Port has failed to do so in opposition. For the aforesaid reasons, Mr. Afoa respectfully requests this Court reverse the trial court's dismissal of his claims.

Respectfully submitted this 9<sup>th</sup> day of March, 2010.

BISHOP LAW OFFICES, P.S.

  
Raymond E. S. Bishop  
WSBA No. 22794

  
Derek K. Moore  
WSBA No. 37921

## V. APPENDIX

- a. Declaration of Brandon Apela Afoa with exhibits (CP 285-339)
- b. Declaration of Toiva Gaoa with exhibits (CP 340-358)
- c. Inspection report of L&L Equipment / Aircraft de-icing services (CP 96-105)
- d. September 26, 2006 letter from Patrick Clancy of the Port to Dion Fatafehi of Swissport Corporation (CP 366 - 367)
- e. September 20, 2006 email from Dave Richardson of the Port regarding Swissport Tug Accident (CP 369 - 371)
- f. September 20, 2006 letter from Joshua Tuani, Swissport Ramp Supervisor regarding Swissport Tug Accident (CP 373)
- g. Excerpts of June 4, 2009 Deposition of Alvin Luna, including pages 50-51, 54-55, 59-68, 73, 76-79, 108-111 and 118-119. (CP 375 - 385)
- h. "Ground Service Operator Licensing Application and Agreement" between the Port and EAGLE (CP 202 - 213)
- i. Excerpts of Port of Seattle Signatory Lease and Operating Agreement 2006-2012 ("2006 Contract")
  - 1. Recitals and Definitions, Article 1, (CP 396-401)
  - 2. Use of Airport, Article 2 and 3 (CP 402-404)
  - 3. § 4.7, "exclusive control" of gates (CP 409)
  - 4. Rents and Charges, Article 8 (CP 418 - 427)
  - 5. Compliance with Law, Article 13, and Indemnification, Article 14 (CP 433 - 436)
  - 6. § 24.15, "Entire Agreement" and § 24.23, "Agreement Not to Grant More Favorable Terms" (CP 450 - 452)

**Appendix Exhibit A**

**Declaration of Brandon Apela Afoa  
with exhibits**

**(CP 285-339)**

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WASHINGTON STATE KING COUNTY SUPERIOR COURT

BRANDON APELA AFOA, an individual,	)	
	)	No. 09-2-06657-4 KNT
Plaintiff,	)	
vs.	)	DECLARATION OF BRANDON APELA
	)	AFOA
PORT OF SEATTLE, a Local Government	)	
Entity in the State of Washington,	)	
	)	
Defendant.	)	

I, BRANDON APELA AFOA, declare as follows:

1. I am over the age of 18 years, a resident of the State of Washington, make this declaration based upon personal knowledge, and I am competent to testify herein. I reside in Puyallup, Washington. The statements in this declaration are within my actual knowledge.
2. I became a paraplegic from the waist down, with limited use of my right arm and hand due to additional nerve damage, as the result of a serious accident at the Port of Seattle's *SeaTac International Airport* on December 26, 2007 while working for a

1 company known as Evergreen Eagle Ground Service Operation Company (EAGLE).

2 I now live my life from my wheel chair, and my bed.

3  
4 **TOIVA GAOA DECLARATION**

- 5 3. I have read the declaration of Toiva Gaoa signed November 4, 2009. The facts in the  
6 declaration are true and correct to the best of my knowledge and belief. I have no  
7 knowledge of any information that contradicts the declaration of Toiva Gaoa.

8  
9 **EXHIBITS**

- 10 4. Attached hereto as Exhibit A is a true and correct copy of my blue Port of Seattle  
11 identification and authorization badge. Blue badges are accurately described in  
12 paragraph 36 of Toiva Gaoa's declaration. My badge allowed me to drive in the  
13 ramp area at the airport. It did not permit me to drive in the air movement area, or  
14 "AMA" as described in paragraph 36 Mr. Gaoa's declaration. I was injured while  
15 driving in the ramp area.

- 16  
17  
18 5. Attached hereto as Exhibit B is a true and correct copy of the Port of Seattle Driver  
19 Training Workbook that existed at or close to the time I was required to take the Port  
20 of Seattle driving test in order to be able to drive in the ramp area of the tarmac. I  
21 studied this workbook, and signed the acknowledgment form at the back of the  
22 workbook. I took the driver's test inside the Port of Seattle terminal building as  
23 outlined in paragraph 36 of Mr. Gaoa's declaration. I passed the test and received  
24 my blue badge (ie, Exhibit A) allowing me to drive in the ramp area.

1 6. Attached hereto as Exhibit C is a true and correct copy of the Port of Seattle Air  
2 Movement Area Drivers Training Program Study Guide that existed at or close to the  
3 time I was required to take the Port of Seattle driving test in order to be able to drive  
4 in the ramp area of the tarmac.  
5

6 7. Attached hereto as Exhibit D are true and correct copies of two pictures of the  
7 powered industrial tractor (PIT) that I was driving when I was injured. These  
8 photographs depict the PIT as it looked when I was using it. In particular, the  
9 pictures demonstrate that there are two seats on the tractor and neither of them have  
10 seat belts. This tractor never had seatbelts at any time during my employment at the  
11 Port of Seattle. This tractor also never possessed a driver's cab or a roll over  
12 protection system at any time during my employment at the Port of Seattle.  
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15 8. Attached hereto as Exhibit E is a true and correct copy of an aerial photograph taken  
16 of the S-Gates at Seattle international Airport. This photograph is exhibit number 9  
17 to the deposition of Alvin Luna, and is also included in the Port's motion for  
18 summary judgment. The aerial photograph shows a great amount of machinery  
19 cluttered in and around the S-Gate area. This equipment belongs to various airlines,  
20 and much of it is broken. The Port of Seattle holds itself responsible for maintaining  
21 its premises free and clear of obstructions. I was injured when I collided with a  
22 broken piece of large machinery, called a cargo loader, in the S-Gate area. The cargo  
23 loader that I struck was parked directly beside another broken large cargo loader.  
24  
25  
26

1 The broken cargo loader that I collided with had been on the Port premises for well  
2 over two weeks.

- 3  
4 9. Attached hereto as Exhibit F are true and correct copies of one photograph of me  
5 taken before the accident, and another photograph of me taken after the accident.  
6 The "before photo" was taken one week before the accident when I was at my  
7 relative's wedding in Hawaii. The "after photo" was taken within a week following  
8 the accident, when I was at Harborview Hospital.  
9

#### 10 MY WEIGHT

- 11 10. I understand the Port of Seattle has considered my weight at the time of the accident  
12 relevant enough to include in its motion for summary judgment. The Port incorrectly  
13 states that my weight at the time of the accident was 400 pounds. As depicted in  
14 Exhibit E, I was fit one week before the accident. My weight at the time of the  
15 accident was a muscular 350 pounds. I had no problem driving to work at the Port  
16 every day in my small Pontiac Vibe. Likewise, I had no problem fitting into the  
17 powered industrial tractors at the airport, including the one in Exhibit D.  
18  
19

#### 20 PORT RETAINED EXCLUSIVE CONTROL

- 21 11. I was employed by Eagle, and I received work orders from Eagle. If any of Eagle's  
22 work orders, or any of my work activities, conflicted with any order, instruction, rule,  
23 or regulation of the Port of Seattle, the Port's Authority would control. Eagle had  
24 high turnover of ramp employees and station managers. In my time at Eagle, I had 2  
25 managers who quit or were fired. Their names were: Prassad and Roger Redifer.  
26

1 Each one of those managers made it clear to me that I was to do whatever the Port  
2 said, even if it didn't match Eagle's manner of doing things.  
3

4 **PORT CONTROL OF WORK MANNER**

5 12. In his declaration, Toiva Gaoa gave several examples of the way the Port of Seattle  
6 would intervene in the manner in which Eagle employees did their work. I  
7 specifically recall some of those examples, and others that Mr. Gaoa may be unaware  
8 of. For instance, I recall driving a smaller powered industrial tractor (PIT) in the  
9 ramp area when I was stopped by the Port of Seattle Ramp Patrol. The Ramp Patrol  
10 decided that since the vehicle I was driving was not manufactured with headlights,  
11 and twilight was approaching, I needed to stop driving. The Ramp Patrol required  
12 me to call Eagle headquarters, and arrange for another vehicle with headlights to  
13 come to my position on the tarmac. When the other vehicle arrived, the Ramp Patrol  
14 made the vehicle with headlights follow me off the tarmac flashing its headlights  
15 behind me. As we left the tarmac, twilight had only started to arrive.  
16  
17

18  
19 I declare under penalty of perjury pursuant to the laws of the state of Washington that the  
20 foregoing is true and correct to the best of my knowledge and belief.

21 Dated this 6th day of November, 2009.

22 Signed at: Puyallup, Washington.



23 

---

BRANDON APELA AFOA

A

31 JAN 2009

SEA  
131562 - 323238



AFOA  
BRANDON A  
EVERGREEN E.A.G.L.E.  
EVERGREEN E.A.G.L.E.  
RAMP AGENT

**Seattle-Tacoma International Airport  
Airport Operations  
Training Department**



# **DRIVER TRAINING WORKBOOK**

## **INSTRUCTIONS:**

- 1. Take and pass the SIDA class**
- 2. Read this workbook**
- 3. Complete the self-test, marking your answers**
- 4. Sign the last page, which is an acknowledgement form**
- 5. Bring this manual and a valid drivers license to class**

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## INTRODUCTION

This Driver Training Workbook will help prepare you for driving in the Non-Movement Area of Seattle-Tacoma International Airport's Air Operations Area, or AOA. You will become familiarized with the layout of the AOA, some airfield markings and their meanings, procedures for driving on the AOA, vehicle safety guidelines, driving rules, parking rules, accident procedures and the POS Rules and Regulations that guide vehicle operations.

Driving on the AOA requires having a work-related reason, authorization by the airport, a valid state driver's license, and successful completion of the driver training course conducted by the Airport Operations Training Department. An excerpt of the Airport Rules and Regulations regarding vehicles and driving on the AOA is included at the end of this workbook. It is important to read these and be familiar with them.

The Port of Seattle wants your work at Sea-Tac to be safe and accident free. Airport safety is vital to you, your employer, other airport tenants and employees, and the Port of Seattle. So use common sense, follow the rules, and think...**SAFETY.**

This workbook is yours to keep and mark in. It is recommended that you keep it with you while driving on the AOA for reference purposes.

Upon completion of this course you should be able to:

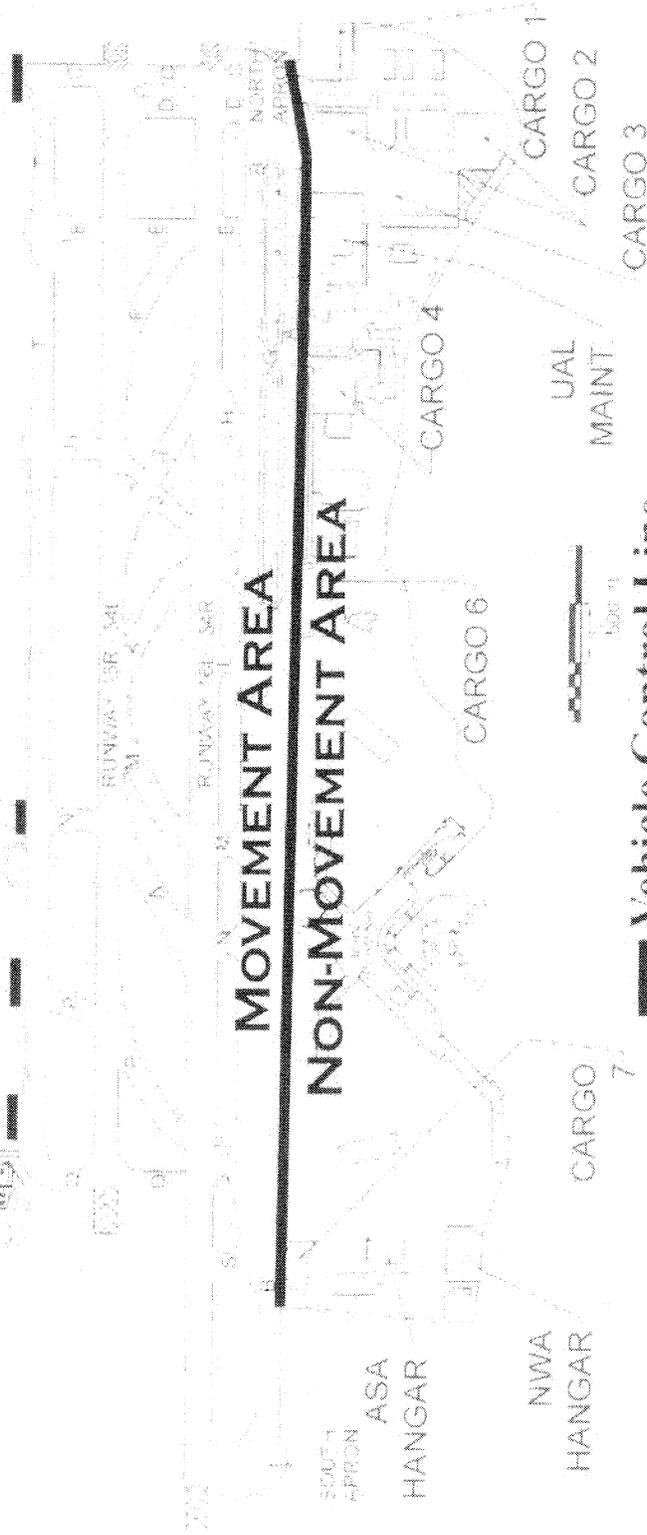
- Know the difference between the Movement and Non-Movement Area.
- Identify some airfield surface markings and their meanings.
- Understand and follow the driving and vehicle safety rules.
- Know important contact phone numbers for the airport.
- Be familiar with policies and procedures for vehicle operations on the AOA.

# SEATTLE-TACOMA INTERNATIONAL AIRPORT



GENERAL AVIATION  
WEST RAMP Q  
WEST RAMP P

WEST RAMP N



**MOVEMENT AREA**

**NON-MOVEMENT AREA**

SOUTH APRON  
ASA HANGAR

NWA HANGAR

CARGO 7

CARGO 6

CARGO 4

CARGO 1

CARGO 2

CARGO 3

UAL MAINT.

500 FT

**— Vehicle Control Line**



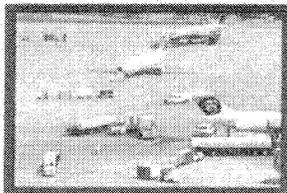
As an employee with driving privileges on the airfield, you are responsible for knowing, understanding and following the operating procedures and guidelines for vehicles on the AOA. This manual covers the critical information you will need to be a competent and safe driver in the Non-Movement areas at Sea-Tac.

## IMPORTANT TERMS and SURFACE MARKINGS



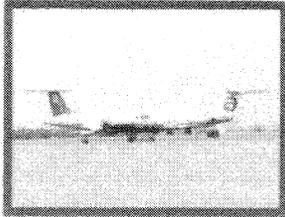
### **Air Operations Area**

The **Air Operations Area**, or **AOA**, includes the entire airport area within the outer perimeter fence. The AOA includes the runways, taxiways, ramps, hardstands, safety areas, perimeter roads and cargo areas. The AOA consists of the Movement and the Non-Movement Area. You will hear the Non-Movement Area referred to as the AOA by many people.



### **Non-Movement Area**

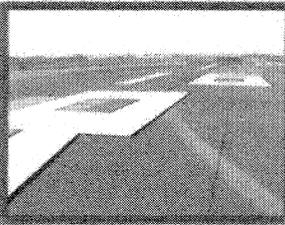
The Non-movement area is defined as the taxiways and ramp areas not under the control of the Air Traffic Control Tower. (See map on p.3) The **Non-Movement Area** consists of aircraft gates, the central terminal, the North and South Satellites, cargo facilities, hardstands (where aircraft often park overnight or for repairs), taxiways, the perimeter roads and the vehicle drive lanes. This area is also referred to as the **Ramp, Apron, or Tarmac**. The words are interchangeable but, for the sake of consistency, this manual will use the term **Ramp**. Both aircraft and ground vehicles move on the Non-Movement area. This is the area you will be working and driving in.



### **Movement Area**

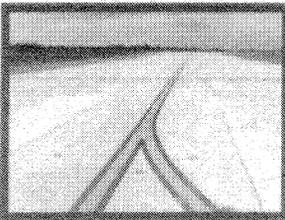
The **Movement Area** is also known as the **Aircraft Movement Area**, or **AMA**. (See map on p.3) The AMA has runways and taxiways, and protected safety and critical areas. Only select personnel are authorized to enter the Movement Area. This manual and the corresponding class, do *not* give you access or authorization to drive in the AMA. It is critical that you *never* enter the AMA without communication with the Air Traffic Control Tower and Airport Operations authorization.

If you must drive vehicles or tow aircraft in the movement area, the Port of Seattle must be notified. The Port of Seattle provides escort for all aircraft towing across the runways. You should attend the Air Movement Area Driving course before you are approved to drive in the movement area.



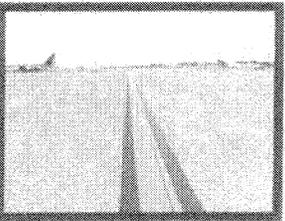
### **Runway**

The runway is the asphalt or concrete surface on which aircraft land and take off.



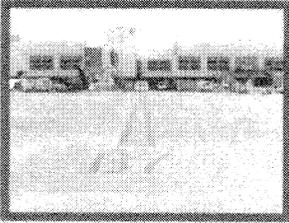
### **Taxiways**

Taxiways are areas used by aircraft to get to and from the runways. These are part of the Movement Area.



### **Taxilanes**

Taxilanes are areas used by aircraft for access between the taxiways and aircraft parking positions. The aircraft follow these yellow lines, which are surface painted markings. Taxilanes are part of the Non-Movement Area.



#### **J-Lines**

J-lines are yellow surface painted markings with each gate's number displayed to guide aircraft from the taxiway to its assigned gate at the terminal.



#### **Vehicle Drive Lanes**

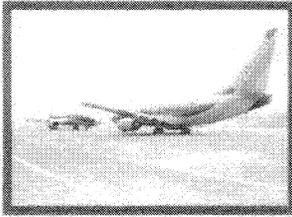
Vehicle Drive Lanes are white surface painted markings defining the correct lanes for vehicles to drive in while on the Ramp. You will see this marking change to a black and white checkered line, sometimes called the zipper line, running along side of the Vehicle Control Line.

The major Vehicle Drive Lanes run north to south for nearly the entire length of the airfield. You must utilize the vehicle drive lanes wherever they are provided. Use extreme caution when operating on or crossing a yellow aircraft taxiway. You will find that drive lanes that cross yellow taxiways have extra markings along the edge to remind you of the danger.



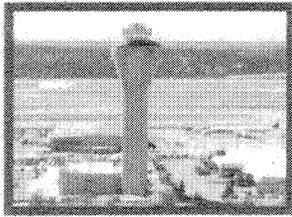
#### **Vehicle Control Line**

The Vehicle Control Line is a red surface painted marking. It is 6 inches wide and bordered by 6 inch white lines. The primary vehicle control line is located just west of the main vehicle drive lanes. Vehicle Control Lines are also found on the west side of the airfield, protecting Taxiway Tango. (See map on p.3) The Vehicle Control Line separates the **Movement** and **Non-Movement Areas**. Its purpose is to alert drivers to where vehicles are not allowed to go. *Never* cross the Vehicle Control Line unless you have authorization to do so by the Air Traffic Control Tower and Airport Operations authorization. Crossing the Vehicle Control Line without permission is called an incursion, and results in a citation.



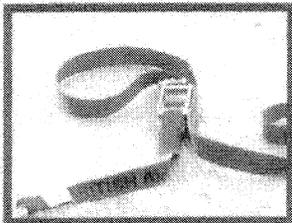
### **Incursion**

An Incursion is any occurrence at an airport involving an aircraft, vehicle, person, or object on the ground that creates a collision hazard or results in loss of separation with an aircraft taking off or intending to takeoff, landing or intending to land.



### **Air Traffic Control Tower**

The Air Traffic Control Tower, or ATCT, directs aircraft, in the air or on the ground and vehicles in the Movement Area. Controllers in the tower use radar and other equipment to guide these movements.

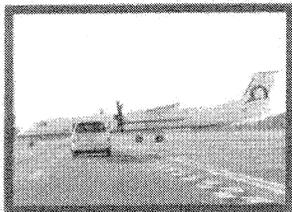


### **Foreign Object Debris**

Foreign Object Debris, or FOD, is any debris or objects found on taxiways, runways and ramps that has the potential to cause damage to aircraft. Examples of items that are considered FOD: trash, rocks, chunks of cement, gloves, straps, nails, wood, rags, even birds. It is critical that all FOD is removed from the path of any aircraft. FOD is a dangerous hazard for aircraft, and can be very costly or deadly if ignored.

If you see FOD in the Non-Movement area as you are driving, **it is your** responsibility to stop, pick it up and dispose of it properly. If you see FOD in the Movement Area, report it to the Airport Duty Manager at 433-4664 immediately.

## **DRIVING ON THE NON-MOVEMENT AREA**



### **Yield the Right of Way to Aircraft**

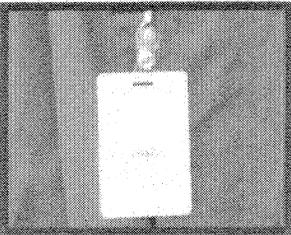
**THIS IS THE NUMBER 1, ABSOLUTE , DO NOT BREAK, RULE ON THE AIRFIELD.** Watch out for taxiing aircraft and always yield the right of way to them. Give all aircraft plenty of room to pass by you, often times more room than you think is needed. A pilot has a very limited view from the cockpit. Ground visibility from most planes is poor and the pilot may be very busy with other

duties, such as tower communications and monitoring the aircraft's instruments. Never assume that the pilot sees you and will wait to let you proceed. This rule exists for your safety as well as for the safety of aircraft passengers and crew.



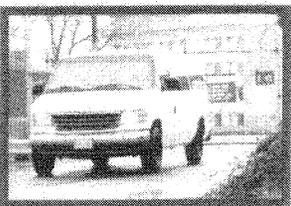
#### **Yield to Emergency Vehicles**

If you see a fire truck, emergency vehicle or airport operations vehicle driving with its flashing lights on, pull over and/or stop, and do not proceed until the emergency vehicle is well clear of you. **Be certain not to cross the Vehicle Control Line.** Emergency vehicles at SEA display a flashing red or blue light when responding to an emergency, while airport operations vehicles display a flashing amber light.



#### **Wear Your ID Badge**

The Port of Seattle requires that every person having access to the Air Operations Area and all other restricted areas display authorized identification. This means you must wear your badge on your outermost garment, above waist level at all times while in a restricted area. Also, when driving any vehicle on the AOA, you must have a valid Driver's License with you. If you observe someone **not** wearing proper identification while in a restricted area you must Challenge that person. If they do not show you authorized ID, call the Port of Seattle Police.



#### **Vehicle Gates**

All vehicle and pedestrian gates are either locked or staffed at all times. Your POS ID is programmed to allow you access to necessary gates. Card readers are located at most gates, which give you access to the AOA. It is the responsibility of every employee that enters or leaves a gate to ensure that it has closed completely before driving away from it. Even if the gate is staffed, you must stop and wait to make sure the gate has closed

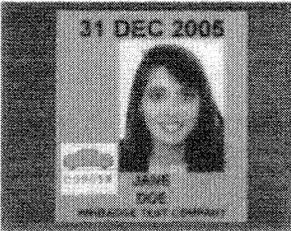
properly. If the gate does not close properly, contact the Airport Duty Manger at 433-4664. Do not leave the area to make the call. Wait for a POS maintenance employee to arrive. Also, do not allow any vehicle or person access to the area until maintenance arrives.

#### **Company Names or Logos on Vehicles**



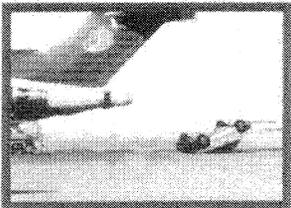
All authorized motor vehicles operating within the AOA must be easily identified. All vehicular equipment operating within the AOA must display signs of commercial design on both sides of the vehicle identifying it as a tenant, vendor, construction company, etc. The lettering must be at least 2 inches (5 cm) in height. Magnetic signs are acceptable.

#### **Vehicle Ramp Permit**



Vehicles that belong to non-tenants requiring access to the AOA, such as vendors or contractors also require vehicle ramp permits. Your or your company must apply for, and be issued, a Ramp Permit. Ramp permits are issued by ID Access Office and are displayed on the driver's POS ID badge.

#### **Beware of Jet Blast and Prop Wash**



Be aware of the effects of jet blast and propeller prop wash (the blast of air that is produced by both). A jet engine produces a blast of hot air strong enough to knock you over, burn you, even turn over a vehicle. Also, stay clear of jet engine intakes. Many people have been killed or severely injured as a result of being sucked into an operating engine. Likewise, stay clear of propellers; they can start up at any time, and a spinning propeller is nearly invisible. One way you can tell if an aircraft's engines are running or about to start is to see if the anti-collision lights on the top and/or the belly of the aircraft are flashing.

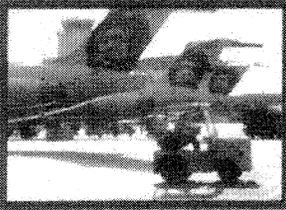
## VEHICLE SAFETY

### Basic Vehicle Safety Requirements



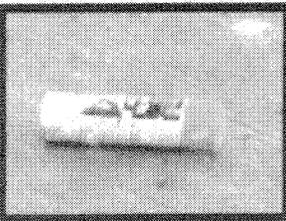
Before operating a motor vehicle on the AOA, it is recommended that you do an equipment check. Check the tires, brakes, headlights, taillights, flashers, rotating beacon, windshield wipers, etc. Also, check any items that are loaded onto the vehicle. Make sure ladders, hats, buckets, and trash are well secured.

### Use a Vehicle Only As Designed



All vehicles should be utilized only in the way they were designed. One example is a baggage tow tractor (also known as a tug). This vehicle is not to be used to transport co-workers. Most are designed to carry one person, the driver. Personnel are prohibited from hitching a ride on the tug or on any baggage carts being hauled behind it. Also, if you will be operating vehicles that tow passenger baggage, keep in mind SEA regulations do not allow more than 6 baggage carts to be towed by a tug at any time.

### Remove or Report Foreign Object Debris



You can help make SEA safer by placing all your trash in a sturdy, covered container that cannot be blown over by wind or jet blast. Also, get in the habit of looking for, stopping and picking up any FOD lying around on the ground in the non-movement area. Keep an eye out for nails, bolts and other items that can puncture tires or be sucked into a jet engine. If you discover a serious debris problem, report it immediately to the Airport Duty Manager at 433-4664.

## DRIVER SAFETY

### Speed Limits

The following are maximum speed limits on the AOA:

**PERIMETER ROADS: 20 MPH**

**DRIVE LANES: 20 MPH**

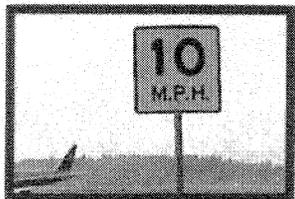
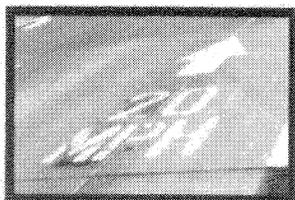
**AIRCRAFT PARKING RAMPS: 20 MPH**

**HEAVY EQUIPMENT: 15 MPH**

**TUGS: 15 MPH**

**BAGWELL OR BAGGAGE MAKE-UP AREA: 5 MPH**

The maximum speed limit on the AOA is 20 mph and is enforced by Airport Operations. **However, some drive lanes are now posted at 10 mph.** All speed limits are posted on signs or with surface painted markings. Please watch for these and obey them. At times, to be safe, a much slower speed is required due to aircraft traffic, weather, and ramp conditions or ramp congestion.



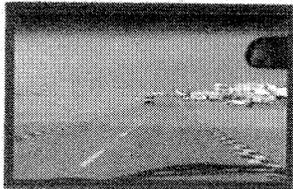
### Washington State Driving Laws Apply

All Washington State driving laws apply on the AOA. It is illegal to drive under the influence of alcohol, controlled substances, and other drugs.

### If You Are Stopped While Driving on the AOA

Port of Seattle personnel are continuously monitoring the safety and security of the ramp. POS Police, POS Fire Department, and Airport Operations have the authority to stop vehicles on the AOA and issue citations. If you are stopped, please be as courteous as possible to the Port officials. They are there to ensure the safety and security of the airport for the traveling public. Citations will be issued for violations, such as cutting off an aircraft. If the violation is sufficiently serious, you may even be required to leave the airfield. If Airport Operations issues a





citation to you, your supervisor will be required to submit a report to Airport Operations detailing what action is being taken to prevent any recurrences. Your driving record with the Port of Seattle is independent of your Washington State driving record. However, your POS driving record can impact your job. If you receive 2 or more citations for the same, or similar, offense, you can lose your privilege to drive on the AOA.



#### **Driving Hazards**

It is much easier to become disoriented when driving on the airfield at night or in foggy conditions. When driving at night or in fog, be even more cautious than usual when driving on the ramp. Remember, fog, snow and rain can be hazardous to drive in, especially on the AOA. At SEA, we do get snow, occasionally. Fog is more common at SEA, and you may be required to drive in it. There are programs in place to make the airport safe and operational in these weather conditions.

Additional training and information should be provided to you by your employer regarding procedures in these weather conditions.

**The primary rules to follow if you are driving on the AOA in fog, snow or rain follow:**

**SLOW DOWN**

**USE YOUR LIGHTS**

**ALLOW GREATER STOPPING DISTANCES**

**STAY IN MARKED DRIVE LANES**



#### **Low Visibility Vehicle Restrictions**

During low visibility conditions, vehicles may be prevented from entering the AOA. Contractors, vendors and other non-essential operators have restricted access. The Airport Operations Department implements these restrictions when necessary and until conditions improve. Your POS ID badge is programmed to

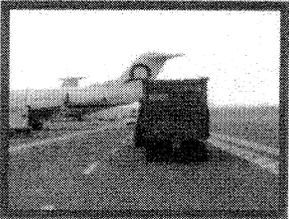


restrict entrance to the AOA through the gates if you are not authorized to operate in low visibility conditions. If you are driving on the AOA when fog occurs, contact the Airport Duty Manager at 433-4664 or your supervisor for instructions for staying on, or leaving the AOA.



#### **Approach Parked Aircraft Cautiously**

In most situations, you will rarely need to approach a parked aircraft. If you must drive near a parked aircraft, approach the aircraft slowly and remain far enough away from it so that you do not block its path or the path of other vehicles. Take all necessary precautions to prevent hitting an aircraft. A small dent in an aircraft can be very costly to repair and can render an aircraft unsafe to fly.



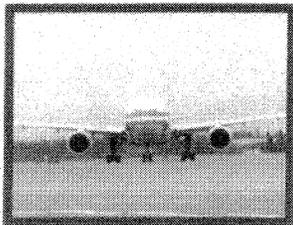
#### **Never Drive Under Any Portion of an Aircraft**

As a general rule, never drive under any portion of an aircraft. If an aircraft has been pushed back and the wing or tail is overhanging the drive lane, stop and wait for the aircraft. Never drive under the wing or tail, and do not swerve out of the drive lane to get by unless directed to do so by a ground marshaller.



#### **Ground Marshalllers**

Ground marshalllers play an important role in safe vehicle and aircraft operations on the airfield. When backing trucks or equipment in close proximity to other equipment, aircraft or vehicles, a ground marshaller (also called a guideman) is strongly recommended. Fuel trucks and all other vehicles with limited visibility should always utilize a marshaller when backing up.



#### **Right of Way**

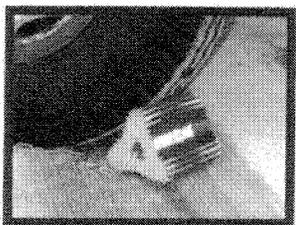
When required, and when in doubt, yield the right of way to other airport vehicles. Just as most aircraft have severely restricted visibility, so do large fuel trucks. And because of their weight they cannot stop quickly.



### **Watch For Boarding and Deplaning Passengers**

In some areas on the ramp, passengers are boarding and deplaning smaller aircraft. Passengers are probably unfamiliar with airfield activity and procedures, so it will be up to you to give them the right of way. **This is one important reason why you should never drive through leased areas without permission.**

## **PARKING**



### **Use Parking Brakes or Wheel Chocks**

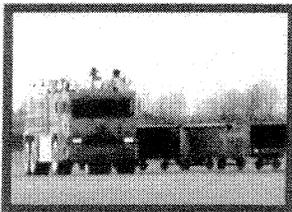
When parking a vehicle anywhere at SEA, be sure to set the parking brake or use wheel chocks to prevent the vehicle from rolling into aircraft or other equipment. This is extremely important for lightweight baggage carts which can be moved by strong winds, jet blast or prop wash.



### **The Clear Zone**

A five-foot clear zone must be maintained on both the secure and non-secure sides of all primary AOA security fencing around the perimeter of SEA. Parking vehicles closer than five feet of the perimeter fence is strictly prohibited. In a few places on the non-secure side of the fence a five-foot clear zone is not possible. In these areas a twelve-foot fence topped with three-strands of barbed wire is installed. These specific areas are clearly identified.

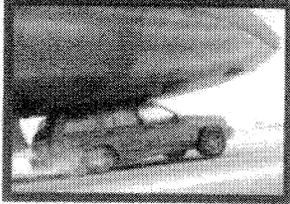
## **ACCIDENTS**



### **What if I'm in an Accident?**

No accident is too minor to report. If you accidentally hit an aircraft, another vehicle or other property, *you must stop immediately* and report it to the Airport Duty Manager at 433-4664 and the Airport Police. You and your company can receive

citations and be fined by Airport Operations for failing to report an accident immediately.



**Stay Away From Accident Sites**

If an emergency incident such as a crash, a fuel spill, etc. occurs on the airfield, **stay clear of the scene**. SEA has highly trained firefighters and specialized equipment for handling aircraft rescue and firefighting.



**Never Leave a Vehicle Unattended in Active Areas**

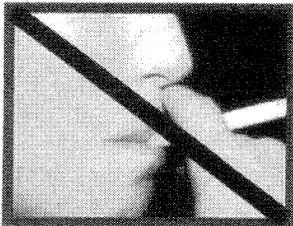
Vehicles parked on active aircraft spots must be attended at all times. No disabled vehicle may be left unattended or abandoned on active airport areas. If your vehicle breaks down anywhere, call your supervisor and the Airport Duty Manager at 433-4664 and stay with it until it is removed. If you do not have a cell phone, have someone else call for assistance.



**Report Spills**

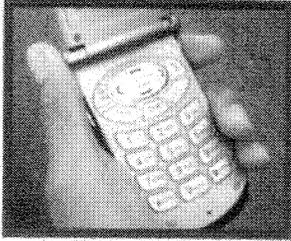
If you cause or notice an oil, grease, fuel or other type of spill of any size, report it immediately to the Airport Duty Manager at 433-4664 and your supervisor. The organization that caused the spill is required to clean it up and dispose of the material and file a spill report. The Port of Seattle Fire Department is equipped to respond to and clean up spills over 5 gallons.

**ADDITIONAL INFORMATION**



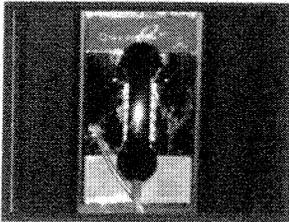
**No Smoking on the Ramp**

The only authorized locations for smoking are on the curb outside of baggage claim. Smoking on the ramp is dangerous; jet fuel can ignite easily, and smoking on the ramp puts the lives of our passengers and each other at risk. Airport Operations can issue citations to those caught smoking in unauthorized locations.



### **Report Violators**

These rules were created for your safety, as well as the safety of the traveling public. If you witness someone violating any of these rules, please report it to the Airport Duty Manager at 433-4664 immediately. Your identity will remain anonymous, but you may be saving many lives.



### **Phone Numbers**

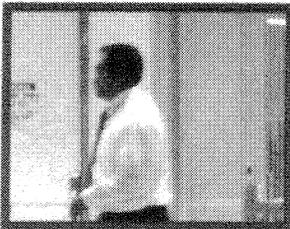
**In all cases of emergency call 911.** Some companies have phone systems that require the caller to dial an additional digit (usually a 9) before dialing a standard seven-digit phone number. If this is the case, you must also dial the additional digit to reach emergency services.

### **Non-emergency Phone Numbers:**

**Port of Seattle Police: 433-5400**

**Airport Duty Manager: 433-4664**

**ID Access Office: 248-4818**



### **Devious Dan Program**

There are two programs in place at the airport designed to test whether you're following the security procedures. The airport's program is called the Devious Dan Program. Badged personnel are escorted into restricted areas and proceed to break security rules in front of various airport employees. They may piggyback, remove their badges, etc. This program tests airport personnel on whether or not they follow security procedures. Always follow security procedures-you never know if you are being tested. The Devious Dan program instantly rewards you for following the rules with coupons for free meals at the airport. However, if you fail to follow procedures, you will receive a citation and fine.

The TSA's program is similar, however there are no rewards, but large fines are issued for breaking security rules.

## **SEGMENTS OF SEA-TAC'S RULES AND REGULATIONS FOLLOW**

It is important that you understand and comply with every rule and regulation detailed in this workbook; so be sure to study it carefully before attempting to operate any vehicle on the AOA. We have identified the Rules and Regulations most pertinent to you, by providing the following excerpts of the Port of Seattle's Airport Rules and Regulations. Many of the rules will be familiar to you, as they have been discussed throughout the manual. Remember you are responsible for complying with **ALL** of Sea-Tac's Rules and Regulations. Citations are issued for failure to comply with any Sea-Tac Rule or Regulation. Any person who refuses to comply with any of Sea-Tac's Rules and Regulations shall be requested to leave the Airport and shall be regarded as a trespasser. In addition, the Port of Seattle may use any legal recourse to help enforce the provisions contained in Sea-Tac's Rules and Regulations.

To review a full version of the Airport Rules and Regulations can be found at:  
<http://www.portseattle.org/seatac/resources/Rulereg.doc>

### **Section 1**

#### **Definitions**

1. **"AIRPORT,"** as referred to hereinafter, means the Seattle-Tacoma International Airport, located in King County, Washington, and owned and operated by the Port of Seattle.
2. **"AIR OPERATIONS AREA" or "AOA"** means any area enclosed by the Airport security fence, including ramps, aprons, runways, taxiways, gate positions, Airport parking areas, and FAA facilities.  
  
**"MOVEMENT AREA" or "MA"** means the runways, taxiways, and other areas of the airport which are used for taxiing or hover taxiing, air taxiing, takeoff, and landing aircraft, exclusive of loading ramps and aircraft parking areas.
3. **"DIRECTOR"** means the Director of Aviation of the Port of Seattle or his/her duly authorized representative as specified in appropriate position descriptions of the Port.
4. **"FEDERAL AVIATION ADMINISTRATION" or "FAA"** means the Federal Aviation Administration created by the Federal Government under Public Law 89-670 and Executive Order 11340 dated March 30, 1967, or to such other governmental agency which may be successor thereto or be vested with the same or similar authority.
5. **"COMMISSION"** means the Port of Seattle Commission.
6. **"CHIEF EXECUTIVE OFFICER"** means the Chief Executive Officer of the Port of Seattle.

7. **"MOTOR VEHICLES"** shall include automobiles, trucks, motorcycles, or any other device so defined in the Revised Code of Washington 47.04.010.
8. **"PERSON"** means any individual, firm, co-partnership, corporation, company, association, joint stock association, or body politic, and includes any trustee, receiver, assignee, or other representative thereof.
9. **"PORT"** means the Port of Seattle, a duly organized municipal corporation with powers as granted by Washington Law, including Titles 14 and 53 of the Revised Code of Washington
10. **"PORT EMPLOYEES"** means employees of the Port of Seattle, and in particular those employees with duties related to the enforcement of these regulations, including but not limited to:
  - a. Port of Seattle Aviation Division, General Managers, Managers, Supervisors
  - b. Port of Seattle Police
  - c. Port of Seattle Firefighters
11. **"ROADWAYS"** includes areas designated by the Director for use by motor vehicles.
12. **"RULES AND REGULATIONS"** shall include these rules and regulations or any directives adopted pursuant hereto, including official Airport signs or oral directives given by Port employees.
13. **"VEHICLES FOR HIRE"** shall include all vehicles used to pick up and deliver passengers and parcels at the Airport. A separate or direct charge for transportation to or from the Airport shall not be a factor in determining that a vehicle is for hire so long as the transportation is incidental to a commercial operation. As used herein, the following definitions specifically apply:
  - a. **"COURTESY CAR"** means vehicles used by hotels, motels, parking lots, car rental agencies and others to pick up and deliver passengers at the Airport, normally where there is no direct charge for transportation to or from the Airport: the transportation services being incidental to a commercial operation.
  - b. **"LIMOUSINE"** means for hire vehicles that do not have a company designation displayed on the vehicle and generally charge on the basis of time engaged rather than distance traveled.
  - c. **"PARCEL CARRIERS AND DELIVERY COMPANY"** means commercial vehicles that deliver and pick up packages at the passenger terminal.
  - d. **"PORT-LICENSED TAXICAB"** means a taxicab having executed an Airport Taxicab Operating Agreement with the Port, authorizing it to pick up or discharge customers or packages at the Airport on the Passenger Pick-Up Drive or Passenger

Check-In Drive: having paid all appropriate fees and charges therefore; and displaying a current taxicab permit decal issued by the Port.

14. **"GROUND SERVICE OPERATORS"** shall include all firms or persons operating on the Airport under a contract to provide ground support service to aircraft including: aircraft fueling, baggage and cargo handling, aircraft towing, de-icing services, and aircraft cleaning.

### SECTION 3

#### GENERAL RULES AND REGULATIONS

1. All persons having entered on the Airport property shall be governed by the rules and regulations herein prescribed and by orders and instructions of the Commission and the Director relative to the use or occupation of any part of the Airport property and shall comply with written or oral instructions issued by the Director or Port employees to enforce these regulations.
2. Any person operating or handling any aircraft, operating or handling any vehicle or apparatus, or using the Airport or any of its facilities shall comply with the applicable rules and regulations at the Airport.
3. Any person or persons who shall refuse to comply with these applicable rules and regulations, after proper request to do so by the Director or a Port employee, shall be requested to leave the Airport and, in the event of failure to comply with a proper request to abide by the rules and regulations of the Airport, shall be regarded as a trespasser.
20. **Clear Zone Requirement:**  
A five-foot clear zone must be maintained on both the secure and non-secure sides of all primary Air Operations Area security fencing, except in those specific areas adjacent the AOA where a five-foot clear zone is not feasible on the non-secure side. The fencing in these areas will be of a 12-foot height topped by three-strand barbed wire. These specific areas are identified in Attachments B and I, Airport Security Plan, which depicts the primary perimeter fence enclosing the Air Operations Area. All Vehicles, equipment and/or material must be located at least five feet from the fence line where fencing is less than 12 feet in height. Signs are posted approximately every 50 feet giving such notification. (See also Section 8, Enforcement, Security Violation Procedure subparagraph B.4.a.(9).)
21. **Smoking Policy:**  
Smoking of cigarettes, cigars, and pipes is prohibited in all areas of the main airport terminal, satellite terminals and aircraft ramp areas, unless posted as a designated smoking area. This regulation applies to all public and non-public areas including restaurants, bars, and lounges, as well as tenant lease areas. (Construction of designated smoking areas within tenant lease areas may be allowed provided the areas are mechanically exhausted directly outside under negative pressure and are at the tenant's

expense.) (See also: Section 5, Fire Regulations, paragraph B.8.a., Smoking Policy; Section 6, Aircraft Fueling and Defueling, paragraph B; and Section 8, Enforcement, Smoking Policy Violations, paragraph C.4.)

## SECTION 4

### MOTOR VEHICLE OPERATIONS

#### A. GENERAL

Motor vehicle operations within and on the Airport premises shall be governed generally by the provisions of the Washington State Motor Vehicle Codes and Traffic Direction procedures; and signals for turns, lights, and safe-driving precaution shall be in conformity therewith. In addition, motor vehicles shall conform to all special regulations prescribed by the Commission or procedures imposed pursuant to Commission regulation by the Director.

1. All motor vehicles that enter the Air Operations Area (AOA) shall possess exhaust systems which are protected with screens, mufflers, or other devices adequate to prevent the escape of sparks or the propagation of flame.

Equipment, other than those performing aircraft servicing functions, shall not be permitted within 50 feet (15 meters) of aircraft during fuel servicing operations.

2. All vehicles (powered and nonpowered) within the AOA must be equipped with reflectors or lights on both front and rear ends and on the sides.
3. All riding of bicycles, skate boards or roller skates/blades is prohibited on the airport and in all areas of the baggage makeup area and passenger terminal. Port of Seattle and tenant-owned bicycles may be allowed for company business in the tenants' respective leased areas on the ramp.

Port of Seattle and tenant-owned bicycles operating on the ramp, baggage makeup areas or passenger terminal will comply with all rules and regulations applicable to motor vehicles. Port of Seattle and tenant-owned bicycles operating during hours of darkness or restricted visibility will be equipped with adequate lights and reflectors.

4. Traffic on perimeter roads, enplaning and deplaning drives, public thoroughfares, and parking areas of the Airport is limited to those vehicles properly licensed to operate on public streets and highways. The operation of baggage tugs and other ramp equipment in these areas is prohibited.
5. All motor vehicle operators must have a valid, current driver's license in possession while operating any powered vehicle anywhere on Airport property.
6. No Ground Service Operator shall provide services on the Airport without first having executed a Ground Service Operator Licensing Application and Agreement in form and content approved by the Director, providing documentation of a

current insurance policy meeting the Airport's specifications and having paid the appropriate fees and/or charges as provided in said Ground Service Operator Licensing Application and Agreement.

7. No more than six (6) baggage or cargo carts will be towed by a single baggage tug or other motor vehicle at any one time and will not exceed fifteen (15) miles [24 km] per hour.
8. In addition to these regulations, the Director is empowered to issue such other instructions as may be deemed necessary for the safety and well-being of Airport users or otherwise in the best interests of the Port.
9. Operators of vehicles which, because of design/function, that restrict operator visibility to sides and rear of vehicle, shall utilize ground marshaller for guidance during backing operations or when operating within restricted space areas.
10. No person shall operate any vehicle or equipment on the Airport under the influence of any alcohol, liquor, narcotics, mind-altering or habit-forming drugs.

#### B. IN-TERMINAL BUILDING

1. Any person operating equipment within the passenger terminal building will abide by all posted speed regulations in these areas and in any event not exceed five (5) miles [8 km] per hour.
2. Any person operating equipment prior to entering into or exiting from any tunnel area or other area where vision is impaired shall, within three (3) feet [1 meter] of any exit or obstruction, bring the equipment to a complete stop and sound the horn before entering the apron or adjoining area.
3. All vehicles operated in the terminal building shall be maintained in good condition at all times and be free of oil and gas leaks. Battery-type vehicles shall be recharged in well-ventilated areas designated by the Fire Department. Each tenant operator shall keep individual areas clean of vehicle liquid spills.
4. Permanent parking of internal combustion engine-driven vehicles is prohibited in any of the terminal buildings. Storage of surplus or infrequently used vehicles is prohibited. The parking of tugs or towing vehicles while baggage carts are loaded is permitted. This regulation is not intended to prohibit the normal operation of airline baggage handling.
5. Electric passenger carts used in transporting passengers:
  - a. will be driven only by Skycaps and Special Service Agents.
  - b. will be operated in a safe and careful manner.
  - c. will be driven at approximately walking speed.
  - d. will give pedestrians the right of way.
  - e. will use horn button as necessary to warn of cart's presence.
  - f. will be equipped with governors to preclude speeds in excess of 5 miles per hour.

- g. will use extreme caution at corners and congested areas.
  - h. will be used in post-security areas only.
  - i. will be equipped with continuously flashing amber lights or other approved lights.
  - j. will be stowed and charged in designated areas.
  - k. will be used for elderly, special assistance passengers and customers.
- (See also Section 8, Enforcement, Miscellaneous Violations subparagraph C.5.)

C. FIELD

1. All vehicular equipment in the Air Operations Area, cargo, tunnel, access road, aircraft parking, or storage areas must at all times comply with any lawful signal or direction of Port employees. All traffic signs, lights, and signals shall be obeyed, unless otherwise directed by Port employees.
2. Every person operating motorized equipment of any character on any area mentioned in the previous paragraph shall operate the same in a careful and prudent manner and at a rate of speed fixed by this section and at no time greater than is reasonable and proper under the conditions existing at the point of operation, taking into account traffic and road conditions, view obstructions, and consistent with all conditions so as not to endanger the life, limb or property or rights of others entitled to the use thereof.
3. Any person operating equipment in the Air Operations Area shall, in addition to this section, abide by all existing Federal Aviation Administration and other governmental rules and regulations.
4. All conditions set forth in this section shall be in conformity and consistent with current FAA and other governmental rules and regulations.
5. No person shall operate any motor vehicles or motorized equipment in the Air Operations Area except:
  - a. Persons assigned to duty in such areas.
  - b. Persons authorized by the Director, and in the case of runways and taxiways (Movement Area), with the prior clearance and permission of the Airport control tower by radio. (See also Section 8, Enforcement, Driving Violations subparagraph B.3.a.(2).)
  - c. Vehicles and operators not possessing ramp access permits or authorized ID must be under escort by Port or tenant vehicle while engaged in AOA operational functions.
6. No person shall operate any motor vehicle or motorized equipment on runways or taxiways (Movement Area), of the Airport unless the motor vehicle or motorized

equipment is equipped with a two-way radio and in ground control frequency radio contact with the Airport control tower or escorted by vehicles so equipped.

7. No person shall operate any motor vehicle or motorized equipment with an aircraft in tow on any portion of the Airport unless the motor vehicle or motorized equipment is equipped with a two-way radio and is in contact with the Airport control tower, and any such person shall have prior permission of the Airport control tower.
8. No person shall operate any motor vehicle or motorized equipment on the aircraft movement or parking areas of the Airport at a speed in excess of twenty (20) miles [32 km] per hour, or less where conditions warrant. Designated motor vehicle drive lanes shall be utilized where provided unless specific authorization to the contrary is given by a Port employee.
9. Any person operating any motor vehicle or motorized equipment on the Air Operations Area of the Airport shall obey any and all posted traffic signs and traffic signals.
10. Any vehicular equipment operating within the Air Operations Area must display signs of commercial design on both sides of the vehicle which identify the vehicle to the Airport tenant, construction firm, or vendor concerned. Firm names must appear in letters a minimum of two (2) inches [5 cm] high. In addition, any vendor's vehicle must display a current ramp permit issued by the Director. (See also Section 8, Enforcement, Security Violation Procedure subparagraph B.4.a.(7).)
11. No person operating a motor vehicle or motorized equipment in the Air Operations Area shall in any way hinder, stop, slow, or otherwise interfere with the operation of any aircraft on the Airport. (See also Section 8, Enforcement, Driving Violations subparagraph B.3.a.(1).)
12. No person shall park any motor vehicle or other equipment or materials in the Air Operations Area of the Airport except in a neat and orderly manner and at such points as prescribed by the Director.
13. No person shall park any motor vehicle or other equipment or materials in the Air Operations Area of the Airport within fifteen (15) feet [4.5 meters] of any fire hydrant or standpipe.
14. No person shall paint, repair, maintain, or overhaul any motor vehicle or other equipment or materials in the Air Operations Area of the Airport except in such areas and under such terms and conditions as prescribed by the Director.
15. No person shall operate any motor vehicle or motorized equipment in the Air Operations Area of the Airport unless such motor vehicle or motorized equipment is in a reasonably safe condition.

#### D. PARKING

1. No parking is permitted on any Airport roadway, as the primary purpose of the Airport roadways is for motor vehicle traffic. However, the Director may designate areas adjacent to entrances as load/unload zones to be utilized in a manner designed to expedite the movement of persons, passengers, freight, supplies, and baggage to Airport buildings and terminals. In designating such areas, the Director may:
  - a. Establish restricted use to actual loading or unloading, prohibit waiting for any purpose, and require motor vehicles to move without regard to their status of loading or unloading.
  - b. Prohibit motor vehicles requiring additional time to assemble passengers and/or baggage from occupying space in roadways (including curb lanes).
  - c. Reserve parking areas for the use of vehicles for hire assembling passengers and baggage.
2. No motor vehicle shall park unattended except in:
  - a. Areas operated or leased for commercial parking by the Port or under a Port lease or concession agreement.
  - b. Areas leased or specified for the parking of Airport employees, including the employees of lessees, permittees, and concessionaires.
  - c. Metered parking areas which may be specially reserved or assigned.
  - d. Other areas specifically signed or designated as a permit area by the Director.

## Questions/Self Test

**True or False** The movement area has runways and taxiways, and protected safety and critical areas.

**True or False** The Air Operations Area includes only the airfield.

**True or False** If an aircraft is overhanging the drive lane, you must stop.

**True or False** If your vehicle breaks down, stay with it and have someone else call for assistance.

**True or False** If you observe a small fuel spill you should assume it has already been reported.

**True or False** If you see trash or debris on the ramp, ignore it because you are not responsible for it.

**True or False** After showing your I.D. badge to enter the AOA, it is not necessary to display it.

**True or False** All vehicles on the AOA must be identified by their company name on both sides.

**True or False** You must not cross the Vehicle Control Line unless you are authorized to do so.

**True or False** If you receive a citation, it has no effect on your job at the airport.

The non-movement area is also called the \_\_\_\_\_. It may also be called the \_\_\_\_\_ or \_\_\_\_\_.

The Vehicle Control Line separates the \_\_\_\_\_ and \_\_\_\_\_ areas.

Trash and debris on the airfield is known as \_\_\_\_\_.

If you are involved in or witness an accident, report it immediately to \_\_\_\_\_.

If you are driving in foggy weather, what are four rules to follow?

\_\_\_\_\_  
\_\_\_\_\_

A clear zone is maintained on both sides of the perimeter fence. This means you cannot park a vehicle closer than \_\_\_\_\_ feet from the fence.

Speed Limits for the following are:

Perimeter Roads and Drive Lanes: \_\_\_\_\_ Aircraft Parking Ramps: \_\_\_\_\_

Heavy Equipment and Tugs: \_\_\_\_\_ Bagwell or Baggage Make-Up Area: \_\_\_\_\_

The number 1 rule on the airfield is: \_\_\_\_\_

**Seattle-Tacoma International Airport  
Airport Operations  
Driver Training Manual**

**Acknowledgement Form**

Sea-Tac International Airport has provided me with a Driver Training Manual, which:

- Explains terms such as Runway, Taxiway, Drive Lane, Taxilane, J-line, Incursion, Vehicle Control Line, Ramp, etc.
- Describes the difference between the Movement and Non-Movement Areas.
- Covers important rules and conditions for Driving on the Ramp.
- Familiarizes you with basic security requirements and procedures.
- Covers Sea-Tac International Airport's Rules and Regulations pertaining to vehicle operations on the AOA.

My signature below signifies that I have received the Driver Training Manual, I have read it, I have completed the Self-Test Questions, and I understand the information provided.

**Note:** You must present this to the instructor when you take the Driver Training class.

**Print Name:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Seattle-Tacoma International Airport  
Airport Operations  
Training Department**



**Air Movement Area Drivers Training  
Program**

**Study Guide**

C

## Introduction

Recognizing the need to provide familiarization and testing for non flight-crew personnel who are involved in repositioning aircraft, the Port of Seattle (POS) has established the Air Movement Area Drivers Training Program. This program presents guidelines and procedures designed to enhance the safety and efficiency of all aircraft movement area operations.

In addition, the implementation of this program is intended to assist in the elimination of runway incursions.

A runway incursion is defined as "any occurrence at an airport involving an aircraft, vehicle, person or object on the ground, that creates a collision hazard or results in loss of separation with an aircraft taking off or intending to takeoff, landing or intending to land."

Runway incursions can result in aircraft collision. Such aircraft collisions, when occurring in the runway environment, are often catastrophic. An example of this collision hazard is the accident which involved two Boeing 747 aircraft which collided on a runway in the Canary Islands, resulting in the worst accident in the history of commercial aviation, in terms of lives lost in a single accident.

In order to minimize the risk of a runway incursion, it is extremely important that all persons who conduct air movement area operations have a thorough understanding of the runway and airfield layout at Seattle-Tacoma International Airport (SEA) as well as familiarity with applicable Air Traffic Control Tower (ATCT) procedures.

The objectives of this program are:

- To identify proper methods and procedures for the safe movement of aircraft at SEA.
- To disseminate information which provides aircraft movement area operators with familiarization and knowledge of acceptable aircraft movement practices.
- To test for knowledge to ensure that all personnel who perform aircraft movement area operations at SEA have a basic understanding of acceptable procedures.

Participation in this program and successful completion of a mandatory test is required for all non flight-crew persons responsible for aircraft movement operations at SEA. Successful completion of the Air Movement Area Drivers Training Program and testing process will result in the issuance of an AMA

Driving Identifier on the POS Identification Badge. Following program implementation, only individuals who have successfully completed the Air Movement Area Drivers Training Program will be permitted to conduct aircraft movement area operations at SEA. Any violation of the POS Rules & Regulations, especially pertaining to movement area operations may result in the loss of POS ID badge and/or retraining and testing.

This study guide contains basic information, which should be thoroughly understood by all persons who intend to operate on the Air Movement Area. This guide is divided into three sections:

Section one contains information regarding movement/non-movement areas.

Section two contains information specific to SEA, including the designations of movement areas, surface markings, airfield signage and lighting.

Section three contains information regarding proper aviation terminology, phraseology and communications on aviation VHF radio equipment.

## Section 1

### Movement/Non-Movement Areas

Movement areas are defined as the runways, taxiways, and other areas of the airport which are utilized for the taxiing, takeoff, and landing of aircraft, exclusive of loading ramps and parking areas. Here at SEA, specific approval for entry onto the movement area must be obtained from ATCT.

Identified below are the types of movement areas found on the airfield at SEA.

- Runway – A defined rectangular surface on an airport prepared or suitable for the landing or takeoff of airplanes.
- Taxiway – A defined path established for the taxiing of aircraft from one part of an airport to another.

Movement areas at SEA are shown on the map on the next page.

### Non-Movement Areas

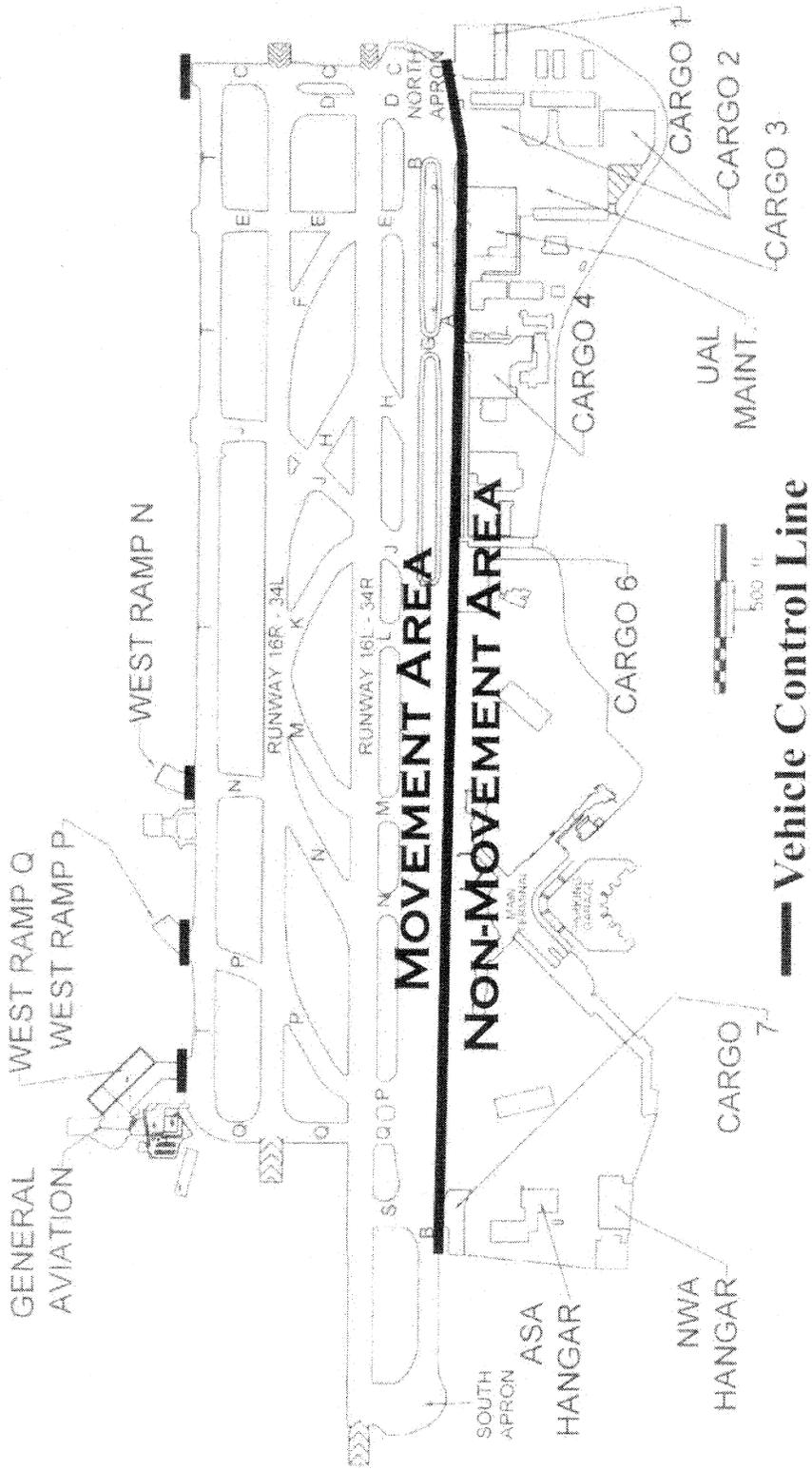
Non-movement areas are defined as the taxilanes and apron/ramp areas not under the control of ATCT.

Identified below are the types of non-movement areas found on the airfield at SEA.

- Taxilane – The portion of the aircraft parking area used for access between taxiways and aircraft parking positions.
- Apron/Ramp – A defined area on an airport intended to accommodate aircraft for purposes of loading or unloading passengers, mail or cargo, refueling, parking or maintenance.

Non-movement areas at SEA are shown on the map on the next page.

# SEATTLE-TACOMA INTERNATIONAL AIRPORT



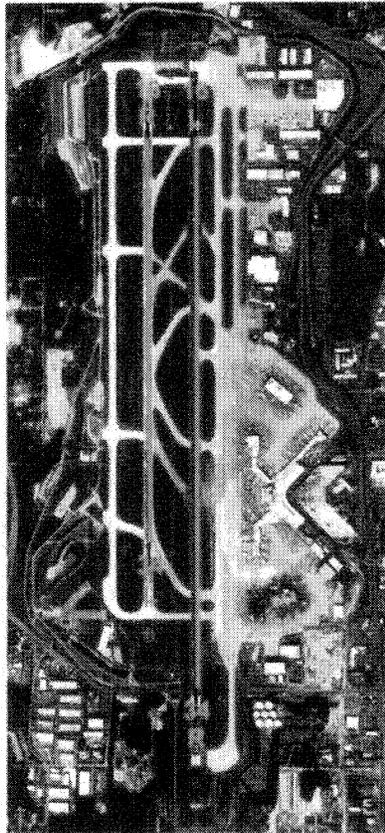
## Section 2

### Runways

Runway designations are based on a runway's magnetic heading, using the 360-degree compass system. Runways may be used in two (opposite) directions, resulting in two runway designations, which are 180 degrees different from one another.

Therefore, a runway which is designated as runway 18/36 would be oriented in the north/south direction. If aircraft were conducting take-off or landing operations to the north, the runway in use would be designated as runway 36. If the same runway were being used by aircraft conducting take-off or landing operations to the south, then the same runway would be designated as runway 18. If there is more than one parallel runway, a letter is added to differentiate the left (L), right (R) or center(C) runway.

At SEA, the runways are oriented in a north/south direction with designations of 16R/34L for the western-most runway and 16L/34R for the eastern-most runway.



## Runway Markings

Runway painted surface markings are white with a black background.

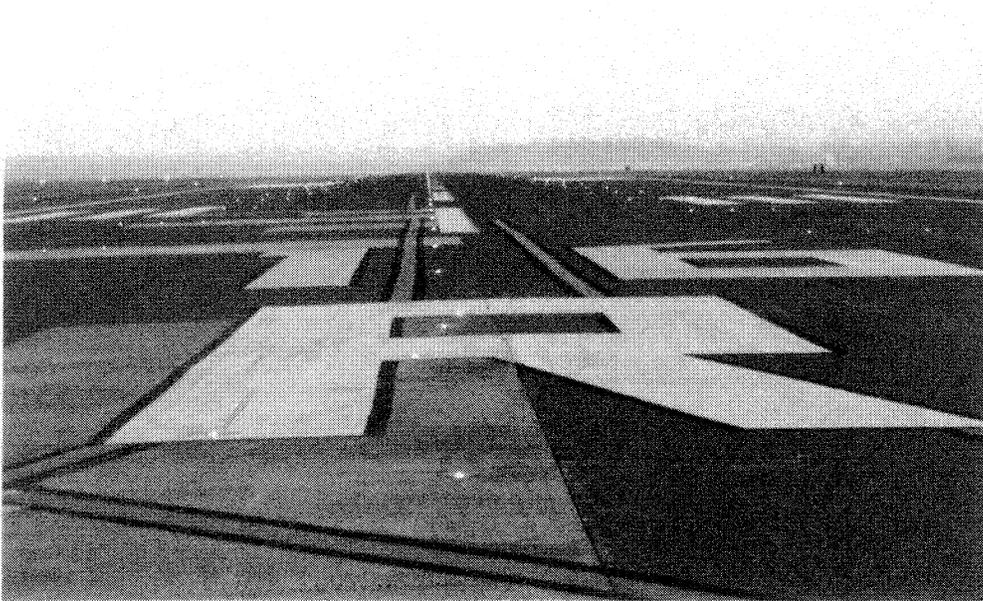
Runway painted surface markings include centerline stripes, edge stripes, threshold/touchdown bars, and runway designation markings.

## Runway Lighting

Runway edge lighting is white, then changes to amber at 2000 feet from runway end.

Runway touchdown zone lighting is white.

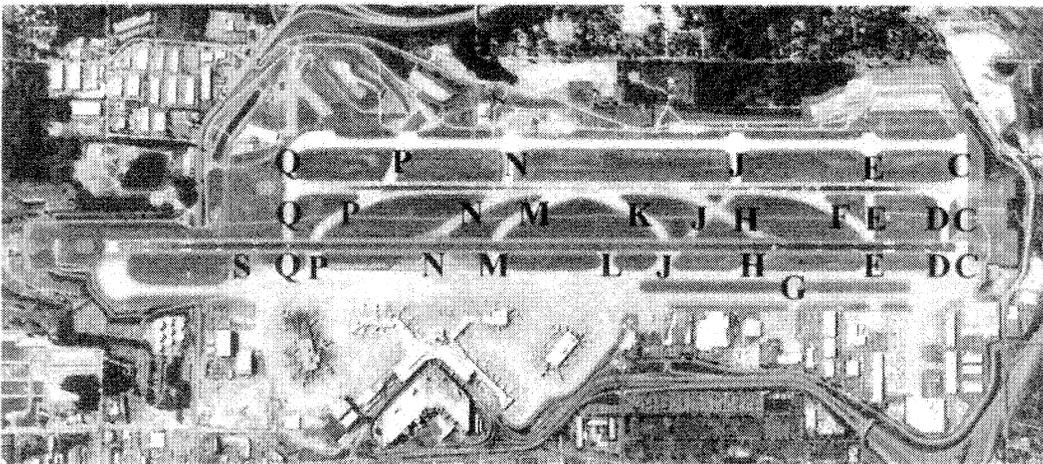
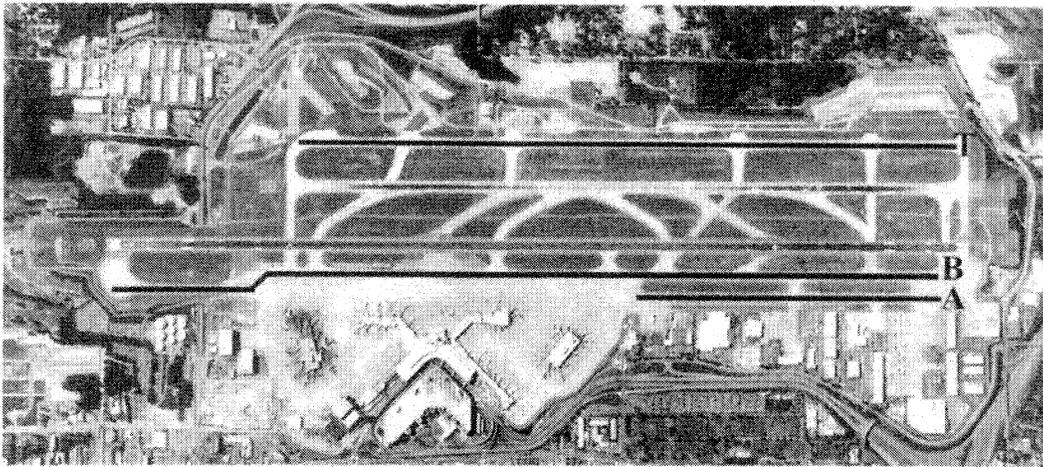
Runway centerline lighting is white, then changes to alternating red and white at 3000 feet remaining, then changes to red at 1000 feet from runway end.



Note: The lights in this photo appear amber or red, however they are actually white.

## Taxiways

SEA has three north-south oriented taxiways. These are Alpha (A), Bravo (B) and Tango (T). Taxiway Alpha (A) begins north of the North Satellite and continues to the North Apron where it meets with Taxiway Delta (D). Taxiway Bravo (B) is east and parallel to the full length of 16L. Taxiway Tango (T) is west and full length of 16R. Remember, specific permission is required to cross any runway even though you may already have permission to be on a taxiway.



SEA also has many inter-connecting taxiways. These are Charlie (C), Delta (D), Echo (E), Foxtrot (F), Golf (G), Hotel (H), Juliett (J), Kilo (K), Lima (L), Mike (M), November (N), Papa (P), Quebec (Q) and Sierra (S). These taxiways are sequenced alphabetically from the north, and may cross both runways, connecting the west side of the airfield to the east (terminal and ramp areas).

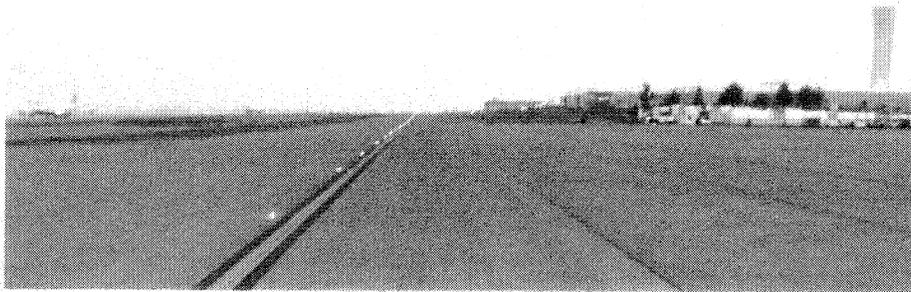
## Taxiway Markings

Taxiway painted surface markings are yellow with a black background.

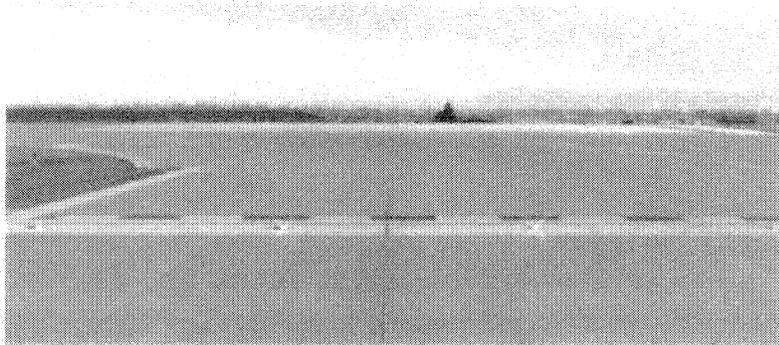
Taxiway painted surface markings include a centerline and double edgelines.

## Taxiway Lighting

Taxiways have green centerline lights or reflectors and/or blue edge lights or reflectors.



In-pavement runway guard lights are amber and parallel to and in front of the runway holding position line. Elevated runway guard lights (amber, alternating flashing lights) are placed to the sides of a runway/taxiway intersection adjacent to the painted hold lines.



Geographic position markings (pink spots) are located along Alpha and Bravo Taxiways and are accompanied by clearance bars (three amber in-pavement lights) and an intermediate holding position markings (dashed yellow line with a black background).



## **Taxilanes**

Taxilanes, also referred to as alleys or alleyways, are situated at various locations at SEA, and have yellow centerlines with black backgrounds. Taxilanes are in the passenger terminal areas around the north and south satellites and in the cargo areas. Taxilanes at SEA are **non-movement areas**.

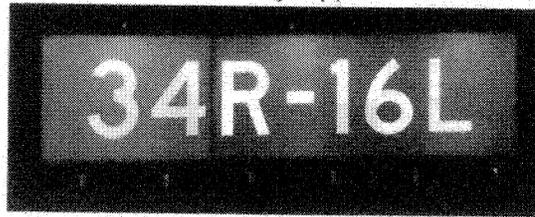
## **Ramp/Apron Areas**

Ramp/Apron areas are maintained by individual airline or ground handling companies or the POS. Surface markings and lighting, when present, will be similar to that of a taxilane. Ramps/Aprons at SEA are also non-movement areas.

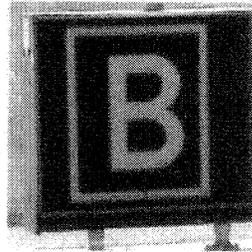
## Airfield Signs and Surface Markings

Airfield signs, surface markings and lighting are visual aids designed to guide operations on movement areas. The colors and sizes of signs and painted surface markings are significant.

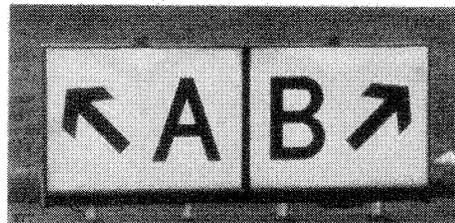
Mandatory instruction signs have a red background with white lettering. These signs denote the entrance to a runway, approach area or critical area.



Location signs have a black background with yellow lettering and a yellow border. Location signs identify movement areas and are installed so as to be highly visible, usually on the left side of the movement areas. Location signs are often combined with other types of signs.



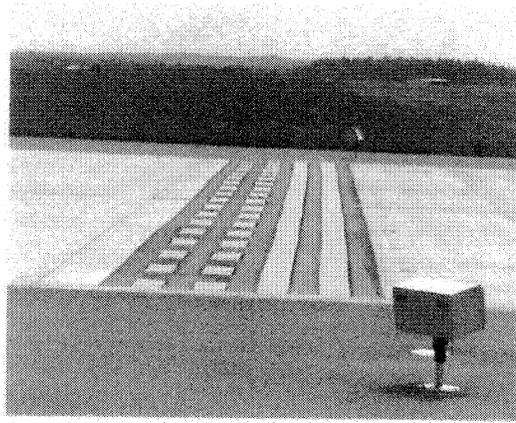
Direction signs have a yellow background with black lettering and arrows. Direction signs are placed before an intersection to identify the intersecting taxiways. The arrows indicate the directions of the taxiways that lead out from the intersection.



Information signs have a yellow background with black lettering. Information Signs provide various types of advisories.

## Surface Markings

At the intersection where a taxiway meets a runway, painted surface markings called hold lines (holding position markings) are installed. Hold lines consist of two solid yellow lines followed by two segmented yellow lines. Operators must hold on the "solid" side of the hold line. This is also the location at the intersection where the mandatory instruction sign identifying the runway is placed. ATCT authorization is required to proceed beyond the hold lines.



Instrument landing system (ILS) hold lines (ILS holding position markings) are painted onto the surface at locations where it is necessary to keep aircraft and vehicles on the ground from interfering with the signals transmitted from the ILS antennas. When ILS approaches are in progress, during periods of low-visibility, operators may be instructed by ATCT to "hold short of the ILS critical area".



## Section 3

### Air Traffic Control Procedures and Radio Phraseology

It is essential to safety that personnel responsible for aircraft movements at SEA be thoroughly familiar with ATCT procedures and radio phraseology. Correct phraseology and radio technique should be used in all communications with ATC. Use of correct radio techniques will reduce frequency congestion, allow a more expeditious flow of aircraft movements and reduce miscommunications.

#### Transmitting on Aviation VHF Frequencies

When using an aviation VHF radio, it is important to communicate in a clear and concise manner so that ATCT understands your transmission. Use of slang, CB or police jargon should be avoided. Transmissions should be brief yet complete enough to adequately convey the message to ATCT.

There are a few simple measures, which should be taken before transmitting on the VHF radio:

- Prior to transmitting, the radio should first be checked by verifying that the correct frequency has been selected.
- Next, the frequency should be briefly monitored to determine that no one else is transmitting or waiting for a read-back. Monitoring the frequency prior to transmitting helps in establishing a mental picture of the current situation, commonly called situational awareness. This procedure will also eliminate instances of transmitting at the same time as someone else.
- Then, verify that the microphone selector switch is set to the proper radio. This will help reduce the number of instances where one frequency is being monitored and another is being inadvertently transmitted on.
- Prior to transmitting, consider what you are going to say, and use the following:
  1. WHO you are calling
  2. WHO you are
  3. WHERE you are on the airport
  4. WHAT you are requesting, or intending to do

To minimize confusion between similar sounding letters, a standardized aviation phonetic alphabet has been adopted for use by the International Civil Aviation Organization. ATCT will use this alphabet during all transmissions to identify taxiways. The phonetic alphabet is shown below, and must be memorized:

### ICAO Phonetic Alphabet

A	Alfa	N	November
B	Bravo	O	Oscar
C	Charlie	P	Papa
D	Delta	Q	Quebec
E	Echo	R	Romeo
F	Foxtrot	S	Sierra
G	Golf	T	Tango
H	Hotel	U	Uniform
I	India	V	Victor
J	Juliett	W	Whiskey
K	Kilo	X	X-Ray
L	Lima	Y	Yankee
M	Mike	Z	Zulu

### SEA Air Traffic Control Frequencies

Automatic Terminal Information Service (ATIS)	118.00
Ground Control	121.70
Tower (Local Control)	119.90
Alternate	126.25

### General Rules to Follow While Moving Aircraft

Ensure that all available pertinent information regarding airport construction, movement area closures and applicable VHF frequencies has been reviewed. Know where you are, where you are going, and how to get there.

- Is operation on the movement area absolutely necessary?
- Can the operation be delayed until a less busy time?
- Listen before you transmit. When you are ready to transmit, pause, listen, and make sure the frequency is clear.
- Use correct radio technique and phraseology. Read back ATCT instructions before proceeding and **read back all hold short and runway crossing instructions verbatim.**

- Maintain a "**sterile cockpit**". Do not become absorbed in unrelated tasks or non-essential conversations while on movement areas.
- Look in all directions before proceeding onto the movement area and then move in an expeditious manner.
- Report when off the movement area.
- Be alert to the sounds or the **lack of sounds** in your receiver. Check your volume, recheck your frequency, and make sure that your microphone is not stuck in the transmit position.
- If you are unsure of your position on the airfield, **stop and ask for assistance**.
- Continuously monitor the appropriate ATCT frequency and acknowledge all transmissions.
- Ensure that you fully understand your taxi/tow instructions. If you are unsure, ask for clarification and **do not move** until you completely understand your instructions.
- Report any deteriorating/confusing airfield signs, surface markings or lighting to SEA Airfield Operations, or FAA at an appropriate time.

## Phraseology

Use of correct radio phraseology enhances safety and saves time. Listed below are examples of some of the most common terms:

**ACKNOWLEDGE**- Let me know that you have received my message.

**ADVISE INTENTIONS**- Tell me what you plan to do.

**AFFIRMATIVE**- Yes.

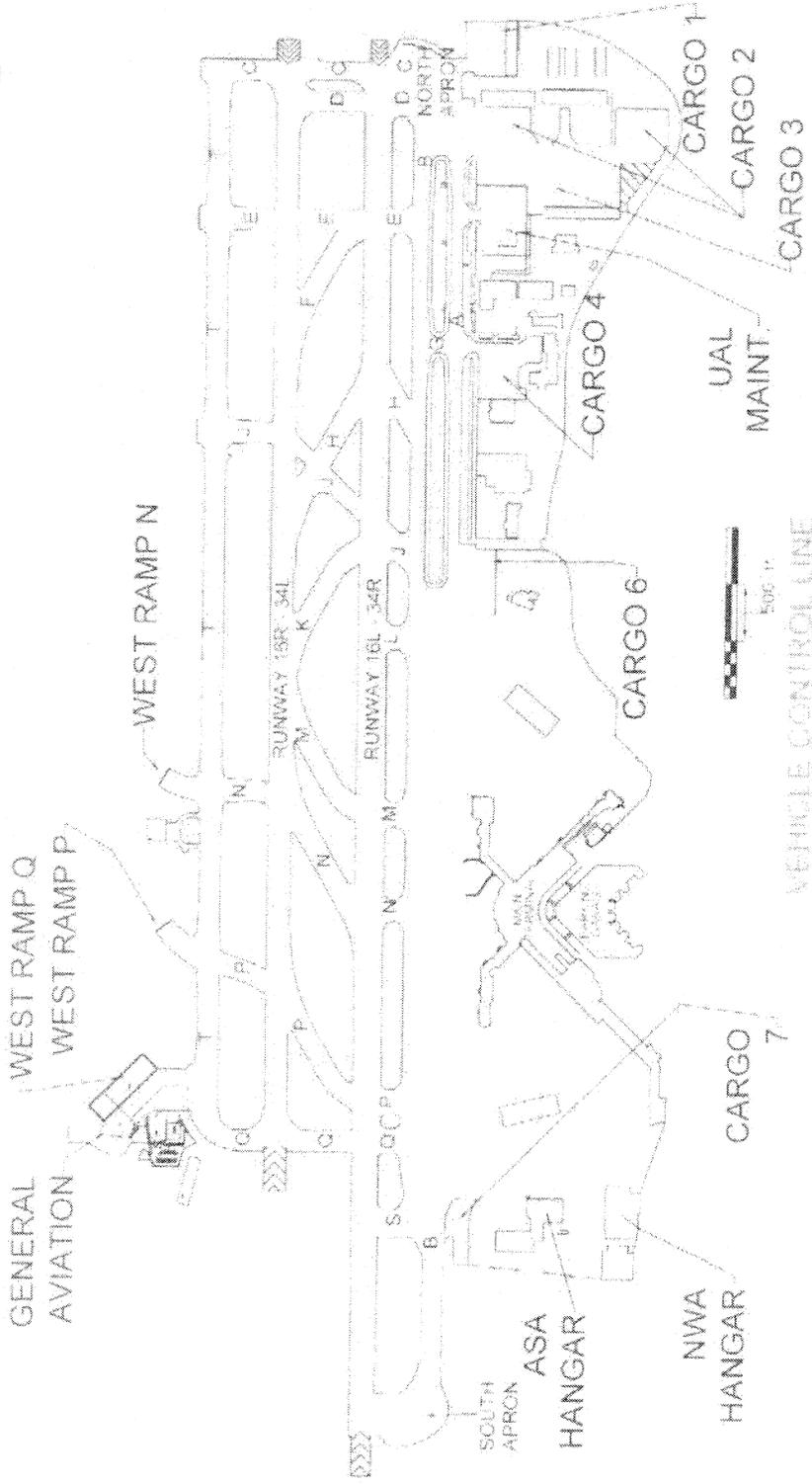
**CONFIRM**- My version is...is that correct?

**CORRECTION**- An error has been made in the transmission and the correct version follows.

**GO AHEAD**- Proceed with your message. Not to be used for any other purpose.

**HOLD**- Stop where you are.

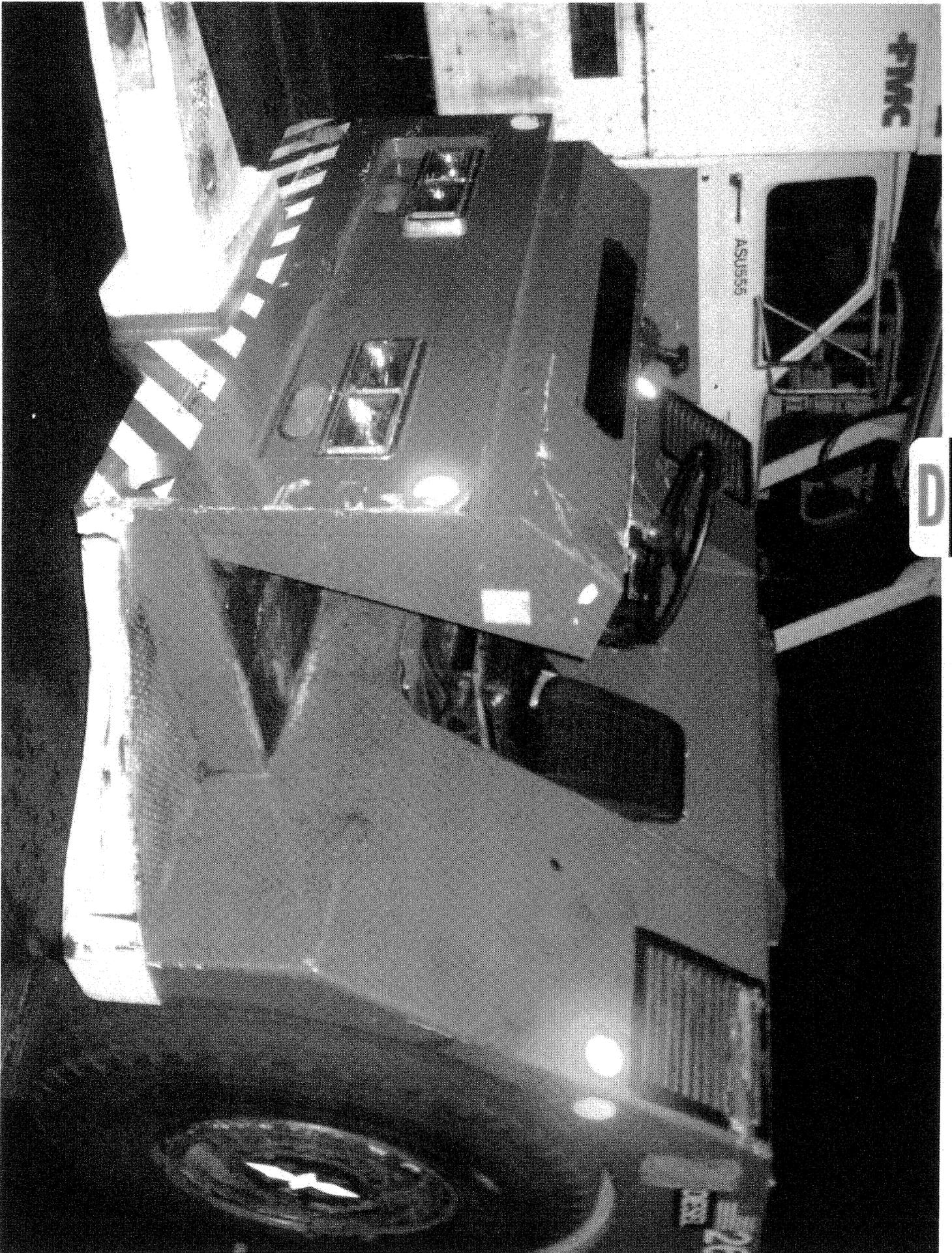
# SEATTLE-TACOMA INTERNATIONAL AIRPORT

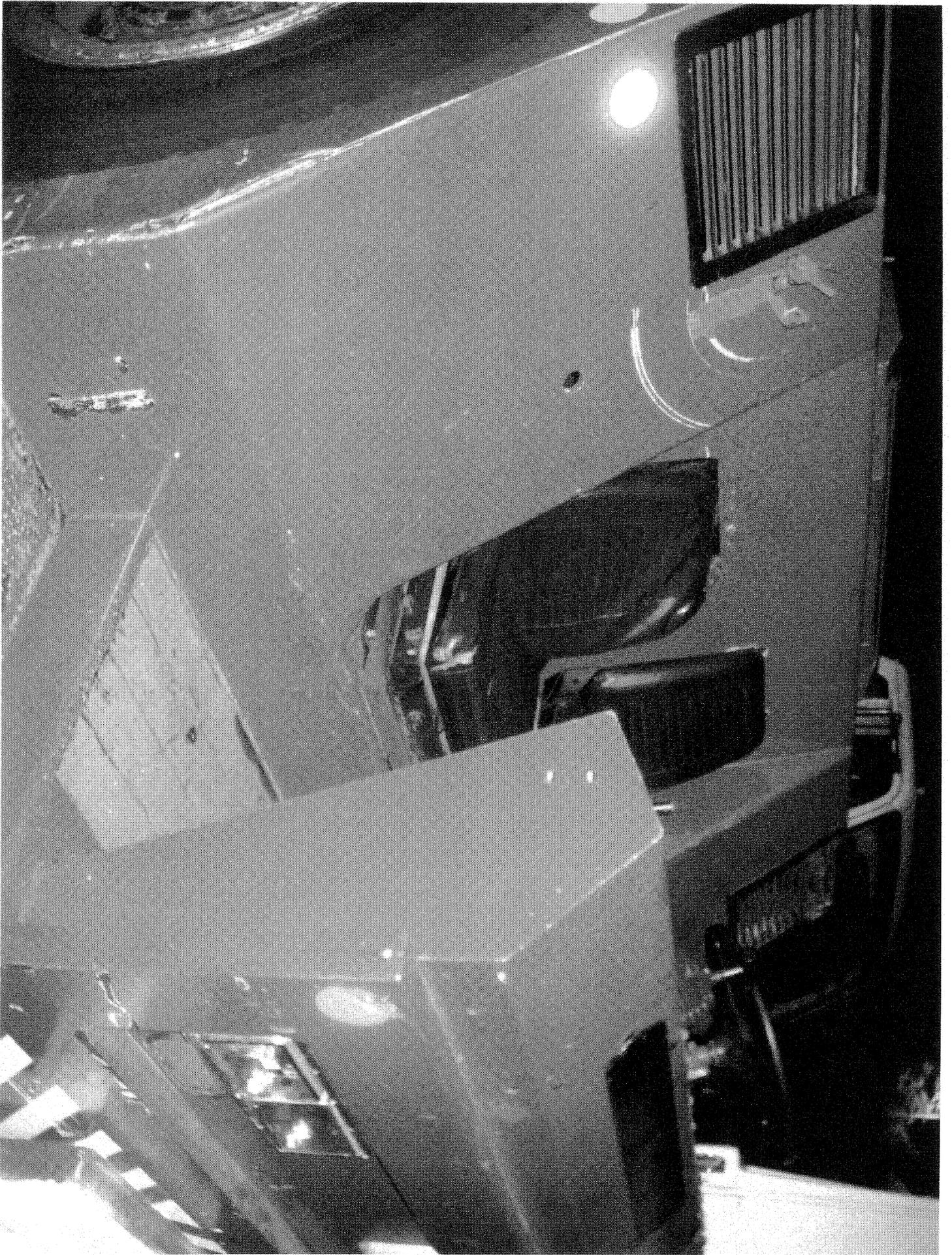


RXX 8.573

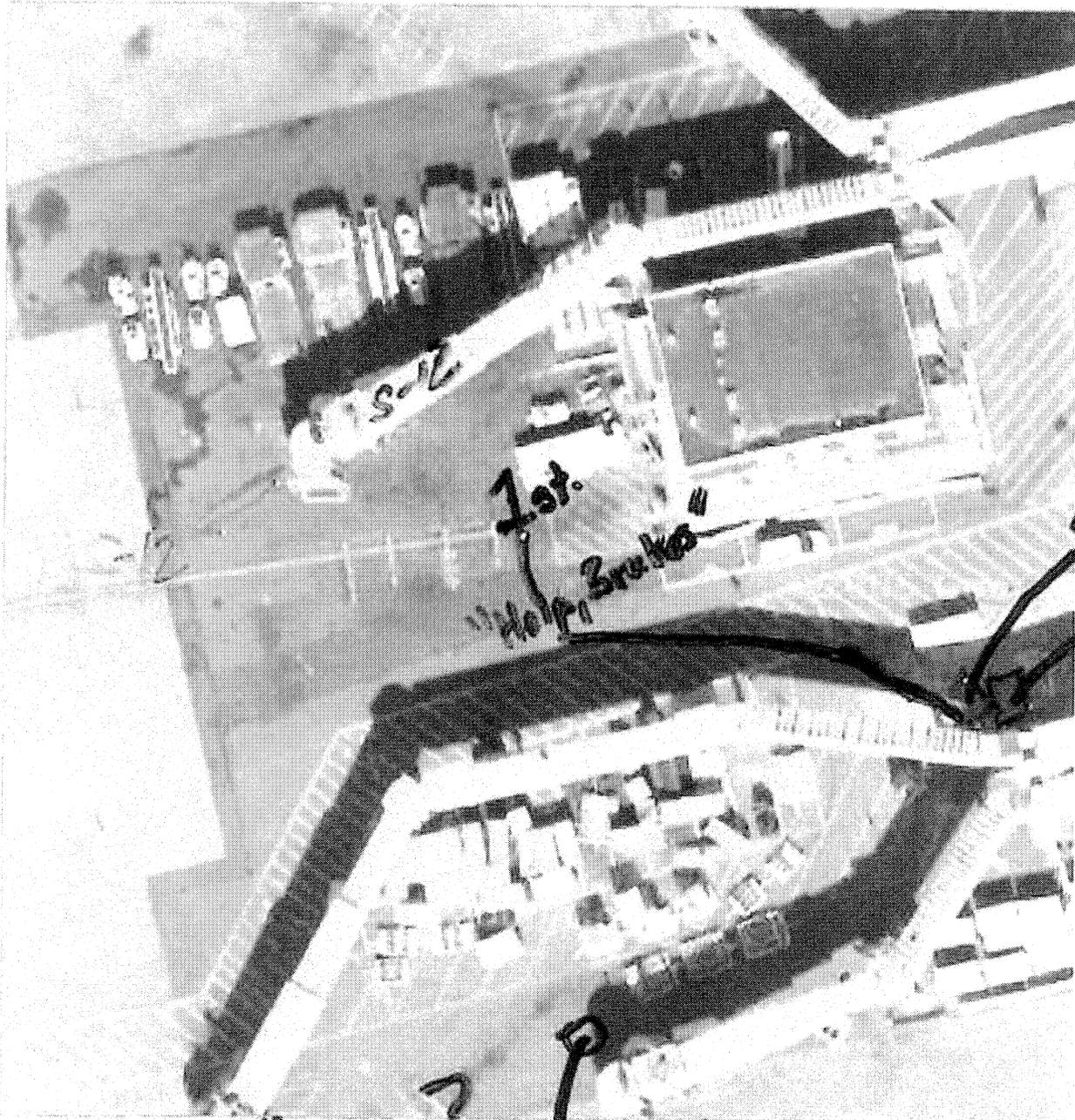
PARKING NEW NAMES PART 3.DWG

ICAO PHONETIC ALPHABET				SEA TAC FREQUENCIES			
A Alfa	F Foxtrot	K Kilo	P Papa	U Uniform	Z Zulu	Automatic Terminal Information Service ATIS	118.8
B Bravo	G Golf	L Lima	Q Quebec	V Victor		Ground Control	121.7
C Charlie	H Hotel	M Mike	R Romeo	W Whiskey		Tower (Local Control)	119.9
D Delta	I India	N November	S Sierra	X X-Ray		Alternate	126.25
E Echo	J Juliett	O Oscar	T Tango	Y Yankee			
PHRASEOLOGY							
<b>ACKNOWLEDGE</b> Let me know that you have received my message.							
<b>ADVISE</b> Tell me what you plan to do.							
<b>AFFIRMATIVE</b> Yes.							
<b>CONFIRM</b> My version is ... Is that correct?							
<b>CORRECTION</b> An error has been made in the transmission and the version follows.							
<b>GO AHEAD</b> Proceed with your message. Not to be used for any other purpose.							
<b>HOLD</b> Stop where you are.							
<b>HOLD SHORT OF</b> Proceed to, but stop before reaching a specific point. <b>REMINDER: READ BACK ALL HOLD SHORT INSTRUCTIONS WORD FOR WORD</b>							
<b>NEGATIVE</b> No, or permission not granted, or that is not correct.							
<b>PROCEED</b> You are authorized to begin or continue moving.							
<b>READ BACK</b> Repeat my message back to me.							
<b>ROGER</b> I have received all of your last transmission. It should not be used to answer a questions requiring a yes or no.							
<b>SAY AGAIN</b> Used to request a repeat of the last transmission. Usually specifies transmission or portion not understood.							
<b>STAND BY</b> Means that the controller or pilot must pause for a few seconds, usually to attend to other duties of a higher priority.							
<b>UNABLE</b> Indicates inability to comply with a specific instruction, request, or clearance.							
<b>VERIFY</b> Request confirmation of information; e.g. "verify cleared to cross runway one six left."							
<b>WILCO</b> I have received your message, understand it, and will comply with it.							
MARKINGS, LIGHTING and SIGNS							
<b>Runway Surface Markings</b> White with black background				<b>Runway Edge Lighting</b>		White, turns Amber at last 2,000 ft	
<b>Taxiway Surface Markings</b> Yellow with black background				<b>Runway Centerline Lighting</b>		White	
<b>Geographic Position Markings</b> "Pink Spots" located on Alpha & Bravo Txys				<b>Taxiway Edge Lighting</b>		Alternating Red & White at 3,000 ft.	
<b>Hold Lines</b> Two solid Yellow lines followed by two segmented Yellow lines. Operators must hold on the solid side of hold line				<b>Taxiway Centerline Lighting</b>		Solid Red at 1,000 ft.	
<b>ILS Hold Lines</b> Yellow ladder protecting ILS critical areas				<b>Elevated Runway Guard Lights</b>		Blue lights and/or reflectors	
<b>Taxilanes</b> Yellow with black background				<b>In-Pavement Runway Guard Lights</b>		Green lights and/or reflectors	
<b>Mandatory Instruction Signs</b> Red background w/ White lettering				<b>Direction Signs</b>		Amber, adjacent to hold lines	
<b>Location Signs</b> Black background w/ Yellow lettering & border				<b>Information Signs</b>		Amber, parallel & in front of hold lines	
						Yellow background w/ Black lettering & arrows	
						Yellow background w/ Black lettering	





# Google maps



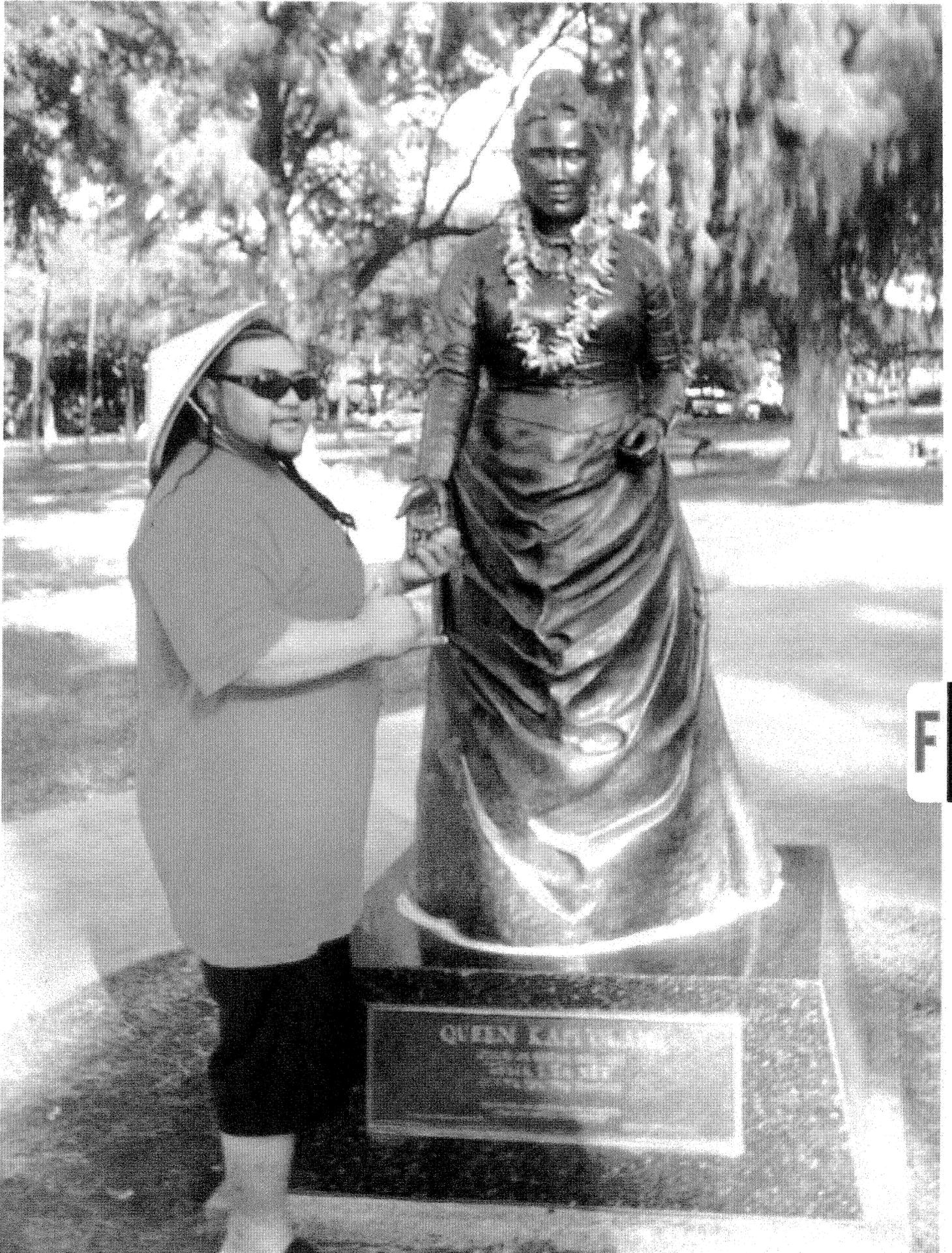
S-15

C.A  
NOSE

A

S-16

Luna
EXHIBIT NO. 9
6/4/09
D MILLS, CRR



F



**Appendix Exhibit B**

**Declaration of Toiva Gaoa  
with exhibits**

**(CP 340-358)**

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WASHINGTON STATE KING COUNTY SUPERIOR COURT

BRANDON APELA AFOA, an individual,

Plaintiff,

vs.

PORT OF SEATTLE, a Local Government  
Entity in the State of Washington,

Defendant.

No. 09-2-06657-4 KNT

DECLARATION OF TOIVA GAOA

I, TOIVA GAOA, declare as follows:

1. I am over the age of 18 years, a resident of the State of Washington, make this declaration based upon personal knowledge, and I am competent to testify herein. I reside at: 2459 216<sup>th</sup> St. Des Moines, WA 98198. The statements in this declaration are within my actual knowledge.

1  
2  
3 **AIRPORT WORK HISTORY**

4 2. I worked at the Seatac International Airport from January 2006 until May 2009. I  
5 began working for a company called Huntley. Huntley assisted airline passengers in  
6 need of wheelchair assistance with transportation to and from gates inside the airport.  
7 I left Huntley and began to work outside the airport terminal on the tarmac for a  
8 company called Delta Global Services (DGS) in late March, 2006. Brandon Afoa  
9 started working for DGS around September 2006. At DGS, Brandon Afoa and I  
10 performed ramp service operations for airlines using some of the smaller planes at  
11 the airport including the Boeing 737 and 757. In July 2007, I left DGS and went to  
12 work for Evergreen Eagle Aviation Ground Services in mid-August of 2007, about  
13 the same time Brandon Afoa also started working for Evergreen Eagle.  
14  
15

16 3. I worked for Evergreen Eagle Ground Services (Eagle) before, at the time, and after  
17 Brandon Afoa was injured on 12/26/2007. I was Eagle's ramp supervisor for  
18 Hawaiian Airlines on the day of Brandon's accident. Eagle served four airlines  
19 (Hawaiian, Eva, China and British Air) when Brandon was injured, and Eagle  
20 assigned a ramp supervisor to each airline.  
21  
22

23 **TYPES OF EAGLE RAMP EMPLOYEES**

24 4. Eagle Ground Services has primarily two types of employees that work on the  
25 tarmac: Ramp Supervisors and Ramp Agents. Both are responsible for loading and  
26 unloading baggage and cargo from airplanes, and moving planes to and from gates  
27

1 using Powered Industrial Tractors, or PITS. The Ramp Supervisors at Eagle receive  
2 incoming flight information and organize the Ramp Agents to perform cargo and  
3 luggage services. Ramp Supervisors usually drive the PITS, but that can change  
4 when things get busy. At the time of Brandon's injury, Eagle Ramp Supervisors were  
5 paid \$12.00/hour and Ramp Agents were paid \$10.00/hour. Eagle does not pay any  
6 benefits because it classifies all of its employees as part-time. Eagle expects its part-  
7 time employees to work many hours. Both Brandon and I worked in excess of 70  
8 hours per week on several occasions. I recall working in excess of 100 hours one  
9 week. Brandon and I would sleep at the Evergreen Eagle Field office in order to  
10 work as many hours as we did. Most of Eagle's Ramp crew is made up of Asian  
11 Pacific Islanders, Somalis, and other Pacific Islanders. Both Brandon and I are from  
12 American Samoa.  
13  
14

#### 15 TERMS & DEFINITIONS

- 16
- 17 5. The Airport Operations Area or "AOA" is all the land inside the entire fenced  
18 airport, including runways. The ramp area is that part of the Airport tarmac that does  
19 not contain landing strips, including the pavement that interconnects the landing  
20 strips.  
21
- 22 6. The term "Ramp" is used interchangeably with "AOA" even though they are  
23 different things. The ramp area is where aircraft are gated, passengers board and un-  
24 board, and baggage is loaded and unloaded from under the aircraft. Traffic in the  
25 ramp includes, but is not limited to: fueling trucks, contractor's vehicles and  
26

1 equipment, Port of Seattle (POS) Ramp Patrol, POS police, POS fire department,  
2 TSA vehicles, mechanics' rigs, cargo loaders, vendor's equipment, dollies, portable  
3 luggage belt drives, tugs, push-backs and other "PITS" or Powered Industrial  
4 Tractors, shuttle vans, and many other types of vehicles. These vehicles cross the  
5 ramp area randomly at all times, day and night. In addition, many aircraft, large and  
6 small, are moved, gated, parked, shuffled, or are "Ronned" continuously in the ramp  
7 area.  
8

9  
10 7. "RON" or "RONNING" means "remaining overnight." Several airlines using the  
11 Port of Seattle have large fleets. These airlines must pay the Port to "RON" aircraft  
12 in their fleet.  
13

14 8. "Emplanement" is the act of hooking up a loaded plane to a terminal gate. The Port  
15 makes money from every emplanement, from every airline, by charging an  
16 emplanement fee.  
17

18 9. "Cargo Lines" are long yellow lines painted on the tarmac to the north and south of  
19 the airport terminal building, in the ramp area. Cargo lines are like parking stalls for  
20 airplanes. Aircraft are removed from terminal gates and parked on cargo lines for  
21 various reasons. Emplanement is costly to the airlines, and they sometimes move  
22 their empty aircraft to cargo lines. Empty aircraft are frequently taken away from the  
23 terminal gates to rest overnight or "RON" on a cargo line. The Port still charges the  
24 airlines for use of cargo line space.  
25  
26

- 1 10. Apart from the "AOA", there is the "AMA." This stands for "Air Movement Area."  
2 This is the area where the runways are located. Planes land and takeoff in the AMA.  
3
- 4 11. A wide, red-and-white painted line, called the "Vehicle Control Line" separates the  
5 AMA from the ramp area.  
6
- 7 12. PITS are Powered Industrial Tractors. All ramp service companies including Eagle  
8 use them frequently, and Brandon was injured while driving one. PITS go by many  
9 names including tug, tractor, and pushback. The biggest ones are often called push-  
10 backs because they can "push back" a large aircraft from a boarding gate until the  
11 aircraft can move under its own power to the runway.  
12
- 13 13. "Brake riding" is the practice of moving an airplane with a Powered Industrial  
14 Tractor (PIT) when the airplane is powered down, and empty of passengers. Brake  
15 riding takes two people. One person must climb into the plane's cockpit, free the  
16 brake, and open a POS control tower radio frequency in the cockpit. The second  
17 person remains below in a PIT hooked to the front landing gear of the airplane. The  
18 person in the PIT receives towing instructions from the person "riding the brake"  
19 above in the cockpit. The brake rider receives radio information from the control  
20 towers concerning exactly where to go with the aircraft. The brake rider relays the  
21 information below to the person towing the airplane with the PIT. Once the plane  
22 reaches its new location, the brake rider sets the airplane's brake again, and climbs  
23 out of the airplane.  
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### PORT RETAINED EXCLUSIVE CONTROL

14. I was employed by Eagle, and I received work orders from Eagle. If any of Eagle's work orders, or any of my work activities, conflicted with any order, instruction, rule, or regulation of the Port of Seattle, the Port's Authority would control. Eagle had high turnover of ramp employees and station managers. In my time at Eagle, I had 5 managers who quit or were fired. Their names were: Prassad, Roger Redifer, Jeff, Jamal, and Jesse. Each one of those managers made it clear to me that I was to do whatever the Port said, even if it didn't match Eagle's manner of doing things.

15. The Port retained exclusive control of the S-Gates at the South Terminal. Eagle had two customers, China Airlines, and Eva Airlines, that would frequently hook up to the S Gates after receiving permission from the Port. On one occasion, I recall the Port pressured Eagle to get an empty China flight off the S Gate so that they could "emplane" a loaded Air France flight. I had to tow the China flight off to a cargo line to accommodate the Port's demand. On another occasion, the Port demanded that an empty Eva Airlines flight that was hooked to the S Gates be towed away so that they could accommodate a loaded United Airlines flight. Brandon Afoa was injured at Gate S-16 while the South terminal was under the Port's exclusive control.

### AIRPORT FENCE

16. The Port exercised its authority inside the entire fenced perimeter of the airport. Attached as Exhibits A and B are true and correct photographs of signs on the airport perimeter fence. Exhibit A is a sign that is attached to the fence at every commercial

1 vehicle entry point to the AOA. There are approximately three such entry points.  
2 Exhibit B is a photograph of a sign that is affixed to the AOA perimeter security  
3 fence about every 100 or 200 yards for the entire length of the fence. These or similar  
4 signs have been in place ever since I began working at the airport at the beginning of  
5 2006.  
6

### 7 8 **TWO PORT CONTROL TOWERS**

9 17. There are two Port of Seattle control towers, one for the AMA, and one for the Ramp  
10 area. The tallest tower, known as "Seattle Ground Control," has a communications  
11 frequency of 121.70 Mhz. I was required by the Port, and the FAA, to tune to it when  
12 crossing into the AMA. The FAA is involved with the AMA because of the greater  
13 danger that exists due to aircraft taking off and landing in the AMA.  
14

15 18. The shorter tower is known as "Seattle Ramp Control." It has a frequency of 122.27  
16 Mhz. I was required by the Port of Seattle to tune to it when hooked by a PIT to an  
17 airplane in the ramp area. The FAA does not involve itself with the "Seattle Ramp  
18 Control" tower functions; the POS is in complete control. I was required to commit  
19 Port frequencies to memory so that the Port could direct my movements on the  
20 tarmac as required.  
21

### 22 23 **BRAKE RIDING AT DGS**

24 19. Before working at Eagle, both Brandon Afoa and I work at Delta Ground Services  
25 (DGS), another Seatac Ground Service Operator that competed with Eagle. At DGS,  
26 Brandon and I formed an aircraft towing team. The two of us would "brake ride"  
27

1 planes for DGS's customers as described in paragraph 13 of this declaration.  
2 Sometimes Brandon would ride in the cockpit, and I would operate the PIT below.  
3 On other occasions, Brandon would drive the PIT, and I would set and release the  
4 brake in the cockpit and take radio instructions from the Port's control towers as  
5 follows:  
6

7  
8 If I approached the red "Vehicle Control Line" moving from the ramp into the  
9 runways the Port of Seattle, supervised by the FAA, would control the manner of my  
10 movement in detail with commands such as "hold short," or "proceed to  
11 Charlie.....Delta.....Echo ....Foxtrot....Golf" where each letter of the alphabet  
12 corresponded to an interconnecting taxiway. There were more than 18 taxiways at  
13 the time of Brandon's injury. The Port of Seattle, under FAA supervision, would  
14 instruct me exactly how and when to proceed in the AMA. When proceeding into  
15 the AMA hooked to a plane, we would frequently have a Port of Seattle Ramp Patrol  
16 vehicle escort us. My crew and I relied on the Port being able to maintain constant  
17 radio contact with me for my crew's safety, while working in the airport's AMA. A  
18 solid radio connection was required when I was hooked to an airplane, towing it  
19 about the tarmac. At DGS, towing or pushing planes was often required of me, and  
20 also of Brandon Afoa.  
21  
22

23 If I crossed from the AMA into the ramp area, I would receive a radio signal from the  
24 Port of Seattle to switch frequencies from the Seattle Ground Control tower to the  
25 Seattle Ramp Control Tower. Once inside the ramp area, the FAA would no longer  
26

1 be involved. My movements would be ultimately controlled by the Port's Ramp  
2 Control Tower with commands like "Hold Short" "Proceed to [a specific area]"  
3 "Give way to [another airplane]" "Pushback and Hold Position" or "Wait for More  
4 Instructions." My crew and I relied on the Port being able to maintain constant radio  
5 contact with me for my crew's own safety, while working in ramp area.  
6

### 7 **BRAKE RIDING AT EAGLE**

8  
9 20. Eagle's customers also required that their planes be towed with a brake rider on  
10 many occasions. Brake riding at Eagle was the same except that at Eagle, airline  
11 customers wanted a mechanic to ride in the cockpit as opposed to a ramp supervisor.  
12 However, I continued to operate the PIT below the brake-riding mechanic. I received  
13 POS radio-relayed movement instructions from the mechanic who was brake-riding  
14 in the cockpit. Once the mechanic and I reached the final destination for the  
15 airplane, the mechanic would set the brake, climb out of the plane, and I would give  
16 him a ride in the unhooked PIT to where he needed to go next. Sometimes, the  
17 mechanic would find his own way back.  
18

### 19 **THE PORT OF SEATTLE "RAMP PATROL"**

20  
21 21. The Port of Seattle maintains a "Ramp Patrol" that has its own vehicles and officers.  
22 The Ramp Patrol has many yellow painted vehicles that travel up and down the  
23 tarmac during all hours of airport operation. The Port Ramp Patrol Officers in the  
24 yellow vehicles are in charge of, among other things, making sure that the Eagle  
25 works in a manner that conforms with the Port's many rules and regulations. The  
26

1 Ramp Patrol may issue tickets and fines for violations of rules. The Ramp Patrol  
2 also controls the manner in which Eagle works by exercising its discretion, without  
3 ticketing or fining, concerning work practices it finds objectionable. The Ramp  
4 Patrol also maintains a fleet of smaller white vehicles. The Ramp Patrol officers that  
5 use these smaller white vehicles concern themselves more with activity at the check  
6 point stations.  
7

### 8 9 **PORT CONTROL OF WORK MANNER**

10 22. As an example of Port control of the manner in which Eagle worked, I was refueling  
11 an Eagle vehicle with a mechanic from Eagle when we were approached by Ramp  
12 Patrol and told to stop. Although we were in an appropriate fueling zone, the Ramp  
13 Patrol exercised its discretion that fueling would be better done elsewhere in that  
14 instance. We moved, and the Ramp Patrol supervised our fueling at our second  
15 location. Since then, I have noticed fueling take place many times in the same area  
16 that we were required to move from.  
17

18  
19 23. For another example, I was part of a project where Eagle was removing large cargo  
20 containers that weighed 154 lbs each from dollies onto the tarmac. This was because  
21 the dollies were needed elsewhere. This is an ordinary project performed by Eagle.  
22 The Ramp Patrol approached Eagle and required that the containers be put back on  
23 the dollies immediately. We stopped the manner in which our work was progressing,  
24 and satisfied the demand of the Port's Ramp Patrol.  
25  
26

1 24. In another example, in 2006, I was stopped by the Ramp Patrol for the way I  
2 "appeared to be towing" a train of dollies. The Ramp Patrol remarked that it looked  
3 like I was "horsing around." When the Ramp Patrol considered that the long train of  
4 dollies would, by their nature, serpentine on their own when pulled I was allowed to  
5 resume my work. In this encounter with the Ramp Patrol, I was asked to change the  
6 manner of my towing so that the dolly train would not appear to sway so much.  
7

8  
9 25. As another example, dollies, tugs, and other equipment belonging to Eagle are often  
10 spread over the area where Eagle performs work. In its discretion, the Ramp Patrol  
11 will order Eagle to move some of its equipment for Port's own reasons. Sometimes  
12 the Ramp Patrol indicates that the Port needs the space. Other times, the Port  
13 indicates that it is trying to cut down on clutter. In either case, we stop the manner in  
14 which we are working and attend to the Port's request.  
15

16  
17 26. As another example, I was towing four cargo dollies loaded with pallets when I  
18 approached a Port of Seattle Check Point station on the tarmac. When I braked to  
19 stop at the checkpoint, the dollies bundled up lightly behind my tractor. The Ramp  
20 Patrol on hand made a spot determination that I had too much weight in my load. I  
21 was ordered to straighten out my line of dollies before proceeding. The normal  
22 manner for me to do so, is to simply drive forward and let the dolly line straighten  
23 itself. The Ramp Patrol did not approve of the manner that I intended to fix things.  
24 The Ramp Patrol instead required me to fix my load from the back. To do this, I  
25 called another Eagle tractor over and pulled the dollies from the back, straightening  
26

1           them that way. The Ramp Patrol then allowed me to proceed with my work in that  
2           manner.

3  
4       27.    As another example, the Port of Seattle has a rule that requires everyone using the  
5           tarmac, including Evergreen, to store equipment five (5) feet away from the  
6           perimeter fence. There is a section of the airport inside the perimeter fence known as  
7           the "bone yard." The boneyard is where all of the ramp service companies keep  
8           equipment that is in disuse, or out of service for other reasons. On one occasion,  
9           Evergreen was storing a mobile staircase in the boneyard, at least 5 feet away from  
10          the perimeter fence as required by rule. The staircase was being stored alongside a  
11          considerable amount of other boneyard equipment, all sat back at least 5 feet from  
12          the perimeter fence. The Port of Seattle decided to single out the mobile staircase,  
13          and require Evergreen to move it further away from the perimeter fence than 5 feet. I  
14          was required to reposition the staircase. The reason given to me by the Port of Seattle  
15          official overseeing the move was that the Port was concerned that the staircase  
16          invited unauthorized entry. Since the staircase was about 12 feet high, it matched the  
17          top height of the barbed-wire perimeter fence. The Port thought an unauthorized  
18          person could span the distance between the fence and the staircase and gain  
19          unauthorized access to the airport. In its discretion, the Port required us to move the  
20          staircase. We stopped the work that we were performing at that time, and quickly  
21          addressed the manner in which the Port wished us to store the staircase.  
22  
23  
24  
25  
26  
27

1 28. As another example of the way the Port controlled the manner in which not only  
2 Eagle, but other ramp service companies, worked, I recall a situation involving two  
3 obviously broken dollies. One of the broken dollies was owned by Eagle, and the  
4 other was owned by Swissport, a competitor ramp service company. The two broken  
5 dollies were stored beside each other in an area near the S gates. Although both  
6 Eagle and Swissport were working near the S gates at the time, the Port interrupted  
7 only Eagle's work to require Eagle to remove its broken dolly from the area.  
8 Swissport was not required to stop work and remove its broken dolly. Employees  
9 from the different ramp service companies would talk on the tarmac about how  
10 inconsistent the ramp patrol was with respect to placing demands on the way ramp  
11 tasks were performed.  
12  
13

14  
15 29. On another occasion, I recall using an Eagle deicer machine on the airport tarmac  
16 when I was approached by the Port's Ramp Patrol, for reasons that were not  
17 immediately clear to me. Ramp patrol pointed out that the deicer I was using was  
18 missing a headlight. I was instructed to leave ramp without receiving a ticket, or  
19 without being escorted out of the ramp area by the Ramp Patrol.  
20

21 **PORT OF SEATTLE POLICE**

22 30. The Ramp Patrol was not the only organized force that the Port used to apply its  
23 rules. I was present on one occasion when a co-worker of mine named Pisa Ierenio  
24 was confronted by the Port of Seattle Police on the tarmac, because he was operating  
25 a water truck with a bad brake light. In that instance, a Port of Seattle police cruiser  
26

1 stopped Pisa's work and instructed him to return to the Evergreen headquarters, and  
2 have the brake light fixed. There was no ticket, and no police escort off the ramp.  
3

#### 4 **THE PUSHBACK THAT BRANDON WAS INJURED ON**

5 31. I am familiar with the pushback (the PIT) that Brandon was injured on. It was several  
6 years old and very poorly maintained. Many of the gauges and dials were broken. It  
7 had no horn. It had no seatbelt. It had many oil leaks. It had difficulty building and  
8 maintaining oil pressure. It was diesel powered, with hydraulic brakes. It relied on oil  
9 pressure to stop. Its brake lines were full of air pockets and braking was spongy. Its  
10 brakes always worked differently, sometimes better than others. I had to pump the  
11 brakes to get stopping action. I drove this PIT more than anyone at Eagle when I  
12 worked there. It was constantly overworked. Most of the time it was the only  
13 pushback we had to use. It was the only pushback we had to serve the four airlines  
14 that Eagle was working with on the day Brandon was injured.  
15  
16

17 32. The pushback that Brandon was injured on never had a working speedometer. The  
18 Port had painted the tarmac with roadway lines that vehicles, including PITS, would  
19 follow. These roadways had radar displays placed beside them so that you could see  
20 how fast you were traveling. Driving by the radar display was the only way you could  
21 tell how fast the PIT Brandon was injured on was going. Before Brandon's accident,  
22 I was able to travel up to 30 mph in the same pushback that Brandon was injured on.  
23 30 mph exceeded the speed limit on the tarmac. However, it was common for Eagle  
24 employees, and other ramp service companies' employees, and other ground crews to  
25  
26

1 speed in order to timely perform all of the tasks required. This was especially true in  
2 times of heavy air traffic.

3  
4 33. After Brandon was severely injured on the pushback, Eagle took it off the line for  
5 awhile. Then Eagle fixed it, and an Eagle mechanic drove it out into the automobile  
6 parking lot at the Eagle Ground Crew HQ, just outside the airport's perimeter  
7 security fence. I was present as the Port was called by Eagle to give the final brake  
8 check and "OK" to let the pushback return to service. A Port of Seattle Fire  
9 Department official came out to check the machine. The Port official made the  
10 mechanic go forward and brake. The brakes held. The Port official made the  
11 mechanic drive backward and brake. The brakes held again. The Port official made  
12 the mechanic use the parking brake. It held. After that brief test, the Port official  
13 verbally "OK'd" the pushback and then drove away in her Port vehicle, and the  
14 machine was allowed back into use. It was given to me to use right away. I drove it  
15 carefully out to the ramp area where the parking brake failed after 30 minutes of use.  
16 I reported the failure to Eagle and returned it. It was never fixed. It was explained to  
17 me that it could continue to be used unless the Port said otherwise, because the Port  
18 had "OK'd" it.  
19  
20  
21

#### 22 PORT SECURITY PROGRAMS

23 34. In addition to directing Eagle employees with respect to safe work practice at the  
24 Airport, the Port of Seattle uses the Ramp Patrol and the Port of Seattle Police to  
25 make sure that Eagle employees are also following security procedures. The Port  
26

1 engages Eagle employees frequently with security challenges or badge checks. I  
2 recall being challenged about five days a week by Port officials. The Port had a  
3 program called "Devious Dan" where decoy workers would intentionally break  
4 security rules in front of you. You could get fined if you did not report the rule  
5 breaker. You could get rewards including free meals if you did report the  
6 wrongdoing. This program allowed the Port to assure our security and safety. The  
7 Port's "Devious Dan" program was separate from a similar program that the TSA ran  
8 at the same time. The TSA program imposed fines for failure to report the rule  
9 breaker, but did not provide rewards as the Port's program did.  
10  
11

12 35. To work inside the AOA, you must be cleared by the Port of Seattle. You must have  
13 no significant criminal history or pose any other threat that the Port is concerned  
14 with. The Port reserves the right to pull your badge and remove you from the Airport  
15 at its discretion. This permits the Port to provide us with assurance that we are in a  
16 safe and secure workplace.  
17

18  
19 36. To drive inside the AOA you must have a valid Washington State Driver's license  
20 and have successfully completed a separate POS driving test(s). The testing  
21 procedures require you report to a POS testing center inside the airport terminal  
22 building. The tests are administered exclusively by the POS on their computers.  
23 You must pass one POS test to obtain permission to drive in the ramp area. You  
24 must pass a different, supplemental, POS test to obtain permission to drive in the  
25 AMA area. If you pass the first test, the Port gives you a blue-colored badge to wear  
26  
27

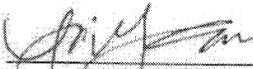
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identifying that you have permission to drive in the ramp area. If you pass the second POS driving test, the Port affixes a seal to your blue badge that says "AMA." The AMA seal allows the Ramp Patrol to see that you have additional permission to drive in the AMA.

I declare under penalty of perjury pursuant to the laws of the state of Washington that the foregoing is true and correct to the best of my knowledge and belief

Dated this 4th day of November, 2009.

Signed at: Des Moines, Washington.

  
\_\_\_\_\_  
TOIVA GAOA

UPON PRESENTATION OF IDENTIFICATION, INCLUDING A VALID WASHINGTON STATE DRIVER'S LICENSE, TIOVA GAOA, SUBSCRIBED HIS NAME ABOVE AND SWORE TO IT BEFORE ME,

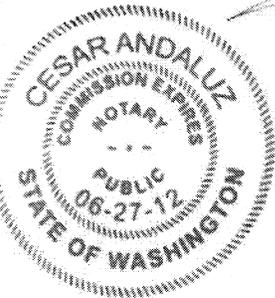
this 4 day of November, 2009.

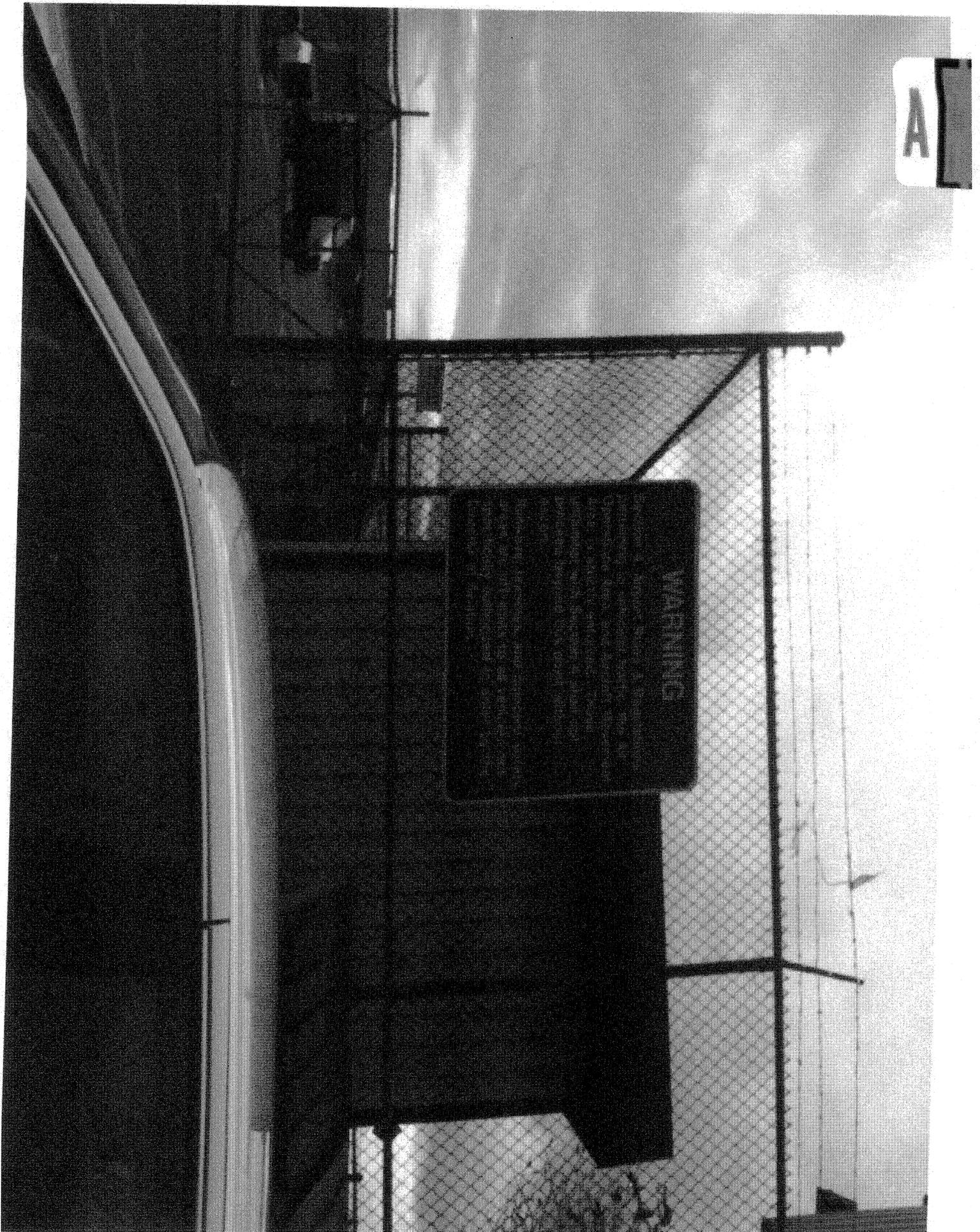
Washington State Notary Public Residing at Seattle

Comm'n expires: 06-27-12

Printed Name: Cesar Andaluz

Signature 





A

WARNING

# NO TRESPASSING

## Restricted Area

Authorized personnel only beyond this point. TSA Part 1542 approved identification badge required.

Offenders subject to arrest and prosecution under RCX Chap. 52.

part 1542, Public Order

B



## **Appendix Exhibit C**

# **Inspection report of L&L Equipment / Aircraft de-icing services**

**(CP 96-105)**

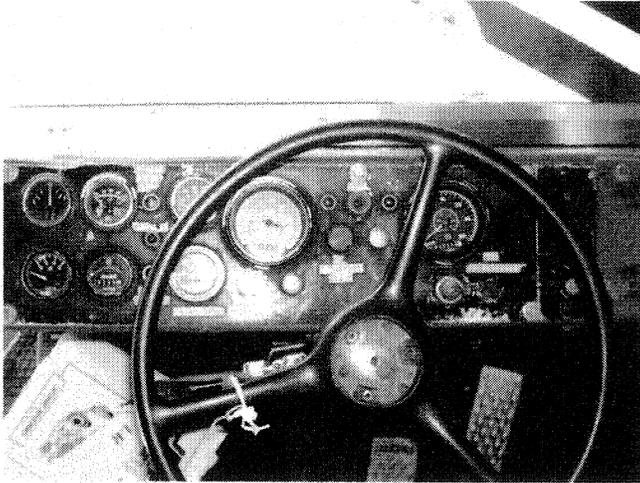
## B1000 Inspection

### Check

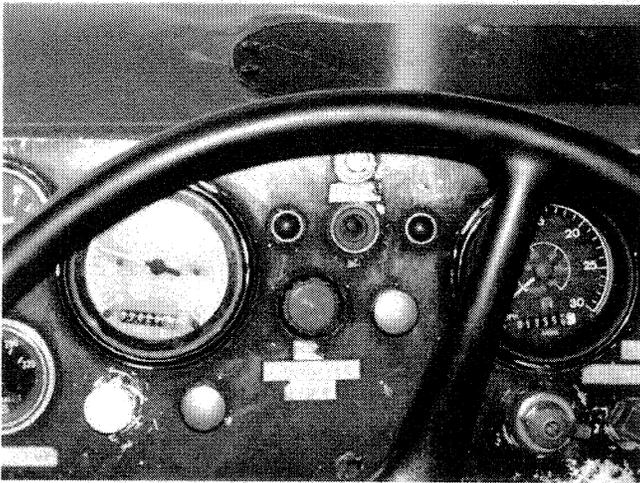
Inspect condition & function of accelerator pedal
Verify service & park brake operation
Start engine-noise/vibration
Check operation of gauges, audio & visual warnings
Inspect trans. shifter, shift interlock & neutral safety
Check engine & transmission operation
Check steering operation-all modes
Test emergency pump
Test emergency braking
Check horn
Verify asset shuts off in gear & restarts in neutral
Inspect wheels for cracks, loose/missing lug nuts
Inspect for irregular wear patterns, probe tires
Check for proper size and matching of tires
Inspect valve stem, valve cap, record inflation & tread
Tire 15.5 R25 Radial 3 star load rating 115 psi
LF:        /                      RF:        /
LR:        /                      RR:        /
Steering-stops/linkage/lubricate-both axles
Inspect steering box-mounting/security/condition
Inspect all brake lines/hoses-routing/condition
Inspect parking brake & linkage-lubricate
Inspect brake rotors & Calipers
Inspect brakes-record lining thickness Min. 1/16 inch
Note signs of uneven wear and/or glazing
R/S-frt: ___ R/S-rear: ___ L/S-frt.: ___ L/S-rear ___
Inspect throttle cable condition
Max speed check 16mph 2600 RPM
Hydraulic pressure 2500 psi
Accumulators dry air 1250-1275 psi (no hydraulic psi)
Accumulators warning switch 1500psi
Auxiliary hydraulic pump 1000 psi
Check stopping distance from full speed with service brakes: Full Speed: _____ Distance: _____
Note if any wheels lock up during hard braking
Check max brake pressure: Pressure: _____
Check brake drums/disks for wear and contamination
Test park brake on an incline of at least 5% (dynamic testing will damage the brake, and is not recommended)
Check number of brake applications with engine off before accumulator is depleted.

### Condition

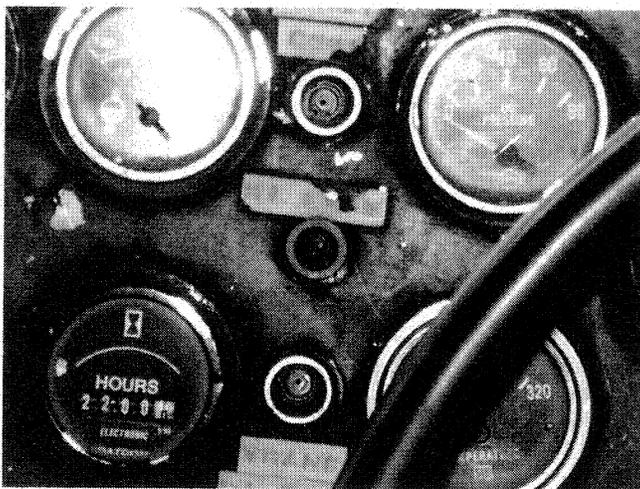
Condition good / A little hard to apply. Return is ok
Service brake works / Parking brake does not hold
Hydraulic cavitations heard under cab at start up
Gauges inop, Engine Oil, Trans, Tach, Speedometer / no audio / no visual warnings work
Trans shifter and safety work
Engine is low on oil, coolant / transmission low on oil / starts and operation is ok
Two wheel steering only. Steering motor is leaking and steering locks up when you apply the brakes. Hydraulic tank is low only 6 " in tank.
Emergency pump does not come on
Two applications
Horn does not work
Checks ok
Wheels in good shape no missing lug nuts
All good
All good
Tire are Bridge stone 385/95r25 14 R25 3 star rating
LF: 26 32nds / 150 psi      RF: 26 32nds /148 psi
LR: 28 32nds / 145 psi      RR: 27 32nds /145 psi
Operation is good
Steering motor is leaking and locks up
Brake lines good routing good
Parking brake disk and pads are wet with hydraulic fluid and linkage is out of adjustment
Rotors and calipers in good shape
Brake pads and calipers in good shape no uneven wear
Thickness in 32ds
R/S-frt:18 R/S-rear:18 L/S-frt.: 18 L/S-rear 18
Throttle cable is worn and is rubbing the intake manifold.
14 mph tack does not work. Test RPM with hand tack and Static RPM is 2900
1650 psi low
Accumulator #1 750 psi accumulator #2 500 psi and leaks
Switch does not work
Auxiliary pump does not come on
Check stopping distance from full speed with service brakes: Full Speed: 14mph _____ Distance: 23' 10"
No wheel lock up
Check max brake pressure: Pressure: 1100psi      slow to build
Brake disks in good condition no contamination
Parking brake did hold
2



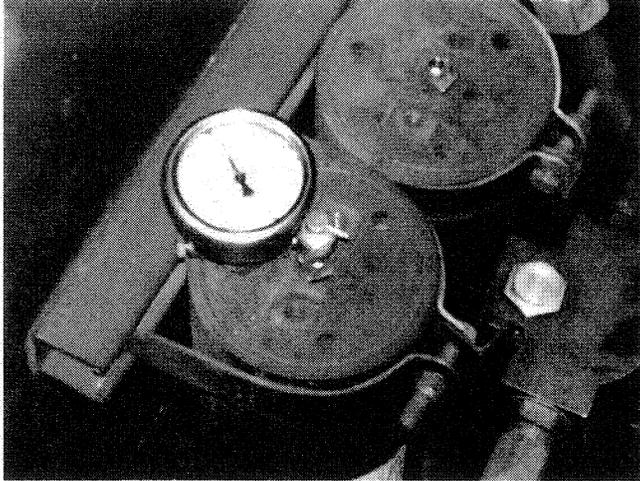
Horn is missing cap and contacts. Most of the indicator light bulbs are missing. Only the turn indicator lights work.



The tac and speedometer are not accurate. Missing bulbs.



More missing indicator bulbs.



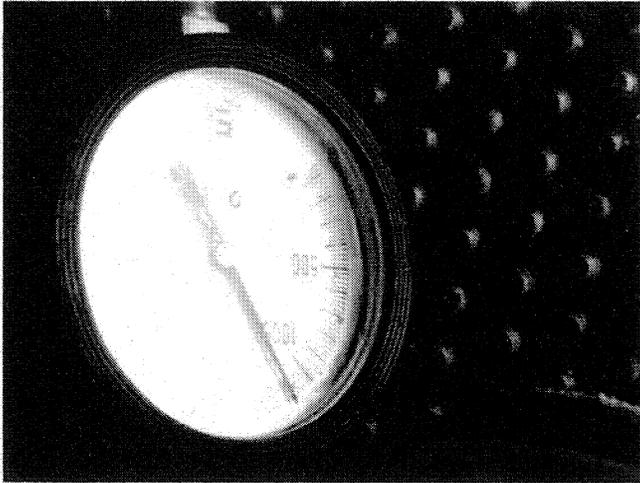
Accumulator #1 750 PSI.



Accumulator #2 500 PSI and the diaphragm leaks.



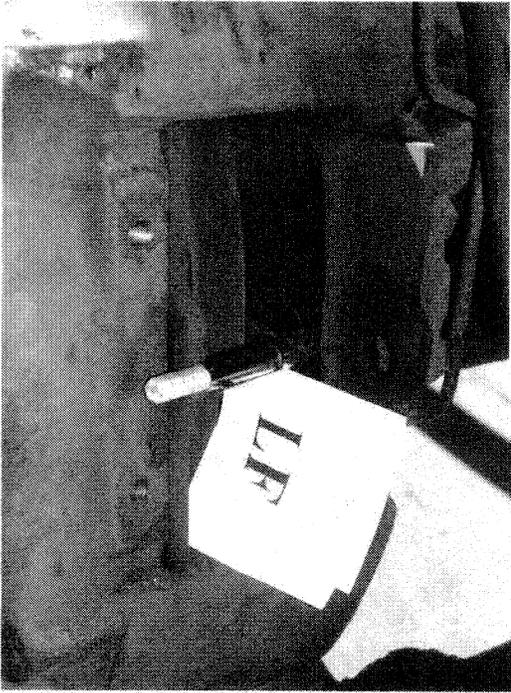
Main hydraulic pressure 1650 PSI.



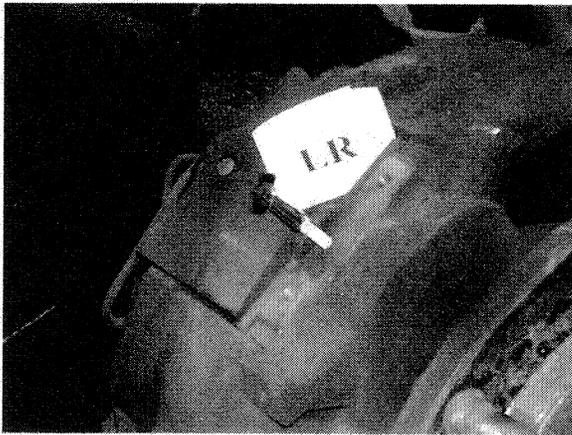
Max. brake pressure 1100 PSI.



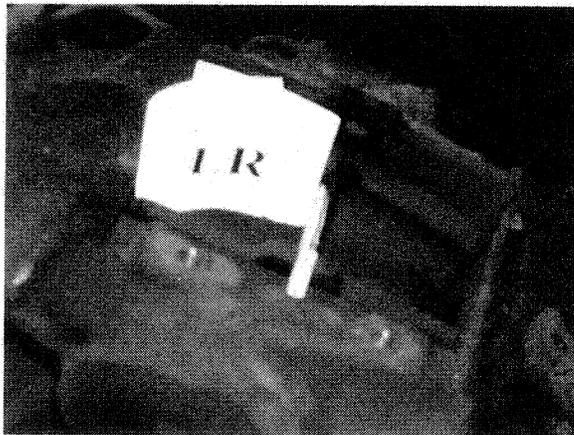
Front left brake pad caliper #1 thickness:  
18 32nds. All calipers and pads are in good  
shape.



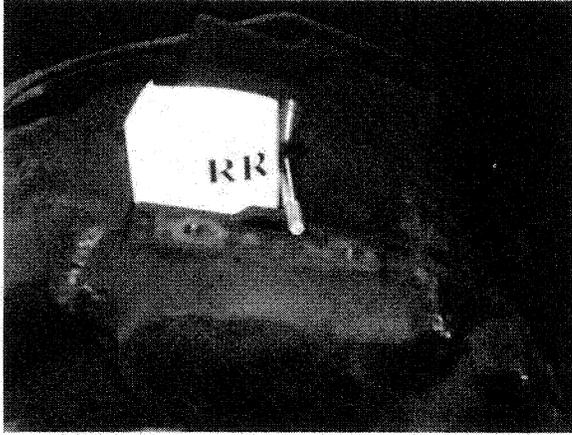
Left front brake pads caliper #2: 18 32nds.



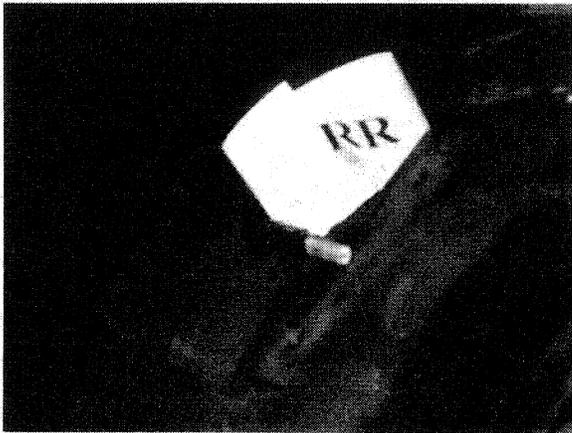
Left rear brake pads caliper #1: 18 32nds



Left rear brake pads caliper #2: 18 32nds



Right rear brake pad caliper #1: 18 32nds



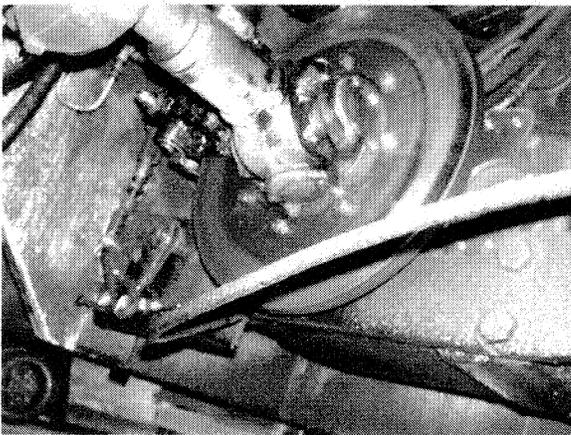
Right rear brake pad caliper #2: 18 32nds



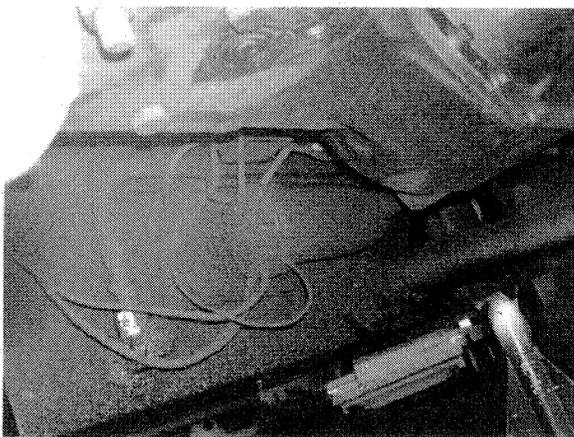
Right front brake pads caliper #1: 18 32nds



Right front brake pads caliper #2: 18 32nds



Parking brake pads and disc are wet with hydraulic fluid. Linkage and cable O.K.

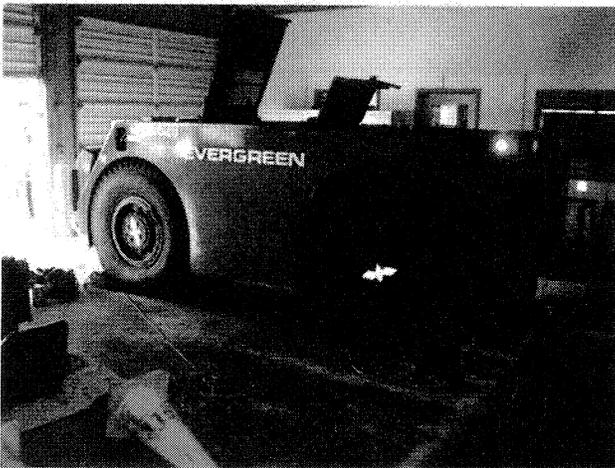


Auxiliary pump not functional.



Steering motor leaks and locks up.

**Exterior Photos:**







## **Appendix Exhibit D**

**September 26, 2006 letter from  
Patrick Clancy of the Port to Dion  
Fatafehi of Swissport Corporation**

**(CP 366 - 367)**



Port of Seattle

September 26, 2006

Mr. Dion Fatafehi, Station Manager  
Swissport Corporation  
Seattle-Tacoma International Airport  
2460 S. 161st Street  
Seattle, WA 98158

Dear Mr. Fatafehi:

On September 20, Swissport employee – Joshua Tuani was involved in a vehicle accident that occurred on the airfield. As a result of that accident, Mr. Tuani was issued POS Uniform Ramp Complaint (citation #2929) for violation of the POS Rules & Regulations.

The circumstances of the accident were that the tug Mr. Tuani was operating sustained a brake failure. Mr. Tuani's statement, and the statement of witnesses, discloses that your employee was aware of the malfunction, but chose to continue to operate the vehicle despite the problem. The vehicle ultimately was abandoned by Mr. Tuani, when he could no longer control it's speed, and the vehicle crashed through the AOA fence. Fortunately there were no injuries sustained in the incident.

The judgment your employee failed to exert in this event is concerning. However, your assertion that this employee is a dependable asset to your company further reinforced by the fact that Mr. Tuani has a clear driving record on the airfield temper the situation.

POS is concerned with the condition of the vehicle in this event. The vehicle, an aircraft tug that is involved in relocating aircraft on the airport surfaces, should be expected to meet a high standard for reliability. The mechanical failure of this vehicle, coupled with recent events of other company vehicles, needs to receive a high priority of attention with Swissport management. POS also urges Swissport to conduct emphasis briefing with your employees to assure proper inspection of all company vehicles prior to use. We make this comment despite your staff's assertion that the tug brakes were functioning properly just prior to the accident.

Seattle-Tacoma  
International Airport  
P.O. Box 68727  
Seattle, WA 98168 U.S.A.  
TELEx 703433  
FAX (206) 431-5912



As a result of our meeting this morning, I wish to advise of the following course of action, and requests for your attention:

- Mr. Joshua Tuani's driving privilege on the AOA at the airport is suspended effective until his completion of the AOA training course conducted by POS Airport Operations Training. Bearing in mind that Mr. Tuani has not had previous citations, POS would still recommend that your company council him and suggest the judgment he applies in performing his duties at the airport be tempered with caution.
- POS is requesting that Swissport conduct an emphasis briefing to all ramp personnel stressing the importance of vehicle inspections, and exercising caution and strong consideration to safety if vehicle malfunctions are encountered on the airfield. I am requesting a copy of the briefing document. Please advise your staff that the POS Airport Duty Manager can be contacted 24/7, particularly in events that affect the movement of aircraft, to assist your company in any incidents that prompt immediate action to assure continued safe operations at the airport.
- POS is requesting verification from Swissport of the complete repair of vehicle 300's brake system before it is put back in service on the AOA.

If you have any questions, please advise.

Sincerely,



Patrick Clancy

Manager Airport Certification

Port Of Seattle, Airport Operations

Phone: (206) 433-5041

cc: Mr. Liem Nguyen, Swissport Ramp Duty Manager  
Dan Cowdin, POS  
Don Roten, POS

**Appendix Exhibit E**

**September 20, 2006 email from Dave  
Richardson of the Port regarding  
Swissport Tug Accident**

**(CP 369 - 371)**

**E**

**Clancy, Pat**

**From:** Generic-Id, Airport-Duty-Manager  
**Sent:** Wednesday, September 20, 2006 2:09 PM  
**To:** Clancy, Pat; Coates, Mark  
**Cc:** z-AV-OPS-ADMs; McPartland, Peggy A; Epstein, David; Parker, Bob; Santiago, Jose  
**Subject:** Swissport Tug Accident  
**Attachments:** IMG\_2005.JPG; IMG\_2006.JPG; IMG\_2002.JPG; IMG\_2003.JPG; IMG\_2004.JPG

Here are the details on this accident

**Date/Time:** Wednesday, September 20, 2006, 1204PM

**Location:** SW corner of Perimeter Rd below RWY 34R

**Vehicle Driver:** Joshua Tuani/Swissport. Badge #79072 275101

**Status of Badge:** Confiscated and with Pat Clancy pending completed investigation

**Citation:** Issued URC 2979 for failure to drive in a careful and prudent manner per POS Rules & Regs Section 4.C.2

**Swissport Tug #:** 300

**Swissport Spvr:** Liam Nguyen

**POSPD:** Officer Santiago. Case # 06-2600

**POS:** Ops 4 Woods, ADM Richardson, Security Spvr Hughes

**Conditions:** Light rain, road was wet.

**Pending Items:** Need to retrieve written reports from POSPD, POS Field Crew and Swissport. Full report and SIDA badge with Pat Clancy

**Details:**

- Swissport towed an ATA A/C to the west side for overnight parking. Tug driver was returning the tug to the east side.
- As he was coming down the hill along the west side of RWY 34R, he claims the brakes went out and he was unable to stop. He jumped off the tug and it went through the AOA fence, going down the hill and ended up stopping on the dirt road on the perimeter of the golf course. It did not roll over.
- Per Eric/Field Crew Foreman, two of his crew saw the tug driver coming down the hill from the snow shed and he was yelling that he did not have brakes. They told him to stop the tug, however he continued onward. When I asked him when he knew his brakes were out and he said at the top

9/26/2006

of the hill by the snow shed. I asked him why he didn't stop then and he said he was trying to get closer to the airport so he could walk back.

- Swissport maintenance checked the tug out and confirmed that the brakes were working, however at a diminished pressure. Upon confirmation to myself that brakes were sufficient to get back to their maintenance shop, I authorized them to drive it back with escort. Swissport maintenance van and Ops 4 escorted the tug off the AOA without further incident.
- Field Crew was called to initiate repairs. Once completed they will notify ADM. Also advised Patrick O'Brien to ensure SAC monitoring for security and then for final inspection.
- I notified Liam Nguyen that I was confiscating Mr. Tuani's badge pending POS Ops receiving full reports from POSPD, Swissport and Field Crew. Advised him to have Mr. Tuani call Ops on Thursday or Friday for status. POSPD verified his driver's license and it was current and valid

Regards,

Dave Richardson

9/26/2006



## **Appendix Exhibit F**

**September 20, 2006 letter from Joshua  
Tuani, Swissport Ramp Supervisor  
regarding Swissport Tug Accident**

**(CP 373)**

**F**

September 20, 2008

To whom it may concern,

Today's incident started with the pushback of the L1011. On blocks for the L1011 was at 1105, Joshua Thani pushed it out with no problems leaving the gate. I then followed the port of Seattle crew to west ramp November 1 where I parked the plane. Everything was cool then, till I made the turn and noticed that the brakes were out. I yelled to Port of Seattle guys that were working on the hill that the brakes were out, they moved in time for me to proceed down the hill without stirring anything. I proceeded to drive to the nearest point up where I can walk back to the operation at 315 (Asiana Airlines) because I had no communication or transportation to get back and everyone was busy at the fit. So anyway I proceeded down perimeter road at a slow pace. I had no problems on the straight away on the back side of perimeter road next to west 45 upon gate just past the bridge on perimeter road). Coming towards end of the straight away I let off the gas pedal to slow down because I saw the turn a ways up. I didn't know the steepness of the hill would affect the pushback's ability to stop or at least slow down enough to make the turn. Coming down the hill I started to pick up speed, about half way down I kicked the brake to slow down, that didn't work so I pulled the e-brake, that didn't work either. By that time I was already picking up speed. I then tried to down shift the pushback in attempt to at least try and slow it down or possibly stop the momentum of the pushback, but to my surprise that didn't work either. Then after that didn't work I put the pushback in reverse, also to try and stop the pushback from moving any further. After realizing that I couldn't reduce the speed or stop the momentum of the tractor I hopped off right before hitting the gate. After the pushback went down I went down myself to see if it had damaged anything or caused any injury to anyone. I stuck around for a little bit before walking back up. I used some of the Port of Seattle guys phone to call my manager and tell him what had happened. From there I just waited until the proper authorities came to check it out. If you have any questions regarding the incident that happened today please call 206-433-5433.

Thank you,

Joshua Thani

Ramp Supervisor

Swisport-USA

Seattle Tacoma International Airport

2400 s. 161<sup>st</sup> Street

Seattle, WA 98158

Tel: (206) 433-5433

Fax: (206) 433-5047

Cell: (206) 383-6281

joshuathani@Swisport.com

# **Appendix Exhibit G**

**Excerpts of  
June 4, 2009 Deposition of Alvin Luna,  
including pages 50-51, 54-55, 59-68,  
73, 76-79, 108-111 and 118-119.**

**(CP 375 - 385)**

**G**

SUPERIOR COURT OF WASHINGTON, KING COUNTY

---

BRANDON APELA AFOA,	)	
	)	
Plaintiff(s),	)	
	)	
vs.	)	09-2-06657-4KNT
	)	
PORT OF SEATTLE, a Local	)	
Government Entity in the State	)	
of Washington,	)	
	)	
Defendant(s).	)	

---

DEPOSITION UPON ORAL EXAMINATION OF

ALVIN LUNA

9:58 A.M.

JUNE 4, 2009

819 VIRGINIA STREET, SUITE C-2

SEATTLE, WASHINGTON

REPORTED BY: DIANE MILLS, CCR #2399

<p>1 A. No.  2 Q. Just you two?  3 A. Yes.  4 Q. Did you ever write down any more information  5 about how the accident happened?  6 A. No, this is the only one.  7 MR. BISHOP: Let the record reflect that  8 when the deponent says --  9 A. And the police, they ask questions to me, and  10 a report to the Port of Seattle so there was another  11 words over there.  12 Q. (BY MR. NORTHCRAFT) So you gave information  13 to the Port of Seattle?  14 A. No, the police was asking me.  15 Q. The police?  16 A. Yeah.  17 Q. So the police asked you questions?  18 A. Uh-huh.  19 Q. And they wrote up what you said?  20 A. Wrote a report.  21 Q. For their report?  22 A. Yes.  23 Q. I have some notes from -- I think Mr. Redifer  24 made these notes, and he says that on -- so it would be  25 not the day of the accident but the day after that he</p>	<p>48  50  Q. You don't remember whether it went faster or  slower or anything; is that right?  A. Yes.  Q. Now, Mr. Afoa, was he also an employee of  Evergreen Aviation?  A. Yes.  Q. Do you know if he was certified to drive this  push-back tug? Let me ask you this. Do you know if he  was certified by Evergreen to drive the push-back tug?  A. Yes. Yes, just I say that I only saw him  operate the push-back.  Q. You saw him operate it?  A. Yeah, operate the push-back.  Q. Do you know if he was --  A. There is no -- you know, at the time the  supervisor is not coming in and he's the one in charge.  Q. And he was the one in charge then?  A. Yes.  Q. Were you ever tested or given a driving test  by anybody at Evergreen to allow you to operate a tug?  A. Me?  Q. Yeah.  A. No.  Q. Can you drive that tug?  A. No.</p>
<p>49  1 said, he writes, "I had Alvin Luna and Eric Mallabo  2 write additional details about the incident."  3 A. Yeah, this one.  4 Q. And that's it?  5 A. Yeah.  6 Q. Do you remember writing anything else?  7 A. No.  8 (Discussion off the record.)  9 Q. (BY MR. NORTHCRAFT) Now, could you look at  10 your drawing which is Exhibit 3, please. From the time  11 you saw Mr. Afoa in the tug, when you heard him  12 yelling, did you see during the path he made from where  13 you first saw him over to where he hit the K-loader?  14 A. Yeah, I saw that.  15 Q. Did you see the tug slow down or speed up or  16 anything like that during that time?  17 A. Yes. I saw the tug was going all the way to  18 the K-loader.  19 Q. Did it speed up, did it slow down, did it kind  20 of speed up and slow down? Can you describe?  21 A. I'm not remembering how many miles he took the  22 K-loader.  23 Q. What you remember now is you saw it and it  24 drove over there and hit the K-loader?  25 A. Yes.</p>	<p>51  Q. Why not?  A. I'm a red badge. My badge is red so I cannot  driving anything, any equipment. But I can operate to  -- you know, when the K-loader is just in the aircraft,  so I can operate, I can assist, help my supervisor, but  I cannot drive.  Q. So you can help your supervisor lift the  K-loader deck up and down?  A. Yes.  Q. But you can't drive it?  A. No.  Q. Do you know if Mr. Afoa was ever given a test  by Evergreen so that he could drive the push-back?  A. No.  Q. You don't know either way?  A. I don't know.  Q. He just had a green badge?  A. Blue.  Q. Blue badge?  A. Blue badge.  MR. NORTHCRAFT: That's all the  questions I have right now. Mr. Bishop may have some  questions for you.  THE WITNESS: Thank you so much.</p>

<p style="text-align: right;">52</p> <p style="text-align: center;">EXAMINATION</p> <p>1</p> <p>2</p> <p>3 BY MR. BISHOP:</p> <p>4 Q. Now I have some questions, I'll try to be</p> <p>5 quick.</p> <p>6 I received the notice of your deposition from</p> <p>7 Mr. Northcraft's office. On the notice there was a</p> <p>8 stick 'em from someone at his office indicating that</p> <p>9 you are going out of town. Are you going out of town?</p> <p>10 A. Yes.</p> <p>11 Q. When are you going out of town?</p> <p>12 A. I'm going to Alaska this coming June 6th,</p> <p>13 Saturday.</p> <p>14 Q. And do you know when you're going to be coming</p> <p>15 back? When do you expect to come back?</p> <p>16 A. Can you repeat the question, please?</p> <p>17 Q. I was asking you when you expect to come back</p> <p>18 from Alaska.</p> <p>19 A. I work -- my contract is three months,</p> <p>20 starting June 6th until September. And I'm planning to</p> <p>21 work in Alaska at another company, because I need work</p> <p>22 for my family because I have five kids.</p> <p>23 Q. Okay. So if I understand you correctly,</p> <p>24 you're going to come back in three months, did I get</p> <p>25 that right?</p>	<p style="text-align: right;">54</p> <p>A. Yes.</p> <p>Q. And the people that were ramp supervisors were Toi and Richard Moore, for example; is that correct?</p> <p>A. Yes.</p> <p>Q. And my further understanding is that Evergreen Eagle would get contracts with airlines such as EVA?</p> <p>A. Yes.</p> <p>Q. I'm going to name some of the airlines I believe they had contracts with and you can tell me if I'm right or I'm wrong.</p> <p>A. Okay.</p> <p>Q. British Airways?</p> <p>A. Yes.</p> <p>Q. EVA cargo?</p> <p>A. Yes.</p> <p>Q. EVA passenger?</p> <p>A. Yes.</p> <p>Q. Hawaiian?</p> <p>A. Yes.</p> <p>Q. China?</p> <p>A. Yes.</p> <p>Q. British Airways?</p> <p>A. Yes.</p> <p>Q. Did they have any more contracts that you're aware of that you can remember?</p>
<p style="text-align: right;">53</p> <p>1 A. No, I cannot come back -- I applied to another</p> <p>2 company already. When my contract was already expired</p> <p>3 at Trident Seafoods, so I apply to another company</p> <p>4 already. One of my friends is my reference in that</p> <p>5 company. When I go there I have to call him and get</p> <p>6 another company for work. Because I don't want to stay</p> <p>7 a long time to just sitting, I cannot do anything for</p> <p>8 my family.</p> <p>9 Q. So I'd like to talk to you about one other</p> <p>10 quick item. We just had a break and people got water</p> <p>11 and people went to the restroom.</p> <p>12 A. Yes.</p> <p>13 Q. And I noticed when you were come back from the</p> <p>14 break that you had a couple of business cards for the</p> <p>15 Northcraft law firm. Did you have a chance to speak</p> <p>16 with Mr. Northcraft outside?</p> <p>17 A. No. I'm just -- the lady that send the letter</p> <p>18 for me, this Lilly Tang, I just -- I didn't know her</p> <p>19 so --</p> <p>20 Q. So you just introduced yourself to Lilly Tang?</p> <p>21 A. Yes.</p> <p>22 Q. Very good. Now, speaking about the airport,</p> <p>23 my understanding is that when you worked at Evergreen</p> <p>24 Eagle there were effectively two positions, ramp agent</p> <p>25 and ramp supervisor; is that correct?</p>	<p style="text-align: right;">55</p> <p>A. That's only the plane. China, Hawaiian, BA, that's British Airlines, EVA cargo, EVA passenger.</p> <p>Q. Okay.</p> <p>A. Five.</p> <p>Q. Okay. And was it Evergreen's procedure to put a supervisor on each airline contract and then have ramp agents work for the supervisors?</p> <p>A. Yes. Every flight have a supervisor, every flight, every airline. And the ramp agent, you know, like me, if my contract is China Airlines, if that supervisor in BA, in British Airlines, they need help because they have no people, so that's the time they call me, okay, I need your help so you can come in here and help me. So I go to Evergreen and just time in, go there and help.</p> <p>Q. So when you were a ramp agent you could find yourself working at the China gate or you could land up working at another gate that needed help?</p> <p>A. Yes.</p> <p>Q. Is that because Evergreen's employees didn't always show up for work and there were shortages of employees at times?</p> <p>A. Yes.</p> <p>Q. And when you were working at the China gate where this accident happened, Richard Moore was your</p>

<p>1 supervisor?  2 A. Yes.  3 Q. Your direct supervisor?  4 A. I'm just a lead.  5 Q. And you were just a lead?  6 A. Uh-huh.  7 Q. And that's also known as a ramp agent; right?  8 A. Yes.  9 Q. And Richard Moore is the ramp supervisor;  10 right?  11 A. Yes.  12 Q. And above Richard Moore was his supervisor; is  13 that correct?  14 A. Yes.  15 Q. Was that supervisor's name Roger Redifer?  16 A. Roger Redifer is a manager.  17 Q. So is he supervising Richard Moore?  18 A. Yes.  19 Q. Does Roger Redifer, did he supervise the other  20 ramp supervisors like Toi?  21 A. Yes.  22 Q. Okay, I think I understand how it works. And  23 how are you employed at Evergreen? Do they treat you  24 as independent contractors? Do they pay your benefits?  25 Do they treat you as employees or as independent</p>	<p>56</p> <p>58</p> <p>A. Okay.  Q. My understanding is that at Evergreen when  this accident happened the distinction, the difference  between ramp agent and ramp supervisor was not great.  And this is what I mean. That if a ramp supervisor did  not show up for work, they would just let a ramp agent  do the supervisor's job; is that correct?  MR. NORTHCRAFT: Object to the form.  A. Yes. The manager is not there when the  accident happened.  Q. (BY MR. BISHOP) So Roger Redifer was not  present when this accident happened, is that what  you're indicating?  A. Yeah. Toi or also my supervisor Richard  Moore, he call the manager, what the accident happened,  what happened to Brandon.  Q. How do people call each other at the time of  the accident? Were they using cell phones or were they  using closed-band radios?  A. Using our own cell phone.  Q. The employees of Evergreen Eagle use cell  phones to communicate at the airport with one another?  A. We have own cell phone. And a supervisor,  they have a radio, and the agent was no radio. The  radio, that's for the company.</p>
<p>57</p> <p>1 contractors?  2 MR. NORTHCRAFT: Object to the form.  3 A. We have no benefits.  4 Q. (BY MR. BISHOP) You have no benefits?  5 A. I have no benefits when I work at Evergreen.  6 Q. And how many hours a week did you work as an  7 agent, typically?  8 A. When I started working in Evergreen I almost  9 work seven days, seven days every day. And I work ten  10 to 14 hours a day.  11 Q. Ten to 14 hours a day for seven days?  12 A. Yeah, at \$10 an hour.  13 Q. And they did not pay you any benefits?  14 A. No.  15 Q. Is that because they refused to classify you  16 as an employee and they classified you as something  17 else, or are you aware?  18 MR. NORTHCRAFT: Object to the form.  19 A. They have an agency that they send you to  20 apply for benefits. If you apply, if you're already  21 applied for, that they kept your paycheck, your payment  22 for that.  23 Q. (BY MR. BISHOP) I'd like to talk about the  24 difference between the ramp agent and ramp supervisor a  25 little bit.</p>	<p>59</p> <p>Q. Did Evergreen provide its employees with  two-way radios or were they all using their cell phones  to communicate?  MR. NORTHCRAFT: Object to the form.  A. We were using cell phones, cell phones when we  are communicating inside the operation.  Q. (BY MR. BISHOP) To perform daily operations  you would use your cell phones?  A. Yes.  Q. And, for example, if someone needed a  push-back at a China gate and they needed to call for  the push-back machine from the Hawaiian gate, would  they make that call on their cell phone to bring it  over?  A. They use radio, because supervisor have  communication. (Court reporter clarification.) The  supervisor use radio for communicating inside the  operation.  Q. And I understand that Brandon Afoa, at the  time of this accident he was classified as a ramp agent  but he was performing supervisor duties when he was  injured; is that correct?  A. Yes.  Q. Okay. Now, my further understanding is that  no one at Evergreen at the time of this accident was</p>

<p>1 certified to drive the push-back; is that true?                  2 MR. NORTHCRAFT: Object to the form.                  3 A. Yes.                  4 Q. (BY MR. BISHOP) Okay. I think you might have                  5 said when Mr. Northcraft was asking questions earlier                  6 that Toi may have been certified. Do you know if Toi                  7 was certified or not?                  8 A. Toi is certified, Toi and Richard Moore.                  9 Q. So Richard Moore -- let me back up. I'm                  10 talking about at the time of this accident, was Toi                  11 certified at the time of the accident?                  12 MR. NORTHCRAFT: Object to the form.                  13 A. Yes.                  14 Q. (BY MR. BISHOP) And let me explain what I                  15 mean by certification.                  16 A. Okay.                  17 Q. Did Evergreen have some type of a                  18 certification course to qualify push-back drivers?                  19 A. I don't know.                  20 Q. Do you know if the Port of Seattle had any                  21 kind of a certification course to qualify push-back                  22 drivers?                  23 A. I do not know.                  24 Q. So at the time of this accident was Toi                  25 certified in any capacity that you're aware of?</p>	<p>60</p>	<p>the Port of Seattle to get AMA.                  Q. And only if you have the -- is it your                  understanding that only if you have the AMA can you                  drive a push-back?                  MR. NORTHCRAFT: Object to the form.                  A. Me?                  Q. (BY MR. BISHOP) No, no, not you, I'm talking                  about generally.                  A. Okay.                  Q. Does a person, does anyone have to have an AMA                  badge from the Port of Seattle before they can drive a                  push-back?                  MR. NORTHCRAFT: Object to the form.                  A. Yes.                  Q. (BY MR. BISHOP) Now, when you say AMA badge,                  is this also the blue badge that you mentioned? Is it                  the same thing or a different system?                  A. It's only the blue badge, and they put AMA if                  you have training already at the Port of Seattle. But                  you have to request first -- your employer is the one                  who give you a form to sit in the training for the Port                  of Seattle office to get training for the AMA.                  Q. But my question is a little bit -- I'm going                  to try to make my questions simpler. So if I have a                  badge, does the blue badge say AMA on it when I get my</p>	<p>62</p>
<p>1 MR. NORTHCRAFT: Object to the form.                  2 A. Yes.                  3 Q. (BY MR. BISHOP) And was Richard also                  4 certified?                  5 A. Yes, because of their badge. I saw their                  6 badge, they're AMA. If you are AMA badge you can do                  7 push-back, you can tow the plane, aircraft.                  8 Q. What does AMA stand for?                  9 A. That's air movement area, I think.                  10 Q. Air movement area?                  11 A. Yes. That's just the meaning.                  12 Q. So is the airport divided into an air movement                  13 area and a non-movement area?                  14 A. Yes.                  15 Q. And in between the areas is there a big red                  16 line?                  17 A. Yes.                  18 Q. Is that big red line the difference between                  19 where the airplanes take off on the runways and then                  20 the baggage area and the ramp area?                  21 A. Yes.                  22 Q. Is that how it works? So who is providing                  23 these AMA badges, if you know? Is it the Port of                  24 Seattle that provides it?                  25 A. Port of Seattle. You go to training inside</p>	<p>61</p>	<p>AMA certification or do I have two badges, a blue one                  and an AMA one?                  A. No, there's only one badge.                  Q. It's the same badge?                  A. It's the same badge.                  Q. So before you get AMA printed on your badge --                  let's back up and ask where you get the badge from in                  the first place.                  A. Okay.                  Q. What is the badge called before you get AMA                  put on it? Does the badge have a name before you get                  AMA put on it?                  MR. NORTHCRAFT: Object to the form.                  Q. (BY MR. BISHOP) Is it called your driver's                  badge?                  MR. NORTHCRAFT: Object to the form.                  Q. (BY MR. BISHOP) How would you describe that                  badge?                  A. That badge, it's one badge only. So AMA, your                  name, Port of Seattle, and then logo for the customs,                  or restricted area you can go if you are authorized to                  go there.                  Q. And I think you indicated that you had a red                  badge?                  A. Yeah, I have a red badge before, when the</p>	<p>63</p>

<p style="text-align: right;">64</p> <p>1 accident happened. And a couple of times I applied in 2 Washington state to make a driver's license, so I got 3 the driver's license and then I apply to Port of 4 Seattle to get the blue badge. So they changed my red 5 badge to blue badge. 6 Q. Let's back up one step. Is it correct to say 7 that before you can get any airport badges you first 8 need to have a Washington State driver's license? 9 A. Exactly, yes. 10 MR. NORTHCRAFT: Object to the form. 11 Q. (BY MR. BISHOP) So once you have a valid 12 Washington State driver's license, you can apply to the 13 Port of Seattle for additional badges? 14 MR. NORTHCRAFT: Object to the form. 15 A. You go first to your employer, you ask first 16 your employer to change your badge, if you're a red 17 badge. So to change your badge, you have to go to your 18 manager to change my badge so I can drive inside the 19 ramp, inside the airport. 20 Q. (BY MR. BISHOP) When you get the AMA 21 designation does the red badge turn into a blue badge? 22 MR. NORTHCRAFT: Object to the form. 23 A. Yes. The Port of Seattle, your red badge will 24 change to blue badge, so your red badge will change to 25 blue badge already.</p>	<p style="text-align: right;">66</p> <p>Q. (BY MR. BISHOP) So does everyone that works on the ramp, everyone that works on the ramp at least have a red badge? A. No, no. I just -- when our operation in baggage claim is done already, my supervisor, some supervisors said you can go to the ramp, you can help over there and just help me to fix what I say to you, so okay. Because everybody was full time, my contract is full time, so I work more than eight to ten hours so I just work the same as my supervisor. I cannot go to the ramp without, you know, without what supervisor said. So if the Port of Seattle catch you, if you are a red badge, why are you here, so they send you to inside the airport. Q. When the Port of Seattle would send you inside the airport -- A. Inside the ramp area. Because you're allowed to, you know, yeah. You're a red badge so you just say you don't drive anything, because if you drive anything you pay \$150 or \$250, that's the maximum you pay. Q. And how would the Port of Seattle give you that ticket? A. They send you to your employer. Q. Now, what part of the Port of Seattle would give you that ticket? Would it be the Port of Seattle</p>
<p style="text-align: right;">65</p> <p>1 Q. (BY MR. BISHOP) So when they give you a blue 2 badge they take your red badge away? 3 A. Yes. 4 Q. I just have a few questions about the red 5 badge. How do you get the red badge in the first 6 place? 7 A. When I applied to Evergreen I applied as a 8 baggage claim area. So baggage claim area, they don't 9 want to mix the blue badge because that area is not a 10 driving area over there, that's only for the baggage 11 area. So your job is only to drop baggage over there, 12 boxes put in the can, so you cannot drive anything. 13 Because if you drive, if you drive any equipment, Port 14 of Seattle will catch you, you have a citation or 15 ticket to pay, \$150. So even my employer said don't 16 drive anything, don't operate anything, equipment. 17 Q. Is that because if the Port of Seattle catches 18 you they'll fine you? 19 A. Because the red badge cannot operate, cannot 20 drive in the ramp. 21 Q. Okay. So if you have a red badge and you're 22 not allowed to drive because it's only a red badge, is 23 a red badge just a security badge? 24 MR. NORTHCRAFT: Object to the form. 25 A. Yes.</p>	<p style="text-align: right;">67</p> <p>police, would it be the Port of Seattle ramp patrol? A. Ramp patrol. If the ramp patrol catch you for that they send you a ticket or a citation. If the police catch you, your badge and ticket out. Q. If the police catch you what? A. Your badge will be taken away. Q. And once your badge is taken away -- A. You cannot work anymore. Q. -- you cannot work anymore? A. Yeah, because it's different. The officers are very strict. Q. So when you're talking about the police, are you talking about the Port of Seattle police? A. Yeah, I'm talking about the Port of Seattle police inside the airport. Q. And the Port of Seattle ramp patrol is different than the Port of Seattle police, is that true? A. Yeah. They are different. Q. But did I understand you correctly when -- I'll ask the question this way. Can the Port of Seattle ramp patrol also hand you tickets? A. Yes. Q. Can they also revoke or take away -- A. Yes.</p>

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1 Q. -- your ability to work?  
 2 A. Yes.  
 3 Q. They can do that?  
 4 A. Uh-huh.  
 5 Q. So we've talked about the Port of Seattle  
 6 police, we've talked about the Port of Seattle ramp  
 7 patrol. Was there any other group from the Port of  
 8 Seattle that could affect the way you worked by giving  
 9 you a ticket?  
 10 A. Yes. The TSA, if they catch you to drive or  
 11 operate, they call the ramp control or they call the  
 12 police and say there's somebody driving here with a red  
 13 badge is roaming around. The police would go over  
 14 there.  
 15 Q. Now, my understanding about the red badge/blue  
 16 badge system at Evergreen was that Evergreen did not  
 17 respect the red badge/blue badge system. And I want to  
 18 ask you some questions about that.  
 19 MR. NORTHCRAFT: Object to the form.  
 20 MR. BISHOP: I haven't asked a question  
 21 yet.  
 22 MR. NORTHCRAFT: I'm objecting to your  
 23 statement.  
 24 Q. (BY MR. BISHOP) So how many people, if you  
 25 can remember, how many ramp agents were there working

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1 at Evergreen at the time of Brandon's accident, more or  
 2 less? Were there 30, 40, 50, 60? I'm talking about  
 3 all the ramp agents and all the ramp supervisors.  
 4 MR. NORTHCRAFT: For just Evergreen?  
 5 MR. BISHOP: Just Evergreen, thank you.  
 6 A. We are almost 38 or 40.  
 7 Q. (BY MR. BISHOP) Thirty-eight or 40?  
 8 A. Yeah. That's only supervisor, employee and  
 9 supervisor and ramp agent. Not including the managers  
 10 and the warehouse, only the operation area.  
 11 Q. And did a lot of people that worked for  
 12 Evergreen operate the push-back without proper  
 13 certification?  
 14 MR. NORTHCRAFT: Object to the form.  
 15 A. Yes.  
 16 Q. (BY MR. BISHOP) About how many?  
 17 A. I cannot say how many, but I saw them drive  
 18 and they're not certified.  
 19 Q. Sure. Can you remember more or less -- I  
 20 mean, you said there was somewhere on the order of 40  
 21 people working there?  
 22 A. Yes.  
 23 Q. Can you remember whether it was more or less  
 24 ten people that would drive without certification? Can  
 25 you have any estimate?

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MR. NORTHCRAFT: Object to the form.  
 A. I estimate that only five to seven people.  
 Q. (BY MR. BISHOP) So five to seven Evergreen  
 employees would drive the push-back without a blue  
 badge?  
 A. Yes, because some supervisors said, hey, can  
 you bring that one here.  
 Q. Right.  
 A. So even though you're not certified, so you  
 drive, you operate that because your supervisor said.  
 So just not make sense, oh, I can't operate this  
 because I'm not certified, so, you know.  
 Q. What happens if a person said back to their  
 supervisor, I'm not going to do it?  
 MR. NORTHCRAFT: Object to the form.  
 A. It's okay. (Court reporter clarification.)  
 Your supervisor said, can you bring that one here so we  
 can move the aircraft, if you answer I cannot operate  
 this because I'm not certified, so they let you go,  
 okay, I don't have to do that. So the supervisor will  
 do that.  
 Q. (BY MR. BISHOP) Were people afraid that they  
 would lose their jobs?  
 A. Yes.  
 MR. NORTHCRAFT: Object to the form.

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Q. (BY MR. BISHOP) Explain how.  
 A. If somebody catch you, if you operate that and  
 you cannot operate that, if somebody catch you or maybe  
 Port of Seattle, they take your badge. Can I see your  
 badge? If you have no AMA you cannot drive that. So  
 they fine you, ticket, they report you to your employer  
 and your employer will fire you.  
 Q. Let me ask you, did that ever happen when you  
 worked at Evergreen? Did anyone ever get fired because  
 they drove a push-back without certification?  
 MR. NORTHCRAFT: Object to the form.  
 A. No.  
 Q. (BY MR. BISHOP) When you're driving a  
 push-back -- well, let me ask you about this exhibit  
 marked Number 5 which is a picture of the push-back in  
 the accident. Is this the push-back that you would see  
 people drive without certification?  
 A. Yes.  
 Q. How many push-backs did Evergreen have? How  
 many push-backs did they have? Whether they worked or  
 not, how many total push-backs did they have at the  
 time of the accident?  
 A. We only had two push-backs. (Court reporter  
 clarification.) But the other one was broke already,  
 we can't use it. But this one, we use always this,

<p style="text-align: right;">72</p> <p>1 every flight. We have five planes in operation but  2 only this one we use that push-back.  3 Q. When you say you have a five-plane operation,  4 you're talking about the five contracts you have with  5 the different airlines; is that correct?  6 A. Yes.  7 Q. So are you telling me that on the night of the  8 accident you had five airline contracts, and the tug in  9 Exhibit Number 5 was the only operational tug that  10 Evergreen had?  11 A. Yes.  12 Q. Let me ask you this, then. For how many days  13 or weeks before the accident, before the accident, for  14 how many days or weeks before the accident was this  15 Evergreen's only operational tug, if you can recall?  16 A. Six to eight months already. The only one we  17 used.  18 Q. You mean you used this -- this was the only  19 tug, this tug in Exhibit Number 5 is the only tug that  20 Evergreen would use?  21 A. Yes.  22 Q. For six to eight months prior to the accident?  23 A. Yes.  24 Q. That belonged to Evergreen?  25 A. Yes.</p>	<p style="text-align: right;">74</p> <p>A. No. They did not borrow that because they  have own push-back.  Q. Okay.  A. They have a lot of push-backs.  Q. So I'm going to ask you a little bit about  this Exhibit Number 4 that Mr. Northcraft showed you.  And I'm looking at it, and it appears to me that there  appears to be not just one K-loader but another  K-loader right beside it. In other words, can you tell  me how many K-loaders are in Exhibit Number 4?  A. Two K-loaders.  Q. Two K-loaders, okay. And down here in the  same exhibit right off to the right-hand side of the  push-back there appear to be some wooden pallets.  A. Yeah, that's wooden pallets.  Q. And then right in front of the wooden pallets  or almost right on top of it there seems to be some  kind of a cement column, a support for one of the jet  ways.  A. No, that's solid steel.  Q. Oh, that's solid steel.  A. Yeah.  Q. Well, let me ask you this question about that  solid steel pillar right on top of the pallets.  Do you know if they ever moved that pillar to</p>
<p style="text-align: right;">73</p> <p>1 Q. And you had five airline contracts?  2 A. Yes.  3 Q. Well, let me ask you this. If this is the  4 only tug or push-back, and again I'm referring to  5 Exhibit Number 5, when you had a lot of planes coming  6 in would you borrow push-backs from other  7 organizations? What would you do?  8 A. Yes. The supervisor borrow through the  9 Northwest Airlines, Swissport. And Northwest, we  10 borrow there, and we call Swissport and Northwest to  11 borrow the push-back, because sometimes the plane is on  12 the same schedule to push. This one is used for  13 another plane, we cannot use another push-back to move  14 the plane so they call Northwest.  15 Q. And my understanding about Swissport is they  16 did their own ramp services; is that correct?  17 A. Yes.  18 Q. How about Northwest; did they do their own  19 ramp services?  20 A. Yes.  21 Q. So they were private in that sense. Let me  22 ask you if the reverse is true. Was there ever an  23 occasion that you can remember where Northwest or  24 Swissport called Evergreen and said, we need your tug,  25 the one in Exhibit Number 5?</p>	<p style="text-align: right;">75</p> <p>change the position of the S15 or the S16 jet way, or  was this a permanent pillar?  A. That's a permanent post.  Q. And then if we look right in front of the two  machines where they're colliding, underneath where the  middle of the jet ways intersect, and I'm talking about  all the jet ways, right in the middle of this picture  there's a big wall. What is that wall made out of?  A. That's steel.  Q. Steel?  A. Yes.  Q. And the tug looks like a very heavy machine.  Is that correct statement?  A. Yes.  Q. What do you believe might have happened if  Brandon had chosen to hit the pillar above the pallets?  MR. NORTHCRAFT: Object to the form.  Q. (BY MR. BISHOP) Do you have any idea what  would happen if Brandon hit that pillar? Could he take  it down?  A. Yes, if they hit the post of the jet bridge,  so there are people walking over there, the passengers,  so maybe people can get hurt. The jet bridge will --  the post, the steel, when Brandon hit that, maybe the  jet bridge will collapse and people will have accident.</p>

<p>1 MR. BISHOP: Mark, would you object for 2 clarity's sake if we used Exhibit Number 4 and had him 3 mark what he believes the gates are? 4 MR. NORTHCRAFT: If he can identify 5 which one is which, I don't care. 6 Q. (BY MR. BISHOP) Can you tell which of these 7 jet ways is which? Is this, for example, S15 or is 8 this S16? Can you tell if that's S15 or S16? 9 A. That's S15 and this is S16. 10 Q. Can you mark right on the jet way the 11 denomination of the jet way. 12 Are you familiar with this? Have you ever 13 seen this before? 14 A. Yes. 15 MR. NORTHCRAFT: You're marking this as 16 an exhibit? 17 MR. BISHOP: Not right now. 18 MR. NORTHCRAFT: If he's going to 19 identify it, I'd like it marked. 20 (Deposition Exhibit 6 was marked for 21 identification.) 22 Q. (BY MR. BISHOP) Can you tell us what Exhibit 23 Number 6 is? 24 A. Number 6, this is a picture that shows -- this 25 is the airport. It's the airport runway. And if you</p>	<p>76</p> <p>A. Yes. Q. And if you successfully pass -- and that test is produced by the Port of Seattle; is that correct? A. Yes. MR. NORTHCRAFT: Object to the form. Q. (BY MR. BISHOP) And if you pass that test, what does the Port of Seattle give you, if anything? A. Your badge. Q. Is this the red badge or the blue badge? A. Even if you apply for red badge, if you have no driver's license, if you have no driver's license, so all the people working not in the operation area inside the airport, so you take the class like this. Q. Okay, great. But my question is if you pass the test what do you get? A. Of course the training, the class. You know, what is the restricted area, you cannot go there, you cannot go there without information, without, you know -- Q. Sure, I understand that you might need the information that is contained in this work booklet to do your job at the airport, but that's not my question. My question is once you pass the test successfully, what does the Port of Seattle give you? Do they give you a physical object, do they give you --</p>
<p>1 apply -- if you want to get a badge, so you take 2 training inside. So this picture will show in the 3 computer to take the class. 4 Q. Can you read the words on the exhibit? 5 A. Yes. Driver Training Workbook. 6 Q. Did you ever study from this workbook to get a 7 badge? 8 A. Yes. 9 Q. And who gave you the badge? 10 A. Port of Seattle. 11 Q. Now, who produces this booklet? Does the Port 12 of Seattle produce this booklet or does Evergreen 13 produce this booklet? 14 MR. NORTHCRAFT: Object to the form. 15 A. Port of Seattle. 16 Q. (BY MR. BISHOP) So you have to take a Port of 17 Seattle -- and I'm reading from the exhibit itself. 18 You have to take an Airport Operations Training 19 Department -- 20 A. Yes. 21 MR. NORTHCRAFT: Object to the form. 22 Q. (BY MR. BISHOP) Let me finish the question. 23 You have to take a test -- after you read this 24 workbook, do you have to take a test after you read 25 this workbook?</p>	<p>77</p> <p>A. No. Q. -- a badge, do they give you -- A. Just only the badge. If you're done already for the SIDA test, that's the time they give you the badge. Q. So if you successfully pass this test do they give you your badge? A. Yes. Q. Now, what badge is that? Is that the red one, is it the blue one? A. First I applied red one because I have no driver's license at that time. Q. Sure, okay. Do you have any idea what this is that I'm putting in front of you now? It's a document called Schedule of Rules and Regulations No. 4. If you don't know what that is that's fine, but I need to ask you, do you know what that is? A. I don't know what that is. (Deposition Exhibit 7 was marked for identification.) Q. (BY MR. BISHOP) Mr. Northcraft was using a diagram that you have drawn called Exhibit Number 3 to gain a sense of where the accident occurred, and also Exhibit Number 4 which is this one here, a picture of where the accident occurred.</p>

<p>108</p> <p>1 Q. So the push-back didn't have a seatbelt for 2 four months --</p> <p>3 A. Yes.</p> <p>4 Q. -- before the accident? Okay. Now, do you 5 remember doing a -- talking to Toi, one of the 6 supervisors, a man whose full name is T-o-i-v-a, 7 G-a-o-a?</p> <p>8 A. Yes, I remember him.</p> <p>9 Q. And what do you remember telling Toi happened 10 in this accident?</p> <p>11 A. He was just asking me what happened in the 12 accident, and he just make a report.</p> <p>13 Q. Did you tell Toi anything differently than 14 you've told Mr. Northcraft or me here today?</p> <p>15 A. No.</p> <p>16 Q. Now, you've talked a lot about the brakes on 17 the push-back in your deposition today. I need to ask 18 you about the steering on the push-back. When you were 19 watching Brandon drive and have the accident, could you 20 see his hands on the steering wheel?</p> <p>21 A. Yes.</p> <p>22 Q. And can you describe for Mr. Northcraft and 23 myself what his hands were doing on the steering wheel? 24 Were they moving in any particular way?</p> <p>25 A. His two hands were on the steering wheel, and</p>	<p>110</p> <p>didn't work and the tug wouldn't stop or steer." I'm interested in the steer part of it. Did this tug appear to not be steering correctly, to you?</p> <p>A. Yes.</p> <p>Q. How so? Tell us how.</p> <p>A. Just as I said, his hands was on the steering wheel, and he was just moving, just, you know, taking -- you know, saying help, screaming help and brakes, brakes, brakes.</p> <p>Q. Was he twisting the steering wheel more violently than usual?</p> <p>A. Yes, just shaking the steering wheel, so when he drive the push-back.</p> <p>Q. I want to talk to you briefly about some of the citations that you or others may have received directly from the Port of Seattle in your time as a ramp agent. So I don't care whether you were working for Evergreen or for Integrated, all I care about is your time at Sea-Tac Airport.</p> <p>And I want to know if you can remember a time when you were driving a push-back with no lights on one side of the vehicle and the Port of Seattle stopped you. Do you remember that?</p> <p>A. Yes.</p> <p>Q. Can you tell me what happened?</p>
<p>109</p> <p>1 he was just like that, saying help, help, help, brakes, 2 brakes.</p> <p>3 Q. But as you sit before Mr. Northcraft and I, 4 you're twisting your arms?</p> <p>5 A. Yes.</p> <p>6 Q. As though they were on a steering wheel?</p> <p>7 A. Yes, on the steering wheel.</p> <p>8 Q. And is that the way that you normally see 9 somebody drive a push-back or do they normally hold the 10 wheel straight?</p> <p>11 A. Your two hands are on the steering wheel.</p> <p>12 Q. Did it appear to you that something might be 13 the matter with the steering the way he was twisting 14 the wheel?</p> <p>15 MR. NORTHCRAFT: Object to the form.</p> <p>16 A. Just as I said, I saw him that his two hands 17 are like that.</p> <p>18 Q. (BY MR. BISHOP) Sure. I represent to you, 19 I'm telling you that I have something called an 20 investigation from a man named Charles Godekin, airport 21 duty manager. Do you know who he is?</p> <p>22 A. Yes.</p> <p>23 Q. And as I read his investigation report, one of 24 the things he writes is this. "According to Luna, Afoa 25 was gesturing wildly and yelling as if the brakes</p>	<p>111</p> <p>A. When I drive the push-back, that's for Integrated, and I work in Integrated at that time, and my supervisor told me to bring the push-back to the warehouse. And the Port of Seattle ramp patrol saw me, I operate the equipment, there's no lights, and he just put on his lights, hey, pull over. So I pull over and he took my badge, give me your badge. Where you go? I'm going to our warehouse to put this equipment all the way over there because there's no lights. Okay, just bring that over there. So he did not give me a citation because I explained to him that the equipment is no lights. Oh, okay, just bring that one over there.</p> <p>Q. So the ramp patrol stopped you for having no operational lights, do I understand that correctly?</p> <p>A. Yes. If I used that in the operation area so that's the time that he gave me a citation.</p> <p>Q. So they stopped you. When they stopped you did they escort you back to Integrated or did they just leave you alone?</p> <p>A. Just leave me alone.</p> <p>Q. So he let you go back.</p> <p>A. Uh-huh.</p> <p>Q. Did the Port of Seattle, I should say the ramp patrol that stopped you, did they tell you that you had</p>

<p>116</p> <p>1 Q. So if I understand you correctly, you were 2 involved in a situation where --</p> <p>3 A. I'm not involved because I'm just -- I saw 4 him.</p> <p>5 Q. I know, it's okay. Sometimes my questions 6 aren't the best, as Mr. Northcraft sometimes notes, but 7 let me ask it this way.</p> <p>8 If I understand what you told us correctly, 9 you're saying that you were driving a vehicle at the 10 airport on the ramp and somebody that you knew did an 11 inappropriate passing of your vehicle?</p> <p>12 A. Yes.</p> <p>13 Q. And was stopped by the ramp patrol and given a 14 citation and had their badge taken away?</p> <p>15 A. Taken away by the ramp patrol.</p> <p>16 Q. Is that correct, what I just said?</p> <p>17 A. Yes.</p> <p>18 Q. I'm just trying to make a good record so that 19 we understand what happened.</p> <p>20 A. Okay.</p> <p>21 Q. Did you ever in all your time at the airport 22 ever see the Port of Seattle kick anybody off the 23 airport premises because of a safety issue or any other 24 issue?</p> <p>25 A. No.</p>	<p>118</p> <p>Q. (BY MR. BISHOP) Well, I showed you the drivers training manual cover sheet which is Exhibit Number 6.</p> <p>A. Yes.</p> <p>Q. I want to ask you, where did you take the examination?</p> <p>A. Inside in the airport.</p> <p>Q. Inside the Port of Seattle' buildings?</p> <p>A. Yes.</p> <p>Q. And how did that examination -- how do you take that examination?</p> <p>A. Through a computer.</p> <p>Q. In front of a Port of Seattle computer?</p> <p>A. Yes.</p> <p>Q. Inside the Port of Seattle main terminal?</p> <p>A. Uh-huh, yes.</p> <p>Q. Is that where that happens?</p> <p>I want to return briefly to Exhibit Number 9 and Number 3, and I want to ask you, you've on Exhibit 9 put an A where you were standing for Alvin. And I want to ask you now that you have this drawn in front of you, and it may help you remember things, I want to ask you from the time that you first saw Brandon to the time you saw him have the accident, did it appear to you that he was speeding up? Did it appear to you that</p>
<p>117</p> <p>1 Q. Did Evergreen Eagle ever kick anybody off the 2 airport premises because of a safety issue while you 3 were there?</p> <p>4 A. I don't know.</p> <p>5 Q. To your understanding, if you have an 6 understanding, who at the Port of Seattle has the 7 ultimate control of what happens at the airport?</p> <p>8 MR. NORTHCRAFT: Object to the form.</p> <p>9 Q. (BY MR. BISHOP) Is it you, is it Evergreen, 10 is it the Port of Seattle? Who has the ultimate 11 control, if you have an understanding?</p> <p>12 MR. NORTHCRAFT: Object to the form.</p> <p>13 A. The Port of Seattle.</p> <p>14 Q. (BY MR. BISHOP) Port of Seattle?</p> <p>15 A. Yes.</p> <p>16 Q. Why do you have that understanding?</p> <p>17 A. What is your question?</p> <p>18 Q. You indicated it's the Port of Seattle in your 19 understanding that has the ultimate control at the 20 airport. And my question is simply, why do you have 21 that understanding? Why do you feel that way?</p> <p>22 MR. NORTHCRAFT: Object to the form.</p> <p>23 A. Yeah, because you got training already, you 24 take training already so you take your safety, your own 25 safety, so you know everything.</p>	<p>119</p> <p>he was kind of going more or less the same speed, if you can remember? Was the push-back in Exhibit Number 5, can you remember if it was speeding up or can you remember if it was going the same speed?</p> <p>A. He was not speeding. I saw what the -- you know, I saw him, the push-back he drive, that he hit all the way to the K-loader. So I don't remember how many miles per hour that he -- you know, when the accident happened.</p> <p>Q. Sure. No, I understand that. I'm not asking you to take a wild guess at how many miles per hour he was going, I'm not asking you to do that. All I'm asking you is can you remember, now that you have Exhibit Number 9 in front of you, whether Brandon, the push-back that he was in, was going more or less the same speed all the way to the accident or whether he was speeding up. Can you remember that? Or was he going the same speed more or less all the way?</p> <p>A. It's the same speed. When he drive the push-back, it's the same speed all the way to the K-loader.</p> <p>Q. So he appeared to be going about the same velocity; is that correct?</p> <p>A. Yes.</p> <p>Q. In the early notes, I will tell you that I</p>

## **Appendix Exhibit H**

# **“Ground Service Operator Licensing Application and Agreement” between the Port and EAGLE**

**(CP 202 - 213)**



Customer No.

067787

## Port of Seattle

### Ground Service Operator Licensing Application & Agreement

A Ground Service Operator Licensing Agreement (GSOL) is required of all companies providing aircraft ground handling services within the Air Operations Area (AOA) of Seattle-Tacoma International Airport ("Airport"), including loading/unloading aircraft cargo, baggage or mail, aircraft movement and/or aircraft maintenance, ground equipment maintenance, interior/exterior aircraft cleaning, and aircraft water, lavatory and fueling services.

Application Date: 11-15-02 Approval Date: 11-27-02  
Renewal Date: 11-01-03 Fee Paid: \$500.<sup>00</sup>

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This section to be completed by Company requesting Ground Service License

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Company Name: Evergreen Aviation Ground Logistics  
Contact Person: Roger Parayno  
Local Address: Bldg: E 104, 2580 S. 156<sup>th</sup> St. SEATAC Int'l  
Local Telephone: (206) 246-7514  
Fax No: (206) 246-6748  
Corporate Address: 3850 Three Mile Lane, McMinnville OR 97128  
E-mail Address: Seaeagl.ops@evergreen-eagle.com

## **Application Requirements:**

### **1. Certification of Carrier Support:**

Applicants for GSOL must demonstrate a need for the license by providing a letter of support ("Certification of Carrier Support") from an air carrier holding a current operating agreement with the Port of Seattle. Such Certification of Carrier Support must be included with this application. Where Applicant will be parking/storing equipment within a carrier's leased area, the Certification of Carrier Support must include a carrier's authorization for applicant to park/store its equipment in carrier's area.

### **2. Proof of Insurance:**

Applications must be accompanied by proof of insurance as required in Section 7 of this Ground Service Operating Licensing Application & Agreement and consistent with the Schedule of Rules and Regulations No. 4.

### **3. License Fee:**

A fee of \$500.00 will be required of all Applicants at the time of License approval. **THERE WILL BE NO EXCEPTIONS MADE TO THIS REQUIREMENT.** Failure to pay the License fee will result in the License not being approved. Yearly renewal of the License will require annual payment of this fee at the time of application for renewal. The Port will not hold equipment parking/storage spaces for those failing to pay the fee at the time of approval or renewal of the License.

### **4. Ground Equipment Control Requirements:**

Estimated square footage required for equipment parking/storage away from gates: 700 square feet.

**Licenses will be granted to eligible applicants only after the Port determines, in its sole discretion, that space is available for parking and/or storage of applicant's equipment.**

## License Agreement

1. This LICENSE, dated this 27 day of Nov, 2002 is granted by the PORT OF SEATTLE (the "Port"), a municipal corporation of the State of Washington, to Evergreen Aviation Ground Logistic Ent. ("Licensee").

2. Duration. This License may remain in effect until 11-01-03, unless otherwise terminated by either party upon thirty (30) days advance written notice delivered by one party to the other, or immediately cancelled/revoked by the Port without prior notice to Licensee pursuant to other provisions of this License.

3. Location. Ingress, egress and movement over those portions of the AOA, designated as support areas for aircraft servicing, and including approximately 700 square feet \_\_\_\_\_, on the Airport's AOA to be used by Licensee exclusively for parking/storing Licensee's equipment (all, collectively, the "Premises") at location(s) designated by the Port.

A. Relocation of Equipment Parking/Storage Area: The Port reserves, in its sole discretion, the right to relocate Licensee's assigned equipment parking/storage area for any reason, including for the reallocation of space to other users. In the event the Port determines, in its sole discretion, that Licensee is not adequately using its assigned parking/storage spaces(s), the Port may revoke this License, unless Licensee can demonstrate that it has obtained authorization to park its equipment in an air carrier's leased area. In such event, the Port will amend this License to delete any assigned parking/storage area.

4. Fees.

A. User Fee: Licensee shall pay to the Port a license user fee of Five Hundred Dollars (\$500.00).

B. Renewal Fee: This License may be renewed yearly, so long as Licensee remains in good standing and in compliance with all of the provisions and obligations contained herein, and subject to the Port's sole determination, at the time renewal is requested by Licensee, that the equipment parking/storage space previously assigned to Licensee is not needed for other Airport operational purposes. Licensee understands and agrees that the Port shall have the sole authority to determine what are "Airport operational purposes" as the term is used in this subparagraph.

C. Parking/storage Space Fee: Licensee shall pay to the Port an annual land rent of \$0.72 for each square foot of parking and storage space described in paragraph 3. This rent is subject to revision at Port discretion to reflect market rates for similar airport property.

5. Use of Premises.

Licensee's only use of the Premises shall be for the purpose of providing aircraft ground handling services within the AOA, including loading/unloading aircraft cargo, baggage or mail, aircraft movement and/or aircraft maintenance, interior/exterior aircraft cleaning, and aircraft water, lavatory and fueling services and for storing/parking Licensee's equipment. Licensee must obtain prior written approval of the Port before conducting any activity other than the use contemplated by this License. The Port shall have the right to use and enjoy the Premises for whatever purpose it may desire other than the use granted to Licensee for the storing/parking of Licensee's equipment.

6. Liability.

A. The Port, its Commission, employees, and agents shall not be liable to any persons or for damage to any property regardless of how such injury or damage be caused, or any other claims sustained, or alleged to have been sustained by Licensee or others, including but not limited to all persons directly or indirectly employed by Licensee, or any agents, contractors, subcontractors, or suppliers, as a result of any condition (including existing or future defects in the property owned by the Port) or any occurrence whatsoever related in any way to the property owned by the Port or the activities undertaken by Licensee.

B. Licensee shall defend, indemnify and hold harmless the Port from all liability, claims, damages, losses and expenses, whether direct, indirect or consequential (including, but not limited to, attorneys' and consultants' fees and other expenses of litigation or arbitration) arising under this License which is caused, or alleged to be caused or alleged to have been caused, as a result of or in connection with any of Licensee's activities undertaken pursuant to this License; provided, however, that this paragraph shall not be construed so as to required the Licensee to defend, indemnify or hold harmless the Port from such claims, damages, losses or expenses caused by or resulting from the sole negligence of the Port.

C. In any and all claims against the Port by any employee of Licensee, the indemnification obligation of subparagraph A of this paragraph shall not be limited in any way by any limitation on the amount or type of damages or compensation benefits payable by or for the Licensee under applicable workers' or workmen's compensation, benefit, or disability laws (including, but not limited to, the Industrial Insurance law, Title 51 of the Revised Code of Washington). LICENSEE EXPRESSLY WAIVES ANY IMMUNITY LICENSEE MIGHT HAVE HAD UNDER SUCH LAWS, AND, BY AGREEING TO ENTER INTO THE LICENSE, ACKNOWLEDGES THAT THE FOREGOING WAIVER HAS BEEN MUTUALLY NEGOTIATED BY THE PARTIES.

D. For the purpose for this paragraph only, the term "Port" shall mean and include the Port and its Commissioners, other officers, employees, and agents, and the term "Licensee" shall mean and include the Licensee, its agents, and any person directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable.

7. Insurance.

A. Licensee shall maintain the following minimum insurance requirements: \$5,000,000 Commercial General Liability; \$5,000,000 Aviation General Liability; \$5,000,000 Aviation/Auto/Equipment Liability; or such requirements and limits as are prescribed for specific ground handling activities in the Port's SCHEDULE OF RULES AND REGULATIONS as may be amended.

B. Licensee's Commercial General Liability insurance shall include, but not be limited to, broad form property, property damage liability, contractual liability and products/completed operations liability. All such insurance shall name the Port of Seattle as an additional insured, shall contain a thirty (30) day written notice cancellation provision and shall be with insurance companies acceptable to the Port.

C. Licensee's Aviation Automobile/Equipment liability insurance shall include, but not be limited to, bodily injury liability, personal injury liability, property damage liability, hired auto/equipment liability and non-owned auto/equipment liability.

D. The Port shall be furnished with appropriate evidence to establish (1) that Licensee's insurance obligations as herein provided have been met, and (2) that the insurance policies as herein required are not subject to cancellation without at least thirty (30) days advance written notice to the Port. Licensee's failure to maintain insurance coverage in the amounts and coverages required by this Agreement and/or by the Port's Rules and Regulations shall result in an immediate termination of this License.

8. Taxes.

Licensee shall be liable for, and shall pay throughout the terms of this License, all taxes payable for, or on account of, the activities conducted on the Premises and all taxes on the property of Licensee on the Premises and any taxes on the Premises and/or on any leasehold interest deemed created by this License and/or any taxes levied in lieu of a tax on said leasehold interest and or/any taxes levied on, or measured by, the fees payable hereunder, whether imposed on Licensee or on the Port.

Licensee 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 fees payments hereunder, Licensee shall pay to the Port with each 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 Licensee shall be payable by Licensee to the Port at least fifteen (15) days prior to the due dates of the respective tax amounts involved, provided, that Licensee shall be entitled to a minimum of ten (10) days written notice of the amounts payable by it.

9. Compliance with Laws and Port Regulations.

Licensee shall comply with all Port regulations including the Port's SCHEDULE OF RULES AND REGULATIONS FOR SEATTLE-TACOMA INTERNATIONAL AIRPORT, and all applicable federal, state and local laws and regulations.

10. Revocation/Cancellation.

The Port may revoke or cancel this License without advance notice in the event Licensee fails to comply with any of the provisions required herein.

11. Licensee's Equipment.

A. All equipment brought by Licensee onto the Premises pursuant to this License shall remain the sole responsibility of Licensee. The Licensee certifies that equipment brought onto the Premises will be maintained in safe and operational condition. As solely determined by the Port, equipment appearing to be unsafe or unoperational is subject to towing, impoundment and storage charges. Equipment must be properly marked and identified with Licensee's name in letters two (2) inches or more high. Improperly identified equipment will not be allowed on the AOA.

B. The Port accepts no liability for Licensee's equipment. When not in use, Licensee's equipment shall remain in Licensee's assigned parking/storage area or in a carrier's leased area, if so authorized. Equipment left in unauthorized areas is subject to towing, impoundment and storage charges. Licensee shall store/park its equipment in a neat and orderly fashion. Licensee equipment shall at no time, intrude on the access to, or use of, any area necessary for vehicle circulation or any other company's assigned equipment parking/storage area or other lease areas. Any equipment that hinders circulation or is stored in an unsafe or disorderly fashion, as determined solely by the Port, is subject to towing, impoundment and storage charges.

C. Upon termination of Licensee's authorization to store/park its equipment in a carrier leased area, Licensee must immediately request equipment parking/storage space from the Port of Seattle and, if the Port determines that it has space available then Licensee shall pay the Port the required fee for equipment parking/storage space. In the event the Port determines space is not available for Licensee to park/store its equipment, this License shall immediately terminate, unless Licensee provides evidence that it has obtained parking/storage space from another carrier.

D. Upon termination or revocation of this License, Licensee shall immediately remove all of its equipment from the Premises at no cost to the Port. Licensee shall repair all damages to the Premises resulting from the use of its equipment.

E. Licensee shall be solely responsible for the maintenance of its equipment while on the Premises for the duration of the License. The Port shall be responsible for maintenance of the Premises for the duration of this License.

12. Utilities.

Licensee shall be responsible for all utilities consumed by its equipment for the duration of this License.

13. Environmental Standards.

A. "Law or Regulation" as used herein shall mean 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.

B. Licensee 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. Licensee 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. Licensee 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 Licensee receives from, or provides to, any governmental unit or agency in connection with Licensee's handling of Hazardous Substances or the presence, or possible presence, or any Hazardous Substance on the Premises.

C. If Licensee, 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, Licensee shall promptly take such action as is necessary to mitigate and correct the violation. If Licensee 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 Licensee (Licensee 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 Licensee is in violation of any Law or Regulation, or that Licensee's actions or inaction's present a threat of violation or a threat of damage to the Premises, the Port reserves the right to enter onto the Premises and take such corrective or mitigating action as the Port deems necessary. All costs and expenses incurred by the Port in connection with any such actions shall become immediately due and payable by Licensee upon presentation of an invoice therefor.

D. The Port shall have access to the Premises to conduct an annual environmental inspection. In addition, Licensee 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. Licensee shall not conduct or permit others to conduct environmental testing on the Premises without first obtaining the Port's written consent. Licensee 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 Licensee, and Licensee shall provide copies to the Port.

E. Prior to vacation of the Premises, in addition to all other requirements under this License, Licensee shall remove any Hazardous Substances placed on the Premises during the term of this License or Licensee's possession of the Premises, and shall demonstrate such removal to the Port's satisfaction.

F. No remedy provided herein shall be deemed exclusive. In addition to any remedy provided above, the Port shall be entitled to full reimbursement from Licensee whenever the Port incurs any costs resulting from Licensee'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-license or otherwise market the property due to its environmental condition (even if such loss of revenue occurs after the expiration or earlier termination of this License).

G. In addition to all other indemnities provided in this License, Licensee 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

- (i) made, commenced or incurred during the term of this License, or
- (ii) made, commenced or incurred after the expiration or termination of this License if arising out of events occurring during the term of this License.

#### 14. Inspection.

The Port reserves the right to inspect the Premises at any and all reasonable times throughout the term of this License; provided, that the Port shall not interfere unduly with Licensee's operations. The right of inspection reserved to the Port hereunder 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 such inspections.

15. Assignment.

This License is not assignable or transferable. Any such prohibited transfer/assignment shall result in immediate cancellation of this License.

16. Other Obligations of Licensee.

A. Licensee understands that failure to comply with Seattle-Tacoma International Airport Rules and Regulations may result in fines imposed by the Federal Aviation Administration, which will be passed on to the Licensee, in addition to any enforcement action taken under the provisions of the enforcement section of Airport Rules and Regulations.

B. Licensee shall, at its sole expense, repair or replace, at the Port's option, all personal property of the Port that is damaged by Licensee's activities.

C. Employees of Licensee issued AOA driving permits shall be limited to the areas leased by the tenant/airline unless otherwise specifically authorized by the Port of Seattle.

D. Access will be restricted during periods of low visibility, emergency situations or otherwise as determined by the Port of Seattle.

17. Liens and Encumbrances.

Licensee shall keep the Premises free and clear of any liens and encumbrances arising out of the use of the Premises by Licensee. At the Port's request, Licensee 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.

18. Notices.

All notices hereunder may be delivered or mailed. If mailed, they shall be sent to the following respective addresses:

To Port:

Port of Seattle  
Attn: M. Bloom (Rm 328MT)  
P. O. Box 68727  
Seattle, WA 98168-0727

To Licensee:

Evergreen Aviation Ground Logistics Enterprise  
2580 S 156<sup>th</sup> St. Bldg E-104  
Seattle-Tacoma International Airport  
Seattle, WA 98158-1137

or to such other respective addresses as either party hereto may hereafter from time to time designate in writing.

19. Captions.

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

20. Invalidity of Particular Provisions.

If any term or provision of this License or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable the remainder of this License or the application of such term or provision to person 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.

21. Nondiscrimination - Services.

A. Licensee agrees that it will not discriminate by segregation or otherwise against any person or persons because of race, sex, age, creed, color or national origin in furnishing, or by refusing to furnish, to such person, or persons, the use of the facility herein provided, including any and all services, privileges, accommodations, and activities provided thereby.

B. It is agreed that Licensee's noncompliance with the provisions of this clause shall constitute a material breach of this License. In the event of such noncompliance, the Port may take appropriate action to enforce compliance, may terminate this License, or may pursue such other remedies as may be provided by law.

22. Nondiscrimination - Employment.

Licensee covenants and agrees that in all matters pertaining to this License, the Licensee shall at all times conduct its business in a manner which assures fair, equal and nondiscriminatory treatment, of all persons without respect to race, sex, age, color, creed or national origin and, in particular:

A. Licensee will maintain open hiring and employment practices and will welcome applications for employment in all positions from qualified individuals who are members of racial or other minorities, and

B. Licensee will comply strictly with all requirements of applicable federal, state and local laws or regulations issued pursuant thereto relating to the establishment of nondiscriminatory requirements in hiring and employment practices and assuring the service of all patrons or customers without discrimination as to any person's race, sex, age, creed, color or national origin.

23. License Modification.

In the event the air carrier that provided Licensee's Certification of Carrier Support at the time this License was approved by the Port changes, Licensee may apply to the Port for a modification of this License. The Port will not consider requests for License Modification unless accompanied by a Certification of Carrier Support from the new air carrier. Licensee's failure to obtain modification of the License pursuant to this paragraph shall result in immediate revocation of this License.

24. In the event any section or sections or any part of any section of this License shall be found invalid for any reason, the remainder shall not thereby be invalidated but shall remain in full force and effect.

LICENSEE

By: [Signature]  
Its: J.P. Financer

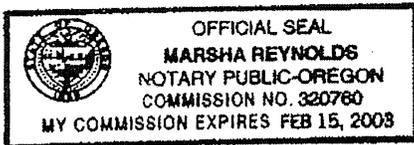
PORT OF SEATTLE

By: [Signature]  
Its: Manager Aeronautical Operations

~~STATE OF WASHINGTON~~ )  
OREGON )  
COUNTY OF ~~KING~~ Yamhill ) : ss.

On this 10 day of October, 2002, before me, the undersigned, a Notary Public in and for the State of ~~Washington~~ Oregon, duly commissioned and sworn personally appeared M. A. Spencer, to me known to be the VICE PRESIDENT of FINANCE - EAGLE, the organization that executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said organization for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument and that the seal affixed is the corporate seal of said organization.

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

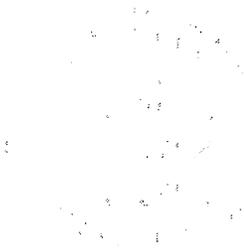


Marsha Reynolds  
NOTARY PUBLIC in and for the State  
Of ~~Washington~~ Oregon, residing at McMinnville, Oregon  
My Commission Expires: 2-15-2003  
Print Name: MARSHA REYNOLDS

STATE OF WASHINGTON )  
 : ss.  
COUNTY OF KING )

On this 27<sup>th</sup> day of Nov., 2002, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared MARK O. Coates, to me known to be the MANAGER of Port of Seattle, the organization that executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said organization for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument and that the seal affixed is the corporate seal of said organization.

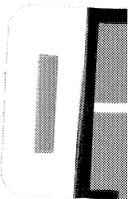
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

  
B. Fjellstad  
NOTARY PUBLIC in and for the State  
Of Washington, residing at Edgewood  
My Commission Expires: 2/2/06  
Print Name: B. Fjellstad

## **Appendix Exhibit I-1**

# **“Ground Service Operator Licensing Application and Agreement” between the Port and EAGLE**

## **Recitals and Definitions, Article 1 (CP 396-401)**



**PORT OF SEATTLE**

**SEATTLE-TACOMA INTERNATIONAL AIRPORT**

**2006 - 2012**

**SIGNATORY LEASE AND OPERATING AGREEMENT**

**Airline: CHINA AIRLINES.**

This SIGNATORY LEASE AND OPERATING AGREEMENT (this "Agreement") is made by and between the PORT OF SEATTLE (the "Port"), a Washington municipal corporation, and CHINA AIRLINES, a Taipei corporation (the "Airline").

**RECITALS**

The Port owns and operates the Seattle-Tacoma International Airport (the "Airport") and has the authority to grant to Airline rights and privileges concerning the occupancy and use of the Airport.

The Airline desires to occupy or use certain Airport premises and facilities and to acquire from the Port certain rights and privileges in connection with its use of the Airport.

In consideration of the terms and conditions described below, the Port and Airline agree as follows:

**ARTICLE 1**

**DEFINITIONS AND EXHIBITS**

**1.1 Basic Data.**

Each reference in this Agreement to any of the following subjects shall incorporate the information specified below:

Port: Port of Seattle.

Port's Overnight Delivery and Street Address: Attn: Manager, Aviation Properties, Mezzanine Level, 17801 Pacific Highway So. Seattle, WA 98158.

Port's Post Office and Payment Address: P. O. Box 34249-1249, Seattle, WA 98124-1249

Airline: CHINA AIRLINES

Airline's Overnight Delivery Address: 18000 Pacific Highway S. #1005  
Seattle, WA 98188

Airline's Post Office Delivery Address: 18000 Pacific Highway S. #1005  
Seattle, WA 98188

Effective Date: 1-1-2006.

Term: The period of time beginning on the Effective Date and ending on the Expiration Date, unless earlier terminated as provided in this Agreement.

Expiration Date: December 31, 2012.

Permitted Uses: As provided in Article 3

Premises and Legal Description: As provided in Article 2.

Security Deposit: \$437,770.02, as provided in Section 19.1.

## 1.2 Additional Defined Terms.

The following terms shall have the following meanings wherever used in this Agreement:

“AAAC” means the Airline Airport Affairs Committee established by the Signatory Airlines operating at the Airport.

“Affiliate” means any Air Carrier flying in or out of the Airport solely for the benefit of a Contracting Carrier(s) and providing transportation of property or passengers for the Contracting Carrier under the name of the Contracting Carrier or, if flying under its own name, is not selling any seats in its own name and all seats are being sold in the name of the Contracting Carrier.

“Air Carrier” means a carrier certificated by the Secretary of Transportation as a Passenger Carrier under 49 U.S.C. § 41102 or a Cargo Carrier under 49 U.S.C. § 41103.

“Airfield or Airfield Area” means all landing areas, runways, taxiways, ramps, aprons, adjacent field areas and related support facilities (e.g. field lighting, navigational aides and cart roads).

“Airfield Revenue Requirement” means the calculation described in Section 8.2.

“Airline Rate Bases” means the rate bases used to calculate Landing Fees or Terminal Rents as provided in Article 8.

“Airport” means the realty and improvements generally known and designated as the “Seattle-Tacoma International Airport.” The improvements on the realty consist of the runways, aircraft taxiways and parking aprons, the passenger and freight terminal buildings, hangars,

vehicle roadways and parking facilities, and all other improvements on such realty. The term "Airport" shall also include any adjacent or nearby realty hereafter acquired for purposes of the Airport by the Port and all improvements hereafter constructed on such realty.

"Approved Capital Budget" means a \$1.85B Capital Improvement budget authorized under Section 6.2 of the Agreement and which includes the New Project Budget, the New Project Management Reserve and the Discretionary Projects Budget.

"Approved Projects" means those previously approved Capital Improvement projects as described in Section 6.1 and listed in Exhibit G.

"Baggage Areas" means the Baggage Claim Areas and Baggage Make up Areas located in the Terminal.

"Baggage Claim Areas" means the areas located in the Terminal where in-bound baggage is unloaded and/or delivered to arriving passengers.

"Baggage Make up Areas" means the areas located in the Terminal where out - bound baggage is sorted for delivery to departing aircraft.

"Capital Improvement" means a single addition or improvement to the Airport's physical plant or equipment consistent with the Port's Capitalization Guidelines attached as Exhibit H, as may be amended by the Port.

"Cargo Carrier" means a carrier certificated by the Secretary of Transportation as a Cargo Carrier under 49 U.S.C. § 41103.

"Chair of the AAAC" means the representative of the Signatory Airline designated as such by the members of the AAAC.

"Common Use Baggage Make up Areas" means any Baggage Make up Area not assigned by the Port as Preferential Use Premises as more fully described in the Premises Notice.

"Common Use Gates" means any Gate not assigned by the Port as Preferential Use Premises as set forth in Article 4.

"Common Use Premises" means those areas within the Terminal including Common Use Baggage Make up Areas, Common Use Gates, and Common Use Ticket Counters that are made available by the Port to Airline and to one or more other Air Carriers, as more fully described in the Premises Notice.

"Common Use Ticket Counters" means any Ticket Counter not assigned by the Port as Preferential Use Premises as set forth in Article 5.

"Contracting Carrier" shall mean a Signatory Airline who contracts with another Air Carrier that is an Affiliate.

“Director” means the Managing Director, Aviation Division, of the Port or his/her successor.

“Discretionary Project Budget” means a total of \$0.03B of the Approved Capital Budget as further described in Section 6.5.

“Exclusive Premises” means any office space, storage area, VIP Lounge, employee break room or other areas of the Terminal designated for the exclusive use by Airline in the Premises Notice, and includes any Shared Exclusive Premises.

“Exempt Projects” means those Capital Improvements subject to Section 6.7 of the Agreement.

“FAA” means the Federal Aviation Administration or successor agency.

“FIS Facility” means the Federal Inspection Services Facility located in the Terminal.

“Fiscal Year” means a year beginning January 1 and ending December 31.

“Gate” means those portions of the Terminal individually comprised of a passenger loading bridge, if any, a passenger hold room and a Gate Ramp.

“Gate Ramp” means the ramp area associated with each Gate.

“Gross Revenues” means the selling price, whether for cash or credit, of all alcoholic beverages or other beverages, and any related food service items sold at the VIP Lounge, but shall exclude any sales or other excise tax imposed upon the purchaser and collected by the Airline as agent for the taxing body imposing the tax and billed to the purchaser as a separate item.

“Joint User Areas” means the Domestic Baggage Claim areas, the FIS Facility and the International Baggage Claim areas, located in the Terminal.

“Landing Fees” means the fees described in Article 8.

“Majority-in-Interest” means Air Carriers that account for more than fifty-five (55) percent in number of the Signatory Airlines and that also account for more than fifty-five (55) percent of the Terminal Rents and Landing Fees paid by all Signatory Airlines at the Airport during the immediately preceding Fiscal Year.

“Majority-in-Interest for Budget Increase” means Air Carriers that account for more than fifty-five percent (55%) in number of the voting Signatory Airlines and that also account for more than fifty-five percent (55%) of the Terminal Rents and Landing Fees paid by the voting Signatory Airlines at the Airport during the immediately preceding Fiscal Year.

“Majority-in-Interest Threshold” means a total estimated project budget (i) at or above 2.5 Million Dollars (\$2.5M) for a Terminal or Airfield Capital Improvement, or (ii) at or above 4.5 Million Dollars (\$4.5M) for a roadway Capital Improvement.

“Maximum Gross Landed Weight” means the maximum weight in thousand pound units at which each aircraft operated by Airline is authorized by the FAA to land at the Airport.

“New Projects” means Capital Improvement projects that are not Approved Projects or Exempt Projects.

“New Project Management Reserve” means \$0.15B of the Approved Capital Budget as further described in Section 6.4.

“Non-Signatory Airline” means any Air Carrier that is not a Signatory Airline.

“Passenger Carrier” means a carrier certificated by the Secretary of Transportation as a Passenger Carrier under 49 U.S.C. § 41102.

“Preferential Use Baggage Make up Areas” means a Baggage Make up Area assigned by the Port as Preferential Use Premises as set forth in Article 5.

“Preferential Use Gate” means a Gate assigned by the Port for Preferential Use by a Signatory Airline as set forth in Article 4.

“Preferential Use Premises” means those areas designated as such in the Premises Notice that are within the Terminal, including Preferential Use Baggage Make up Areas, Preferential Use Gates and Preferential Use Ticket Counters and to which Airline has a higher priority of use over all other Air Carriers.

“Preferential Use Ticket Counter” means a Ticket Counter assigned by the Port as Preferential Use Premises to a Signatory Airline as set forth in Article 5.

“Premises” shall mean any: (a) Exclusive Premises, (b) Preferential Use Premises; (c) Joint User Areas; and (d) Common Use Premises; *provided*, however, that in the case of Common Use Premises, such areas will only constitute “Premises” during the period of time for which Airline has the right to use such areas.

“Premises Notice” means the notice described in subsection 2.3.1.

“Proportionate Percentage of the 2005 Revenue Available for Sharing” means an amount calculated by multiplying the 2005 Revenue Available for Sharing by the ratio of the Landing Fees and Terminal Rents paid by Air Carriers that were Signatory Airlines in the year 2005 to the total amount of Landing Fees and Terminal Rent paid by all Signatory Airlines for the year 2005.

“Public Areas” means sidewalks, concourses, corridors, lobbies, passageways, restrooms, elevators, escalators and other similar space made available by the Port from time to time for use by passengers, Port and Airline employees and other members of the public.

“2005 Revenue Available for Sharing” means fifty percent (50%) of the amount by which the Airport’s net revenues exceed 135% of its annual debt service portion of the Port’s net

revenues, said amount to be shared with the Air Carriers that were Signatory Airlines in the year 2005.

“Scheduled Airline” means an Air Carrier performing scheduled passenger service operations at the Airport.

“Scheduled Operation” means a Scheduled Airline’s operation (arrival or departure) that occurs pursuant to a schedule that is published in the Official Airline Guide (OAG) or any successor publication and that is also made available to the Port at least forty-five (45) days prior to the commencement of such operation.

“Security Fund” means the fund defined in Article 19 of this Agreement.

“Shared Exclusive Premises” means Exclusive Premises assigned to Airline pursuant to a Premises Notice that are also assigned by the Port to other Signatory Airlines on an equal percentage basis pursuant to a lease agreement, and designated as Shared Exclusive Premises in the Premises Notice.

“Signatory Airline” means any Air Carrier that has entered into an agreement with the Port substantially similar to this Agreement.

“Terminal” means Gates, Ticket Counters, Baggage Areas, office space, storage areas, concourses, lobbies, VIP lounges, FIS Facility, employee break rooms and Public Areas located within the “drip-line” of the passenger terminal building at the Airport. For purposes of this definition, the “drip-line” shall mean the footprint (improved or unimproved) inside the outer limits of the passenger terminal building, which in all cases should not extend beyond the roof-drip line.

“Terminal Rents” means the rents charged by the Port for Airline’s use of the Terminal, as described in Article 8.

“Terminal Revenue Requirement” means the calculation described in Section 8.3.

“Ticket Counters” means those areas made available by the Port for use by Airline for ticketing passengers and similar activities, including curbside check-in positions.

“VIP Lounge” means those Exclusive Premises used by Airline to provide premium services to its passengers.

### 1.3 Exhibits.

Exhibit A: **INTENTIONALLY OMITTED**

Exhibit B (pp. 1-11): Airport Legal Description and Drawing

Exhibit C: Premises Notice

Exhibit D (pp. 1-9): Gate Use, Assignment and Scheduling Procedures

## **Appendix Exhibit I-2**

### **“Ground Service Operator Licensing Application and Agreement” between the Port and EAGLE**

**Use of Airport, Article 2 and 3  
(CP 402-404)**

Exhibit E: Preferential Use Gate Assignments

Exhibit F (pp. 1-2): Approved Capital Improvement Projects

Exhibit G (pp. 1-4): Capital Projects Procedures

Exhibit H (pp. 1-6): Port's Capitalization Guidelines

Exhibit I (pp. 1-20): Debt Service Schedule

Exhibit J: Article 8 Landing Fee Calculation

Exhibit K (pp. 1-5): Article 8 Terminal Rents Calculation

## ARTICLE 2

### GRANT OF RIGHTS TO USE AIRPORT

The Port grants to Airline the rights of occupancy and use in certain areas located within the Airport as provided in this Article, subject to the terms of this Agreement. The legal description of the Airport is attached hereto as **Exhibit B** and incorporated herein by this reference.

#### 2.1 Rights to Use Airfield Area.

The Port grants to Airline a nonexclusive license to use the Airfield Area, in common with others, subject at all times to the exclusive control and management by the Port.

#### 2.2 Rights to Use Public Areas.

The Port grants to Airline a nonexclusive license to use the Public Areas within the Terminal, in common with others, subject at all times to the exclusive control and management by the Port. Port shall have the right to relocate, change or discontinue the use of any such area from time to time during the Term.

#### 2.3 Rights to Use Premises.

2.3.1 **Premises Notice.** On or before the Effective Date, the Port will issue to Airline a Premises Notice, attached hereto as **Exhibit C** and incorporated herein by this reference, that will designate which areas of the Airport, if any, will be made available by the Port for use by Airline as: (a) Exclusive Premises, including Shared Exclusive Premises; (b) Preferential Use Premises; (c) Common Use Premises and (d) Joint User Areas (all, collectively, the "Premises"). Lessee acknowledges and agrees that the Premises Notice will be revised by the Port and issued to Airline from time to time during the Term to reflect assignment and reallocation rights pursuant to this Agreement. The parties agree that, upon issuance by the Port, the revised Premises Notice shall be attached and incorporated to the Agreement and shall update and replace the last issued **Exhibit C** without further amendment of the Agreement.

2.3.2 Exclusive Premises. The Port grants to Airline the exclusive right to use the Exclusive Premises, including Shared Exclusive Premises, identified in the Premises Notice.

2.3.3 Preferential Use Premises. The Port grants to Airline, subject to Articles 4 and 5 of this Agreement, the right to use, on a preferential use basis, the Preferential Use Premises identified in the Premises Notice.

2.3.4 Common Use Premises. The Port grants to Airline, subject to Articles 4 and 5 of this Agreement, the right to use, on a common use basis, the Common Use Premises identified in the Premises Notice, subject at all times to the exclusive control and management by the Port. Subject to the provisions of Articles 4 and 5 of this Agreement, the Port reserves the right to revise Airline's right to use such Common Use Premises by sending to Airline a revised Premises Notice.

### **ARTICLE 3**

#### **USE OF AIRPORT**

##### **3.1 Limitations and Prohibitions on Use.**

Airline shall not use the Premises or cause or permit its employees or others to use the Premises for any other purpose than specified in this Agreement.

##### **3.2 Terminal.**

Use of the Terminal by Airline shall be limited to the following activities:

3.2.1 The operation of an air transportation business for the carriage of persons, property, baggage, cargo, express and mail, including but not limited to the following categories of flights: revenue, training, test, inspection, emergency, charter and sightseeing.

3.2.2 The hiring and training of personnel in the employ of or to be employed by Airline, and the training of Airline's contractors.

3.2.3 The use alone or in conjunction with other Air Carriers, for any and all purposes in connection with or incidental to the operation of an air transportation business, including the handling of reservations, the handling, ticketing and billing of passengers, and the operation of passenger clubs and lounge rooms, and, to the extent permitted by law, the serving of food and beverages in such passenger clubs and lounge rooms.

3.2.4 The installation and operation, at Airline's expense, of identification signs advertising the business of Airline, which shall be substantially uniform in size, type and location with those of other Air Carriers, the number, type, size, design and location of which shall be consistent with Port standards and subject to the approval of the Port, which shall not be unreasonably withheld or delayed.

##### **3.3 Gates.**

Subject to Article 4 (Assignment and Use of Gates), the use of Gates by Airline shall be limited to:

3.3.1 The ticketing, boarding, unboarding and billing of passengers, the use of the passenger holding areas as waiting areas for such passengers and the use of the Gate Ramp while the Gate is used by Airline.

3.3.2 Operational staging of equipment for fueling, servicing, loading, or unloading and line maintenance of aircraft that can be completed during the time period associated with a Scheduled Operation, provided that:

(a) Nothing in this subsection shall be implied or construed to grant to Airline the right to store or park equipment on the Gate Ramp (other than as required for the regular servicing of aircraft at Gates); and

(b) In addition to the line maintenance permitted under subsection 3.3.2 above, at the Port's sole discretion and so long as it does not interfere with another Air Carrier's Scheduled Operations, the Port may permit Airline to perform emergency line maintenance of aircraft on the Gate Ramp.

### 3.4 Airfield Area.

The use of the Airfield Area and related facilities by Airline shall be limited to the following activities:

3.4.1 The servicing by Airline or others of Airline's aircraft, including Airline's servicing of its code-share partners and affiliates, and other equipment by truck or otherwise, with gasoline, fuel, or other propellants, de-icing or other supplies including food and beverages required by Airline.

3.4.2 The landing, taking off, flying, taxiing, towing, parking, loading or unloading of Airline's aircraft or the aircraft of any other Air Carrier.

3.4.3 The loading and unloading of any property, cargo, mail, and carriage of employees, in properly designated facilities, by such motor vehicles or other manner of conveyance as Airline may require in the operation of an air transportation business.

3.4.4 The installation, maintenance and operation by Airline of aircraft air-conditioning equipment, auxiliary power, start-up and miscellaneous support equipment reasonably necessary for Airline's operations and not otherwise provided by the Port. Any such equipment not reasonably required shall be promptly removed by Airline.

## ARTICLE 4

### ASSIGNMENT AND USE OF GATES

#### 4.1 No Exclusive Use Gates.

## **Appendix Exhibit I-3**

### **“Ground Service Operator Licensing Application and Agreement” between the Port and EAGLE**

**§ 4.7, “exclusive control” of gates  
(CP 409)**

Gate, if Airline is not utilizing that Preferential Gate during the Period of Use for a Scheduled Operation.

**4.6 Charges for Use of Gate by Another Carrier.**

Any Requesting Airline that is accommodated at any of Airline's Preferential Use Gates shall be required to pay Airline the same charges for use of the Gate that it would have been required to pay the Port for use of a Common Use Gate and Airline may not demand any additional payments from the Requesting Airline on account of its use of the Gate. Airline may, however, require as a condition of accommodation that the Requesting Airline provide (a) indemnification reasonably satisfactory to Airline; *provided*, that Airline may not require indemnification that is broader than the indemnification Airline has given to the Port under Article 14 of this Agreement, (b) proof of insurance of the types and with the limits of coverage required to be carried by Airline under Article 14 of this Agreement and (c) a deposit securing payment of the charges to Airline; *provided*, that Airline may not require a security deposit that is greater than the security deposit Airline has given to the Port under Article 19 of this Agreement.

**4.7 Port's Control of Common Use Gates.**

The Port shall retain exclusive control of the use of all Common Use Gates.

**4.8 Gate Management Advisory Committee.**

The Port shall establish a Gate Management Advisory Committee, composed of representatives designated by the Port and representatives of the Signatory Airlines designated by the AAAC. The Committee shall review and make recommendations to the Port about the numbers of Gates to be reserved for use as Common Use Gates during any Fiscal Year and about the locations within the Terminal of Common Use Gates and Preferential Use Gates. The Committee shall consider both the operational efficiency (from the perspectives of the Port, the Signatory Airlines and any Non-Signatory Airlines) and the customer service implications of its recommendations. The Committee's recommendations about the numbers of Gates to be reserved for use as Common Use Gates shall take into account the expected average number of Scheduled Seats to be accommodated by all Gates at the Airport during the coming year. The final numbers and locations of all Common Use and Preferential Use Gates, however, shall be determined by the Director's sole discretion, after taking account of the recommendations, if any, of the Committee.

**4.9 CUTE.**

The Port reserves the right to install common use terminal equipment ("CUTE") at all Common Use and Preferential Use Gates. Notwithstanding the foregoing, the Port will not install CUTE at any of Airline's Preferential Use Gates (i) unless the Port expects Air Carriers other than Airline to have Scheduled Operations at Airline's Preferential Use Gates; or (ii) where Airline objects, in writing, no later than thirty (30) days after receiving the Port's notice of intent to install CUTE; *provided*, that if Airline fails to object, the Port may proceed with the installation.

**Appendix Exhibit I-4**

**“Ground Service Operator Licensing  
Application and Agreement” between  
the Port and EAGLE**

**Rents and Charges, Article 8  
(CP 418 - 427)**

estimated rental charges for Airline's use of its Preferential Use Premises and Exclusive Use Premises, plus (ii) one (1) month of estimated rental charges for Airline's use of Common Use Premises and Joint User Areas, plus (iii) one (1) month of Airline's estimated Landing Fees.

## ARTICLE 8

### COMPENSATORY RATES AND CHARGES

#### 8.1 Compensatory Rates.

The Landing Fees and Terminal Rents to be charged by the Port and paid by Airline (and by all other Signatory Airlines) for its use of the Airport from the Effective Date until the expiration or earlier termination of this Agreement shall be calculated using compensatory rate-setting methods, as set forth in this Article.

#### 8.2 Landing Fee.

The Landing Fee effective January 1<sup>st</sup> of each Fiscal Year shall be determined according to the method set forth in this Section.

8.2.1 Airfield Revenue Requirement. The Port will calculate the Airfield Revenue Requirement by computing the sum of the following budgetary items:

(a) 1.0 times the sum of the annual debt service allocable to bond-funded Airfield capital projects and the share of annual debt service allocable to bond-funded Airport roadway projects or other bond-funded Airport infrastructure or system wide projects that is allocable to the Airfield, all for projects that have been completed or for which the capitalized interest fund has been exhausted ("Airfield Debt Service") (a copy of the current Debt Service Schedule is attached hereto as Exhibit I); *provided*, that the Port may increase the coverage on Airfield Debt Service above 1.0 and up to 1.25, but equivalent to any increase under subsection 8.3.1 (a), if the Port determines, in its sole discretion, that such increase is necessary to maintain the total Airport revenue bond coverage ("Total Airport Coverage") at 1.25 times the sum of the annual debt service; *plus*

(b) The annual amortization allocable to equity-funded Airfield capital projects and other equity-funded projects of the type described in subsection 8.2.1(a) that is allocable to the Airfield calculated for equity expended after December 31, 2005 for future projects that come into use during the Term based upon actual cost, the useful life of each such project and an annual amortization rate of six percent (6.0%); *plus*

(c) the annual operating and maintenance expenses allocable to the Airfield and the share of such expenses for the projects described in subsection 8.2.1(a) allocable to the Airfield; *plus*

(d) the annual interest charges attributable to borrowing against future grant payments to be made in accordance with the FAA's Letter of Intent for the Third Runway

or attributable to commercial paper or other debt instruments used to provide interim financing for Airfield capital improvements; *plus*

(e) the allocated share of annual debt service attributable to the Port Headquarters at Pier 69, without debt service coverage; *plus*

(f) deposits needed to replenish debt service reserve funds allocable to the Airfield to required levels; *plus*

(g) the allocated share of annual capital costs, amortization and operating costs attributable to Port-occupied space in the Terminal used in connection with the management, administration or operation of the Airfield; *less*

(h) revenues (other than Landing Fees charged to Air Carriers) that are received by the Port for the use of the Airfield, including revenue derived from Landing Fee premiums paid by Non-Signatory Airlines under Section 8.11.; revenue derived from annual aircraft parking land rental charges of 10% of the appraised value of the land reserved for aircraft parking positions at all Gates, based on its highest and best use and determined in accordance with customary commercial real estate appraisal methods; and aircraft parking charges for hardstands not contiguous to the Terminal; *plus or less*

(i) amounts allocable to the Airfield required to maintain a Security Deposit Fund in an amount equivalent to 1/12<sup>th</sup> of the total Signatory Airline Airfield and Terminal Revenue Requirement.

8.2.2 Projected Landed Weight. The Port will project the aggregate certificated Maximum Gross Landed Weight for all aircraft carrying passengers or cargo in commercial service that are expected to land at the Airport during the year.

8.2.3 Calculation of Landing Fee. The Port will calculate the Landing Fee by dividing the Airfield Revenue Requirement by the projected landed weight, yielding a Landing Fee to be expressed in dollars and cents per one thousand pounds in landed weight. Landing Fees will be levied upon Airline based upon the aggregate certificated Maximum Gross Landed Weight of all aircraft operated by Airline that land at the Airport.

### 8.3 Terminal Rents.

The Terminal Rents effective January 1<sup>st</sup> of each Fiscal Year shall be determined according to the method set forth in this Section.

8.3.1 Terminal Revenue Requirement. The Port will calculate the aggregate Terminal Revenue Requirement by computing the sum of the following budgetary items:

(a) 1.0 times the sum of the annual debt service allocable to bond-funded terminal capital projects and the share of annual debt service allocable to bond-funded Airport roadway projects or other bond-funded Airport infrastructure or system wide projects that is allocable to the Terminal ("Terminal Debt Service"), all for projects that have been completed or for which the capitalized interest fund has been exhausted (a copy of the current

Debt Service Schedule is attached hereto as **Exhibit I**); *provided*, that the Port may increase the coverage on Terminal Debt Service above 1.0 and up to 1.25, but equivalent to any increase under subsection 8.2.1 (a), if the Port determines, in its sole discretion, that such increase is necessary to maintain the total Airport revenue bond coverage ("Total Airport Coverage") at 1.25 times the sum of the annual debt service; *plus*

(b) the annual amortization allocable to equity-funded Terminal capital projects and other equity-funded projects of the type described in subsection 8.3.1(a) that is allocable to the Terminal, calculated for future projects that come into use during the Term, based upon actual cost, the useful life of each such project and an annual amortization rate of six percent (6.0%); *plus*

(c) the annual interest charges attributable to commercial paper or other debt instruments used to provide interim financing for terminal capital improvements; *plus*

(d) the annual operating and maintenance expenses allocable to the Terminal and the share of such expenses for the projects described in subsection 8.3.1(a) allocable to the Terminal; *plus*

(e) deposits needed to replenish debt service reserve funds allocable to the Terminal to required levels; *plus*

(f) the allocated share of annual debt service attributable to the Port Headquarters at Pier 69, without debt service coverage; yielding the gross Terminal costs, *less*

(g) revenues received by the Port from separately established tariffs for the use of Port-owned equipment at the Terminal, including loading bridges, podiums and hold room furniture, and revenues received by the Port from separately established tariffs for the use of open storage space; *less*

(h) the annual capital costs, amortization and operating costs attributable to Terminal systems dedicated to use by Air Carriers; *less*

(i) the allocated share of the remaining annual capital costs, amortization and operating costs attributable to space in the Terminal reserved for nonaeronautical facilities or activities; *less*

(j) the allocated share of the remaining annual capital costs, amortization and operating costs attributable to Port-occupied space in the Terminal used in connection with the management, administration or operation of the Airfield Area or of nonaeronautical facilities or activities at the Airport; *less*

(k) the Port's pro rata share of the remaining annual capital costs, amortization and operating costs attributable to Public Areas; *plus*

(l) the annual capital costs, amortization and operating costs attributable to Terminal systems dedicated to use by Air Carriers that were deducted in subsection 8.3.1(h); *plus or less*

(m) amounts allocable to the Terminal required to maintain a Security Deposit Fund in an amount equivalent to 1/12<sup>th</sup> of the total Signatory Airline Airfield and Terminal Revenue Requirement; *less*

(n) terminal revenues derived from premiums paid by Non-Signatory Airlines.

8.3.2 Distribution of the Terminal Revenue Requirement. The Port will distribute the aggregate Terminal Revenue Requirement calculated in accordance with subsection 8.3.1 into four cost assignment groups: Group A (consisting of Gates, Ticket Counters and Business/Service Counters); Group B (consisting of offices and VIP lounges); Group C (consisting of Baggage Areas and the FIS); and Group D (consisting of closed storage space). The costs assigned to the rented space within each of these four groups shall bear the following relativities to each other on a square foot basis:

Group A:	2.50
Group B:	1.50
Group C:	1.00
Group D:	0.50

For rate-setting purposes, the costs per square foot of rented space in each of these four groups will be normalized so that the aggregate costs assigned to all four groups will equal the Terminal Revenue Requirement.

### 8.3.3 Charges for use of Gates.

(a) Calculation of Common Use Gate Charge. The Port will calculate the revenue requirement for Common Use Gate charges by multiplying the square footage of all Common Use Gates except for those Common Use Gates rejected under subsection 4.4.7 by the per-square foot cost for Group A space and adding the costs of Gate Ramp space and Port-owned equipment and furniture associated with all Common Use Gates not otherwise recovered through separately established tariffs. The Port will then calculate separate rates for use of Common Use Gates by four different classes of aircraft: (i) wide body (with capacity for 200 or more passengers); (ii) narrow body (100-199 passengers); (iii) regional (50-99 passengers); and (iv) commuter (less than 50 passengers), to be levied on the basis of the total number of turns made in each class of aircraft. The charges for use of Common Use Gates by aircraft within each of these classes shall bear the following relativities to each other:

Wide body:	1.80
Narrow body:	1.00
Regional:	0.70
Commuter	0.40

For rate-setting purposes, the charges per turn for each of these four classes of aircraft will be normalized so that expected aggregate Common Use Gate charges equal the Common Use Gate revenue requirement. Common Use Gate charges will be levied upon Airline on the basis of the total number of turns its makes at Common Use Gates with each class of aircraft; provided.

however, that the annual charges to Airline for the use of any Common Use Gate during the Fiscal Year shall not exceed what Airline would have been charged if it had been assigned that Gate for its Preferential Use.

(b) Calculation of Preferential Gate Use Charge. The Port will calculate the annual rental rate for the use of each Preferential Use Gate by multiplying the square footage of each Gate by the per-square foot cost for Group A space. Preferential Gate use charges will be levied upon Airline on the basis of the total square footage of Preferential Gate use space assigned to Airline.

(c) Calculation of Preferential Gate Ramp Use Charge. The Port will calculate an annual rental charge for the use of Gate Ramp assigned for Preferential Use on the basis of ten percent (10%) of the appraised value of the Gate Ramp based on its highest and best use and determined in accordance with customary commercial real estate appraisal methods. This charge will be levied upon Airline on the basis of the total square footage of Gate Ramp associated with Preferential Use Gates assigned to Airline.

#### 8.3.4 Charges for use of Counters.

(a) Calculation of Preferential Use Ticket Counter Charges and Exclusive Use Business/Service Counters. The Port will calculate the annual rental rate for the use of each Preferential Use Ticket Counter and each Exclusive Use Business/Service Counter by multiplying the square footage of each Counter position by the per-square foot cost for Group A space. Charges for the use of Preferential Ticket Counters and Exclusive Use Business/Service Counters will be levied upon Airline on the basis of the total square footage of such Counters assigned to Airline.

(b) Calculation of Common Use Ticket Counter Charges. The Port will calculate an hourly charge for the use of a Common Use Ticket Counter by (i) multiplying the square footage of all Common Use Ticket Counters by the per-square foot cost for Group A space, and (ii) then dividing the total of (i) above by the expected total number of hours of use of all Common Use Ticket Counters during that Fiscal Year. Charges for the use of Common Use Ticket Counters will be levied upon Airline on the basis of the number of hours that it uses any Common Use Ticket Counter; *provided*, however, that the annual charges to Airline for the use of any Common Use Ticket Counter during the Fiscal Year shall not exceed what Airline would have been charged if it had been assigned that Common Use Ticket Counter for its preferential use.

#### 8.3.5 Charges for use of Baggage Areas.

(a) Calculation of Preferential Use Baggage Make up Charges. The Port will calculate the annual rental rate for the use of each Baggage Make up Area assigned for preferential use by multiplying the square footage of the area by the per-square foot cost for Group C space. Charges for the use of such Baggage Make up areas will be levied upon Airline on the basis of the total square footage of all Baggage Make up Areas assigned to Airline for its preferential use.

(b) Calculation of Common Use Baggage Make-up Charges. The Port

will calculate a charge per outbound Available Seat for the use of each Common Use Baggage Makeup Area by (i) dividing each Signatory Airline's annual rental rate for the use of Preferential Baggage Makeup Areas (calculated under subsection 8.3.5(a) above) by that Signatory Airline's Available Seats for the months of September through August of the immediately preceding Fiscal Year (the "Cost Per Available Seat" "CPAS"); and (ii) determining the ninetieth (90<sup>th</sup>) percentile CPAS among all qualifying Signatory Airlines. Charges for the use of Common Use Baggage Makeup Areas will be levied upon Airline on the basis of Airline's Available Seats; provided, however, that the annual charges to Airline for the use of any Common Use Baggage Makeup Area during the year shall not exceed what Airline would have been charged if it had been assigned that Common Use Baggage Makeup Area for its preferential use.

As used in this subsection 8.3.5(b), "Available Seat" means the total number of seats available on Airline's outbound Scheduled Operations.

(c) Calculation of Domestic Baggage Claim Charges. The Port will calculate the charge for the use of Baggage Claim Areas serving domestic flights by multiplying the square footage of all such Baggage Claim Areas by the per-square foot cost for Group C space to determine the Domestic Baggage Claim revenue requirement. Charges for the use of domestic Baggage Claim Areas shall be calculated by allocating ten percent (10%) of that revenue requirement equally among all Signatory Airlines with scheduled domestic service, and ninety percent (90%) of that revenue requirement shall be divided by the expected number of passengers deplaning from domestic flights arriving during the Fiscal Year to determine the Domestic Baggage Claim charge per deplaned passenger. Charges for the use of domestic Baggage Claim Areas will be levied upon Airline on the basis of the sum of its equal share of ten percent (10%) of the revenue requirement plus the product of the total number of passengers it deplanes from domestic flights arriving during the Fiscal Year times the per passenger charge.

8.3.6 Charges For Use of Certain Exclusive Use Space. The Port will calculate the annual rental rate for the use of office space, including use of Shared Exclusive Premises, Airline Ticket Office and VIP lounges by multiplying the square footage of such space by the per-square foot cost for Group B space. Charges for the use of such Exclusive Use space will be levied upon Airline on the basis of the total square footage of such space assigned to Airline.

(a) Percentage Fees Payable for VIP Lounge. Airline shall pay to the Port the following percentage fees on the sale of all alcoholic beverages or other beverages, and any related food service items sold at or within the VIP Lounge: eighteen percent (18%) of the Gross Revenues received by the Airline from beer and wine sales, eighteen percent (18%) of the Gross Revenues received by Airline from all liquor sales and fourteen percent (14%) of the Gross Revenues received by Airline from all other (if any) sales incurred during said preceding month.

8.3.7 Charges for use of the FIS Facility and International Baggage Claim Area. The Port will calculate the charge for the use of the FIS Facility and the Baggage Claim Area serving international flights by multiplying the square footage of the FIS Facility and the international Baggage Claim Area by the per-square foot cost for Group C space to determine the FIS revenue requirement. Charges for the use of the FIS Facility and international Baggage

Claim Area shall be calculated by allocating ten percent (10%) of that revenue requirement equally among all Signatory Airlines that use the FIS Facility, and ninety percent (90%) of that revenue requirement shall be divided by the expected number of passengers deplaning from international flights and/or transborder flights using the FIS Facility and arriving during the year, including those deplaning passengers continuing on to other domestic or international flights, to determine the FIS charge per deplaned passenger. Charges for the use of the FIS Facility and international Baggage Claim Area will be levied upon Airline on the basis of the sum of its equal share of ten percent (10%) of the revenue requirement plus the product of the total number of passengers it deplanes from international flights and/or transborder flights using the FIS Facility and arriving during the year, including those deplaning passengers continuing on to other domestic or international flights, times the per passenger charge.

#### 8.3.8 Charges for the Use of Storage Space.

(a) Charge for Closed Space. The Port will calculate the annual rental rate for the use of closed storage space by multiplying the square footage of storage space by the per-square foot cost for Group D space. Charges for the use of closed storage space shall be levied upon Airline on the basis of the total square footage of such space assigned to Airline.

(b) Charge for Open Space. The annual rental rate for the use of open storage space will be fifty percent (50%) of the rate for the use of closed storage space. The rate under this subsection 8.3.8 (b) shall be referred to as cost assignment Group E, as illustrated in Exhibit C to this Agreement. Charges for the use of open storage space shall be levied upon Airline on the basis of the total square footage of such space assigned to Airline.

#### 8.4 **Illustration of Calculations.**

Exhibit J (Landing Fee Calculation) and Exhibit K (Terminal Rents Calculation) attached to this Agreement and incorporated herein by this reference, illustrate the calculation of Rates and Charges in accordance with the methods set forth in this Article based upon the budget and projected levels of airport activity for Fiscal Year 2006.

#### 8.5 **Mid-year Adjustments.**

8.5.1 If it appears to the Port, on the basis of information it is able to accumulate during the course of a Fiscal Year during the Term, including information pursuant to Section 20.4 of the Agreement, that the budgeted airfield and terminal costs or projected landed aircraft weight or rented Terminal space it used in calculating the Landing Fees or Terminal Rents then in effect are likely to vary substantially from actual results at the Airport, the Port may, in its sole discretion, make mid-year adjustments to the Landing Fees or Terminal Rents (or both).

8.5.2 Notwithstanding the provisions of subsection 8.5.1, the Port's right to make mid-year adjustments to the Landing Fees or Terminal Rents (or both) that are based on Section 8.6 shall be subject to the following:

(a) Where the Actual Variance (defined in Section 8.6) exceeds the Estimated Variance (defined in Section 8.6) between five percent (5%) and under ten percent (10%), the Port reserves the right to make mid-year adjustments to the Landing Fees and

Terminal Rents (or both) for the current Fiscal Year.

(b) Where the Actual Variance exceeds the Estimated Variance by ten percent (10%) or greater, the Port shall adjust the Landing Fees and Terminal Rents (or both) for the current Fiscal Year.

8.5.3 The Port shall provide Airline with a minimum of thirty (30) days advance written notice of any mid-year adjustment under this Section 8.5.

#### 8.6 Adjustments-to-Actual.

The Landing Fees and Terminal Rents established by the Port at the inception of each Fiscal Year will be separately recalculated by the Port during its budget cycle for the following Fiscal Year in accordance with the methods set forth in this Article and on the basis of estimates of actuals ("Estimated Variance"). Any resulting Estimated Variance will be included in the Port's budget for that Fiscal Year following ("Estimated Variance Fiscal Year"). No later than March 31 of the Estimated Variance Fiscal Year, the Port will recalculate the Landing Fees and Terminal Rents of the Estimated Variance in accordance with the methods set forth in this Article. If it is determined that the indicated actual Landing Fees or Terminal Rents of the Estimated Variance would vary from the Landing Fees or Terminal Rents initially calculated for that Fiscal Year ("Actual Variance"), the Port shall include the Actual Variance into the Port's budget for the Fiscal Year following the Estimated Variance Fiscal Year: *provided*, that where the Actual Variance exceeds the Estimated Variance, the Port has the right to adjust the Landing Fees and Terminal Rents (or both) for the current Fiscal Year in accordance with subsection 8.5.2

8.7 **Reserved**

8.8 **Reserved.**

8.9 **Activity Reports.**

8.9.1 Flight Information Management System. Airline shall provide the Port with the information for the Port's Flight Information Management System ("FIMS") as by providing real time data output from Airline's internal flight information display system, computer reservations system, cargo load message transmission, ARINC or SITA transmissions, or other information systems (including commercial information systems) on a per flight basis. Airline shall provide to the Port, in real time, the following information about the Airline's operations and activities at the Airport. For each arriving flight: (a) flight number and Airport Gate utilized, (b) aircraft registration number and aircraft type, and (c) actual time of arrival at the Airport (wheels-on) and actual time of arrival at the Gate (aircraft parked at the Gate). For each departing flight: (a) flight number and Airport Gate utilized, (b) aircraft registration number and aircraft type, and (c) actual time of departure from Gate (aircraft pushback) and actual time of departure from Airport (wheels-off).

8.9.2 Future Automated Activity Reporting. The Port shall give Airline notice that the Port intends to enhance FIMS to receive electronic activity reporting for all data listed in subsection 8.9.1. Airline agrees to work with the Port to develop Airline's automated activity

reporting capability. Airline shall cooperate with the Port in testing the enhanced FIMS, provided such testing does not unreasonably interfere with Airline's operations.

**8.9.3 Failure to Report.** If Airline fails timely to furnish the Port with any monthly activity report under subsections 8.9.1, 8.9.2 or Section 9.1, whichever may be applicable, Airline's Landing Fees, Terminal Rents and any other charges due under this Agreement shall be determined by assuming that Airline's activity in any month for which Airline has failed to report its activity equaled the Airline's maximum activity during any of the previous twelve (12) months for which Airline submitted an activity report to the Port. Any necessary adjustments in the Airline's charges shall be calculated after an accurate report is delivered to the Port by Airline for the month in question. Resulting credits or debits shall be applied to the appropriate invoices in the next billing period.

**8.10 Consultation.**

No later than November 1 of each year during the Term, the Port shall disclose to Airline what revised Landing Fees and Terminal Rents the Port expects to charge Airline effective on January 1 of the following year and shall consult with Airline about the revised charges. In connection with this consultation, the Port shall provide to Airline the calculations the Port has made in determining the revised charges with reasonable supporting documentation. The Port's obligation to consult with Airline shall not limit in any way the Port's rate-setting powers under this Agreement or otherwise or cause any delay in the effectiveness of revised charges. No later than December 1 of each year during the Term, the Port shall notify Airline of the actual Landing Fees and Terminal Rents it will charge effective January 1 of the following year.

**8.11 Non – Signatory Premium.** Non – Signatory Airlines shall pay a ten percent (10%) premium on all rates and charges set forth under this Article 8.

**8.12 International Service Program.** Notwithstanding any other provision in this Agreement and, in order to attract new international passenger air service to the Airport, the Port reserves the right to adopt and implement an FAA approved program of international service incentives at the Airport, which may include rate and charges incentives ("International Service Program"); *provided*, that subject to Port Commission approval, non-aeronautical Airport revenues may be used as one of the funding sources for an International Service Program. Said Program shall be offered to all Passenger Carriers determined eligible under established program criteria.

**8.13 Affiliates.** In the event Airline contracts with an Affiliate, it shall be considered a Contracting Carrier, and all of the following provisions applicable to Contracting Carriers shall apply to Airline:

**8.13.1** Airline may not use an Affiliate without first notifying the Port that it intends to designate an Affiliate and ensuring that the Affiliate must enter into an Affiliate Operating Permit with the Port, and that Airline also signs that agreement as the Contracting Carrier. Airline is also responsible to notify the Port when it ceases to use the Affiliate. Affiliates signing a Signatory Lease and Operating Agreement will be bound by that Agreement for its entire term.

8.13.2 All Affiliates using the Airport must enter into an Affiliate Operating Permit with the Port. The Contracting Carrier must also sign the Affiliate's Operating Permit with the Port. An Affiliate shall be considered an agent of the Contracting Carrier.

8.13.3 All Landing Fees, Terminal Rents and other charges and fees due from the Affiliate and all reports required to be made for payment of Landing Fees and Terminal Rents shall be made by the Contracting Carrier. The Contracting Carrier will remain liable to the Port for the payment of all Landing Fees and Terminal Rents due from the Affiliate, and any such past due payments (including PFCs) will be subtracted from any reimbursement due to the Contracting Carrier by the Port. Notwithstanding the foregoing, the Affiliate shall directly report and pay to the Port all PFCs that it collects. If the Contracting Carrier fails to make payment or submit reports on behalf of the Affiliate, the Affiliate remains fully responsible and liable to the Port for both reporting and payment. As long as the Contracting Carrier is making all payments of Landing Fees and Terminal Rents, and submitting the activity reports for the Affiliate, then that Affiliate activity will count toward the Contracting Carrier's activity.

8.13.4 Any Air Carrier who operates under its own name and sells any seats in its own name will not be deemed an Affiliate. An Affiliate may work for more than one (1) Signatory Airline at a time, or from time to time, but any Signatory Airline for whom the Affiliate is working must sign the Affiliate's Operating Permit, agreeing to be responsible for reporting and paying for the Affiliate's operations on its behalf. Notwithstanding anything to the contrary, an Air Carrier's status as Affiliate of the Airline at the Airport may be terminated by the Airline upon not less than thirty (30) days written notice to the Port. Any Affiliate who sells any seats in its own name will be required to sign a Signatory Lease and Operating Agreement, or will be deemed a Non-Signatory Airline, and Section 8.13 shall not apply.

8.13.5 Because the Affiliate is operating on behalf of a Signatory Airline(s) who reports and pays for all Terminal Rents and Landing Fees associated with the Affiliate's operations, the Affiliate will not be required to pay a Non-Signatory premium on its Landing Fees and Terminal Rents, except as provided in this Section 8.13. The Landing Fees and Terminal Rents paid by the Contracting Carrier on behalf of its Affiliate(s) is subject to all the provisions of Article 8.

8.13.6 If an Affiliate chooses to lease space directly from the Port, the Affiliate must become a Signatory Airline or a Non-Signatory Airline, but in either case relinquishes its status as an Affiliate.

## **ARTICLE 9**

### **PAYMENTS**

#### **9.1 Payment of Landing Fees and Terminal Rents.**

Airline shall pay to the Port Landing Fees and Terminal Rents calculated in accordance with Article 8 as follows. Beginning on the Effective Date, Airline shall pay to the Port on a

## **Appendix Exhibit I-5**

**“Ground Service Operator Licensing  
Application and Agreement” between  
the Port and EAGLE**

**Compliance with Law, Article 13, and  
Indemnification, Article 14  
(CP 433 - 436)**

rendered the entire Premises unusable, said rental shall be abated entirely, and upon termination of the Agreement as to such damaged or destroyed Premises, the Airline shall have no further obligation to pay the rental allocable thereto. The costs assigned to such unusable Premises under subsection 8.3.2 shall be evenly redistributed for the duration of such rent abatement among all of rented space in the corresponding Group under subsection 8.3.2. The Port may charge a reasonable rental for any temporary substitute space it furnishes. In the event that the Port shall elect to terminate the Agreement as to the portion of the Premises damaged or destroyed as provided above, and in the event the loss of use thereof by the Airline will have a substantial adverse effect on Airline's use of the remainder of the Premises and its business and operations at the Airport, the Airline may within thirty (30) days after receipt of the Port's notice of termination, terminate this Agreement in its entirety by giving the Port written notice thereof.

### **12.6 Inspections.**

The Port may, upon reasonable notice to Airline, cause the Premises and Airline's operations at the Airport to be inspected and may conduct an inspection of Airline's operations at the Airport to confirm that such operations comply with the requirements set forth in this Agreement. The Port shall use reasonable efforts not to interfere with Airline's operations during any such inspection, and Airline shall cooperate with such inspection. In the event such inspection shows that Airline is not substantially complying with such requirements, without limiting the Port's ability to call a default hereunder, the Port may require that Airline reimburse the Port for the reasonable costs of such inspection. Airline shall promptly remedy any noncompliance shown in any such inspection.

## **ARTICLE 13**

### **COMPLIANCE WITH LAW**

#### **13.1 General Laws.**

At all times, Airline shall, with respect to its operations at the Airport, comply with all applicable present and future federal, state and local laws, rules, regulations and ordinances, as they may be amended from time to time, whether foreseen or unforeseen, ordinary as well as extraordinary, including without implied limitation those relating to (i) health and safety; (ii) the environment; and (iii) disabled access, including the Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et seq.*

#### **13.2 Airport Rules and Regulations.**

The use by Airline of the Premises, the Public Areas, the Airfield Area and all other areas of the Airport shall be subject to such Airport Rules and Regulations as are now or may in the future be adopted by the Port, provided that such Rules and Regulations do not conflict with applicable provisions of state or federal law. Except in the case of emergency Rules and Regulations, the Port shall give Airline written notice and opportunity to comment on any proposed Rules and Regulations that would affect Airline's operations at the Airport before such proposed Rules and Regulations are adopted by the Port. Within twenty (20) calendar days after receipt of the Port's notice of such proposed Rules and Regulations, the Chair of the AAAC (and

not Airline individually), may submit, in writing, objections to the proposed Rules and Regulations on behalf of Airline and all other objecting Air Carriers. The Port and the Chair of the AAAC shall have fifteen (15) calendar days after the Port's receipt of the AAAC's objection to meet and discuss the proposed Rules and Regulations. If the AAAC's objections are not resolved, the Port shall provide the proposed Rules and Regulations and the AAAC's objections to the Port Commission prior to implementation, and the AAAC shall have twenty (20) days to comment to the Port Commission on its objections. After the AAAC comments to the Port Commission on its objections, or if the AAAC fails to comment to the Port Commission during the allotted twenty (20) day period, the Port shall implement the proposed Rules and Regulations.

## ARTICLE 14

### INDEMNIFICATION - LIABILITY INSURANCE

#### 14.1 Indemnification of Port by Airline.

Except where, and to the extent, caused by the negligence or intentional wrongdoing of Port, its agents, employees, contractors, officers, directors or predecessors in interest, the Port and its officers, employees and agents, shall not be liable for any injury (including death) to any persons or for damage to any property regardless of how such injury or damage may be caused, sustained or alleged to have been sustained by Airline or by others, including but not limited to all persons directly or indirectly employed by Airline, or any agents, contractors, subcontractors, licensees and invitees of Airline, as a result of any condition (including existing or future defects in the Premises) or occurrence (including failure or interruption of utility service) whatsoever related in any way to the Premises or the areas adjacent thereto or related in any way to Airline's use or occupancy of the Premises and of areas adjacent thereto. Airline agrees to defend (with counsel reasonably acceptable to the Port) and hold and save the Port harmless from all liability and expenses (including attorney's fees, costs, and all expenses of litigation) in connection with any such actual or alleged injury or damage, except where, and to the extent, caused by the negligence or intentional wrongdoing of the Port, its agents, employees, contractors, officers, directors or predecessors in interest. All indemnities provided in this Agreement shall survive the expiration or any earlier termination of this Agreement. Any final judgment rendered against the Port for any cause for which Airline is liable hereunder shall be conclusive against Airline as to liability and amount upon the expiration of the time for appeal therefrom.

14.1.1 Industrial Insurance Laws. Airline shall comply with the statutory requirements of Chapter 51 of the Revised Code of Washington ("RCW") regarding workers compensation coverage for its employees. In any and all claims against the Port by an employee of Airline, the indemnification obligation of Section 14.1 of this Agreement shall not be limited in any way by any limitation on the amount or type of damages or compensation benefits payable by or for the Airline under applicable worker's or workmen's compensation, benefit, or disability laws (including but not limited to RCW 51 Industrial Insurance). Airline expressly waives any immunity Airline might have under such laws and, by agreeing to enter into the Agreement, acknowledges that the foregoing waiver has been mutually negotiated by the parties.

#### 14.2 Liability Insurance.

During the Term, Airline shall provide to the Port at the address set forth in Section 1.1, pay for and maintain with companies, reasonably satisfactory to Port, commercial general liability insurance (using ISO Form CG 00 01 07 98 or equivalent) in the minimum single limit of \$300 million per occurrence and hereafter in such increased amounts or on such revised terms and conditions as the Port may from time to time specify, after consultation with Airline, to indemnify both the Port and Airline against any liability or expense relating to this Agreement. Unless already covered in the policy, the policy shall specifically be endorsed to cover all "mobile equipment" utilized by the Airline at the Airport. The Port shall be named as an additional insured (using ISO Form 20 26 11 85 or equivalent), and shall be furnished with appropriate written evidence to establish that Airline's insurance obligations as required by this Article have been and continue to be met, and that the insurance coverage required by this Article is not subject to cancellation, nonrenewal or material reduction in coverage without at least thirty (30) 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. The liability insurance required by this Section 14.2 shall not contain a deductible or self-insured retention in excess of \$10,000 without the prior written approval of the Port. All deductibles and self-insured retentions shall be paid by, assumed by, for the account of, and at Airline's sole risk. To the extent that Airline relies on excess or "umbrella" policy of insurance to satisfy the requirements of this Section, any such policy shall be no less broad than the underlying policy, shall have the same inception and expiration dates as the underlying policy, and shall include a drop-down provision.

#### 14.3 Automobile Liability Insurance.

During the Term, Airline shall provide to the Port at the address set forth in Section 1.1, pay for and maintain with companies reasonably satisfactory to Port, commercial automobile liability insurance covering all owned, non-owned and hired automobiles, trucks and trailers in the minimum single limit of \$5 million for operations outside the Air Movement Area and \$10 million for operations inside the Air Movement Area and hereafter in such increased amounts or on such revised terms and conditions as the Port may from time to time specify. The Port shall be named as an additional insured, and shall be furnished with appropriate written evidence to establish that Airline's insurance obligations as required by this Article have been and continue to be met, and that the insurance coverage required by this Article is not subject to cancellation, nonrenewal or material reduction in coverage without at least thirty (30) days' advance written notice to the Port; provided, that where the cancellation is for non-payment of premium, written notice to the Port may be provided ten (10) days in advance of cancellation. The inclusion of the Port as an additional insured shall not create any premium liability for the Port. The liability insurance required by this Section shall not contain a deductible or self-insured retention in excess of \$10,000 without the prior written approval of the Port. All deductibles and self-insured retentions shall be paid by, assumed by, for the account of, and at Airline's sole risk. To the extent that Airline relies on excess or "umbrella" policy of insurance to satisfy the requirements of this Section, any such policy shall be no less broad than the underlying policy, shall have the same inception and expiration dates as the underlying policy, and shall include a drop-down provision.

**14.4 Other Forms of Insurance.**

Airline shall also obtain all other forms of insurance required for its particular use of the Airport or as required by law.

**14.5 Additional Insurance.**

In the event of cancellation of any required insurance at any time during the Term, or any change not reasonably acceptable to the Port, including an erosion in available limits below those specified in this Article 14, the Port reserves the right, after consultation with Airline, to provide additional insurance and charge the cost of any premiums for such coverage to the Airline. The Port's right under this Section 14.5 includes, but is not limited to, the Port purchasing higher limits for its own insurance program to account for an erosion in limits by Airline.

**14.6 No Representation of Adequacy.**

The Port makes no representation that limits or forms of insurance coverage specified or required under this Agreement are adequate to cover Airline's property or Airline's liabilities or obligations under this Agreement.

**14.7 Port's Right to Request Information from Insurance Company.**

If at any time the Port requests a written statement from the insurance company as to any impairments to the aggregate limit, Airline shall promptly authorize and have delivered such statement to the Port. Airline authorizes the Port and its insurance consultant to confirm with Airline's insurance agents, brokers and insurance companies all information furnished the Port, as to Airline's compliance with the Port's insurance requirements.

**14.8 Primary Coverage.**

All insurance policies required under this Agreement shall be endorsed to state that Airline's policy is primary and not contributory with any insurance carried by the Port.

**ARTICLE 15**

**WAIVER OF SUBROGATION**

The Port and Airline (for themselves and on behalf of anyone claiming through or under them by way of subrogation or otherwise) hereby release each other from liability and waive all right of recovery against each other for any loss to real or personal property located anywhere on or about the Airport from perils which can be insured against under a standard form commercial property or fire insurance policy (specifically including hull insurance or the like) with extended perils coverage endorsements generally available in Washington at the time the loss occurs. The effect of the release and waiver of the right to recover damages shall not be limited by whether the party incurring the loss has actually obtained such insurance, by the amount of insurance carried, or by any deductibles applicable thereto. If a party's applicable insurance policies do not

## **Appendix Exhibit I-6**

**“Ground Service Operator Licensing  
Application and Agreement” between  
the Port and EAGLE**

**§ 24.15, “Entire Agreement” and  
§ 24.23, “Agreement Not to Grant  
More Favorable Terms”  
(CP 450 - 452)**

**24.12 Successors and Assigns.** All of the terms, provisions, covenants, stipulations, conditions and considerations in this Agreement shall extend to and bind the legal representatives, successors, and assigns of each party to this Agreement.

**24.13 Taxes.** Airline recognizes and understands that this Agreement may create a possessory interest subject to property taxation, including state leasehold tax, and that Airline may be subject to the payment of property taxes levied on such interest. Airline shall be liable for, and shall pay throughout the Term, all taxes payable for, or on account of, the activities conducted by Airline on the Airport and all taxes on the personal property of Airline on the Premises and any taxes on the Premises or on any property interest created by this Agreement and any taxes levied in lieu of a tax on any such property interest and any taxes levied on, or measured by, the Terminal Rents and other charges payable under this Agreement, whether imposed on Airline or on the Port. Airline shall reimburse the Port for all such taxes paid or payable by the Port. With respect to any such taxes payable by the Port that are levied on, or measured by, the Terminal Rents or other charges payable under this Agreement, Airline shall pay to the Port with each payment an amount equal to the tax levied on, or measured by, that particular payment. All other tax amounts for which the Port is or will be entitled to reimbursement from Airline shall be payable by Airline to the Port at least fifteen (15) days prior to the due dates of the respective tax amounts involved, provided that Airline shall be entitled to a minimum of ten (10) days written notice of the amounts payable by it.

**24.14 Exhibits.** All exhibits referred to in this Agreement and which may, from time to time, be referred to in any duly executed amendment to this Agreement are (and with respect to future amendments, shall be) by such reference incorporated in this Agreement and shall be deemed a part of this Agreement as fully as if set forth within it.

**24.15 Entire Agreement.** This Agreement supercedes the Signatory Lease and Operating Agreement between the parties dated January 1, 2004 ("2004 SLOA"). Notwithstanding the foregoing, any approvals obtained from either party under the provisions of the 2004 SLOA shall survive its termination. The parties intend that this Agreement shall be the final expression of their agreement with respect to its subject matter and may not be contradicted by evidence of any prior or contemporaneous written or oral agreements or understandings. The parties further intend that this Agreement shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts of the Agreement) may be introduced in any judicial, administrative or other legal proceeding involving this Agreement.

**24.16 Amendments.** Except as specifically provided herein, neither this Agreement, nor any of its term or provisions, may be changed, waived, discharged or terminated, except by a written instrument signed by the party against which the enforcement of the change, waiver, discharge or termination is sought.

**24.17 No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.

**24.18 No Joint Venture.** ~~24.18 No Joint Venture~~ It is expressly agreed that the Parties are not, in any way or for any purpose, partners and therefore do not assume any responsibilities for one another.

**24.19 Attorneys' Fees.** In the event that either party shall be required to bring any action to enforce any of the provisions of this Agreement, or shall be required to defend any action brought by the other party with respect to this Agreement, and in the further event that one party shall substantially prevail in such action, the losing party shall pay all of the prevailing party's reasonable costs and reasonable attorneys fees as determined by the court. In the event the Port or Airline is represented by in-house attorneys in such action, such attorneys' fees shall be computed at hourly rates charged by attorneys of comparable experience in private practice in Seattle; *provided*, that Airlines shall only be required to pay to the Port the difference between the total attorneys fees owed by Airline and the amount direct billed to the Port by its in-house counsel.

**24.20 Liens and Encumbrances.** Airline shall keep the Premises free and clear of any liens and encumbrances arising or growing out of Airline's use and occupancy of the Premises or activities at the Airport. Airline agrees to fully indemnify and defend the Port in connection with any such liens filed against the Premises. At the Port's request, Airline shall furnish the Port with written proof of payment of any item that would or might constitute the basis for such a lien on the Premises if not paid.

**24.21 Notices.** All notices and payments under this Agreement may be delivered or mailed. If delivered by messenger or courier (including overnight air courier), they shall be deemed delivered when received at the street addresses listed in Article 1. If mailed, they shall be sent to the Port's Address and Airline's Address as provided in Article 1, respectively, or to such other respective addresses as either party may from time to time designate in writing. All notices and payments mailed by regular post (including first class) shall be deemed to have been given on the second business day following the date of mailing, if properly mailed and addressed. Notices and payments sent by certified or registered mail shall be deemed to have been given on the third business day following the date of mailing, if properly mailed and addressed. For all types of mail, the postmark affixed by the United States Postal Service shall be conclusive evidence of the date of mailing.

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

**24.23 Agreement Not to Grant More Favorable Terms.** During the Term, the Port agrees not to enter into any lease, contract or other agreement with any other Air Carrier conducting operations at the Airport that contains rates and charges more favorable to such Air Carrier than the rates and charges payable by Airline under this Agreement, unless the Port also makes those more favorable terms available to Airline. The provisions of this Section 24.23 shall in no way limit, impair or interfere with the Port's ability to charge or establish such rates

and charges as the Port may deem applicable when entering into any lease, contract or other agreement with any party that is not an Air Carrier.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the Effective Date.

**PORT OF SEATTLE**

a municipal corporation

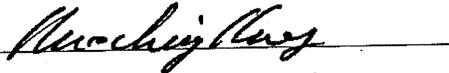
By: 

Name: Mark M Reis

Title: Managing Director, Aviation

AIRLINE: CHINA AIRLINES

a Taipei corporation

By: 

Name: KUO-CHING KUEY

Title: General Manager Seattle Branch