

FIRST AMENDMENT TO LEASE AND OPERATING AGREEMENT

THIS FIRST AMENDMENT TO LEASE AND OPERATING AGREEMENT (the "Amendment") dated April _____, 2023, is made and entered into by and between the PORT OF TACOMA, a Washington municipal corporation (the "Port" or "Lessor"), and WWL VEHICLE SERVICES AMERICAS, INC., a California corporation ("WWL" or the "Lessee").

RECITALS

WHEREAS, the Port of Tacoma, as Lessor, and WWL Vehicle Services Americas, Inc. as Lessee, are parties to a Lease and Operating Agreement dated March 16, 2018 (the "Lease") regarding Premises as specifically defined and described in Section 1.1 of the Lease; and

WHEREAS, Lessor utilizes the Premises for the receipt, delivery, and temporary storage of finished vehicles and high and heavy cargo storage and processing of Lessee's customers, including GLOVIS America, Inc. ("GLOVIS"); and

WHEREAS, the Lessor Work as defined in Section 8 of the Lease has been completed at a final cost to Lessor of \$34,047,312; and

WHEREAS, commencing on or about April 5, 2023, GLOVIS entered into a Second Amendment to Use Agreement with the Northwest Seaport Alliance (NWSA), the marine cargo operating partnership of the Port of Tacoma and Port of Seattle, to designate the Port of Tacoma as the sole port of call in the Pacific Northwest for all vessels engaged in the import or export of Kia America, Inc. (KUS) (formerly KIA Motors America, Inc. (KMA)) vehicles, and all vessels engaged in the import or export of Hyundai Motors America, Inc. (HMA) vehicles (the "Consolidation"); and

WHEREAS, the Consolidation is expected to result in increased volume of vehicle shipments to the Port of Tacoma, which will require WWL to secure additional storage area in addition to the Premises for GLOVIS vehicles; and

WHEREAS, Lessor and NWSA have been unable to locate suitable and available additional property to accommodate WWL's immediate additional space needs to support the Consolidation; and

WHEREAS, Lessor would typically provide Preferential Use space to WWL for low cost in exchange for WWL remitting applicable tariff charges to Lessor; and

WHEREAS, as a result of the unavailability of Port or NWSA property to accommodate the additional vehicle volume resulting from the Consolidation, Lessee has executed a short-term lease with the Puyallup Tribe of Indians ("Tribal Lease") for additional property; and

WHEREAS, the cost of the Tribal Lease is significantly more expensive for WWL than use of Port or NWSA property for additional Preferential Use space; and

WHEREAS, had WWL not entered into the Tribal Lease, WWL vessels would not have been able to timely unload in the Port of Tacoma; and

WHEREAS, the Port seeks to defray the cost to WWL for a portion of its rent for the Tribal Lease and expand WWL's Lease to include additional Preferential Use Area to support the Consolidation; and

WHEREAS, Lessor and Lessee now desire to modify and amend certain terms and provisions of the Lease.

NOW, THEREFORE, in consideration of the above-stated premises and the terms and conditions set forth below, the Parties agree to amend the Lease as follows:

AMENDMENT AGREEMENT

1. PREFERENTIAL USE AREA

A new paragraph is added to Section 1: Premises, as follows:

1.1.3. Additional Preferential Use Area

1.1.3.1 Effective Date and Additional Preferential Use Area. Effective May 15, 2023, Lessor grants to Lessee the non-exclusive preferential use of approximately twelve (12) acres of land, together with any existing improvements thereon, as generally shown and described in **Exhibit A** hereto ("Additional Preferential Use Area"). The term "non-exclusive preferential use" when used with respect to the Additional Preferential Use Area shall have the same meaning and shall be subject to the same requirements and restrictions as provided for the Preferential Use Area in in paragraph 1.1.2.3 of the Lease. Lessee's use of the Additional Preferential Use Area shall be expressly subject to the terms and conditions specified in Section 5 of the Lease.

1.1.3.2 Term. Lessee shall have the right to non-exclusive preferential use of the Additional Preferential Use Area from May 15, 2023 through December 31, 2028, unless NWSA receives written notice regarding its intent to terminate vehicle processing services with WWL, in which case, WWL will have ninety (90) days after the termination of its agreement with GLOVIS to vacate the Additional Preferential Use Area.

1.1.3.4 Condition: Improvements. Lessor and Lessee will jointly examine the Additional Preferential Use Area and complete and document a move-in inspection using the form attached as **Exhibit B**. Upon completion of such move-in inspection, Lessee will accept the Additional Preferential Use Area in its then-present condition. The condition of the Additional Preferential Use Area also includes, without limitation, the environmental conditions referenced in Section 25 of the Lease. Lessor makes no representations or warranties regarding the Additional Preferential Use Area, including but not limited to soil conditions, structural conditions, or the condition of any mechanical, electrical, or other systems. Lessee will be solely and exclusively responsible for the cost of any

alterations or improvements, which must be submitted to Lessor for review in accordance with Lessor's Tenant Improvement Procedure as now in effect or as hereafter amended or adopted. Except as otherwise specified in this Amendment, Lessee shall comply with the requirements of Section 8 of the Lease in completing alterations and improvements to the Additional Preferential Use Area.

1.1.3.5 Utilities. Utilities for the Additional Preferential Use Area shall be the same as for the Premises in Section 6 of the Lease.

1.1.3.6 Taxes. Taxes for the Additional Preferential Use Area shall be the same as for the Premises in Section 7 of the Lease.

1.1.3.7 Lease Security. The Lease Security will be increased to reflect the Preferential Use Fee for the Additional Preferential Use Area and shall be adjusted to reflect future Preferential Use Fee adjustments as provided in Section 3.6 of the Lease. Lease Security shall otherwise be the same as for the Premises in Section 4 of the Lease.

1.1.3.8 Maintenance and Repair. Maintenance and Repair for the Additional Preferential Use Area shall be the same as for the Premises in Section 9 of the Lease.

1.1.3.9 Insurance. Insurance for the Additional Preferential Use Area shall be the same as for the Premises in Section 17 of the Lease.

1.1.3.10 Environmental Provisions. Environmental Provisions for the Additional Preferential Use Area shall be the same as for the Premises in Section 25 of the Lease.

1.1.3.11 Premises Security. Premises Security for the Additional Preferential Use Area shall be the same as for the Premises in Section 13 of the Lease.

1.1.3.12 Premises. The term "Premises" as defined and used in the Lease shall include the Additional Preferential Use Area, subject to the terms, conditions, and limitations provided in this Amendment. In the event of conflict with the Lease, the terms and conditions of this Amendment shall control with respect to Lease provisions applicable to the Additional Preferential Use Area.

2. PREFERENTIAL USE FEE - MINIMUM ANNUAL REVENUE GUARANTEE

The first paragraph of Section 3.2 of the Lease is amended to provide as follows:

3.2 Preferential Use Fee – Minimum Annual Revenue Guarantee. Commencing on the later of January 1, 2019 or the date of Lessor's First Readiness Notice under Section 1.1.2.2 above (the "Preferential Use Fee Commencement Date"), Lessee agrees to guarantee, and Lessor agrees to accept, a Minimum Annual Revenue Guarantee (MAG) as provided below as Preferential Use Fee for use of Preferential Use Area ("Preferential

Use Fee”), subject to periodic increases as provided in Section 3.6 below, and subject to all applicable taxes as now or hereafter assessed. All amounts shall be paid when due as provided below, at such place as Lessor may designate, without any prior demand, and without any abatement, deduction or setoff whatsoever. Payments may be made by ACH, EFT, auto-draft, or auto-pay. If the Preferential Use Fee Commencement Date, or the end of the Term, is on any day other than the first (or last) day of a calendar month or is less than a full year, then Preferential Use Fee shall be prorated per diem based upon the actual number of days in such month or year. For Lease year 2023, the MAG shall be \$2,691,017 based on the \$34,037,312 actual cost of Lessor’s Work under Section 8 below. Lessee agrees to guarantee, and Lessor agrees to accept, additional MAG as Preferential Use Fee for the Additional Preferential Use Area. For Lease year 2023, the MAG for the Additional Preferential Use Area shall be \$371,901. Based on the initial estimated budget for Lessor’s Work of \$32,000,000, the MAG shall be \$2,200,000 per calendar year; provided, however, that if the actual cost of Lessor’s Work varies (up or down) from \$32,000,000 by more than \$500,000, then the MAG shall be adjusted by the same percentage by which the actual cost of Lessor’s Work varied from \$32,000,000. For example only, if the actual cost of Lessor’s Work is \$32,750,000, a 2.34% increase, then the MAG would be \$2,251,480 ($\$2,200,000 \times 102.34\% = \$2,241,480$). The MAG, as finally determined as provided above, The MAG (including the MAG for the Additional Preferential Use Area) shall be periodically adjusted every year hereafter as provided in Section 3.6 below.

The last paragraph of Section 3.2 of the Lease is amended to provide as follows:

MAG Revenue shall be reconciled by the parties within ninety (90) days after the end of each calendar year, and shall be reconciled and settled within ninety (90) days after the end of each 5-year period (December 31, 2023 and each 5-year anniversary thereof) as follows: If the aggregate MAG Revenue during any such 5-year period, less the aggregate amounts paid by Lessor to Lessee for Revenue Sharing under Section 3.3 below during such period, is less than the aggregate MAG for such period (including adjustments under Section 3.6 below), then Lessee shall pay the shortfall (“Preferential Use Fee Shortfall”) to Lessor within thirty (30) days from the date of invoice by Lessor. If the aggregate MAG Revenue during any such 5-year period, less the aggregate amounts paid by Lessor to Lessee for Revenue Sharing under Section 3.3 below during such period, is equal to or greater than the aggregate MAG for such period (including adjustments under Section 3.6 below), then no payment will be due as a result thereof by either Lessee or Lessor. For purposes of this section a year shall mean a calendar year, except that for the Additional Preferential Use Area, MAG Revenue shall be prorated from May 15, 2023 through December 31, 2023. The amounts payable by Lessee to Lessor under this section are sometimes referred to in this Lease as “Preferential Use Fee”, “Preferential Use Fee - Minimum Annual Revenue Guarantee”, or “Minimum Annual Revenue Guarantee”.

3. REVENUE SHARING

Section 3.3 of the Lease is deleted in its entirety and replaced with the following:

3.3 Revenue Sharing. The parties are each assuming certain risks in connection with the development of the Premises and committing to a long-term arrangement at the Port of Tacoma. To reflect this risk-sharing, the parties agree that

if in any calendar year of the Term the MAG Revenue exceeds the following levels, adjusted as provided below ("Revenue Sharing Thresholds"), then the excess amounts will be shared as follows:

- (i) Tier 1: If MAG Revenue during any year exceeds \$3,669,567, then Lessor shall pay Lessee 25% of the excess from \$3,699,568 to \$4,281,162.
- (ii) Tier 2: If MAG Revenue during any year exceeds \$4,281,162, then Lessor shall pay Lessee 50% of the excess above \$4,281,163.

The Revenue Sharing Thresholds shall increase by the following amounts during the term of Lessee's use of the Additional Preferential Use Area:

- (i) Tier 1: If MAG Revenue during any year exceeds \$4,176,705, then Lessor shall pay Lessee 25% of the excess from \$4,176,706 to \$4,872,824.
- (ii) Tier 2: If MAG Revenue during any year exceeds \$4,872,824, then Lessor shall pay Lessee 50% of the excess above \$4,872,825.

The above Revenue Sharing Thresholds (including Revenue Sharing for the Additional Preferential Use Area) shall be subject to the special rule provided in Section 3.4 below and shall be adjusted annually as provided in Section 3.6 below. In addition, Revenue Sharing for the Additional Preferential Use Area shall be prorated from May 15, 2023 through December 31, 2023.

4. SPECIAL RULE FOR EXISTING BUSINESS

Section 3.4 of the Lease is deleted in its entirety and replaced with the following:

3.4 Special Rule for Existing Business. With the exception of Mitsubishi (MMNA), if between January 1, 2019 and January 1, 2029 WWL becomes the processor for any NWSA finished vehicle key account existing as of January 1, 2019, then any revenue received by Lessor from the handling of these vehicles will count towards MAG Revenue, but will not count towards Revenue Sharing Thresholds. Existing business shall be defined as finished vehicle manufacturers or their representatives using the NWSA gateway as of January 1, 2019, and includes the following: KIA Motors America Korean import business; Mazda North America US Japanese import business; Isuzu Cab Chassis Japanese import business; and Mitsubishi Fuso Japanese import business. Examples of business that would not be considered existing business are: Kia Motors Canada import business; and GM Korean import business; and Mazda Canada Import business. If any existing business leaves the NWSA gateway during the period January 1, 2019 through January 1, 2029, then it will no longer be considered existing business for purposes of this Section 3.4.

5. SPECIAL RULE ON PAYMENT OF OFFSET FEE FOR TRIBAL LEASE

A new section 10 is added to the Lease as follows:

10. Special Rule on Payment of Offset Fee for Tribal Lease.

10.1 Because Lessor was initially unable to accommodate additional space for Lessee at other Port or NWSA properties, Lessee entered into the Tribal Lease on March 8, 2023 on a month-to-month basis. To offset the increased cost of the Tribal Lease, and in consideration of the additional volume and related tariff income anticipated as a result of the Consolidation, Lessor agrees to pay Lessee \$13 per unit for imported or exported Hyundai vehicles through the WWL auto terminal ("Offset Fee"). The Offset Fee shall be paid retroactive to March 8, 2023, the effective date of the Tribal Lease, through June 9, 2023.

10.2 Lessor shall have no obligation to pay the Offset Fee after June 9, 2023 or if the Tribal Lease is terminated.

10.3 At no time may the Offset Fee exceed the cost of rent payments made by Lessee under the Tribal Lease.

10.4 Lessor will continue to collect the wharfage, dockage, service and facilities fees as well as storage fees for all vehicles or other cargoes stored at the Tribal Lease premises per the NWSA/Port of Tacoma Tariff #300.

10.5 Within five days of the execution of this Amendment, Lessee shall provide Lessor with a copy of the fully executed Tribal Lease. Lessee shall provide Lessor with copies of any amendments to the Tribal Lease within five (5) days of execution.

10.6 No later than the 7th of each month the Lessor and Lessee will reconcile the number of Hyundai imports/exports during the previous month to calculate the Offset Fee and Lessor will issue Lessee a check for the corresponding Offset Fee amount. Reconciliation for the month of April 2023 will be retroactive to March 8, 2023.

6. **SAVINGS CLAUSE:** Except to the extent expressly modified by the provisions of this Amendment, the provisions of the Lease shall remain unchanged and in full force and effect, and are hereby affirmed and ratified by Lessor and Lessee.

7. **COUNTERPARTS:** This Amendment may be executed in counterparts, each of which shall be regarded as an original and all of which together shall constitute one and the same agreement.


[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto do hereby execute this Amendment on the date as first set forth above.

PORT OF TACOMA

WWL VEHICLE SERVICES AMERICAS, INC.

(signature)



(signature)

Eric Johnson
(print name)

John Felitto
(print name)

Its: Executive Director

Its: President

Date: _____

Date: 3-27-2023

APPROVED AS TO FORM

By: _____

Heather L. Burgess
Port of Tacoma General Counsel