

2/26/13  
112349  
157732 6/12

FIFTH LEASE EXTENSION AGREEMENT NO. 29211

**29211**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

THIS FIFTH LEASE EXTENSION AGREEMENT NO. 29211 ("Agreement")

is dated as of September 17, 2013, and is made and entered, in duplicate, pursuant to minute order adopted by the City Council of the City of Long Beach at its meeting of September 17, 2013, between WILLIAMS SCOTSMAN, INC., a Maryland corporation ("Lessor"), and the CITY OF LONG BEACH, a municipal corporation ("Lessee" or "City").

1. RECITALS. This Agreement is made with reference to the following facts and objectives:

1.1 Pursuant to (i) that certain Lease Agreement dated as of February 20, 2002 between City and Lessor (CPX-07667) (the "Car Rental Facility Lease"), and (ii) that certain Lease Agreement dated as of March 1, 2002 between City and Lessor (CPX-09935) (the "North Holdroom Lease", and together with the Car Rental Facility Lease, the "Lease"), as amended by (i) that certain Lease Extension Agreement (City Contract No. 29211) dated as of July 25, 2005, (ii) that certain Second Lease Extension Agreement dated as of January 22, 2008, (iii) that certain Third Lease Extension Agreement dated as of January 31, 2010, and (iv) that certain Fourth Lease Extension Agreement dated as of January 31, 2012, City leases from Lessor certain trailers and/or relocatable, modular and/or prefabricated structures, together with stairs, railings, and other items attached or appurtenant thereto comprising the so-called North Holdroom and the Car Rental Facility at the Long Beach Municipal Airport.

1.2 City desires to extend the term of the Car Rental Facility Lease and Lessor is willing to do so on the terms and conditions of this Agreement.

1.3 The North Holdroom has been removed and the North Holdroom Lease has terminated by its own terms.

NOW, THEREFORE, the parties do hereby agree as follows:

2. TERM. The term of the Car Rental Facility Lease shall be extended for an additional twenty-four (24) months so that the expiration date is January 31, 2016.

OFFICE OF THE CITY ATTORNEY  
ROBERT E. SHANNON, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664

OFFICE OF THE CITY ATTORNEY  
ROBERT E. SHANNON, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664

- 1                   3.     MONTHLY RENT. Effective February 1, 2014, City shall pay Lessor
- 2 rental of One Thousand Two Hundred Dollars (\$1,200) per month for the Car Rental
- 3 Facility.
- 4                   4.     HOLDOVER. Should City fail to vacate the Car Rental Facility upon
- 5 the expiration of the term, the Car Rental Facility Lease shall become a month-to-month
- 6 lease terminable by either party upon thirty (30) days advance written notice, but
- 7 otherwise upon the same terms as contained in the Car Rental Facility Lease.
- 8                   5.     EARLY TERMINATION. City shall have the right to terminate the
- 9 Car Rental Facility Lease upon sixty (60) days advance written notice to Lessor.
- 10                  6.     REMOVAL. Upon termination of the Car Rental Facility Lease,
- 11 Lessor shall remove and repair the Car Rental Facility and all appurtenances, including
- 12 the ramp, and City shall pay Lessor an amount not to exceed Twenty-Two Thousand Two
- 13 Hundred Twenty Five and 06/100 Dollars (\$22,225.06) in accordance with Lessor's
- 14 Quote No. 366937, 365305 and repair estimate dated 08/02/13, subject to increase if the
- 15 Car Rental Facility suffers further damage after the date hereof, or if City requests further
- 16 services not contemplated by the aforementioned removal quotes and repair estimate.
- 17                  7.     FULL FORCE AND EFFECT. Except as modified by the terms
- 18 hereof, the Car Rental Facility Lease remains unchanged and in full force and effect.
- 19                   /
- 20                   /
- 21                   /
- 22                   /
- 23                   /
- 24                   /
- 25                   /
- 26                   /
- 27                   /
- 28                   /

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IN WITNESS WHEREOF, the parties have executed this Agreement with all formalities required by law.

"Lessor"

WILLIAMS SCOTSMAN, INC., a Maryland corporation

Date: Sept 26, 2013

By *Donna J. Jernstedt*  
Its Contracts Administrator

Date: Sept. 26, 2013

By *Donald W. Walker*  
Its Contracts Manager

"Lessee"

CITY OF LONG BEACH, a municipal corporation

Date: 11.12, 2013

By *SM* Assistant City Manager  
Patrick H. West, City Manager

EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.

This Agreement is approved as to form this 21 day of October, 2013.

CHARLES PARKIN, City Attorney

By *[Signature]*  
Richard F. Anthony, Deputy

OFFICE OF THE CITY ATTORNEY  
ROBERT E. SHANNON, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664

05-00962

## Exhibit "A"

**WILLIAMS SCOTSMAN, INC.**  
**GENERAL TERMS & CONDITIONS (05/28/2009)**  
**REVISED 06/11/09**  
**CITY OF LONG BEACH**

1. **True Lease.** This Agreement ("Agreement") is a true lease and not a sale. Lessee shall not acquire ownership interest in the Equipment. The Equipment shall remain the sole personal property of Lessor.

2. **Delivery; Acceptance.** Upon delivery, Lessee agrees to inspect and accept the Equipment and accept the Equipment if the inspection is satisfactory. The Equipment is deemed finally accepted at the time of delivery unless Lessee notifies Lessor of a defect/deficiency in writing within 48 hours after delivery.

3. **Site Suitability; Inspection.** Lessee shall choose a firm level site accessible by truck to locate the Equipment. If Lessee fails to provide such a site, then Lessee shall pay for any resulting additional delivery, site preparation and return charges, including but not limited to, storage related charges attributable to delayed delivery and/or installation of the Equipment required and/or requested by Lessee. Lessee shall not alter the manner of installation or location of the Equipment without written consent of Lessor. Lessor shall have the right to enter the premises and inspect the Equipment during normal business hours during the term of this Agreement and any Extension Period. **LESSOR DOES NOT RECOMMEND OR SUPPORT THE STACKING OF EQUIPMENT. DO NOT STACK EQUIPMENT UNLESS YOU HAVE THE APPROVAL OF QUALIFIED ENGINEERING PROFESSIONALS, COMPLY WITH ALL OCCUPATIONAL SAFETY LAWS, AND OBTAIN ALL ZONING, BUILDING, AND OCCUPANCY PERMITS. NOTWITHSTANDING ANY EXPRESS TERMS TO THE CONTRARY, LESSOR DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, IF THE LESSEE STACKS EQUIPMENT.**

4. **Use; Maintenance; Condition.** Lessee has the right to peaceably and quietly hold, use and enjoy the Equipment, subject to the terms and conditions of this Agreement. Lessee agrees not to remove existing nameplates or decals affixed to the Equipment. Lessee shall use the Equipment solely in the conduct of its business and in a careful and lawful manner. Lessee shall not use, release, store, dispose of, or otherwise have present any Hazardous Materials in, on, under or near the Equipment, unless Lessor shall have first consented in writing to such use or presence of Hazardous Materials, and such Hazardous Materials are used, stored, manufactured, disposed of or otherwise present in accordance with all applicable laws. "Hazardous Materials" shall mean any explosives, flammable substances, radioactive materials, asbestos, paints containing lead, materials containing urea, formaldehyde, polychlorinated biphenyls, oil, petroleum byproducts, or any other hazardous, toxic, dangerous or otherwise regulated substances, wastes, pollutants, contaminants, or biological substances (including fungi, bacteria, mold and microbial matter of any kind) whether having such characteristics in fact or defined as such under federal, state, or local laws and regulations. Lessee shall pay any and all fees, charges and expenses and comply with all laws related to the use, possession, and operation of the Equipment while it is in Lessee's possession, including obtaining all approvals and permits related to the use and/or possession of the Equipment. Lessee shall maintain and keep the Equipment in good repair and safe operating condition during the term of this Agreement in accordance with the Williams Scotsman Service Guide, incorporated herein as Exhibit A. Lessee shall not, without Lessor's prior written consent, make any changes, alterations or improvements in or to the Equipment or remove any parts, accessories or attachments from it. Lessor makes no representations as to the Equipment's compliance with federal, state or local building codes, zoning ordinances, or other types of regulations or use codes.

5. **Term of Lease; Extension.** The term of this Agreement begins on the date of delivery of the Equipment, and ends on the later of the last day of the Minimum Lease Term ("Term") or the Extension Period (as herein defined).

At the end of the Term, this Agreement is extended on a month-to-month basis until the Equipment is returned to Lessor (the "Extension Period"). During the Extension Period, Lessor has the right to, on 30 days notice, increase the Rate Per Month and/or the knockdown and return freight charges to Lessor's then prevailing rate. After the end of the Term, either party can terminate this Agreement on 30 days written notice.

6. **Rent; Fees; Taxes; Late Charges.** Rent begins to accrue on the Delivery Date. If delivery is not made on the first of the month, then rent shall be prorated for the first month of the Term. Lessee shall pay Lessor monthly rent for the Equipment on the due date at the Rate Per Month stated in this Agreement during the Term, and at the Rate Per Month established by Lessor during the Extension Period. If any payment is not paid on the due date, Lessee agrees to pay Lessor a charge of 1 1/2% per month of the amount in arrears for the period such amount remains unpaid. Lessee shall pay or, if requested by Lessor, reimburse Lessor for any and all sales, use, personal property taxes, or other taxes, fees or assessments levied against or imposed upon the Equipment, its value, use or operation. Payments shall be effective upon Lessor's receipt of payment. Lessor may apply any payment from Lessee against any obligation due and owing by Lessee under this Agreement, regardless of any statement appearing on or referred to in any remittance from Lessee or any prior application of payment. The receipt by Lessor of a partial payment of any amount due to Lessor endorsed as payment in full will be deemed to be a part payment only, and any endorsements or statements on the check or any letter accompanying the check shall not be deemed an accord and/or satisfaction. Lessee's obligation (without prior notice or demand) to pay rent and all other amounts due hereunder shall be absolute and unconditional, and not subject to any abatement, set off, defense, recoupment, or reduction.

7. **No Liens.** Lessee agrees to keep the Equipment free and clear of any and all claims, liens, encumbrances or attachments.

8. **Indemnity.** Lessee agrees to indemnify, defend and keep harmless Lessor, its agents and employees, from and against any and all losses, claims, reasonable attorneys' fees and expenses related to: (a) the death of, injury to, or damage to the property of, any person or party related to or arising out of the use, possession, condition, return or repossession of the Equipment; and (b) the failure of Lessee to maintain the Equipment as agreed to herein.

9. **Loss; Damage.** Lessee assumes the risk of all loss and damage to the Equipment from all causes, including loss of use. Upon the occurrence of the total loss of the Equipment, to such an extent as to make the repair thereof uneconomical (in Lessor's opinion) Lessor shall declare the Equipment a Total Loss. In the event of a Total Loss, Lessee shall pay Lessor, on the next date for the payment of rent, the rent then due plus the Equipment Value as set forth herein (the "Total Loss Amount"). Upon receipt of the Total Loss Amount, all Lessee's lease obligation under this Agreement will terminate, provided however that Lessee shall not be released of responsibility for any pending insurance claims which occurred during the lease term or which may be subsequently filed, and Lessor shall transfer title of the Equipment to Lessee. In the event of loss or damage to the Equipment that does not constitute a Total Loss, Lessee, at its sole cost and expense, shall pay for the repair of such damage as directed by Lessor to the condition required by this Agreement.

10. **Insurance.** Lessee's responsibility for the Equipment begins immediately upon delivery. Lessee shall obtain and keep in force during the entire Lease Term the following liability and property insurance coverage naming Lessor as Additional Insured and Loss Payee. Lessee has elected to meet the insurance requirements contained herein by self-insurance. If Lessee subsequently elects not to self-insure, Lessee shall provide Lessor with (30) days prior written notice of such election along with a valid certificate of insurance evidencing the required coverage. (A) **General Liability Insurance:** A

policy of combined bodily injury and property damage insurance insuring Lessee and Lessor against any liability arising out of the use, maintenance, or possession of the Equipment. Such insurance shall be in an amount not less than \$1,000,000 per occurrence. (B) Property Insurance: A policy of insurance covering all loss or damage to the Equipment, including flood and earthquake, for not less than 100% of the Equipment Value, for the full term of the Lease. (C) General. (1) Lessee's insurance for the Equipment shall be issued by insurance companies satisfactory to Lessor. Such insurance shall be primary, and any other coverage carried by the Lessor, as additional insured, shall be excess and non-contributory. Within 10 days after the delivery of the Equipment, Lessee shall provide Lessor with evidence of the required insurance and naming Lessor as Additional Insured and Loss Payee. The Evidence of Insurance must provide Lessor with 30 days prior written notice of any cancellation. Any proceeds of such insurance shall be paid to Lessor and shall be applied to the replacement of the Equipment or payment of monies due under this Agreement, at the option of Lessor. Lessee shall comply with all requirements of the insurance underwriters or any governmental authority. (2) Lessee will only be assessed Missing or Expired Certificate fees, as provided herein, if Lessee subsequently elects not to self-insure and does not provide Lessor with a certificate evidencing insurance coverage, or the subsequent renewal certificate upon the initial certificate's expiration, or if Lessee voluntarily elects to take the waivers. Lessee shall provide Lessor with (1) one month's prior written notice of any impending self-insurance termination. Lessee shall pay a Missing or Expired Evidence fee for each month that Lessee fails to timely provide the required Evidence of Insurance for property coverage or for liability coverage. Such fees shall be calculated by Lessor at its then-prevailing rate(s). Payment of such fees shall not provide Lessee with any insurance coverage, nor excuse Lessee from performing its obligations under Sections 8 & 9.

**11. Defaults; Remedies**. (A) Lessee shall be deemed to be in default hereunder upon the occurrence of any of the following events ("Events of Default"): (1) Lessee shall fail to make any payment due hereunder within 10 days after its due date; (2) Lessee shall fail to perform or observe any other term, covenant, or condition of this Agreement; or (3) Lessee shall have defaulted under any other agreement with Lessor. (B) Following Lessor's prior written notice to Lessee of Lessee's Event of Default, and thirty (30) days provided to Lessee in which to cure such Event of Default, should the Event of Default remain uncured, Lessor may declare this Agreement, to be in Default, and thereafter may exercise any one or more of the following remedies: (1) Declare the rent for the Term and all other unpaid rent, fees, taxes and charges under this Agreement immediately due and payable; (2) Repossess, retake and/or retain any or all of the Equipment free of all rights and claims of Lessee with notice, but without legal process, or judicial intervention, unless required by law, and without releasing Lessee of any term, covenant or condition provided herein; (3) Sell or otherwise dispose of any or all of the Equipment in a commercially reasonable manner and apply the net proceeds of such disposition, after deducting all costs, to the obligations of Lessee, with Lessee remaining liable for any deficiency; (4) Cancel this Agreement; and/or (5) Exercise any other right or remedy available to Lessor at law or in equity. Lessor's waiver of any Event of Default shall not constitute a waiver of any other Event of Default or a waiver of any term or condition of this Agreement. No right or remedy referred to herein is intended to be exclusive, and each may be exercised concurrently or separately and from time to time. In the event Lessor shall repossess or retake the Equipment, and there shall be in or attached to such Equipment any property owned by, or in the custody or control of Lessee, then Lessor is hereby authorized to take possession of such property for a period of 10 days. Lessor shall provide written notice to Lessee of any property left in the Equipment and, thereafter, any such property not claimed by Lessee, will be deemed abandoned, and Lessor shall have the right to dispose of it. (C) To the extent permitted by applicable law, Lessee and Lessor waive all right to trial by jury of all claims, defenses, counterclaims and suits of any kind arising from or relating to this Agreement.

**12. Return of Equipment; Termination of Lease**. At the end of the lease term, Lessee shall make the Equipment available to Lessor, without

impediment, at the Delivery Address or any other address to which Lessor has previously provided written approval of relocation of the Equipment. Any impediment to pick-up of the Equipment may result in additional charges to Lessee. Lessee shall provide Lessor with at least 30 days advance written notice of the return of the Equipment. The Equipment shall be "broom clean" and in the same condition as delivered to Lessee, ordinary wear and tear excepted. Termination will become effective only when the Equipment has been returned to Lessor as herein provided and Lessee has paid Lessor all unpaid rental and other charges applicable to the Equipment. Lessee hereby consents to entry by Lessor or its agents upon the premises where the Equipment may be located for return or repossession of the Equipment. Lessee agrees that prior to the return of the Equipment to Lessor or upon notice of its repossession, Lessee shall immediately disconnect all utilities, remove all of Lessee's personal property, and vacate the Equipment. In the event there shall be any of Lessee's personal property left in the Equipment upon its return, Lessor shall provide written notice to Lessee of such property, and a time period of (10) days in which to claim the property. Lessor shall not be liable for keeping or storing any personal property of Lessee left in or on the Equipment; and, thereafter, such property not claimed by Lessee, will be deemed abandoned by Lessee. Any accessories and additions to the returned Equipment shall be deemed to be part of the Equipment and the property of Lessor. Lessee shall reimburse Lessor for any and all costs incurred related to the return of the Equipment and in repairing, cleaning or otherwise restoring the Equipment to its condition when delivered, ordinary wear and tear excepted.

**13. Limited Warranty**. For as long as Lessee timely makes all payments due hereunder, Lessor warrants throughout the term of this Agreement that it will repair structural or mechanical defects in the Equipment (excluding HVAC filters, fire extinguishers, fuses/breakers and light bulbs), provided that Lessee notifies Lessor in writing of any defects, malfunctions, or leaks within two (2) business days of the occurrence thereof. Lessor shall have no liability for the repair of any defect or condition resulting from Lessee's relocation of the Equipment, utilities connection, alteration of the Equipment, use of the Equipment for a purpose for which it was not intended, vandalism, misuse of the Equipment, for excessive wear and tear or for which timely notice is not provided to Lessor. The repair of the Equipment by Lessor, due to a defect or condition resulting from any of the preceding causes shall result in additional charges to Lessee. Lessor shall have no liability whatsoever for any consequential, incidental or punitive damages, costs or expenses. Except as specifically provided herein, Lessor disclaims any and all warranties, express or implied, related to the Equipment and any maintenance or repair work performed by Lessor including any warranties of merchantability, suitability, or fitness for a particular purpose.

**14. Assignment**. Lessee shall not assign this Agreement or sublet the Equipment without the prior written consent of Lessor. This Agreement shall be binding upon any permitted assignee or successor of Lessee. Lessor may assign any of its rights hereunder without notice to Lessee.

**15. Miscellaneous**. (a) Time is of the essence with respect to this Agreement. (b) This Agreement, when signed by both parties, constitutes the entire agreement between the parties, superseding and replacing all prior documents and representations, with respect to the subject matter hereof. It may only be amended by a document signed by both parties. (c) If any provision of this Agreement is deemed unenforceable for any reason, then such provision shall be deemed stricken and shall not affect the enforceability of any of its other provisions. Notwithstanding anything contained herein to the contrary, if it should be determined by a court of competent jurisdiction that any indemnification or other protection afforded to an indemnitee under Section 8 would be in violation of or otherwise prohibited by any applicable law, then Section 8 shall automatically be deemed to be amended in a manner which provides the maximum indemnification and other protections to such indemnitee consistent with such applicable law. (d) The obligations of



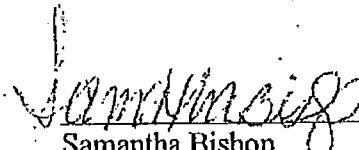
WILLIAMS SCOTSMAN, INC.  
8211 Town Center Drive  
Baltimore, MD 21236-5997  
410.931.6000 - 800.638.6963  
Fax: 410.933.6940

SECRETARY'S CERTIFICATE

I, Samantha Bishop, hereby certify that I am the Corporate Secretary of Williams Scotsman, Inc. ("Williams Scotsman"), a Maryland corporation, and that the individual listed below has the corporate authority to execute contracts and agreements binding Williams Scotsman to contracts and obligations up to the dollar amount specified below:

<u>Name</u>	<u>Title</u>	<u>Authority Limit</u>
Donna Finnerty	Contracts Administrator	\$500,000.00

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the Seal of the corporation, this 26th day of October 2009.

  
\_\_\_\_\_  
Samantha Bishop  
Corporate Secretary  
Williams Scotsman, Inc.

