

ORIGINAL

PUBLIC



**UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION**

In the Matter of	)	
	)	
Hertz Global Holdings, Inc. a corporation	)	
	)	
	)	<b>Docket No. C-4376</b>

**PETITION OF FRANCHISE SERVICES OF NORTH AMERICA, INC. FOR  
PRIOR APPROVAL OF THE SALE OF  
THE PORTLAND AND SAN JOSE LOCATIONS**

Pursuant to Section 2.41(f) of the Commission’s Rules of Practice and Procedure, 16 C.F.R. § 2.41(f), and Paragraph 5 of the Commission’s Decision and Order In the Matter of Hertz Global Holdings, Inc., (respectively “Hertz” and the “Order”) (Docket No. C-4376), Franchise Services of North America, Inc. (“FSNA”) respectfully requests that the Federal Trade Commission (the “Commission”) approve the sale and assignment to Avis Budget Group (“Avis”) and Sixt Rent-A-Car, LLC (“Sixt”) of certain of the assets and liabilities relating to the business of Simply Wheelz LLC d/b/a Advantage Rent A Car (“Simply Wheelz,” the “Debtor” or the “Company”, and the assets to be purchased, the “Portland location” and the “San Jose location”). This sale will be pursuant to the terms of a bid submitted by Avis (the “Avis Bid”) and Sixt (the “Sixt Bid”) which was approved by the United States Bankruptcy Court for the Southern District of Mississippi (the “Bankruptcy Court”) in its Order issued on June 10, 2014 (the “Bankruptcy Court Order” or the “Order”). Through a series of Commission-approved

transactions, FSNA acquired the Assets To Be Divested (as defined in the Order),<sup>1</sup> and through its direct subsidiary, Simply Wheelz, has been operating a car rental business under the “Advantage” brand (the “Advantage Business”). Under the terms of Paragraph 5 of that Order, the Acquirer of Assets To Be Divested, in this case FSNA, must obtain prior approval from the Commission before disposing of any of those assets.

### **EXECUTIVE SUMMARY**

The Commission approved the sale and assignment of most, but not all Advantage Assets to The Catalyst Capital Group Inc. on behalf of one or more funds managed by it and/or through certain affiliates or any designee thereof (“Catalyst”) on January 30, 2014 (the “Advantage/Catalyst Sale”). The Debtor temporarily suspended operations at 28 locations (the “Non-Transferred Locations” or the “Excluded Assets”) that were excluded from the Advantage/Catalyst Sale. Since that time, the Debtor and Catalyst have worked diligently to find buyers for the 28 Non-Transferred Locations. On May 30, 2014, the Commission approved the sale and assignment of ten closed Advantage locations to Hertz and twelve closed Advantage locations to Avis. The Debtor continued to seek buyers for six other Non-Transferred Locations: Detroit, Hartford, Milwaukee, Portland, Richmond, and San Jose (the “Remaining Non-Transferred Locations.”). Subsequently, the Debtor determined that there were no viable prospects for the Detroit and Milwaukee locations, and the Bankruptcy Court entered its Order approving the Debtor’s rejection of those locations on May 15, 2014. Despite diligent efforts to market the Hartford and Richmond locations, the Debtor has not been able to locate a buyer, so it will seek Bankruptcy Court approval to reject those locations as well.

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<sup>1</sup> This Application adopts and incorporates by reference all Definitions set forth in the Order.

FSNA and the Debtor now seek Commission approval for the sale of the Portland location to Avis and the San Jose location to Sixt pursuant to the Bankruptcy Court-approved process. Despite the Debtor's marketing these locations as a part of its second sales process, neither of these locations attracted a bidder at the minimum purchase price. Subsequently, to accommodate the Portland and San Jose Airports and their desire to have another car rental company alternative for the consumers utilizing those airports, the Debtor again marketed these locations with a lower minimum purchase price. The proposed transactions with Avis and Sixt will minimize the period of time the Advantage space at each of these airports remains dark. For these reasons, FSNA respectfully requests that the Commission promptly approves the sale of Portland to Avis and San Jose to Sixt, as described in more detail below.

**Request for Shortened Review**

FSNA respectfully requests that the public notice period for this submission be waived or reduced. A shortening or a waiver of the public notice period benefits competition by enabling Avis to immediately place a value brand at the Portland location and enabling Sixt immediately to place its brand at the San Jose location. This sale will not reduce competition in any respect because the Debtor suspended operations at the Portland and San Jose counters in late January 2014. Also, Avis and Sixt are prepared to close within five business days of obtaining Commission approval of the sale. So, the sooner FSNA obtains Commission approval, the sooner the parties can close this divestiture sale. This will permit Avis to establish a value brand at the Portland location and Sixt to establish its own brand at the San Jose location sooner.

### Update on Bankruptcy Sale Process

On March 7, 2014, the Debtor filed its Sale Motion in which it sought Bankruptcy Court approval to sell the 28 locations that were Excluded Assets<sup>2</sup> through a court-sanctioned competitive bidding process. The Sale Motion referred to these 28 locations as the “Non-Transferred Locations.” At the Auction conducted on March 17, 2014, Avis successfully bid to acquire 12 locations, and Hertz successfully bid to acquire 10 locations. On March 31, 2014, the Court entered its Sale Order approving the sale results of the Auction (Docket No. 498). On May 29, 2014, the Commission approved the transfer of these locations to Avis and Hertz. On June 12, 2014, the Debtor filed its *Notice of Closing of Sale of Assets to The Hertz Corporation and List of Contracts to be Assumed and Assigned* (Docket No. 603), and its *Notice of Closing of Sale of Assets to Avis Budget Car Rental, LLC and List of Contracts to be Assumed and Assigned* (Docket No. 604).

After the Bankruptcy Court approved the sale of these locations to Avis and Hertz, the Debtor marketed the Remaining Non-Transferred Locations. On May 14, 2014, the Debtor filed its Sale Motion (Docket No. 567) and Order Shortening Time (Docket No. 569) in which it sought Bankruptcy Court approval to sell the Remaining Non-Transferred Locations through a court-sanctioned competitive bidding process. On or before the Bid Deadline of May 23, 2014, the Debtor received the Avis Bid for the Portland location and the Sixt Bid for the San Jose location. As stated previously, these were the only bids the Debtor received for any of these Non-Transferred Locations. The Bankruptcy Court approved the sale of the Portland location to

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<sup>2</sup> Under the Catalyst Asset Purchase Agreement, Catalyst could set which of the Advantage Assets it wanted to purchase. Those assets Catalyst elected to purchase were denominated as the “Purchased Assets,” while those assets Catalyst elected not to purchase were denominated as the “Excluded Assets.” In general terms, assets related to the 40 core locations are Purchased Assets, while those which relate to the 28 locations are Excluded Assets.



Avis and the sale of the San Jose location to Sixt in its Order issued on June 10, 2014. A copy of the Order is attached as **Exhibit 1** to this Application.<sup>3</sup>

**Update on Sale to Catalyst**

During this time in which the Debtor was marketing the remaining Non-Transferred Locations for sale, as reflected in the *Notice of (I) Closing of Sale of Assets and (II) Final Schedules to Asset Purchase Agreement, Including List of Contracts Assumed, Assigned and Sold to the Buyer under the APA*, the Debtor and Catalyst consummated the sale transaction to Advantage Opco, LLC, the assignee of Catalyst, on April 30, 2014. Subsequently, the Debtor has worked with Advantage Opco, LLC on various operational and transition issues related to the Closing.

**Effort to Dispose of Remaining Non-Transferred Locations:  
Sale to Avis and Sixt**

Following the Commission's approval of the sale of the 22 locations to Avis and Hertz, the Debtor was left with just six Non-Transferred Locations available for sale – Portland, San Jose, Detroit, Milwaukee, Hartford and Richmond. The Hertz Settlement Agreement had prohibited the Debtor from marketing Hartford and Richmond until after the sale to Catalyst closed, and the Catalyst closing had not occurred when the Debtor ran its first sales process for the Non-Transferred Locations, so this was the first time those two locations had been exposed to the market. The other four locations – Portland, San Jose, Milwaukee and Detroit – had been offered as a part of the first sales process for the Non-Transferred Locations – but no one

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<sup>3</sup> The attached Order contains the Binding Term Sheets submitted by Avis (the "Avis Term Sheet") and Sixt (the "Sixt Order"), as well as the Purchase and Assignment Agreement by and between Sixt, the Debtor and Advantage Opco, LLC (the "Sixt APA").

submitted a bid for any of those four locations as a part of that process. Nevertheless, the Debtor believed that there were interested parties in those four locations, so it included those in the same Bankruptcy Court-approved, competitive sales process that it was going to run for Hartford and Richmond. That marketing and sale process was similar to that the Debtor used to sell the 22 locations to Avis and Hertz, except the minimum bid price was reduced from the previous sales process: (1) contacting potentially interested parties; (2) setting a deadline for the submission of bids; (3) if more than a single bid was submitted, having an auction; and (4) holding a preliminary and a final sale hearing to approve the winning bids.

At the end of the process, only two bids were submitted -- one (Avis) for Portland and one (Sixt) for San Jose. No bid was submitted on the Hartford or Richmond locations. The Avis Bid was for the minimum bid of \$1 plus Assumed Liabilities for the Portland location and the Sixt Bid was for the minimum bid of \$1 plus Assumed Liabilities for the San Jose location. Both were deemed to be Qualified Bids by the Debtor and its professionals. Because only one bid was submitted for each of these two properties, no auction was conducted, and the Bankruptcy Court approved the sale of each location.

**Findings by the Bankruptcy Court in the Sale Order Concerning the Sales Process:**

In the Bankruptcy Court Order approving the sale of these locations to Avis and Sixt, the Bankruptcy Court found as follows: (1) the bidding procedures were substantively and procedurally fair to all parties; (2) the sale process and Bidding Procedures were non-collusive, duly noticed, proper in all respects, and afforded a full, fair and reasonable opportunity for any party to make a higher or otherwise better offer to purchase any of the Remaining Non-Transferred Locations; (3) the Non-Transferred Locations were adequately marketed by the Debtor and its advisors; (4) the consideration provided by Avis and Sixt under the terms of their

respective binding Term Sheets constituted the best offer and provided fair and reasonable consideration to the Debtor for the Non-Transferred Locations; (5) the Avis Term Sheet and the Sixt Term Sheet presented the best opportunity to maximize and realize the value of the Non-Transferred Locations for the Debtor's estate; and (6) the bidding and related procedures established by the Sale Motion and Order Shortening Time were complied with in all material respects.

**Current Proposal to Sell Locations to Avis and Sixt**

The counters are dark at Portland and San Jose today since the Debtor temporarily suspended operations at each of these two Non-Transferred Locations at the end of January 2014. After the Commission approves the sale of Portland to Avis, Avis will be able to reopen this location. The Debtor has been advised that Avis intends to place at Portland a value brand that is not currently operating at this location. This sale will benefit price-conscious consumers especially, and almost immediately. The Debtor also has been advised that Sixt intends to place at San Jose its brand that is not currently operating at this location. Moreover, these sales will not reduce competition in any respect, as the Portland and San Jose counters are dark today and the sale process confirmed no other interested buyers. Prompt Commission approval of the sale of the Portland and San Jose locations will help Advantage build a viable national rental car company and simultaneously resuscitate two closed locations without any anticompetitive effects. For its part, the Debtor and Catalyst will deploy the proceeds of the sale to offset liabilities and fleet financing costs, so that Advantage is healthier and more viable as an overall competitor as it begins operations as Advantage Opco, LLC following its purchase of the assets from the Debtor and its operations as Advantage Rent A Car.

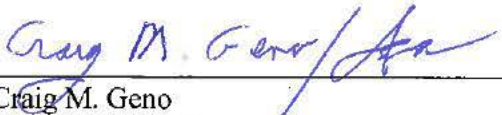
In the absence of this transaction, Advantage will receive no benefit from these assets. Given the limited interest in the Portland and San Jose locations, it is uncertain whether or when each local airport authority would re-bid those locations as car rental counters. In fact, both airport authorities were cooperative with the Debtor and the sale process, and even consensually extended the June 4, 2014 bankruptcy deadline by which the Debtor had to assume or reject these concession agreements to the extent they were unexpired leases of non-residential real estate. Even if these airport authorities did so at some point in the future, there are no assurances that the outcome of a re-bid would benefit consumers more than a sale to Avis and Sixt, especially since other companies, in addition to Avis and Sixt, were invited to bid for these Remaining Non-Transferred Locations, and none did.

**Conclusion**

The proposed sale of the Portland location to Avis and the San Jose location to Sixt is in the best interests of the consuming public and will improve competition in the national rental car market by immediately revitalizing the locations. The sale is on fair and reasonable terms, and was obtained after a court-approved marketing and sale process. Expedited approval will help Advantage build a viable and vigorous national car rental company and increase competition at the currently closed Portland and San Jose locations by adding value and other brand operators. For these reasons, FSNA respectfully requests that the Commission promptly approves the sale of the Portland location to Avis and the San Jose location to Sixt.

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Respectfully submitted,

  
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Craig M. Geno  
*Counsel for FSNA*

# **EXHIBIT 1**





**SO ORDERED,**

Judge Edward Ellington  
United States Bankruptcy Judge  
Date Signed: June 10, 2014

The Order of the Court is set forth below. The docket reflects the date entered.

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI**

In re:	)	
	)	
<b>SIMPLY WHEELZ LLC, F/D/B/A</b>	)	<b>CASE NO. 13-03332-ee</b>
<b>ADVANTAGE RENT-A-CAR</b>	)	<b>Chapter 11</b>
	)	
<b>Debtor</b>	)	

**ORDER GRANTING MOTION OF DEBTOR FOR ENTRY OF AN ORDER  
APPROVING A SUPPLEMENTAL AUCTION FOR THE SALE AND ASSUMPTION  
AND ASSIGNMENT, PURSUANT TO BANKRUPTCY CODE SECTIONS 105(a), 363,  
AND 365 AND BANKRUPTCY RULES 2002, 6004, 6006, 9007 AND 9014, OF CERTAIN  
EXECUTORY CONTRACTS AND UNEXPIRED LEASES FOR REMAINING  
NON-TRANSFERRED LOCATIONS FREE AND CLEAR OF ALL LIENS,  
CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS,  
AND GRANTING RELATED RELIEF  
[Docket Nos. 326; 468; 567]**

This matter came before the Court on the *Motion of Debtor for Entry of an Order Approving a Supplemental Auction for the Sale and Assumption and Assignment, Pursuant to Bankruptcy Code Sections 105(a), 363, and 365 and Bankruptcy Rules 2002, 6004, 6006, 9007 and 9014, of Certain Executory Contracts and Unexpired Leases for Remaining Non-Transferred Locations Free and Clear of All Liens, Claims, Encumbrances, and Other Interests,*

and Granting Related Relief [Docket No. 567] (the "**Sale Motion**")<sup>1</sup> filed by Simply Wheelz LLC, as debtor and debtor-in-possession (the "**Debtor**") and the *Order Granting Motion of Debtor for Order to Shorten Notice Period and Setting Preliminary and Final Hearing on Motion to Approve the Sale and the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases for Remaining Locations* [Docket No. 569] (the "**Order Shortening Time**"). In the Sale Motion and in the Order Shortening Time, the Debtor sought the entry of an order, seeking authority and approval for the following:

- (i) To approve Bidding Procedures which will govern the submission of competing bids at an Auction (attached as Exhibit "C" to the Sale Motion) and the Bid Term Sheet Form (a copy of which is attached to the Sale Motion as Exhibit "B") for the Remaining Non-Transferred Locations (as more particularly described in Exhibit "A" to the Sale Motion);
- (ii) To require that the Bidding Procedures and the Bid Term Sheet Form, together with the Sale Motion and the Order Shortening Time will be served on all parties in interest through the CM/ECF system on or before Thursday, May 15, 2014;
- (iii) To provide that the bid deadline for Remaining Non-Transferred Locations pursuant to the Sale Motion will be **Friday, May 23, 2014 at noon** (prevailing Central Time);
- (iv) To provide that if there is more than one Qualified Bidder that has submitted a bid for some or all of the Remaining Non-Transferred Locations, the Debtor, in consultation with the Purchaser, is hereby authorized to conduct an Auction for the Remaining Non-Transferred Locations on **Tuesday, May 27, 2014, beginning at 9:30 a.m. (prevailing Central Time)**;
- (v) To require that any objection or other response to the Sale Motion must be filed electronically through the Court's ECF system, and served electronically on all parties enlisted to receive service electronically, no later than **Tuesday, May 27, 2014 at 2:30 p.m. (prevailing Central Time)**;
- (vi) To set a Preliminary Hearing on the Sale Motion for **Tuesday, May 27, 2014 at 2:30 p.m. (prevailing Central Time)** (the "**Preliminary Hearing**");

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Sale Motion or the Catalyst Sale Order (as herein defined), unless otherwise indicated herein.

- (vii) To set a Final Hearing on the Sale Motion for **Thursday, May 29, 2014 at 9:30 a.m. (prevailing Central Time)** (the "**Final Hearing**"), or as soon thereafter as counsel may be heard, before the Honorable Edward Ellington, United States Bankruptcy Judge, at the United States Courthouse, 501 E. Court Street, 4<sup>th</sup> Floor, Courtroom 4D, Jackson, MS;
- (viii) To require the Debtor to mail a copy of the Sale Motion and this Order Shortening Time to: (a) the Office of the United States Trustee for the Region 5; (b) Counsel for the DIP Lender; (c) the counterparties to those certain executory contracts and those certain unexpired leases of non-residential real property related to the Debtor's business, including, but not limited to, the non-residential real property leases that are identified in the Debtor's Schedule G filed on December 19, 2013 [Dkt. No. 288] and to serve those parties requesting notice pursuant to Rule 2002 a copy of the Order Shortening Time and the Sale Motion through the Court's CM/ECF system;
- (ix) To approve the sale and transfer of the Remaining Non-Transferred Locations by the Debtor to the Successful Bidder(s), according to sale terms submitted in a Qualified Bid or to the results obtained at the Auction, and which sale of Remaining Non-Transferred Locations shall be, pursuant to Bankruptcy Code sections 105(a), 363, and 365 and Bankruptcy Rules 2002, 6004, 6006, 9007 and 9014, free and clear of all liens, claims, encumbrances, and other interests;
- (x) To approve the assumption and assignment of Assigned Contracts (including all executory contracts and unexpired leases) related to the Remaining Non-Transferred Locations to the Successful Bidder(s), according to terms submitted in a Qualified Bid or to the results obtained at the Auction, and which assumption and assignment of Assigned Contracts shall be, pursuant to Bankruptcy Code sections 105(a), 363, and 365 and Bankruptcy Rules 2002, 6004, 6006, 9007 and 9014, free and clear of all liens, claims, encumbrances, and other interests; and
- (xi) For such other and further relief as the Court deems just and proper.

On or before the Bid Deadline, the Debtor received two bids (one each) for two of the Remaining Non-Transferred Locations. An affiliate of Avis Budget Group, Inc. ("**Avis**")<sup>2</sup> submitted one bid (the "**Avis Bid**") for the Portland International Airport (PDX) concession agreement, and Sixt Rent a Car, LLC ("**Sixt**") submitted a bid (the "**Sixt Bid**") for the Mineta

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<sup>2</sup> For purposes of this Order, all references to "Avis" or "Purchaser" (with regard to Avis) shall include Budget Rent-A Car System together with its affiliates Avis Budget Car Rental LLC and Payless Car Rental, Inc. as the collective "Buyer" under the Avis Term Sheet. All of the Buyer entities shall be deemed the Purchaser of the Avis Purchased Assets (as Avis may designate) and shall be entitled to all rights and protections afforded to a Purchaser in this Sale Order.

San José International Airport (SJC) concession agreements. Both the Avis Bid and the Sixt Bid were deemed to be Qualified Bids by the Debtor and its professionals.

The Court had set the Sale Motion for final hearing on May 29, 2014 (the "***Sale Hearing***") at which time all interested parties had an opportunity to be heard with respect to the Sale Motion. The Court reviewed and considered the Sale Motion and the Order Shortening Time and finds that no objections were timely filed to the Sale Motion. The Court further reviewed and considered the *Notice to Counterparties to Executory Contracts and Unexpired Leases Debtor May Assume and Assign* [Docket No. 126]; the *Notice to Counterparties to Executory Contracts and Unexpired Leases with Debtor Who Filed Timely Objections to Sale Motion* [Docket No. 226]; and the *Order (I) Approving Purchase Agreement, (II) Authorizing Sale Free and Clear of All Liens, Claims, Encumbrances, and Other Interests, and (III) Granting Related Relief* [Docket No. 326] (the "***Catalyst Sale Order***"), as well as statements of counsel in support of the relief requested in the Sale Motion, and finds as follows: (i) due notice of the Sale Motion and the Order Shortening Time was provided to all parties in interest; (ii) the relief requested in the Sale Motion is in the best interests of the Debtor, its estate, and all other parties-in-interest; (iii) the Court has jurisdiction over this matter; and (iv) the legal and factual bases set forth in the Sale Motion establish just cause for the relief granted herein.

After due deliberation thereon, the court expressly finds as follows:

**Jurisdiction, Venue and Final Order**

A. This Court has jurisdiction to hear and determine the Sale Motion pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this District and in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.



B. This Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h), 6006(d) and 7062, and to the extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, this Court expressly finds that there is no just reason for delay in the implementation of this Order and expressly directs entry of this Order as set forth herein.

**Notice of the Cure Amounts, the Sale Motion,  
the Bid Deadline, and the Sale Hearing**

C. As evidenced by the certificates of service filed with this Court (of which the Court takes judicial notice) proper, timely, adequate and sufficient notice of the Cure Amounts, the Sale Motion, the Bid Deadline (as set forth in the Order Shortening Time), and the Sale Hearing has been provided in accordance with sections 102(1), 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006 and 9014. The Debtor has complied with all obligations to provide notice of the Sale Motion, the Bid Deadline, and the Sale Hearing as required by the Sale Motion and Order Shortening Time. The aforementioned notices are good, sufficient and appropriate under the circumstances, and no other or further notice of the Sale Motion, the Bid Deadline, or the Sale Hearing is required for the entry of this Order.

D. A reasonable opportunity to object or to be heard regarding the relief requested in the Sale Motion was afforded to all interested persons and entities, including, without limitation: (i) the Office of the United States Trustee for Region V; (ii) the creditors listed on the List of Creditors Holding 20 Largest Unsecured Claims; (iii) the Assistant United States Attorney for the Southern District of Mississippi; (iv) all counter-parties to the Debtor's executory contracts and unexpired leases; and (v) those parties who have formally filed requests for notice in this chapter 11 case pursuant to Bankruptcy Rule 2002.

E. The Debtor previously served a notice (as amended, modified or otherwise supplemented from time to time, the "*Cure Notice*") of the potential assumption and assignment of the Assigned Contracts and of the amount necessary to cure any defaults pursuant to section 365(b) of the Bankruptcy Code (the "*Cure Amounts*") upon each non-Debtor counterparty to an Assigned Contract.<sup>3</sup> The service and provision of the Cure Notice was good, sufficient and appropriate under the circumstances and no further notice need be given in respect of assumption and assignment of the Assigned Contracts, including with respect to adequate assurance of future performance, or establishing a Cure Amount for the respective Assigned Contracts. Non-Debtor counterparties to the Assigned Contracts have had an adequate opportunity to object to assumption and assignment of the applicable Assigned Contracts and the Cure Amounts set forth in the Cure Notice (including objections related to the adequate assurance of future performance and objections based on whether applicable law excuses the non-Debtor counterparty from accepting performance by, or rendering performance to, Avis and Sixt, respectively, as the Purchasers, for purposes of section 365(c)(1) of the Bankruptcy Code).

F. The deadline to file an objection to the assumption and assignment to Avis and Sixt, respectively, as the Purchasers, of any Assigned Contract (a "*Contract Objection*") has expired, and to the extent any non-Debtor counterparty to an Assigned Contract timely filed a Contract Objection, all such Contract Objections have been (i) resolved or withdrawn as set forth in Docket Nos. 158, 159, 160, 180, 189, 203, 242, 246, 258, 260, 273, and 326 or on the terms set forth in this Order; or (ii) overruled. To the extent that any non-Debtor counterparty to an Assigned Contract did not file a Contract Objection by the applicable Contract Objection deadline, such entity shall forever be barred and estopped from: (a) objecting to the Cure

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<sup>3</sup> See Notice to Counterparties to Executory Contracts and Unexpired Leases Debtor May Assume and Assign [Docket No. 126].



Amount as the amount necessary to cure all defaults to satisfy section 365 of the Bankruptcy Code or from asserting that any additional amounts are due or any additional defaults exist (including, without limitation, any defaults arising from any provisions in such Assigned Contract prohibiting, restricting or conditioning any assignment thereof or any defaults arising from any change of control of the Debtor or its business); (b) asserting that any conditions to assumption and assignment must be satisfied under such Assigned Contract before it can be assumed and assigned or that any required consent, authorization or approval for assignment has not been given; or (c) asserting that Avis and Sixt, respectively, as the Purchasers, have not provided adequate assurance of future performance as contemplated by section 365 of the Bankruptcy Code.

G. Pursuant to section 365(k) of the Bankruptcy Code, the assignment by the Debtor to an entity of a contract or a lease under section 365 of the Bankruptcy Code relieves the Debtor and the bankruptcy estate from any liability for any breach of such contract or lease occurring after such assignment.

#### **Bids of Avis and Sixt**

H. As contemplated by the Sale Motion and the Order Shortening Time, Avis and Sixt each submitted on or before May 22, 2014, a written offer for a single specified Remaining Non-Transferred Location.<sup>4</sup> The Avis Bid was for the Portland International Airport (PDX) concession agreement, and the Sixt Bid was for the Mineta San José International Airport (SJC) concession agreements.

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<sup>4</sup> Where the context so requires, all references in this Order to "Remaining Non-Transferred Locations" shall be deemed (i) to be references only to such Remaining Non-Transferred Locations that are subject to the Avis Term Sheet or the Sixt Term Sheet, as applicable, and (ii) to include all of the Assigned Contracts and other assets of the Debtor listed in the applicable Avis Term Sheet or Sixt Term Sheet related to any such Remaining Non-Transferred Location.

I. Both the Avis Bid and the Sixt Bid were deemed to be Qualified Bids by the Debtor and its professionals.

J. Basically, the Sixt Bid was for the minimum bid of \$1 plus Assumed Liabilities for the Mineta San José International Airport (SJC) concession agreements, while the Avis Bid was \$1 plus Assumed Liabilities for the Portland International Airport (PDX) concession agreement.<sup>5</sup>

K. The Binding Term Sheet setting forth the final terms of the Successful Bid by Avis is attached hereto as Exhibit "A" (the "*Avis Term Sheet*") and the Binding Term Sheet setting forth the terms of the Successful Bid by Sixt is attached hereto as Exhibit "B" (the "*Sixt Term Sheet*"). The Avis Term Sheet and the Sixt Term Sheet may be collectively referred to as the "*Binding Term Sheets*." The Purchase and Assignment Agreement by and between Sixt, the Debtor and Advantage Opco, LLC is attached hereto as Exhibit "C" (the "*Sixt APA*").

L. The Avis Term Sheet constitutes the Successful Bid (as defined in the Sale Motion) for the Purchased Assets identified therein. The Sixt Term Sheet constitutes the Successful Bid (as defined in the Sale Motion) for the Purchased Assets identified therein.

M. The binding offers of Avis and Sixt as reflected by the Avis Term Sheet and the Sixt Term Sheet are valid, duly authorized and proper under the Bidding Procedures, prior Orders of the Court in this case, sections 363 and 365 of the Bankruptcy Code, and applicable law. Further, the Debtor has the authority to market and sell the Purchased Assets to Avis and Sixt as set forth in the Avis Term Sheet and the Sixt Term Sheet under the terms and conditions of the Hertz Settlement.

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<sup>5</sup> Sometimes, Avis and Sixt are referred to collectively herein as "*Purchasers*" although Avis and Sixt are each purchasing a different and a separate Remaining Non-Transferred Location as reflected in Exhibit A hereto.

**Higher or Otherwise Better Offers**

N. The Debtor conducted a fair and open sale process in a manner reasonably calculated to produce the highest or otherwise best offer for the Remaining Non-Transferred Locations in compliance with the Sale Motion and Order Shortening Time. The Bidding Procedures were substantively and procedurally fair to all parties. The sale process and Bidding Procedures were non-collusive, duly noticed, proper in all respects, and afforded a full, fair and reasonable opportunity for any party to make a higher or otherwise better offer to purchase all or any of the Remaining Non-Transferred Locations. The bidding and related procedures established by the Sale Motion and Order Shortening Time have been complied with in all material respects.

O. The Remaining Non-Transferred Locations were adequately marketed by the Debtor and its advisors, and the consideration provided by Avis and Sixt under the terms of their respective Binding Term Sheets constitutes the highest or otherwise best offer and provides fair and reasonable consideration to the Debtor for the Remaining Non-Transferred Locations. The Avis Term Sheet and the Sixt Term Sheet represent the best opportunity to maximize and realize the value of the Remaining Non-Transferred Locations for the Debtor's estate. The Debtor's determination that the consideration provided by Avis and Sixt under the terms of their respective Binding Term Sheets constitutes the highest or otherwise best offer for the Remaining Non-Transferred Locations and constitutes a valid and sound exercise of the Debtor's business judgment.

P. Approval of the Sale Motion, the Avis Term Sheet, and the Sixt Term Sheet and the consummation of the transactions contemplated thereby are in the best interests of the Debtor, its creditors, its estate and other parties in interest. The Debtor has demonstrated good,

sufficient and sound business reasons and justifications for entering into the transactions and the performance of its obligations under the Avis Term Sheet and the Sixt Term Sheet.

Q. Entry of this Order approving (i) the Avis Term Sheet and the Sixt Term Sheet, (ii) all the provisions thereof, and (iii) the consummation of the transactions contemplated thereby is a condition precedent to the consummation of the transactions by Avis and by Sixt.

R. The Avis Term Sheet and the Sixt Term Sheet were not entered into, and neither the Debtor nor Avis and Sixt, respectively, as the Purchasers, propose to consummate the transactions for the purpose of hindering, delaying or defrauding the Debtor's present or future creditors. Neither the Debtor nor Avis and Sixt, respectively, as the Purchasers, are entering into the Avis Term Sheet and the Sixt Term Sheet, or proposing to consummate the transactions for any improper, illegal or fraudulent purpose, whether based on statutory or common law, or whether under the Bankruptcy Code or under the laws of the United States, any state, territory, possession thereof or the District of Columbia or any other applicable jurisdiction with laws substantially similar to the foregoing, including any laws related to any fraudulent conveyance or fraudulent transfer claims.

S. The terms and conditions of the sales process, and the result of the sales process, including the form and total consideration to be realized by the Debtor pursuant to the Avis Term Sheet and the Sixt Term Sheet, (i) is in the best interests of the Debtor's creditors and estate and (ii) constitutes fair value, full and adequate consideration, reasonably equivalent value, and reasonable market value for the Remaining Non-Transferred Locations.

T. The agreement of Avis to assume certain liabilities to the extent set forth in the Avis Term Sheet and the agreement of Sixt to assume certain liabilities to the extent set forth in the Sixt Term Sheet (for each respective party and term sheet, "*Seller Assumed Liabilities*") is

essential to provide for the payment of Seller Assumed Liabilities comprising certain limited post-petition administrative expenses incurred by the Debtor.

U. Avis and Sixt, respectively, as the Purchasers, are the Successful Bidders for their respective Remaining Non-Transferred Locations in accordance with the Sale Motion and Order Shortening Time. Avis and Sixt, respectively, as the Purchasers, have complied in all respects with the Sale Motion and Order Shortening Time and any other applicable order of this Court in negotiating and entering into the Avis Term Sheet and the Sixt Term Sheet, and the transactions contemplated thereby likewise comply with the Sale Motion and Order Shortening Time and any other applicable order of this Court.

V. The Catalyst Capital Group, Inc. (on behalf of funds managed by it and its affiliates, in its capacity as purchaser of the Debtor's assets pursuant to the Sale Order entered on January 2, 2014 [Docket No. 326], and/or as debtor-in-possession lender, "*Catalyst*"), consents to the transfer of the Remaining Non-Transferred Locations, as approved herein, in accordance with the Sale Motion, the Order Shortening Time, and the Avis Term Sheet and the Sixt Term Sheet.

W. The Debtor reserves the right to market and sell any of the other Remaining Non-Transferred Locations either by an amended Sale Motion or by a separate sale motion for one or more of the Remaining Non-Transferred Locations.

X. Avis, Portland International Airport, Sixt and Mineta San José International Airport agree to extend consensually the deadline by which the Debtor can assume or reject leases of non-residential real property pursuant to § 365(d)(4)(B)(ii) to September 1, 2014, the Outside Closing Date under the applicable Term Sheet for the sale of the Remaining Non-Transferred Locations being assigned to Avis or to Sixt hereunder.

**Good Faith of Debtor and Purchasers**

Y. The sale process conducted by the Debtor, including, without limitation, the Bidding Procedures set forth in the Sale Motion and Order Shortening Time, was at arm's length, non-collusive, in good faith, and substantively and procedurally fair to all entities. The Avis Term Sheet and the Sixt Term Sheet and the transactions contemplated thereunder were the result of the sales process proposed by the Debtor and approved by this Court, and the terms of the Avis Term Sheet and the Sixt Term Sheet were proposed, negotiated and entered into by and between the Debtor and Avis and Sixt, respectively, as the Purchasers, without collusion, in good faith and at arm's length.

Z. The Debtor, Purchasers and their respective professionals and advisors have complied in good faith with the Bidding Procedures, Sale Motion, and Order Shortening Time in all respects. Through substantial marketing efforts by the Debtor and its professionals, a competitive sale process that was conducted in accordance with the Bidding Procedures, Sale Motion, and Order Shortening Time, the Debtor (a) afforded all creditors and other parties in interest and all potential purchasers a full, fair and reasonable opportunity to qualify as bidders and submit their highest or otherwise best offer to purchase the Remaining Non-Transferred Locations, (b) provided potential purchasers, upon request, sufficient information to enable them to make an informed judgment on whether to bid on the Remaining Non-Transferred Locations, and (c) considered any bids submitted on or before the Bid Deadline (as defined in the Bidding Procedures).

AA. Neither Avis and Sixt, respectively, as the Purchasers, nor any of their affiliates, present or contemplated members, officers, directors, shareholders or any of their respective



successors and assigns is an "insider" of the Debtor, as the term "insider" is defined in section 101(31) of the Bankruptcy Code. Avis and Sixt, respectively, as the Purchasers, are entering into the transactions in good faith and are "good faith Purchasers" within the meaning of section 363(m) of the Bankruptcy Code, and are therefore entitled to the full protection of that provision, and otherwise have proceeded in good faith in all respects in connection with this proceeding. Neither the Debtor nor Avis and Sixt, respectively, as the Purchasers, have engaged in any action or inaction that would cause or permit the Avis Term Sheet and the Sixt Term Sheet or the transactions to be avoided or impose any costs or damages under section 363(n) of the Bankruptcy Code.

**Section 363 is Satisfied**

BB. The Debtor has demonstrated a sufficient basis and compelling circumstances requiring it to (i) enter into the Avis Term Sheet and the Sixt Term Sheet (and any related documentation necessary to effectuate the transactions contemplated thereby), (ii) sell the Remaining Non-Transferred Locations, and (iii) assume and assign the Assigned Contracts related to such Remaining Non-Transferred Locations. These actions are appropriate exercises of the Debtor's business judgment and are in the best interests of the Debtor, its estate and its creditors. Such business reasons include, without limitation, the fact that: (i) the Avis Term Sheet and the Sixt Term Sheet constitute the highest or otherwise best offer for the Remaining Non-Transferred Locations; (ii) the Avis Term Sheet and the Sixt Term Sheet present the best opportunity to maximize and realize the value of the Remaining Non-Transferred Locations; and (iii) unless the sale is concluded expeditiously, the recoveries of the Debtor's estate and constituencies are likely to be adversely affected and there is a significant risk that numerous obligations constituting administrative expenses in the Debtor's chapter 11 case (including the

liabilities that will be assumed by Avis and Sixt to the extent set forth in their respective Binding Term Sheets) will not be satisfied.

CC. Each of the Avis Term Sheet and the Sixt Term Sheet is a valid and binding contract between the Debtor and Avis and Sixt, respectively, as the Purchasers, and shall be enforceable pursuant to their respective terms.

DD. For purposes of section 363(b)(1) of the Bankruptcy Code, there is no "personally identifiable information" (as defined in section 101(41A) of the Bankruptcy Code) about individuals to persons that are not affiliated with the Debtor that are being conveyed pursuant to either the Avis Term Sheet or the Sixt Term Sheet, and the transactions will not violate any such privacy policy, or violate any applicable laws relating to the use, dissemination or transfer of the Remaining Non-Transferred Locations. The sale or transfer of property containing personally identifiable information shall be consistent with those procedures currently in place by the debtor regarding the transfer of personally identifiable information in accordance with 11 U.S.C. § 363(b)(1)(A).

EE. The Remaining Non-Transferred Locations constitute property of the Debtor's estate within the meaning of section 541(a) of the Bankruptcy Code and title thereto is presently vested in the Debtor's estate.

FF. The sale of all Remaining Non-Transferred Locations to the respective Purchasers under the terms of the Avis Term Sheet and the Sixt Term Sheet meets the applicable provisions of section 363(f) of the Bankruptcy Code, and except as expressly provided in the Avis Term Sheet and the Sixt Term Sheet with respect to the Seller Assumed Liabilities, (i) the transfer of the Remaining Non-Transferred Locations to Avis and Sixt, respectively, as the Purchasers, and (ii) the assumption and/or assignment to Avis and Sixt, respectively, as the Purchasers, of the

Assigned Contracts and other assets of the Debtor solely relating to the Remaining Non-Transferred Locations, in each case, will be free and clear of all Liens and Claims (each as defined in Paragraph 9 below). In addition, the sale of all Remaining Non-Transferred Locations to the respective Purchasers under the terms of the Avis Term Sheet and the Sixt Term Sheet and the assumption and/or assignment to Avis and Sixt, respectively, as Purchasers of the Assigned Contract and other assets of the Debtor solely relating to the Remaining Non-Transferred Locations, in each case, will not subject Avis and Sixt, respectively, as the Purchasers, or any of the assets to be acquired by Avis or Sixt, to any liability for any Liens or Claims whatsoever (including, without limitation, under any theory of equitable law, antitrust, setoff (except with respect to setoffs that were effected prior to the Petition Date), or Successor or Transferee Liability (as defined in Paragraph 18)). All holders of Liens or Claims and all counterparties to Assigned Contracts who did not object, or withdrew their objections, are deemed to have consented to the transactions pursuant to section 363(f)(2) of the Bankruptcy Code.

GG. Avis and Sixt, respectively, as the Purchasers, would not have entered into the Avis Term Sheet and the Sixt Term Sheet and would not consummate the transactions, thus adversely affecting the Debtor, its estate, creditors, employees and other parties in interest, if the sale of the Remaining Non-Transferred Locations was not free and clear of all Liens and Claims or if Avis and Sixt, respectively, as the Purchasers, would, or in the future could, be liable for any Liens or Claims, including, without limitation and as applicable, any liabilities that are not expressly assumed by Avis and Sixt, respectively, as the Purchasers, as set forth in the Avis Term Sheet and the Sixt Term Sheet. Avis and Sixt, respectively, as the Purchasers, assert that they will not consummate the transactions unless this Court specifically orders that neither Avis nor Sixt, respectively, as a Purchaser, and none of the assets of Avis or Sixt (including, without

limitation, the Remaining Non-Transferred Locations) will have any liability whatsoever with respect to, or be required to satisfy in any manner, whether at law or in equity, whether by payment, setoff or otherwise, directly or indirectly, any Lien or Claim, or any Successor or Transferee Liability for the Debtor, in each case, other than the Purchase Price, including the Seller Assumed Liabilities.

HH. The transfer of the Remaining Non-Transferred Locations to Avis and Sixt under the terms of their respective Binding Term Sheets is a legal, valid and effective transfer of all of the legal, equitable and beneficial right, title and interest in and to the Remaining Non-Transferred Locations free and clear of all Liens and Claims. The Debtor may sell its interests in the Remaining Non-Transferred Locations free and clear of all Liens and Claims because, in each case, one or more of the standards set forth in section 363(f) of the Bankruptcy Code has been satisfied. The transfer of the Remaining Non-Transferred Locations to Avis and Sixt, respectively, as the Purchasers, will vest Avis and Sixt, respectively, as the Purchasers, with good and marketable title to the Remaining Non-Transferred Locations free and clear of all Liens and Claims.

II. Neither Avis nor Sixt, respectively, as a Purchaser: (i) is a successor to the Debtor or its estate by reason of any theory of law or equity; (ii) except to the extent set forth in the respective Binding Term Sheets, shall assume or in any way be responsible for any liability or obligation of the Debtor or its estate by reason thereof; (iii) is a continuation or substantial continuation of the Debtor or its estate, and there is no continuity between Avis and Sixt, respectively, as a Purchaser, and the Debtor; (iv) has a common identity of incorporators, directors or equity holders with the Debtor; and (v) is holding itself out to the public as a

continuation of the Debtor or its estate, and the transactions do not amount to a consolidation, merger or *de facto* merger of the Debtor and either Avis nor Sixt, respectively, as a Purchaser.

JJ. There is no legal or equitable reason to delay the transactions. The transactions must be approved and consummated promptly to preserve the value of the Debtor's assets.

KK. The Debtor has demonstrated both (i) good, sufficient and sound business purposes and justifications and (ii) compelling circumstances for the transactions pursuant to section 363(b) of the Bankruptcy Code prior to, and outside of, a plan of reorganization in that, among other things, absent the immediate consummation of the transactions, the value of the Debtor's assets will be harmed. To maximize the value of the Remaining Non-Transferred Locations, it is essential that the transactions occur within the timeframe set forth in the Avis Term Sheet and the Sixt Term Sheet. Time is of the essence in consummating the transactions.

LL. The sale and assignment of the Remaining Non-Transferred Locations outside of a plan of reorganization pursuant to the Avis Term Sheet and the Sixt Term Sheet neither impermissibly restructures the rights of the Debtor's creditors nor impermissibly dictates the terms of a liquidating plan for the Debtor. Neither the Avis Term Sheet and the Sixt Term Sheet nor the transactions contemplated thereby constitutes a *sub rosa* chapter 11 plan.

**Assumption and Assignment of the Assigned Contracts**

MM. The assumption and assignment of the Assigned Contracts (as such Assigned Contracts may be amended, supplemented or otherwise modified prior to assumption and assignment without further order of the Court with the consent of the Debtor, Catalyst, the applicable contract counterparty and Avis and Sixt, respectively, as the Purchasers) that are designated for assumption and assignment pursuant to the terms of this Order and the Avis Term Sheet and the Sixt Term Sheet are: (i) properly assumable by the Debtor and assignable to Avis

or Sixt, respectively, as the Purchasers; (ii) integral to the Avis Term Sheet and the Sixt Term Sheet; (iii) are in the best interests of the Debtor and its estate, creditors and other parties in interest, and (iv) represent the reasonable exercise of sound and prudent business judgment by the Debtor. Further, the assumption and assignment of each of the Assigned Contracts is consistent with sections 363 and 365 of the Bankruptcy Code, prior Orders of the Bankruptcy Court and the Hertz Settlement.

NN. No section of any Assigned Contract that purports to prohibit, restrict, impose any penalty or fee, or condition the use, consideration or assignment of any such Assigned Contract in connection with the transactions shall have any force or effect.

OO. The Debtor has met all requirements of section 365(b) of the Bankruptcy Code for each of the Assigned Contracts. The Debtor has (i) cured and/or provided adequate assurance of cure of any default existing prior to the closing of the transactions contemplated by the respective Binding Term Sheets (each, a "*Closing*") under all of the Assigned Contracts, within the meaning of section 365(b)(1)(A) of the Bankruptcy Code; and (ii) provided compensation or adequate assurance of compensation to any counterparty to an Assigned Contract for actual pecuniary loss to such entity resulting from a default prior to the Closing under any of the Assigned Contracts, within the meaning of section 365(b)(1)(B) of the Bankruptcy Code. Each of the Assigned Contracts is free and clear of all Liens and Claims, except as expressly permitted in the Avis Term Sheet and the Sixt Term Sheet.

PP. Each of Avis and Sixt, respectively, as a Purchaser, has demonstrated adequate assurance of future performance under the relevant Assigned Contracts within the meaning of sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code. Pursuant to section 365(f) of the Bankruptcy Code, the Assigned Contracts to be assumed and assigned under the Avis Term



Sheet and the Sixt Term Sheet shall be assigned and transferred to, and remain in full force and effect for the benefit of, the respective Purchaser notwithstanding any provision in the Assigned Contracts or other restrictions prohibiting their assignment or transfer.

QQ. No defaults exist in the Debtor's performance under the Assigned Contracts as of the date of this Order other than the failure to pay amounts equal to the Cure Amounts or defaults that are not required to be cured as contemplated in section 365(b)(1)(A) of the Bankruptcy Code.

**No Objections to Sale Motion**

RR. Prior to the deadline for filing objections to the Sale Motion, no Objections had been filed.

**THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:**

**General Provisions**

1. The Sale Motion is granted and approved as set forth herein.
2. No objections were timely filed to the Sale Motion.
3. All persons and entities given notice of the Sale Motion that failed to timely object thereto are deemed to consent to the relief sought therein including, without limitation, all non-Debtor parties to the Assigned Contracts.
4. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the findings of fact constitute conclusions of law, they are adopted as such, and to the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

**Approval of the Avis Term Sheet and the Sixt Term Sheet**

5. The Avis Term Sheet and the Sixt Term Sheet, all of the terms and conditions thereof, and all of the transactions contemplated therein are approved in all respects. The failure specifically to include any particular provision of the Avis Term Sheet and the Sixt Term Sheet in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Avis Term Sheet and the Sixt Term Sheet be authorized and approved in their entirety. The transfer of the Remaining Non-Transferred Locations by the Debtor to Avis and Sixt, respectively, as the Purchasers, according to the terms of the Avis Term Sheet and the Sixt Term Sheet shall be a legal, valid and effective transfer of the Remaining Non-Transferred Locations. The consummation of the transactions is hereby approved and authorized under section 363(b) of the Bankruptcy Code.

6. The Debtor is authorized: (a) to take any and all actions necessary or appropriate to perform, consummate, implement and close the transactions, including the sale to Avis and Sixt, respectively, as the Purchasers, of all Remaining Non-Transferred Locations, in accordance with the terms and conditions set forth in the Avis Term Sheet and the Sixt Term Sheet and this Order, including, without limitation, executing, acknowledging and delivering such deeds, assignments, conveyances and other assurance, documents and instruments of transfer and taking any action for purposes of assigning, transferring, granting, conveying, and confirming to Avis and Sixt, respectively, as the Purchasers, or reducing to possession, any or all of the Remaining Non-Transferred Locations, and entering into any transition services or operations support agreements with Avis and Sixt, respectively, as the Purchasers, and any other agreements related to implementing the transactions; (b) to assume and assign any and all Assigned Contracts; and (c) to perform its obligations under the Avis Term Sheet and the Sixt Term Sheet.

7. All persons and entities are prohibited and enjoined from taking any action to adversely affect or interfere with, or which would be inconsistent with, the ability of the Debtor to transfer the Remaining Non-Transferred Locations to Avis and Sixt, respectively, as the Purchasers, in accordance with the Avis Term Sheet and the Sixt Term Sheet and this Order.

8. In the event Avis and/or Sixt, respectively, as the Purchasers, or the Debtor, as the Seller, fail to consummate the sale in accordance with the Avis Term Sheet and the Sixt Term Sheet because of a breach or failure to perform on the part of Avis or Sixt or Seller, as applicable, then the non-breaching party may seek to enforce its rights for such breach.

9. Except as otherwise expressly provided in the Avis Term Sheet and the Sixt Term Sheet with respect to Seller Assumed Liabilities, the Remaining Non-Transferred Locations shall be sold free and clear of all claims, liabilities, interests, rights and encumbrances, including, without limitation, all mortgages, restrictions (including, without limitation, any restriction on the use, voting rights, transfer rights, claims for receipt of income or other exercise of any attributes of ownership), hypothecations, charges, indentures, loan agreements, instruments, options, deeds of trust, security interests, equity interests, conditional sale rights or other title retention agreements, pledges, judgments, demands, rights of first refusal, consent rights, offsets, contract rights, rights of setoff, rights of recovery, reimbursement rights, contribution claims, indemnity rights, exoneration rights, product liability claims, alter-ego claims, environmental rights and claims (including, without limitation, toxic tort claims), labor rights and claims, employment rights and claims, pension rights and claims, tax claims, regulatory violations, decrees of any court or foreign or domestic governmental entity, charges of any kind or nature, debts arising in any way in connection with any agreements, acts, or failures to act, reclamation claims, obligation claims, demands, guaranties, contractual or other commitment rights and

claims, rights of licensees or sublicensees under section 365(n) of the Bankruptcy Code or any similar statute, and all other matters of any kind and nature, whether known or unknown, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or non-material, disputed or undisputed, whether arising prior to or subsequent to the commencement of the Debtor's chapter 11 case (but, for the avoidance of doubt, in each case arising from or related to the ownership of the Remaining Non-Transferred Locations or the operation of the Business prior to the date of the Closing (the "*Closing Date*") of any of the Remaining Non-Transferred Locations), and whether imposed by agreement, understanding, law, equity or otherwise, including claims otherwise arising under any theory, law or doctrine of successor liability or related theories, as well as any and all "claims" as that term is defined and used in the Bankruptcy Code, including section 101(5) thereof (all of the foregoing, collectively, "*Claims*"), and any consensual or nonconsensual lien, statutory lien, real or personal property lien, mechanics' lien, materialmans' lien, warehousemans' lien, tax lien, and any and all "liens" as that term is defined and used in the Bankruptcy Code, including section 101(37) thereof (all of the foregoing, collectively, "*Liens*").

10. At each Closing of any Remaining Non-Transferred Location, all of the Debtor's right, title and interest in and to, and possession of, that particular Remaining Non-Transferred Location or those particular Remaining Non-Transferred Locations shall be immediately vested in Avis and Sixt, respectively, as the Purchasers, pursuant to sections 105(a), 363(b), 363(f) and 365 of the Bankruptcy Code free and clear of any and all Liens and Claims. Such transfer shall constitute a legal, valid, binding and effective transfer of such Remaining Non-Transferred Locations. All persons or entities, presently, or on or after the Closing, in possession of some or

all of the Remaining Non-Transferred Locations are directed to surrender possession of the Remaining Non-Transferred Locations directly to Avis or Sixt as the Purchaser or its designee on the Closing or at such time thereafter as Avis or Sixt as the Purchaser may request.

11. Avis and Sixt, respectively, as the Purchasers, are hereby authorized in connection with the consummation of the transactions to allocate the Remaining Non-Transferred Locations, Seller Assumed Liabilities, and the Assigned Contracts among its affiliates, designees, assignees, and/or successors in a manner as it, in its sole discretion, deems appropriate, and to assign, sublease, sublicense, transfer or otherwise dispose of any of the Remaining Non-Transferred Locations or the rights under any Assigned Contract to its affiliates, designees, assignees, and/or successors with all of the rights and protections accorded under this Order and the Avis Term Sheet and the Sixt Term Sheet, and the Debtor shall cooperate with and take all actions reasonably requested by Avis and Sixt, respectively, as the Purchasers, to effectuate any of the foregoing, which shall be at the cost of Avis and Sixt, respectively, as the Purchasers, if requested after the Closing Date to the extent provided in the Avis Term Sheet and the Sixt Term Sheet.

12. This Order: (a) shall be effective as a determination that, as of the Closing, (i) no Liens or Claims (other than the Seller Assumed Liabilities) will be capable of being asserted against Avis and Sixt, respectively, as the Purchasers, or any of its assets (including the Remaining Non-Transferred Locations), (ii) the Remaining Non-Transferred Locations shall have been transferred to Avis and Sixt, respectively, as the Purchasers, free and clear of all Liens and Claims, and (iii) the conveyances described herein have been effected; and (b) is and shall be binding upon and govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars

of deeds, registrars of patents, trademarks or other intellectual property, administrative agencies, governmental departments, secretaries of state, federal and local officials and all other persons and entities who may be required by operation of law, the duties of their office or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any lease; and each of the foregoing persons and entities is hereby directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the Avis Term Sheet and the Sixt Term Sheet.

13. Except as otherwise expressly provided in the Avis Term Sheet and the Sixt Term Sheet with respect to the Seller Assumed Liabilities, all persons and entities (and their respective successors and assigns), including, without limitation, all debt security holders, equity security holders, affiliates, governmental, tax and regulatory authorities, lenders, customers, vendors, employees, trade creditors, litigation claimants and other creditors holding Liens or Claims arising under or out of, in connection with, or in any way relating to, the Debtor, the Remaining Non-Transferred Locations, the ownership, sale or operation of the Remaining Non-Transferred Locations and the Business prior to Closing or the transfer of the Remaining Non-Transferred Locations to Avis and Sixt, respectively, as the Purchasers, are hereby forever barred, estopped and permanently enjoined from asserting such Liens or Claims against Avis and Sixt, respectively, as the Purchasers, its successors or assigns, its assets or property or the Remaining Non-Transferred Locations. Following the Closing, no holder of any Lien or Claim shall interfere with title to or use and enjoyment of the Remaining Non-Transferred Locations of Avis and Sixt, respectively, as the Purchasers, based on or related to any such Lien or Claim, or based on any action the Debtor may take in its chapter 11 case.



14. Each person or entity that has filed financing statements, mortgages, *lis pendens* or other documents or agreements evidencing Liens or Claims against or in the Remaining Non-Transferred Locations shall be obligated to deliver to the Debtor and Avis and Sixt, respectively, as the Purchasers, prior to the Closing of the transactions in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all Liens and Claims that the person or entity has with respect to the Remaining Non-Transferred Locations or otherwise. If any person or entity that has filed financing statements, mortgages, *lis pendens* or other documents or agreements evidencing Liens or Claims against or in the Remaining Non-Transferred Locations shall not have delivered to the Debtor prior to the Closing of the transactions, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all Liens and Claims that the person or entity has with respect to the Remaining Non-Transferred Locations or otherwise, then only with regard to the Remaining Non-Transferred Locations that are purchased by the Purchasers, pursuant to each of the Binding Term Sheets, as applicable, and this Order: (a) each of the Debtor and Purchasers is hereby authorized and directed to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Remaining Non-Transferred Locations; (b) Avis and Sixt, respectively, as the Purchasers, are each hereby authorized to file, register or otherwise record a certified copy of this Order, which, once filed, registered or otherwise recorded, shall constitute conclusive evidence of the release of all Liens and Claims against Avis and Sixt, respectively, as the Purchasers, and the applicable Remaining Non-Transferred Locations; and (c) Avis and Sixt, respectively, as the Purchasers, may seek in this Court or any other court to compel appropriate parties to execute termination statements, instruments of satisfaction, and releases of all Liens and Claims with respect to the

Remaining Non-Transferred Locations other than Seller Assumed Liabilities. This Order is deemed to be in recordable form sufficient to be placed in the filing or recording system of each and every federal, state, or local government agency, department or office. Notwithstanding the foregoing, the provisions of this Order authorizing the sale and assignment of the Remaining Non-Transferred Locations free and clear of Liens and Claims shall be self-executing, and neither the Debtor nor Avis and Sixt, respectively, as the Purchasers, shall be required to execute or file releases, termination statements, assignments, consents or other instruments to effectuate, consummate and implement the provisions of this Order.

15. Avis and Sixt, respectively, as the Purchasers, shall be authorized, as of the Closing Date, to operate under any license, permit, registration and governmental (including airport authorities) authorization or approval (collectively, the "*Ancillary Licenses*") of the Debtor with respect to the Remaining Non-Transferred Locations, and all Ancillary Licenses are deemed to have been, and hereby are directed to be, transferred to Avis and Sixt, respectively, as the Purchasers, as of the Closing Date. For the avoidance of doubt, the Ancillary Licenses do not include the Assigned Contracts, and none of the provisions of this paragraph 15 apply to the assumption and assignment of the Assigned Contracts to the Purchasers. To the extent any Ancillary License cannot be transferred to Avis and Sixt, respectively, as the Purchasers, in accordance with the first sentence of this paragraph 15, each such Ancillary License: (a) shall remain in effect while Avis and Sixt, respectively, as the Purchasers, with assistance from the Debtor, works promptly and diligently to apply for and secure all necessary government approvals for the transfer or new issuance of Ancillary Licenses to Avis and Sixt, respectively, as the Purchasers; and (b) shall terminate on a license-by-license basis following the final determination of the application of Avis and Sixt, respectively, as the Purchasers, for transfer or



new issuance of an Ancillary License to Avis and Sixt, respectively, as the Purchasers. The Debtor shall maintain the Ancillary Licenses in good standing to the fullest extent allowed by applicable law for the benefit of Avis and Sixt, respectively, as the Purchasers, until equivalent new Ancillary Licenses are issued to Avis and Sixt, respectively, as the Purchasers, which shall be at the cost of Avis and Sixt, respectively, as the Purchasers, to the extent obligations are incurred after the Closing Date. Without limiting the foregoing, the Purchasers and Debtor may enter into any reasonable arrangement that either of the Purchasers may request and at the expense of such Purchaser without further application or motion to or order of the Court, which arrangement provides Avis and Sixt, respectively, as the Purchasers, with all of the benefits of, or under, any such Ancillary License or any other Non-Assignable Purchased Asset (as defined in the Avis Term Sheet). Further, also without limiting the foregoing, Avis and Sixt, respectively, as the Purchasers, and the Debtor may enter into any reasonable shared services agreement or shared management agreement that Purchasers may request and at the expense of Purchasers without further application or motion to or order of the Court, which arrangement provides Purchasers with the benefits of management or services of the Debtor in transitioning the operation of the business of the Debtor to Avis and Sixt, respectively, as the Purchasers.

16. To the extent set forth in section 525 of the Bankruptcy Code, no governmental unit (including any airport authority) may revoke or suspend any permit or license relating to the operation of the Remaining Non-Transferred Locations sold, transferred, assigned or conveyed to Avis and Sixt, respectively, as the Purchasers, on account of the filing or pendency of this chapter 11 case or the consummation of the transactions.

**No Successor or Transferee Liability**

17. Avis and Sixt, respectively, as the Purchasers, shall not be deemed, as a result of any action taken in connection with the Avis Term Sheet and the Sixt Term Sheet, the consummation of the transactions contemplated by the Avis Term Sheet and the Sixt Term Sheet, or the transfer or operation of the Remaining Non-Transferred Locations, including the Assigned Contracts, to: (a) be a legal successor, or otherwise be deemed a successor to the Debtor or its affiliates (other than, for Avis and Sixt, respectively, as the Purchasers, with respect to any obligations as an assignee under the Assigned Contracts arising after the Closing); (b) have, *de facto* or otherwise, merged with or into the Debtor or its affiliates; (c) be an alter ego or a mere continuation or substantial continuation of the Debtor or its affiliates, in each case including, without limitation, within the meaning of any pension law, the Employee Retirement Income Security Act, the Consolidated Omnibus Budget Reconciliation Act ("*COBRA*"), the WARN Act (29 U.S.C. §§ 2101 *et seq.*) ("*WARN*"), the Fair Labor Standard Act, Title VII of the Civil Rights Act of 1964 (as amended), the Age Discrimination and Employment Act of 1967 (as amended), the Federal Rehabilitation Act of 1973 (as amended), the National Labor Relations Act, 29 U.S.C. § 151, *et seq.* (the "*NLRA*").

18. Other than as expressly set forth in the Avis Term Sheet and the Sixt Term Sheet or this Order solely with respect to Seller Assumed Liabilities, Avis and Sixt, respectively, as the Purchasers, shall not have any responsibility for any liability or other obligation of the Debtor or any of its affiliates, whether known or unknown as of the Closing, now existing or hereafter arising, asserted or unasserted, fixed or contingent, liquidated or unliquidated, including under any law or theory of successor or vicarious liability, antitrust law, environmental law, foreign, federal, state or local revenue law, or products liability law. Without limiting the generality of

the foregoing, Avis and Sixt, respectively, as the Purchasers, shall not be liable for any (a) liabilities, debts or obligations on account of any taxes arising, accruing or payable under, out of, in connection with, or in any way relating to the ownership or operation of the Remaining Non-Transferred Locations prior to the Closing; (b) environmental liabilities or obligations arising from conditions first existing on or prior to Closing (including, without limitation, the presence of hazardous, toxic, polluting, or contaminating substances or wastes), which may be asserted on any basis, including, without limitation, under the Comprehensive Environmental Response Compensation and Liability Act ("**CERCLA**"); (c) liabilities, debts or obligations arising from conditions first existing or actions occurring prior to the Closing with respect to any labor, employment, or similar law, rule or regulation, including the laws specified in the preceding Paragraph (including filing requirements under any such laws, rules or regulations); or (d) liabilities under any other foreign, federal, state or local law by virtue of Avis and Sixt, respectively, as the Purchasers, purchasing any of the Remaining Non-Transferred Locations or assuming any of the Seller Assumed Liabilities (all liabilities described in Paragraphs 17 and 18 of this Order, "**Successor or Transferee Liability**").

19. Except as otherwise expressly provided in the Avis Term Sheet and the Sixt Term Sheet, nothing shall require Avis and Sixt, respectively, as the Purchasers, to: (a) continue or maintain in effect, or assume any liability in respect of any employee, collective bargaining agreement, pension, welfare, fringe benefit or any other benefit plan, trust arrangement or other agreements to which the Debtor is a party or have any responsibility therefor including, without limitation, medical, welfare and pension benefits payable after retirement or other termination of employment; or (b) assume any responsibility as a fiduciary, plan sponsor or otherwise, for making any contribution to, or in respect of the funding, investment or administration of any

employee benefit plan, arrangement or agreement (including, but not limited to, pension plans) or the termination of any such plan, arrangement or agreement.

20. Effective upon the Closing, except with respect to Seller Assumed Liabilities, all persons and entities are forever prohibited and enjoined from commencing or continuing in any matter any action or other proceeding, whether in law or equity, in any judicial, administrative, arbitral or other proceeding against Avis and Sixt, respectively, as the Purchasers, or their respective assets (including the Remaining Non-Transferred Locations), with respect to any (a) Lien or Claim, or (b) Successor or Transferee Liability, including, without limitation, the following actions with respect to clauses (a) and (b): (i) commencing or continuing any action or other proceeding pending or threatened; (ii) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order; (iii) creating, perfecting or enforcing any Lien or Claim; (iv) asserting any setoff, right of subrogation or recoupment of any kind; (v) commencing or continuing any action, in any manner or place, that does not comply with, or is inconsistent with, the provisions of this Order or other orders of this Court, or the agreements or actions contemplated or taken in respect hereof; or (vi) revoking, terminating, failing or refusing to renew any license, permit or authorization to operate any of the Remaining Non-Transferred Locations or conduct any of the businesses operated with such assets.

**Good Faith of Purchasers**

21. The transactions contemplated by the Avis Term Sheet and the Sixt Term Sheet are undertaken by Avis and Sixt, respectively, as the Purchasers, without collusion and in good faith, as that term is described in section 363(m) of the Bankruptcy Code and, accordingly, Avis and Sixt are deemed for all purposes to be good faith purchasers in the transactions contemplated by the Avis Term Sheet and the Sixt Term Sheet and the reversal or modification on appeal of

the authorization provided herein to consummate the sale shall not affect the validity of the transactions (including the assumption and assignment of the Assigned Contracts), unless such authorization and consummation of the sale are duly and properly stayed pending such appeal.

22. Neither the Debtor nor Avis and Sixt, respectively, as the Purchasers, has engaged in any collusion with other bidders or has taken any other action or inaction that would cause or permit the transactions to be avoided or costs or damages to be imposed under section 363(n) of the Bankruptcy Code or otherwise.

**Assumption and Assignment of Assigned Contracts**

23. The Debtor is authorized and directed to assume and assign each of the Assigned Contracts upon the Closing of the transactions (or thereafter, in accordance with the Avis Term Sheet and the Sixt Term Sheet), free and clear of all Liens and Claims. The payment of the applicable Cure Amounts by Avis and Sixt, respectively, as the Purchasers, or the Debtor, as applicable, shall, in accordance with section 365(b) of the Bankruptcy Code, (a) cure all defaults under the Assigned Contracts as contemplated by section 365 of the Bankruptcy Code as of the Closing Date, (b) compensate for any actual pecuniary loss to such non-Debtor counterparty resulting from such default, and (c) together with the assumption of the Assigned Contracts by the Debtor and the assignment of the Assigned Contracts to Avis and Sixt, respectively, as the Purchasers, constitute adequate assurance of future performance thereof.

24. Any provisions in any Assigned Contract that prohibit or condition the assignment of such Assigned Contract or allow the counterparty to such Assigned Contract to terminate, recapture, impose any penalty or fee, accelerate, increase any rate, condition on renewal or extension, or modify any term or condition, directly or indirectly, upon the assignment of such Assigned Agreement, constitute unenforceable anti-assignment provisions

that are void and of no force and effect. All other requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Debtor and assignment to Avis and Sixt, respectively, as the Purchasers, or an Affiliate of Avis and Sixt, respectively, as the Purchasers, of the Assigned Contracts have been satisfied. Upon the Closing, in accordance with sections 363 and 365 of the Bankruptcy Code, Avis and Sixt, respectively, as the Purchasers, shall be fully and irrevocably vested with all right, title and interest of the Debtor under the Assigned Contracts, and such Assigned Contracts shall remain in full force and effect for the benefit of Avis and Sixt, respectively, as the Purchasers. Each non-Debtor counterparty to the Assigned Contracts shall be forever barred, estopped, and permanently enjoined from (a) asserting against the Debtor or Avis and Sixt, respectively, as the Purchasers, or their respective assets or property any assignment fee, acceleration, default, breach or claim or pecuniary loss, or condition to assignment existing, arising or accruing as of the Closing Date or arising by reason of the Closing, including any breach related to or arising out of change-in-control in such Assigned Contracts, or any purported written or oral modification to the Assigned Contracts and (b) asserting against Avis and Sixt, respectively, as the Purchasers, (or its assets or property, including the Remaining Non-Transferred Locations) any Lien or Claim, counterclaim, breach, condition, setoff, asserted or capable of being asserted against the Debtor existing as of the Closing Date or arising by reason of the Closing.

25. Upon the Closing and the payment of the relevant Cure Amounts, Avis and Sixt, respectively, as the Purchasers, shall be deemed to be substituted for the Debtor as a party to the applicable Assigned Contracts and the Debtor shall be released, pursuant to section 365(k) of the Bankruptcy Code, from any liability under the Assigned Contracts. There shall be no assignment fees, increases or any other fees charged to Avis and Sixt, respectively, as the Purchasers, or the



Debtor as a result of the assumption and assignment of the Assigned Contracts. The failure of the Debtor or Avis and Sixt, respectively, as the Purchasers, to enforce at any time one or more terms or conditions of any Assigned Contract shall not be a waiver of such terms or conditions or of the right of the Debtor or Avis and Sixt, respectively, as the Purchasers, as the case may be, to enforce every term and condition of such Assigned Contract. The validity of the assumption and assignment of any Assigned Contract to Avis and Sixt, respectively, as the Purchasers, shall not be affected by any existing dispute between the Debtor and any counterparty to such Assigned Contract. Any party that may have had the right to consent to the assignment of any Assigned Contract is deemed to have consented for the purposes of section 365(e)(2)(A)(ii) of the Bankruptcy Code.

26. Unless Avis and Sixt, respectively, as the Purchasers, otherwise expressly agree in writing, (a) all defaults or other obligations of the Debtor under the Assigned Contracts arising or accruing prior to the Closing Date (without giving effect to any acceleration clauses or any default provisions of the kind specified in section 365(b)(2) of the Bankruptcy Code) shall be deemed cured upon payment of the Cure Amounts, and Avis and Sixt, respectively, as the Purchasers, shall have no liability or obligation arising or accruing under the Assigned Contracts on or prior to the Closing Date, except as otherwise expressly set forth in the Avis Term Sheet and the Sixt Term Sheet, and (b) each non-Debtor party to an Assigned Contract is forever barred, estopped and permanently enjoined from asserting against Avis and Sixt, respectively, as the Purchasers, or its assets or property (including, without limitation, the Remaining Non-Transferred Locations), any default existing as of the Closing Date, any Lien or Claim, counterclaim, breach, condition, setoff (except with respect to setoffs that were effected prior to the Petition Date), or other claim asserted or capable of being asserted against the Debtor. Other



than the Assigned Contracts, Avis and Sixt, respectively, as the Purchasers, have assumed none of the Debtor's other contracts or leases and shall have no liability whatsoever thereunder.

27. The assignments of each of the Assigned Contracts by the Debtor to Avis and Sixt respectively are made in good faith under sections 363(b) and (m) of the Bankruptcy Code and are consistent with prior Orders of the Bankruptcy Court and the Hertz Settlement. Further, each of the Assigned Contracts by the Debtor to Avis and Sixt, respectively, is properly assumable by the Debtor and assignable to Avis or Sixt, respectively, as the Purchasers.

#### **Other Provisions**

28. For avoidance of doubt, the sales process described herein was in conformity with the Hertz Settlement.<sup>6</sup>

29. Avis and Sixt, respectively, as the Purchasers, shall not be required to seek or obtain relief from the automatic stay under section 362 of the Bankruptcy Code to enforce any of its remedies under the Avis Term Sheet and the Sixt Term Sheet or any other sale-related document. The automatic stay imposed by section 362 of the Bankruptcy Code is modified solely to the extent necessary to implement the preceding sentence, provided however that this Court shall retain exclusive jurisdiction over any and all disputes with respect thereto.

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<sup>6</sup> The term "*Hertz Settlement*" means, collectively, the following: (i) that certain Settlement Agreement by and among the Debtor, The Hertz Corporation, Purchasers, FSNA and Tom McDonnell dated as of December 17, 2013 (together with the Releases (as defined in such Settlement Agreement) and all related agreements, amendments, documents or instruments and all exhibits, schedules and addenda to the Settlement Agreement or any Release, collectively the "*Hertz Settlement Documents*"), as amended by those certain amendments to the Hertz Settlement Documents as approved in that certain *Agreed Order Granting Motion of Debtor for Entry of an Order to Amend Settlement Agreement with Hertz Corporation and Other Parties and Granting Related Relief* (the "*Hertz Settlement Amendment Order*") [Docket No. 447], (ii) that certain *Order Granting Motion of the Debtor for an Order Authorizing the Debtor to Amend the Hertz Term Sheet* [Docket No. 583] and (iii) the related Releases (as defined in the Hertz Settlement Agreement), each, as approved by that certain *Order Granting Expedited Motion of Debtor to Compromise and Settle Claims and Disputes Pursuant to Fed. R. Bankr. P. 9019* [Docket No. 293] (the "*Hertz Settlement Approval Order*").

30. Nothing in this Order or the Avis Term Sheet and the Sixt Term Sheet releases, nullifies, precludes, or enjoins the enforcement of any (a) obligation to a governmental unit under police and regulatory statutes, (b) regulations that any entity would be subject to as the owner or operator of property after the date of entry of this Order, or (c) obligations to pay ad valorem taxes and to remit customer facility charges (CFCs) to local governmental entities. Nothing in this Order or the Avis Term Sheet and the Sixt Term Sheet divests any tribunal of any jurisdiction it may have under environmental law or other governmental regulatory non-bankruptcy law.

31. This Order is binding upon and inures to the benefit of any successors and assigns of the Debtor or Avis and Sixt, respectively, as the Purchasers, including any trustee appointed in any subsequent case of the Debtor under chapter 7 of the Bankruptcy Code.

32. This Order and the Avis Term Sheet and the Sixt Term Sheet shall be binding in all respects upon Catalyst, all creditors of (whether known or unknown) the Debtor, all holders of equity interests in the Debtor, any holders of Liens or Claims in, against, or on all or any portion of the Remaining Non-Transferred Locations, all non-Debtor counterparties to the Assigned Contracts, all successors and assigns Avis and Sixt, respectively, as the Purchasers, the Debtor and its affiliates and subsidiaries and any subsequent trustees appointed in this chapter 11 case or upon a conversion to chapter 7 under the Bankruptcy Code, and shall not be subject to rejection.

33. Nothing contained in any chapter 11 plan confirmed in the Debtor's chapter 11 case, any order confirming any such chapter 11 plan or any order approving wind-down or dismissal of this chapter 11 cases or any subsequent chapter 7 cases shall conflict with or derogate from the provisions of the Avis Term Sheet and the Sixt Term Sheet or this Order, and

to the extent of any conflict or derogation between this Order or the Avis Term Sheet and the Sixt Term Sheet and such future plan or order, the terms of this Order and the Avis Term Sheet and the Sixt Term Sheet shall control.

34. The provisions of this Order and the Avis Term Sheet and the Sixt Term Sheet are non-severable and mutually dependent. To the extent any provisions of this Order conflict with, or are otherwise inconsistent with, the terms and conditions of the Avis Term Sheet and the Sixt Term Sheet or the Sale Motion and Order Shortening Time, this Order shall govern and control.

35. The Avis Term Sheet and the Sixt Term Sheet and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto and Catalyst, in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Debtor's estate.

36. No bulk sales law or any similar law of any state or other jurisdiction shall apply in any way to the transactions authorized herein, including, without limitation, the Avis Term Sheet and the Sixt Term Sheet and the transactions.

37. The Court shall retain exclusive jurisdiction to, among other things, interpret, implement, and enforce the terms and provisions of this Order and the Avis Term Sheet and the Sixt Term Sheet, all amendments thereto and any waivers and consents thereunder and each of the agreements executed in connection therewith to which the Debtor is a party or which has been assigned by the Debtor to Avis and Sixt, respectively, as the Purchasers, or its designees, and to adjudicate, if necessary, any and all disputes concerning or relating in any way to the transactions. This Court retains jurisdiction to compel delivery of the Remaining Non-Transferred Locations, to protect Avis and Sixt, respectively, as the Purchasers, and its assets,

including the Remaining Non-Transferred Locations, against any Claims, Liens, and Successor or Transferee Liability and to enter orders, as appropriate, pursuant to sections 105, 363 or 365 (or other applicable provisions) of the Bankruptcy Code necessary to transfer the Remaining Non-Transferred Locations and the Assigned Contracts to Avis and Sixt, respectively, as the Purchasers.

38. The requirements set forth in Bankruptcy Rules 6003(b), 6004 and 6006 have been satisfied or otherwise deemed waived.

39. As provided by Bankruptcy Rules 7062 and 9014, the terms and conditions of this Order shall be effective immediately upon entry and shall not be subject to the stay provisions contained in Bankruptcy Rules 6004(h) and 6006(d). Time is of the essence in closing the sale and the Debtor and Avis and Sixt, respectively, as the Purchasers, intend to close the sale as soon as possible.

**##END OF ORDER##**

**ORDER SUBMITTED BY:**

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ATTORNEY FOR ADVANTAGE OPCO, LLC, AS  
ASSIGNEE OF THE CATALYST CAPITAL GROUP, INC.  
ON BEHALF OF FUNDS MANAGED BY IT

**Exhibit "A"**



**EXECUTION VERSION**

**Purchase Agreement for Acquisition of Operations of Debtor at Portland International Airport  
By Budget Rent A Car System, Inc.**

1.	<b>Acquisition Transaction Summary</b>	Pursuant to Sections 363(b) and 365 of the Bankruptcy Code and this Purchase Agreement (the " <u>Agreement</u> "), (a) Simply Wheelz LLC (" <u>Debtor</u> ") will sell, assign, convey, transfer and deliver to Budget Rent A Car System, Inc. (together with its affiliates, including Avis Budget Car Rental, LLC and Payless Car Rental, Inc., " <u>Buyer</u> ") that certain Rental Car Limited Service Kiosk Lease as of September 1, 2011, by and between The Port of Portland (the " <u>Authority</u> ") and Simply Wheelz LLC d/b/a Advantage Rent-A-Car (the " <u>Purchased Contract</u> ") relating to Debtor's rental car operations at Portland International Airport (PDX) (the " <u>Purchased Location</u> "), free and clear of all liens, claims, encumbrances and successor liabilities, and (b) Buyer will pay the Purchase Price (as defined below) (the " <u>Buyer Transaction</u> ").
2.	<b>Purchase Price</b>	<p>The purchase price (the "<u>Purchase Price</u>") for the Purchased Contract will be the sum of (a) the Purchased Location Cash Purchase Price, plus (b) the Assumed Liabilities.</p> <p>The term "<u>Purchased Location Cash Purchase Price</u>" means \$1.00. The Purchased Location Cash Purchase Price meets the requirements of section 5(D) of the Bidding Procedures.</p> <p>The term "<u>Assumed Liabilities</u>" means, collectively, (a) the sum of (i) the aggregate amount of minimum annual guarantee payments and real property lease rental payments arising under the Purchased Contract solely to the extent that such liabilities arise on and after April 1, 2014 and remain unpaid to the Authority on the date hereof, which shall not exceed \$83,071.69 in accordance with a schedule of Open A/R through June 1, 2014 provided by the Authority to the parties hereto (it being understood that \$83,071.69 is equal to the excess of the amount set forth on such schedule with respect to the Purchased Contract over the Debtor Cure Amount), (ii) the portion of the monthly payment of the minimum annual guarantee required to be made by Debtor pursuant to the Purchased Contract, which shall not exceed \$54,166.67, beginning with the payment due on June 20, 2014 and ending on the Closing Date (as defined below) and (iii) the monthly Promises Rental payment to be made by Debtor pursuant to the Purchased Contract, which shall not exceed \$185.47, beginning with the payment due on July 1, 2014 and ending on the Closing Date (such sum, the "<u>Pre-Closing Assumed Liabilities</u>"), and (b) all liabilities arising under the Purchased Contract to the extent (and only to the extent) such liabilities arise or accrue following the Closing.</p> <p>The term "<u>Debtor Cure Amount</u>" means \$27,083.33.</p> <p>Except as expressly set forth in the preceding paragraph, Buyer shall not assume (i) any other liabilities of Debtor or (ii) any other liabilities in respect of the Purchased Location.</p> <p>For the avoidance of doubt, at the Closing, Buyer shall substitute or</p>

		<p>replace any bond, letter of credit, or similar credit support provided by Debtor, The Catalyst Capital Group, Inc. (on behalf of funds managed by it and its affiliates, in its capacity as purchaser of the Debtor's assets pursuant to the Sale Order entered on January 2, 2014 [Dkt. # 326], and/or as debtor-in-possession lender, "Catalyst") or any bond surety, letter of credit issuer or other provider of such credit support (any bond surety, letter of credit issuer or other provider of credit support, a "Third Party Credit Support Provider") with respect to the Purchased Contract, and shall indemnify Debtor, Catalyst and each Third Party Credit Support Provider for any drawings or payments thereunder that are made on account of any Assumed Liabilities; provided that in no event shall any such bond, letter of credit, or similar credit support exceed \$162,500 in the aggregate.</p>
3.	<p><b>Closings; Payment of Purchase Price</b></p>	<p>Subject to the satisfaction of the conditions set forth in Section 4 below, the closing of the transactions contemplated hereby (the "Closing") shall take place on or before the fifth business day after the satisfaction or waiver of all conditions precedent set forth herein or such other date as may be mutually acceptable to Debtor, Catalyst and Buyer (such date, the "Closing Date").</p> <p>On the Closing Date, Buyer shall be obligated to pay to (i) Debtor and Catalyst (for application to the DIP Indebtedness) the Purchased Location Cash Purchase Price and (ii) the Authority, on behalf of Debtor and Catalyst, an amount equal to the Pre-Closing Assumed Liabilities.</p> <p>On the Closing Date, the Debtor shall be obligated to pay the Debtor Cure Amount to the Authority.</p>
4.	<p><b>Conditions to Closing</b></p>	<p>The effectiveness of the Buyer Transaction shall be conditioned on:</p> <p>(i) with respect to the obligations of each party to this term sheet to consummate the Closing, (A) the entry of a Bankruptcy Court order (the "Buyer Sale Order") approving the sale of the Purchased Contract to Buyer free and clear of liens and encumbrances pursuant to section 363 of the Bankruptcy Code, which order shall be in form and substance reasonably acceptable to Buyer, Debtor, and Catalyst, (B) Debtor's authority to market and sell the Purchased Contract pursuant to the Settlement Agreement by and among Debtor, The Hertz Corporation and certain other parties pursuant to the order filed on December 16, 2013 [Dkt. #210] and (C) there shall not be in effect any statute, rule, regulation or executive order enacted, issued, entered or promulgated by a governmental body of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the Buyer Transaction;</p> <p>(ii) with respect to the obligations of Debtor and Catalyst to consummate the Closing, (A) the performance in all material respects of all obligations of Buyer hereunder and the delivery of an officer's certificate with respect thereto, (B) the delivery by Buyer of a duly executed bill of sale, assignment and assumption agreement and other good and sufficient instruments of conveyance and transfer, in form reasonably satisfactory</p>

		<p>to Debtor and Catalyst, and (C) Buyer's delivery of the Purchase Price; and</p> <p>(iii) with respect to the obligations of Buyer to consummate the Closing, (A) the payment by the Debtor of the Debtor Cure Amount to the Authority on the Closing Date, (B) the accuracy in all material respects of the representations and warranties of, and performance in all material respects of all obligations of, Debtor hereunder and the delivery of an officer's certificate with respect thereto, (C) the delivery by Debtor of a duly executed assignment and assumption agreement and other good and sufficient instruments of conveyance and transfer necessary to convey the Purchased Contract to Buyer free and clear of all liens, claims, encumbrances and successor liabilities, in form reasonably satisfactory to Buyer with respect to the Closing, (D) a duly executed non-foreign person affidavit of Debtor (or, if Debtor is a disregarded entity, its owner) dated as of such Closing Date, sworn under penalty of perjury and in form and substance required under the Treasury Regulations issued pursuant to Section 1445 of the Code, stating that Debtor (or, if Debtor is a disregarded entity, its owner) is not a "foreign person" as defined in Section 1445 of the Code, and (E) receipt by Buyer of any consents, approvals, waivers, permits, authorizations or other permissions from, and delivering all necessary notices to, and making all filings with, any governmental body or other third party as may be necessary to consummate the Buyer Transaction and operate the Purchased Contract.</p>
5.	<b>Termination</b>	<p>The Buyer Transaction may be terminated by:</p> <ul style="list-style-type: none"> <li>• the mutual written consent of Debtor, Catalyst and Buyer;</li> <li>• any of Debtor, Catalyst or Buyer if the Closing has not occurred on or prior to the Outside Closing Date;</li> <li>• Buyer if the Bankruptcy Court does not enter the Buyer Sale Order on or prior to June 16, 2014;</li> <li>• any of Debtor, Catalyst or Buyer if such party is prohibited from consummating the Buyer Transaction by law, consent decree or order of any applicable government or judicial body; or</li> <li>• either of Debtor, on the one hand, or Buyer, on the other hand, if the other party commits any uncured breach of any obligation hereunder, or if any representation or warranty herein of such party becomes materially inaccurate, in each case, that makes the conditions to closing incapable of being satisfied as of the Closing.</li> </ul> <p>The term "<u>Outside Closing Date</u>" means September 1, 2014; <u>provided</u>, that (x) Buyer may, in its sole discretion, extend such date by providing notice to the Debtor for a period of 30 days so long as Buyer is working in good faith to consummate the Closing and (y) Debtor, Catalyst and Buyer may mutually agree to extend such date.</p>
6.	<b>Further Assurances</b>	<p>Subject to the terms and conditions contained herein and applicable law, the Parties shall use their respective commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable to consummate and make effective</p>

		<p>the Buyer Transaction as soon as practicable, and shall coordinate and cooperate with each other in respect of the foregoing. Without limiting the foregoing, until such time as the Buyer Transaction is either consummated or terminated in accordance with the terms hereof, the Parties shall use their respective commercially reasonable efforts to obtain or provide, as applicable, (i) the entry of the Buyer Sale Order and (ii) the consent of the FTC for the Buyer Transaction (it being understood that neither Buyer nor its affiliates will be required to divest any assets in order to consummate the Buyer Transaction), and (iii) any other consents, approvals, waivers, permits, authorizations or other permissions from, and all necessary notices to, and all filings with, any governmental body or other third party as may be necessary to consummate the Buyer Transaction.</p>
7.	<b>Employees</b>	<p>Buyer has no obligation to hire any employees of Debtor or to assume any liability in connection with the termination thereof.</p>
8.	<b>Miscellaneous</b>	<p>For the avoidance of doubt, Debtor is under no obligation (a) except as set forth in Section 3, to make any payments to the Authority in connection with the Buyer Transaction or (b) to perform or undertake any obligations with respect to the Purchased Contract, except as expressly provided herein.</p> <p>Buyer, Debtor and Catalyst hereby acknowledge and agree that this Agreement is intended to be an irrevocable and binding agreement. The provisions of this Agreement and all duties, obligations and rights arising herefrom shall be governed by and construed in accordance with the laws of the State of Mississippi, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Mississippi or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Mississippi. The parties consent to the exclusive jurisdiction and venue of the United States Bankruptcy Court for the Southern District of Mississippi to resolve any disputes arising out of or relating to this Agreement.</p>

\* \* \* \*

**IN WITNESS WHEREOF**, the Parties hereto have caused this Purchase Agreement to be executed by their respective duly authorized officers as of June 10, 2014.

**BUDGET RENT A CAR SYSTEM, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**SIMPLY WHEELZ LLC D/B/A ADVANTAGE  
RENT A CAR**

By: \_\_\_\_\_  
Name: William N. Plamondon III  
Title: President

**THE CATALYST CAPITAL GROUP, INC.  
(on behalf of funds managed by it)**

By: \_\_\_\_\_  
Name: Gabriel de Alba  
Title: Managing Director and Partner

**Exhibit "B"**



**Term Sheet for Acquisition of Mineta San Jose International Airport (SJC) Location**

1.	<b>Acquisition Transaction Summary</b>	Pursuant to Sections 363(b) and 365 of the Bankruptcy Code, (a) Simply Wheelz LLC ("Debtor") will sell, assign, convey, transfer and deliver to Sixt Rent a Car, LLC ("Buyer") the Operations Agreement and Lease Between City of San Jose And Simply Wheelz, LLC dba Advantage Rent A Car (the " <u>Lease</u> ") and the Facilities Management Agreement (the " <u>FMA</u> ") relating to the Mineta San Jose International Airport (SJC) location (the " <u>Purchased Location</u> "), each in the form provided to us prior to the date herof, (collectively, the " <u>Purchased Assets</u> "), free and clear of all liens, claims, encumbrances and successor liabilities, and (b) Buyer will pay the Purchase Price (as defined below) (the " <u>Buyer Transaction</u> ").
2.	<b>Purchase Price</b>	<p>The purchase price (the "<u>Purchase Price</u>") for the Purchased Assets will be the sum of (a) \$1.00, plus (b) the Assumed Liabilities (as defined below), plus (c) Cure Costs (as defined below).</p> <p>The term "<u>Assumed Liabilities</u>" means (i) with respect to the Lease, the variable Concession Fee and Rent of a combined amount not to exceed \$35,000.00 on a monthly basis, and (ii) with respect to the FMA, the variable Expense Allocation of an amount not to exceed \$17,000.00 on a yearly basis.</p> <p>The term "<u>Cure Costs</u>" is the amount of \$18,497.00 currently owed by Simply Wheelz, LLC dba Advantage Rent a Car to the City of San Jose.</p> <p>For avoidance of doubt, Buyer shall substitute or replace the letter of credit provided by the Debtor of an amount not to exceed \$150,000.00.</p> <p>Buyer will not assume or undertake any liability or obligation that has not been expressly mentioned in this Term Sheet.</p> <p>For avoidance of doubt, Debtor is under no obligation whatsoever either (a) to pay any moneys or (b) to perform or undertake any obligations with respect to the Lease or the FMA related to or in connection with the Purchased Location.</p>
3.	<b>Closings; Payment of Purchase Price</b>	Subject to the satisfaction of the conditions set forth in Section 4 below, the closing of the transaction contemplated hereby with

		<p>respect to the Purchased Location (the "<u>Closing</u>") shall take place on or before the fifth business day after the satisfaction or waiver of all conditions precedent with respect to the Purchased Location or such other date as may be mutually acceptable to Debtor, Catalyst and Buyer (each date on which a Closing occurs, a "<u>Closing Date</u>").</p> <p>Buyer shall be obligated upon the Closing of the Purchased Location (i) to pay to Debtor and Catalyst (for application to the DIP Indebtedness) the Cure Costs, and (ii) to pay any Assumed Liabilities arising after the date hereof, which, at Buyer's sole option, may be paid directly to the City of San Jose, if not previously paid by Debtor.</p>
4.	<b>Conditions to Closing</b>	<p>The effectiveness of the Buyer Transaction shall be conditioned on (i) the entry of a Bankruptcy Court order, which order shall have become final and non-appealable (the "<u>Buyer Sale Order</u>") approving the sale of the Purchased Assets to Buyer free and clear of liens and encumbrances pursuant to section 363 of the Bankruptcy Code, which order shall be in form and substance reasonably acceptable to Buyer, Debtor, and Catalyst.</p> <p>For avoidance of doubt, the Lease and the FMA shall not be deemed to be assumed and assigned until the Closing.</p> <p>The obligation of Buyer to consummate the Closing shall be conditioned upon the satisfaction (or waiver by Buyer) of the following: (i) receipt of express City of San Jose and Airport approval of Buyer's acquisition, (ii) receipt of all third party consents and approvals required pursuant to the terms of the Lease in connection with the assignment of the Lease to Buyer at the Closing, including without limitation the Federal Trade Commission ("<u>FTC</u>"), (iii) Debtor's and Catalyst's performance of and/or compliance with (as applicable) all of their respective agreements, covenants, and obligations hereunder in all material respects, and (iv) no order having been enacted, issued, promulgated, enforced, or entered by any governmental entity which has the effect of prohibiting or limiting in any way Buyer's acquisition, ownership, or operation of the Purchased Location.</p>
5.	<b>Termination</b>	<p>The Buyer Transaction may be terminated by (i) the mutual written consent of Debtor, Catalyst and Buyer.; (ii) Buyer if the Closing has not occurred on or prior to August 31, 2014; or (iii)</p>

		the Debtor or Buyer if the other party commits any unsecured breach of any obligation hereunder, or if any representation or warranty herein of such party becomes materially inaccurate, in each case, that makes the conditions to closing incapable of being satisfied as of the Closing.
6.	<b>Further Assurances</b>	Subject to the terms and conditions contained herein and applicable law, the Parties shall use their respective commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable to consummate and make effective the Buyer Transaction as soon as practicable, and shall coordinate and cooperate with each other in respect of the foregoing. Without limiting the foregoing, until such time as the Buyer Transaction is either consummated or terminated in accordance with the terms hereof, the Parties shall use their respective commercially reasonable efforts to obtain or provide, as applicable, (i) the entry of the Buyer Sale Order, and (ii) the consent of the FTC for the Buyer Transaction, and (iii) any other consents, approvals, waivers, permits, authorizations or other permissions from, and all necessary notices to, and all filings with, any governmental body or other third party as may be necessary to consummate the Buyer Transaction. For avoidance of doubt, the effectiveness of the Buyer Transaction, and Buyer's obligation to pay the Purchase Price, is conditioned upon obtaining any required consents referenced in clauses (ii) or (iii) in the immediately preceding sentence, and if Buyer is unable to obtain any such required consents with respect to the Purchased Location, then it shall be entitled to terminate the Buyer Transaction pursuant to the provisions of Section 5 hereof.
7.	<b>Federal Trade Commission</b>	Buyer is responsible for obtaining, at its own expense, any approval of the FTC that may be required as a condition for its acquiring any of the Purchased Assets. Debtor and Catalyst agree to assist and cooperate with Buyer with respect to obtaining any FTC approval that may be required.

\* \* \* \*

**Exhibit "C"**

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**PURCHASE AND ASSIGNMENT AGREEMENT**

**BY AND BETWEEN**

**SIXT RENT A CAR, LLC**

**SIMPLY WHEELZ, LLC, F/D/B/A ADVANTAGE RENT-A-CAR**

**AND**

**ADVANTAGE OPCO, LLC**

\_\_\_\_\_, 2014

## PURCHASE AND ASSIGNMENT AGREEMENT

**THIS PURCHASE AND ASSIGNMENT AGREEMENT** (the "Agreement") is made and entered into as of \_\_\_\_\_, 2014, by and among Sixt Rent A Car, LLC, a Delaware limited liability company ("Buyer"); Simply Wheelz LLC, F/D/B/A Advantage Rent-A-Car, a Delaware limited liability company ("Seller"); and Advantage Opco, LLC, a Delaware limited liability company ("Opco"). Buyer, Seller, and Opco are each referred to in this Agreement as a "Party" and collectively as the "Parties."

### RECITALS:

**A.** WHEREAS, on November 6, 2013, an Order for Relief under Chapter 11 of the Bankruptcy Code was entered by the United States Bankruptcy Court for the Southern District of Mississippi (the "Bankruptcy Court"), in Chapter 11 Case No. 13-03332 granting Seller protection from its creditors under Chapter 11 of Title 11 of the United States Code, as amended from time to time (the "Bankruptcy Code"); and

**B.** WHEREAS, Seller is a party to the Operations Agreement and Lease Between City of San Jose And Simply Wheelz, LLC dba Advantage Rent A Car (the "Lease") and the Facilities Management Agreement (the "FMA") relating to the Mineta San Jose International Airport (SJC) location (the "Purchased Location") (collectively, the "Purchased Assets"). Copies of the Lease and FMA are attached hereto as Exhibits A and B, respectively.

**C.** WHEREAS, Buyer desires to (i) operate a rental car business at the Mineta San Jose International Airport (the "Airport"), and (ii) utilize the portion of the Airport facilities currently leased to Seller (the "Premises") under the Lease and FMA.

**D.** WHEREAS, Opco has extended certain indebtedness to Buyer as debtor in possession (the "DIP Indebtedness");

**E.** WHEREAS, Seller desires to sell and Buyer desires to acquire and assume Seller's interest in the Purchased Assets according to the terms set forth herein (the "Transaction").

### PROVISIONS:

**NOW, THEREFORE**, in consideration of the mutual promises and covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, hereby covenant and agree as follows:

**1. Definitions.** The following terms shall have the following meanings when used in this Agreement:

**1.01** "Encumbrance" means any charge, claim, limitation, condition, equitable interest, mortgage, lien, option, pledge, security interest, easement, encroachment, right of first refusal, adverse claim or restriction of any kind, including any restriction on or transfer or other assignment, as security or otherwise, of or relating to use, quiet enjoyment, voting, transfer, receipt of income or exercise of any other attribute of ownership.

**2. Sale of Purchased Assets Interests.** Subject to the terms and conditions of this Agreement, and pursuant to Sections 363(b) and 365 of the Bankruptcy Code, Seller agrees to sell and Buyer agrees to purchase all of Seller's right, title and interest in and to the Purchased Assets, free and clear of all liens, claims, Encumbrances and successor liabilities. The Parties agree and acknowledge that

the Purchased Assets shall not include Seller's automotive assets including any vehicles, parts, automotive equipment, supplies, and related automotive assets.

**3. Purchase Price.** The purchase price (the "Purchase Price") for the Purchased Assets will be the sum of (a) \$1.00, plus (b) the Assumed Liabilities (as defined below), plus (c) Cure Costs (as defined below).

The term "Assumed Liabilities" means (i) with respect to the Lease, the variable Concession Fee and Rent of a combined amount not to exceed \$35,000.00 on a monthly basis, and (ii) with respect to the FMA, the variable Expense Allocation of an amount not to exceed \$17,000.00.

The term "Cure Costs" is the amount of \$18,497.00 currently owed by Simply Wheelz, LLC dba Advantage Rent a Car to the City of San Jose.

For avoidance of doubt, Buyer shall substitute or replace the letter of credit provided by the Seller of an amount not to exceed \$150,000.00.

**4. Closings; Payment of Purchase Price.** Subject to the satisfaction of the conditions set forth in Section 5 below, the closing of the Transaction contemplated hereby with respect to the Purchased Location (the "Closing") shall take place on or before the fifth business day after the satisfaction or waiver of all conditions precedent with respect to the Purchased Location or such other date as may be mutually acceptable to Seller, Buyer, and Opco (the "Closing Date").

Buyer shall be obligated upon the Closing of the Purchased Location (i) to pay to Seller and Opco (for application to the DIP Indebtedness) the Cure Costs, and (ii) to pay any Assumed Liabilities arising after the date hereof, which, at Buyer's sole option, may be paid directly to the City of San Jose, if not previously paid by Seller.

Buyer shall not be deemed to have assumed the Purchased Assets until the Closing is complete.

**5. Conditions to Closing.** The effectiveness of the Buyer Transaction shall be conditioned on the entry of a Bankruptcy Court order, which order shall have become final and non-appealable (the "Sale Order") approving the sale of the Purchased Assets to Buyer free and clear of liens and Encumbrances pursuant to section 363 of the Bankruptcy Code, which order shall be in form and substance reasonably acceptable to Buyer and Seller.

The obligation of Buyer to consummate the Closing shall be conditioned upon the satisfaction (or waiver by Buyer) of the following: (i) receipt of express City of San Jose and Airport approval of Buyer's acquisition, (ii) receipt of all third party consents and approvals required pursuant to the terms of the Lease in connection with the assignment of the Lease to Buyer at the Closing, including without limitation the Federal Trade Commission ("FTC"), (iii) Seller's performance of and/or compliance with (as applicable) all of their respective agreements, covenants, and obligations hereunder in all material respects, and (iv) no order having been enacted, issued, promulgated, enforced, or entered by any governmental entity which has the effect of prohibiting or limiting in any way Buyer's acquisition,



ownership, or operation of the Purchased Location.

6. **Termination.** The Transaction may be terminated by (i) the mutual written consent of Seller, Buyer, and Opco; (ii) Buyer if the Closing has not occurred on or prior to August 31, 2014; (iii) Buyer if the conditions to closing of Section 5 have not been met; or (iv) the Seller or Buyer if the other party commits any uncured breach of any obligation hereunder, or if any representation or warranty herein of such party becomes materially inaccurate, in each case, that makes the conditions to closing incapable of being satisfied as of the Closing.

If the Transaction is terminated, all actions under this Agreement or otherwise will immediately terminate and no Party will suffer any penalties or have any obligations to any other Party.

7. **Buyer's Assumption of Liabilities.** Buyer shall only assume the liabilities and obligations of Seller specifically mentioned in this Agreement. Buyer shall not assume or become responsible or obligated for any other liabilities of Seller.

8. **Further Assurances.** Subject to the terms and conditions contained herein and applicable law, the Parties shall use their respective commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable to consummate and make effective the Transaction as soon as practicable, and shall coordinate and cooperate with each other in respect of the foregoing. Without limiting the foregoing, until such time as the Transaction is either consummated or terminated in accordance with the terms hereof, the Parties shall use their respective commercially reasonable efforts to obtain or provide, as applicable, (i) the entry of the Sale Order, and (ii) the consent of the FTC for the Transaction, and (iii) any other consents, approvals, waivers, permits, authorizations or other permissions from, and all necessary notices to, and all filings with, any governmental body or other third party as may be necessary to consummate the Transaction. For avoidance of doubt, the effectiveness of the Transaction, and Buyer's obligation to pay the Purchase Price, is conditioned upon obtaining any required consents referenced in clauses (ii) or (iii) in the immediately preceding sentence, and if Buyer is unable to obtain any such required consents with respect to the Purchased Location, then it shall be entitled to terminate the Transaction pursuant to the provisions of Section 6 hereof.

9. **Transitional Matters.**

9.01 **Removal of Property.** Seller shall remove all vehicles and any other personal property of Seller not being sold hereunder from the Premises no later than the Closing Date.

9.02 **No Transfer of Bookings.** Buyer will not have any obligation or liability with respect to any reservations for rental car services made by or in connection with Seller.

10. **Bankruptcy Matters.** It is the intention of the parties to consummate the transactions contemplated by this Agreement pursuant to a Bankruptcy Court approved Sale Order of the Purchased Assets under Section 363 of the Bankruptcy Code.

Except as otherwise permitted by the terms and conditions of this Agreement, the Sale Order or the Bankruptcy Court, so long as Buyer is ready, willing and able to consummate the Closing, and Buyer is not in any way in default or in breach of any of the terms and conditions of this Agreement, Seller shall not file

any motion or other pleading in the Bankruptcy Court that seeks to rescind or otherwise avoid the transactions contemplated by this Agreement.

**11. Miscellaneous Provisions.**

**11.01 Notices.** Any notice permitted or required to be given pursuant to this Agreement shall be written and shall be deemed to have been given when delivered personally or when delivered by Federal Express or by any other nationally recognized overnight delivery company (or when such personal or overnight delivery is refused, as applicable), to the address of such Party set forth below, or to such other addresses as any Party may hereafter designate to the other in writing. Until otherwise designated, the address for notice purposes of the Parties are as follows:

Buyer:

Sixt Rent A Car, LLC  
1850 SE 17<sup>th</sup> Street  
Suite 207  
Fort Lauderdale, Florida 33316  
Attention: Matthias Lenk

Seller:

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

Opco:

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

**11.02 Amendment.** This Agreement may be amended, modified, or supplemented only by a written instrument signed by each of the parties hereto.

**11.03 Governing Law; Venue.** This Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of Mississippi without giving effect to the principles of conflicts of law thereof. Notwithstanding the foregoing, prior to the closing of the Chapter 11 Case, except as otherwise expressly provided in this Agreement, the parties hereto agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby shall be brought exclusively in the Bankruptcy Court, and each party hereto hereby irrevocably consents to the jurisdiction of the Bankruptcy Court (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in the Bankruptcy Court or that any such suit, action or proceeding which is brought in the Bankruptcy Court has been brought in an inconvenient forum. Process in any such suit, action or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of the Bankruptcy Court.

**11.04 Entire Understanding; Amendment.** Except where separate agreements are specifically provided for herein, this Agreement constitutes the entire understanding and agreement between the Parties with regard to all matters herein, and there are no other agreements, conditions, or representations, oral or written, expressed or implied, with regard thereto other than as referred to herein. This Agreement may only be amended by a written amendment signed by or on behalf of all parties hereto.

**11.05 Severability.** If any item or provision of this Agreement is held to be invalid or unenforceable for any reason, such term or provision shall be ineffective to the extent of such invalidity or

unenforceability without invalidating the remaining terms and provisions hereof, and this Agreement shall be construed to the fullest extent possible as if such invalid or unenforceable term or provision has not been contained herein.

**11.06** Successors. This Agreement shall be binding upon, and shall inure to the benefit of, the Parties hereto and their respective heirs, administrators, executors, and successors.

**11.07** Assignment. This Agreement may not be assigned by any Party without the prior written consent of all other Parties, which may be withheld in a Party's sole discretion; provided, however, that Buyer may assign this Agreement and any of its rights and obligations hereunder to any entity that has substantially the same ownership structure as Buyer.

**11.08** Counterparts; Validity of Electronic Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original. Any Party may deliver a signed signature page by the attachment of a .pdf, .tif, .gif, .jpeg or similar attachment to an electronic mail message or by facsimile, and each signature delivered by such electronic means shall (a) be deemed to be an original, (b) be treated in all respects as an original executed document, (c) be fully valid and enforceable, and (d) have the same binding legal effect as if it was an original signed version thereof delivered in person. Each Party hereby irrevocably waives any objection that it has or may have in the future regarding the validity or enforceability of any such electronic signature.

**[Signature Page Follows]**

IN WITNESS WHEREOF, the Parties have caused this Purchase and Assignment Agreement to be duly executed as of the date first above written.

**SIXT RENT A CAR, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SIMPLY WHEELZ, LLC, F/D/B/A ADVANTAGE RENT-A-CAR**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ADVANTAGE OPCO, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

***SIGNATURE PAGE TO PURCHASE AND ASSIGNMENT AGREEMENT***

Exhibit A

*[attached]*

Exhibit B

*[attached]*

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