

May 4, 1994

Introduced by: RON SIMS

MW:TB

Proposed No: 94-246

ORDINANCE NO. **11367**

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AN ORDINANCE authorizing the King County Executive to advertise and issue a Request For Proposal (RFP) for a new lease of at least 10 years for a restaurant in the Terminal Building at King County International Airport.

PREAMBLE:

In accordance with provisions of K.C.C. 4.56.190B, the King County council may adopt an ordinance permitting the County executive to advertise and issue a RFP to lease county-owned land and facilities.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. The King County executive is hereby authorized to issue an RFP (substantially as shown in Attachment A) and enter into a lease agreement (substantially as shown in Attachment B), for a lease of a restaurant/lounge totalling 7,710 square feet at King County International Airport for a term of up to 10 years or more.

INTRODUCED AND READ for the first time this 2nd day of May, 1994.

PASSED this 13th day of June, 1994.

Passed by a vote of 11-0.

KING COUNTY, COUNCIL
KING COUNTY, WASHINGTON

Kent Pullen
Chair

ATTEST:

Gerald A. Peterson
Clerk of the Council

APPROVED this 21st day of June, 1994.

Ray Soler
King County Executive

Attachments:

- A. RFP Document
- B. Lease Agreement

NAME OF PROPOSER: _____

SECTION I General Information

- A. Extra copies of this RFP and the proposal application form may be obtained by contacting the Purchasing Agency.
- B. King County, as an Equal Opportunity Employer, affirms that it does not discriminate against individuals or firms because of their race, color, marital status, religion, age, sex, national origin, or handicap.
- C. King County strongly encourages minority and women owned firms and community based organizations to submit proposals. Woman owned firms shall be at least 51% owned and controlled by women and minority owned firms at least 51% owned and controlled by minority persons. Minority person shall mean any ethnic person who is a resident of the United States or its territories, including Asians/Pacific Islanders, persons of African descent, Hispanics, and Native-Americans/Alaskan Natives.
- D. In the event it becomes necessary to revise any part of this RFP, addenda shall be provided to all proposers who received the basic RFP.
- E. King County reserves the right to reject any and all proposals, waive informalities, and to accept only that proposal which will be in the best interest of the County, all factors considered. The County reserves the right to further negotiate lease terms and conditions with the party submitting the proposal which is deemed in the best interests of King County.
- F. Please direct all questions to:
- Nicki Lenden
King County Purchasing Agency
620 King County Administration Building
500 Fourth Avenue
Seattle, WA 98104
(206) 296-4210
- G. Attachments. The following attachments are for the proposer's information and do not have to be submitted with the proposal. The proposer selected for this project shall comply with these requirements prior to finalization of the contract.
1. Bidding Instruction and Lease Option/Lease Contract Conditions;

2. Instructions for Affirmative Action Compliance on King County contracts;
3. King County Ordinance No. 7788;
4. King County Personnel Inventory Report; and
5. Affidavit and Certificate of Compliance with King County Affirmative Action Ordinance No. 7788

SECTION II Purpose of Request for Proposal

The purpose of this RFP is to solicit proposals for an Option to Lease and develop approximately 7,719 square feet of space in the Arrivals Building of King County International Airport as a restaurant and cocktail lounge. The address is:

and is legally described on the attached Exhibit _____.

SECTION III Summary of Offering

King County, a municipal corporation and political subdivision of the State of Washington, owns King County International Airport/Boeing Field. The airport has approximately 550 acres and two runways. The larger runway is 10,000 feet long and can accommodate virtually any aircraft. The smaller runway is 3,710 feet long. The airport is one of the top 15 busiest in the United States and accommodates approximately 600 general aviation aircraft. No scheduled airlines regularly use the airport but it is used as a major facility for air freight operations. The western portion of the airport is largely devoted to major aircraft manufacturing and the easterly side is largely devoted to general aviation facilities.

The size, sophistication, number of services and location close to downtown Seattle, have made it attractive to the more serious aviator. Recent history has seen more business oriented uses and fewer purely recreational pilots.

King County is seeking a responsible party to lease and remodel, according to the attached specifications, 7,719 square feet of space in the Arrivals Building located at King County International Airport as a restaurant and cocktail lounge. King County will make the space available to the Lessee (successful proposer) pursuant to King County's work schedule and any additional actions necessary to make the space useable to the Lessee.

The RFP is for an Option to Lease. The successful proposer will receive an option to lease the property on terms resulting from the proposal and will be given a period of six (6) months to finalize plans, obtain permits, complete studies, arrange financing or other items the successful proposer deems necessary, prior to the exercising the option and committing to the lease. An extension of the option period is possible pursuant to the conditions itemized in this RFP.

A lease term of up to 10 years is available with additional options in five-year increments. The County estimates that the approximate costs to improve the space to bring the restaurant up to date could be in the range of \$160,000 (approximately \$20 per square foot). Proposers need to describe the improvements and estimated costs which are proposed to renovate the restaurant. The County will evaluate the kinds of improvements and consider the amount of the investment as a part of the total proposal.

NOTE: There is a Washington State Leasehold Excise Tax payable in addition to the rent. The tax is currently 12.84 percent of the rent.

The glassware, china, silverware, tables, chairs, kitchen equipment, audio equipment, and other trade fixtures are not part of the leasehold property and should not be considered in your bid. However, we understand that the Internal Revenue Service may consider reasonable offers to purchase the equipment.

SECTION IV Utilities and Maintenance.

- A. Utilities. Tenant shall arrange and pay for water service, natural gas, electrical service, telephone service, as well as solid waste removal. Tenant shall pay any and all charges related to sanitary sewer service (Metro).
- B. Maintenance. Tenant shall be responsible for all pest-control services to be performed on a monthly basis. Tenant will be responsible for interior window cleaning and janitorial services on the premises. In addition, the tenant shall periodically have the kitchen exhaust fan system cleaned and inspected by a professional hood cleaning company. Tenant shall periodically clean and inspect the grease traps in restaurant side-sewer, and keep said sewer line in good operating order.

SECTION V LEASE, RENT, AND OPTION

- A. The Lease. A sample of the Lease form and Option form are attached by this reference are incorporated into the specifications for this RFP.
- B. The Rent. A lease will be prepared utilizing the above referenced form and incorporating the applicable specifications of this RFP and the term, rent, construction commitment and other conditions specified by the successful proposer.

Base Rent shall be paid monthly in advance, at a rate of \$4,000.00. The Lease shall be subject to rental adjustments in 1997 on the anniversary of its effective date, and every 3 years thereafter.

Note: There is a Washington State Leasehold Excise tax payable in addition to the rent. The tax is currently (12.84%) of the rent.

Percentage Rent shall be paid on or before the 10th day of each month after the first month following the Lease Commencement Date. Lessee shall pay a sum equal to the stated percentages of gross receipts for the previous calendar month or one-twelfth of the minimum annual rental whichever is greater, together with the Washington State Leasehold Excise Tax due. The rent payable for the 12th month of each year of the lease shall be adjusted based on the annual gross receipt's percentage payment, or the annual minimum rental whichever is greater, and any additional amount due and owing as adjusted.

- C. The Option. This RFP is for an Option to Lease. The successful proposer will receive an option allowing the successful proposer six (6) months to make any required studies, prepare plans, obtain financing, obtain any necessary permits and approvals and any other activities deemed necessary by the successful proposer prior to the successful proposer committing to the lease. Improvements to the premises may be done during this six-month time frame.

If additional time is required, through no fault of the proposer, an extension of the option period will be granted for up to three months, at a cost to the proposer of one-sixth of the initial option fee for each month of the extension.

The proposer will state the option fee offered as part of this RFP. The minimum required option fee is \$15,000.00.

SECTION VI EVALUATION CRITERIA

Proposals submitted in response to this RFP shall be evaluated by an evaluation committee composed of representatives of King County's Airport Division, Property Services Division, and King County Council. The proposals will be evaluated on the basis of which proposal, all things considered, is in the best interests of King County.

The evaluation committee will evaluate each proposal and score each proposal on the basis of the following criteria. Each proposal will receive a numerical score with the maximum score being 100 points.

- | | <u>Maximum Points</u> |
|--|-----------------------|
| A. <u>Financial Strength and Credit Worthiness</u>
are very important. Proposals which do not demonstrate sufficiency in these items, in the opinion of King County, may be rejected regardless of the merits of the rest of the proposal. Any rejection will be at the sole option of King County. The concern is that the proposer has the ability to perform on the other criteria. For example, a proposer having enormous financial strength would not receive many more points than a proposer having ample financial strength, but a proposer clearly lacking sufficient financial strength to perform would not be given further consideration. | 25 |
| B. <u>Experience and Qualifications.</u> King County wants the Lessee to succeed. The proposer should demonstrate a background of successful experience and or qualifications, supporting the proposer's ability to successfully conduct the business indicated in the proposed use of the property. Experience and qualifications in the specific use proposed will be given the greatest weight. Experience and qualifications in a similar or related field will be given weight in the evaluation, with a generally successful business background somewhat less weight. | 25 |

- | | | |
|----|--|----|
| C. | <u>Business Plan.</u> The most desirable use would be a restaurant operation providing services to the general public as outlined in Section _____ on Page _____. This (use) criterion will be evaluated on the basis of desirable operations proposed for the property. | 25 |
| D. | <u>Tenant Improvements.</u> Anticipated necessary improvements would be in the \$20.00 per square foot range, plus an additional \$40,000. in start-up costs. | 5 |
| E. | <u>Length of Lease.</u> | 5 |
| F. | <u>Financial Return to King County.</u> | |
| | 1. Rent. This criterion will be evaluated by giving the maximum points to the proposer offering the most rent with other proposers receiving a score calculated by dividing the rent offered by the highest rent proposed and multiplying the result by the maximum number (15) of points. | 15 |

EVALUATION CRITERIA SUMMARY

A.	FINANCIAL STRENGTH AND CREDIT WORTHINESS	25
B.	EXPERIENCE AND QUALIFICATIONS	25
C.	BUSINESS PLAN	25
D.	TENANT IMPROVEMENTS	5
E.	LENGTH OF LEASE	5
F.	FINANCIAL RETURN	<u>15</u>
	MAXIMUM OBTAINABLE POINTS	<u>100</u>

SECTION VII THE SELECTION PROCESS

All complete and fully executed proposals received by the proposal submittal deadline will be reviewed and evaluated by an Evaluation Committee. This Evaluation Committee shall consist of representatives of King County Property Services Division; Airport Division; and, the King County Council.

After the Evaluation Committee's review and evaluation takes place, those proposers having the highest qualifications based on the criteria contained in this RFP will be asked to attend a personal interview. The Evaluation Committee may request that

those proposers who are selected to attend a personal interview clarify their original proposals. If this request is made, proposers will be notified two weeks prior to their scheduled interview.

After the Evaluation Committee selects a proposal, the recommendation will be submitted to the manager of King County Property Services Division who will submit them to the King County

Director of Executive Administration for further review. The director of King County's Executive Administration shall submit the recommendations and comments to the King County Executive.

The King County Executive will select a proposal based on these recommendations and comments and will direct the manager of King County Property Services Division to finalize lease negotiations with the selected proposer.

If the selected proposer fails to enter into the option to lease for the property within thirty (30) days after a request by the County to do so, the County reserves the right to offer the option to other proposers responding to this RFP.

The County reserves the right to waive any irregularity in any proposal, to accept or decline any and all proposals, to negotiate specific portions of any proposals, or to request submittal of new proposals.

SECTION VIII SELECTION PROCESS SCHEDULE

RFP AVAILABLE

DEADLINE FOR PROPOSER QUESTIONS

PROPOSALS DUE

EVALUATION COMMITTEE'S REVIEW OF PROPOSALS AND
SELECTION OF APPLICANTS FOR INTERVIEWS

INTERVIEWS

EVALUATION COMMITTEE COMPLETES RECOMMENDATIONS
AND PREPARATION OF OPTION AND ANY OTHER
REQUIRED DOCUMENTS FOR LESSEE'S SIGNATURE

LESSEE EXECUTES AND RETURNS DOCUMENTS

OPTION TO LEASE AND ANY OTHER REQUIRED
DOCUMENTS APPROVED BY KING COUNTY

SECTION IX PROPOSER'S CHECKLIST

SUBMITTAL

An original and four (4) copies of the proposal must be submitted. If proposals are made for more than one alternate, an original and three copies of the proposal must be submitted for each alternate.

Where applicable, use attached forms from Section I: PROPOSER'S QUESTIONNAIRE.

A. FINANCIAL STRENGTH AND CREDIT WORTHINESS

1. Financial Statement. This should demonstrate the ability to perform the requirements of this RFP.
2. References including banking and previous credit transactions sufficient to provide evidence of credit worthiness.
3. Letters and or commitments from bankers/mortgage lenders indicating willingness to finance the proposed development. (Unless proposer can demonstrate sufficient assets in A. 1. above to show that financing is not necessary.)

B. EXPERIENCE AND QUALIFICATIONS

A narrative providing information about the experience and background of the proposer and a biographical sketch of key personnel who will be responsible for managing and operating the premises. This narrative should provide information regarding appropriate and pertinent licenses and credentials, previous experience and references for all key personnel, and designate to what extent these people will be devoting their time to the proposed operation. Any additional documentation including letters of reference may be submitted.

C. BUSINESS PLAN

A narrative describing the proposed use of the property and a marketing business plan.

D. TENANT IMPROVEMENTS

A narrative describing physical and mechanical plans to change the space as well as decor.

- E. PROPOSED LENGTH OF LEASE
Minimum term of ten (10) years, with additional five-year terms available.

Describe terms your firm would agree to.

- F. FINANCIAL RETURN
A proforma budget showing projected income and expenses allowing for rental payments and leasehold excise tax, and projected financial return to the Company.

SECTION X DEVELOPMENT REQUIREMENTS (if applicable)

A. ENVIRONMENTAL REVIEW

The lessee shall be responsible for obtaining all necessary permits, approvals and licenses for any development of the property. Certain activities, developments, or additions to the premises could require an Environmental Impact Statement pursuant to WAC 197-10-690. In this event, King County Department of Development and Environmental Services (DDES) will be the lead agency pursuant to WAC 197-10-690. The King County Property Services Division shall review any EIS prepared by the lead agency for the lessee's proposal as part of King County's environmental review process. Such review shall either accept or reject the EIS in an unchanged condition.

B. MINORITY AND WOMEN'S BUSINESS PARTICIPATION

King County Code 4.18, pertaining to utilization of minority and women's businesses, does not apply to the lease or any construction, per memo of July 18, 1991.

SECTION XI PROPOSER'S QUESTIONNAIRE

All information requested in this QUESTIONNAIRE must be furnished by the PROPOSER, and must be submitted with the PROPOSAL. Statements must be complete and accurate. Omission, inaccuracy, or misstatement may be cause for refection of a proposal.

By submission of this PROPOSAL, the PROPOSER acknowledges and agrees that the County has the right to make any inquiry or investigation it deems appropriate to substantiate or supplement information contained in this QUESTIONNAIRE, and authorizes the release to the County of any and all information sought in such inquiry or investigation.

The pronoun you, as used in the PROPOSER'S QUESTIONNAIRE, means search of PROPOSER'S principals, partners, or shareholders with over ten percent (10%) beneficial ownership of PROPOSER.

How did you learn of this proposal offering?

- () 1. Received County direct mail flyer
- () 2. Word of mouth
- () 3. In which newspaper, magazine, or newspaper did you read of this offering?
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AIRPORT LEASE AGREEMENT

1. PARTIES. This Lease dated the _____ of _____, 19 __, is between King County, a municipal corporation and a political subdivision of the State of Washington, and _____, herein called "Lessee."

2. PREMISES. King County hereby leases to Lessee, upon the following terms and conditions, premises located in King County, Washington legally described as follows:

Approximately 7719 square feet of space on the second floor of the Arrivals Building at King County International Airport.

including any trade fixtures and personal property that are listed. These items shall be included within the meaning of premises unless specifically excluded.

3. TERM.

A. This lease term shall be for 10 years and 0 months, and shall begin on the _____ day of _____, 19____, and end on the _____ day of _____, 19____.

B. If King County is unable to deliver possession of the premises by the date specified for the commencement of the term as a result of causes beyond King County's reasonable control, King County shall not be liable for any damage caused for failing to deliver possession, and this lease shall not be void or voidable. Lessee shall not be liable for rent until King County delivers possession of the premises to Lessee, but the term shall not be extended by the delay. If King County does not deliver possession of the premises to Lessee WITHIN SIXTY (60) days after commencement of the term, Lessee can elect to terminate this lease by giving notice to King County at any time before the date King County delivers possession of the premises to Lessee.

4. RENT. Lessee shall pay to King County a rent of Four Thousand and No/100 (~~\$4000.00~~) DOLLARS payable in advance on or before the first (1st) day of each and every calendar month of the lease term. Lessee shall also pay a Leasehold Excise Tax of Five Hundred Thirteen ⁶⁰/₁₀₀ (\$ 513.60) DOLLARS per month. The rent is adjustable as set forth in the King County General Terms and Conditions. All rents and tax shall be made payable to the KING COUNTY INTERNATIONAL AIRPORT and are to be received in the office of the :

King County International Airport
7233 Perimeter Road
P.O. Box 80245
Seattle, WA 98108

Said rental is exclusive of any other sale, franchise, business or occupation, or other tax based on rents. Should any such taxes apply during the life of this lease the rent shall be increased by such amount.

5. SECURITY DEPOSIT. At the time of the signing of this lease, the Lessee, shall pay the first (1st) month's rent and leasehold tax. In addition, the Lessee shall deposit with King County the sum of Nine Thousand Twenty Seven and 20/100 (\$9027.20) DOLLARS as a security deposit for the payment of rent and tax. The security deposit is the only sum to be credited toward payment of the last month's rent upon Lessee's termination of the lease. The return of this deposit, or any portion of it, shall be conditioned on the performance of all the Lessee's duties. Within sixty (60) days after termination of the tenancy and vacation of the premises King County will return any sum due the Lessee from this deposit retained by King County. Furthermore, the Lessee understands and agrees that all rents, late charges and utility bills owing, unless paid by the Lessee, may be deducted from the deposit at the time of Lessee's vacation of the premises if any amount remains in that fund after

subtraction of damage. The deposits need not be held in any special account and no interest will be paid thereon. A rental surety bond will be accepted in lieu of a cash deposit.

6. USE. Lessee shall use said premises for the following purposes and no others without prior written consent of the King County:

A Restaurant and Cocktail Lounge

7. LESSEE IMPROVEMENTS.

A. Lessee shall submit to King County detailed plans and specifications for the following improvements within sixty (60) days after execution of this lease. Such improvements shall consist of:

Remodeling of Restaurant and Lounge facilities.

Lessee will begin construction of the improvements no later than Ninety
(90) days after approval of the plans and specifications, and shall be completed by _____.

B. If Lessee substantially fails to make the improvements or alterations required by this lease, this lease shall be terminated and all rentals paid shall be forfeited to King County.

C. Construction Bonds. Lessee shall provide Lessor with a payment bond and a performance bond, prior to executing this Lease in an amount equal to the estimated costs of all improvements.

The performance bond shall name both Lessee and, if Lessee is not itself construction the improvements, Lessee's contractor, as principal(s) and Lessor shall be named as obligee. The surety or sureties on the bond shall bind themselves, their heirs, executors, administrators, successors and assigns along jointly and severally with Lessee and Lessee's contractor, to King County, a political subdivision of the State of Washington for payment on the bond. The aforesaid bond shall remain in effect until the principal(s) has promptly and faithfully performed all obligations and duties contained in this lease referring to the construction of improvements. The bond shall be available to claimants for labor and materials in the event principal(s) fail to pay for such labor and materials in addition to the payment bond, however, such claims shall be subject and junior damage claims of the obligations and duties contained in this Lease regarding construction of improvements.

A payment bond, pursuant to R.C.W. 39.08, shall be executed by Lessee and/or Lessee's contractor to assure payment for labor, materials and supplies required for performance of the lease obligations. This bond is in addition to the performance bond mentioned above.

In any action on the bond for the recovery of any claim or defect, each party shall pay its own costs and attorney's fees.

Surety or sureties on the payment and performance bonds shall waive any notice requirements for any modifications to this lease consented to by the Lessor. Lessor shall notify the surety or sureties in writing of any defects in performance. The surety's or sureties' right of subrogation to the position of Lessee shall be subject to the written consent of Lessor, though not unreasonably withheld.

8. GENERAL TERMS AND CONDITIONS. Attached hereto and incorporated herein by reference are King County General Terms and Conditions.

9. ENTIRE AGREEMENT - AMENDMENTS. This printed lease together with the attached Terms and Conditions and any and all exhibits expressly incorporated herein by reference and attached hereto shall constitute the whole agreement between the parties. There are no terms, obligations, covenants or conditions other than those contained herein. No modification or amendment of this lease shall be valid or effective unless evidence by an agreement in writing signed by both parties.

10. NOTICES. Required notices except legal notices shall be given in writing to the following respective address:

To King County: KING COUNTY INTERNATIONAL AIRPORT
7233 Perimeter Road
P.O. Box 80245
Seattle, Washington 98108

To Lessee:

or to such other respective addresses as either party hereto may hereafter from time to time designated in writing. Notices sent by mail shall be deemed to have been given when properly mailed.

11. PERSONAL GUARANTEE. Performance and payment of all obligations of Lessee are jointly and severally guaranteed by the Individuals who sign this agreement. Said guarantor's are acting in their individual capacity, on behalf of themselves and of their martial communities consisting of themselves and their respective spouses.

IN WITNESS WHEREOF, the parties hereto have subscribed their names as of the ___ day of _____, 19 ____.

LESSEE:

BY _____

TITLE _____

BY _____

TITLE _____

LESSOR:

KING COUNTY WASHINGTON

BY _____

TITLE County Executive

APPROVED AS TO FORM:

BY _____

TITLE Deputy Prosecuting Attorney

APPROVED:

BY _____

TITLE Airport Manager

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

I certify that _____ signed this instrument, on oath stated that he was authorized by the King County Executive to execute the instrument, and acknowledged it as the _____ of King County, Washington to be the free and voluntary act of said County for the uses and purposes mentioned in the instrument.

Date: _____

NOTARY PUBLIC in and for the State of
Washington residing at _____
My appointment expires _____

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

On this day personally appeared before me _____, to me known to be the _____ of the Corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned and that he was authorized to execute the said instrument.

GIVEN under my hand and official seal this _____, day of _____, 19 ____.

NOTARY PUBLIC in and for the State of
Washington residing at _____
My appointment expires _____

KING COUNTY GENERAL TERMS AND CONDITIONS1. LATE PAYMENT, TAXES, AND LICENSES.

- A. LATE PAYMENTS. There will be a late collection charge of five percent (5%) or THIRTY DOLLARS (\$30.00), whichever is greater, plus one percent (1%) per month interest for any delinquent rental not delivered to King County by the tenth (10th) of the month.
- B. LEASEHOLD TAX. A Leasehold Excise Tax is levied pursuant to the Revised Code of Washington (R.C.W.) Chapter 82.29A. The Lessee agrees to pay this tax to King County. If the State of Washington changes the Leasehold Excise Tax or if King County receives authorization to levy this tax, the tax payable shall be correspondingly changed.
- C. LICENSE AND TAXES. Lessee shall pay throughout the term of this Lease, all applicable taxes and all license and excise fees covering the business conducted on the premises.
- D. OTHER CONSIDERATION. No offset, reduction, or credit toward rent shall be allowed unless it is in writing and signed by the Manager of the Real Property Division of King County.

2. RENT ADJUSTMENT. To ensure a fair rent based upon the fair market value of the premises, King County may adjust the rent to the current "fair market rental value" every three (3) years, the first adjustment to occur three (3) years after the beginning of the term of this Lease.

- A. FAIR MARKET RENTAL VALUE DEFINED. For all purposes required under this Lease, "Fair Market Rental Value" is defined as: An amount in the competitive market that a well-informed and willing lessor, who desires but is not required to lease, would accept, and which a well-informed and willing lessee, who desires, but is not required to lease, would pay for the use of the premises after due consideration of all the elements reasonably affecting value.
- B. NOTICE OF RENTAL ADJUSTMENT. When it elects to adjust the rent, King County will give Lessee written notice of the adjusted rent. Within thirty (30) days following receipt of notice from King County, Lessee will give King County written notice of its acceptance or rejection of the adjusted rent. If Lessee does not notify King County within the thirty (30) day period, the rent as adjusted by King County will become the rent.
- C. ARBITRATION. If Lessee and King County cannot agree upon the rent adjustment, the rent for the period will be adjusted by arbitration. Lessee and King County will select one arbitrator each, and the two selected arbitrators will select a third arbitrator. If the two arbitrators have not selected a third arbitrator within thirty (30) days after the selection of the last selection of the two, either Lessee or King County will apply to the presiding judge of the Superior Court in King County for the appointment of a third arbitrator. Each arbitrator will be a member of the American Institute of Real Estate Appraisers, or of the Society of Real Estate Appraisers, or of some equivalent body. Each arbitrator shall be licensed by the State of Washington. The three arbitrators will determine the fair market rental value for the premises; but, the arbitrators may not reduce the rent below the sum fixed for the last preceding period. The decision of a majority of the arbitrators will bind both Lessee and King County. At the conclusion of the arbitration, the arbitrators will submit written reports to Lessee and King County which shall contain all pertinent evidence that led to their conclusion together with an explanation of their reasoning for such conclusion.

1. Cost of Arbitration. The cost of the arbitration will be divided equally between Lessee and King County.
2. Rent Pending Adjustment. In the event resolution of the rental adjustment is not completed prior to the commencement of the term being considered, Lessee shall, pending resolution of such rental adjustment, continue to pay King County the rental then in effect and King County, at its option, may elect to require that interest in the amount of twelve percent (12%) per annum be payable on any sum due as a result of a retroactive rental increase determined under the terms of this Lease.
3. COMPLIANCE WITH ALL LAWS AND REGULATIONS. In using the premises, Lessee will comply with all applicable laws, ordinances, and regulations from any and all authorities having jurisdiction. The Lessee specifically agrees to comply and pay all costs associated with achieving such compliance without any notice from King County, and further agrees that King County does not waive this section by giving notice of demand for compliance in any instance.
4. UTILITIES. Lessee shall pay for all costs, expenses, fees, services, and charges of all kinds for heat, light, water, gas, and telephone, and for all other public utilities used on said premises so that the same shall not become a lien against the leased premises.
5. IMPROVEMENTS AND ALTERATIONS.
 - A. Lessee shall make no alterations or improvements to or upon the premises, or install any fixtures (other than trade fixtures which can be removed without injury to the premises) without first obtaining written approval from King County.
 - B. Unless otherwise stipulated, all improvements or alterations erected or made on the premises shall, upon expiration or earlier termination of this Lease, belong to King County without compensation to the Lessee; however, King County shall have the option, to be exercised on expiration or earlier termination of the Lease, to require the Lessee, at Lessee's expense, to remove any or all such improvements or alterations.
6. CONDITION OF PREMISES. The Lessee has inspected and knows the condition of the premises and it is understood and agreed that the premises are leased on an "as is" basis without any obligation on the part of King County to make any changes, improvements, or to incur any expenses whatsoever for the maintenance or repair of the premises.
7. CONSTRUCTION DEFECTS. King County shall not be liable to the Lessee for claims or damages arising from any defect in the construction of or the present condition of the premises, whether known or unknown, or for damage by storm, rain, or leakage or any other occurrence.
8. MAINTENANCE.
 - A. Lessee shall throughout the term of this Lease without cost or expense to King County, keep and maintain the leased premises and all improvements, landscaping, fixtures, and equipment which may now or hereafter exist thereon, in a neat, clean, and sanitary condition and shall, except for reasonable wear and tear, at all times preserve the premises in good and safe repair. Upon the expiration or sooner termination of the Lease, Lessee shall forthwith return the same in as good condition as existed at the commencement of occupancy (ordinary wear and tear excepted).
 - B. If, after thirty (30) days' notice from King County, Lessee fails to maintain or repair any part of the leased premises or any improvement, landscaping, fixtures or equipment thereon, King County may, but shall not be obligated to, enter upon the

leased premises and perform such maintenance or repair, and Lessee agrees to pay the costs thereof to King County upon receipt of a written demand. Any unpaid sums under this paragraph shall be payable as additional rent on the next rent payment date due following the written demand and will bear interest at the maximum rate allowed by Washington State Law.

9. INDEMNITY AND HOLD HARMLESS. The Lessee agrees to indemnify and hold King County harmless as provided herein to the maximum extent possible under law. Accordingly, the Lessee agrees for itself, its successors, and assigns, to defend, indemnify, and hold harmless King County, its appointed and elected officials, and employees from and against liability for all claims, demands, suits, and judgments, including costs of defense thereof for injury to persons, death, or property damage which is caused by, arises out of, or is incidental to Lessee's exercise of rights and privileges granted by this Lease Agreement, except to the extent of Lessor's sole negligence. The Lessee's obligations under this section shall include:
- A. The duty to promptly accept tender of defense and provide defense to the County at the Lessee's own expense;
 - B. Indemnification of claims made by the Lessee's own employees or agents; and,
 - C. Waiver of the Lessee's immunity under the industrial insurance provisions of Title 51 R.C.W. but only to the extent necessary to indemnify King County, which waiver has been mutually negotiated by the parties.

In the event it is necessary for the County to incur attorney's fees, legal expenses or other costs to enforce the provisions of this section, all such fees, expenses and costs shall be recoverable from the Lessee.

In the event it is determined that R.C.W. 4.24.115 applies to this Lease Agreement, the Lessee agrees to defend, hold harmless, and indemnify King County to the maximum extent permitted thereunder, and specifically for its negligence concurrent with that of King County to the full extent of Lessee's negligence. Lessee agrees to defend, indemnify, and hold harmless the County for claims by Lessee's employees and agrees to waiver of its immunity under Title 51 R.C.W., which waiver has been mutually negotiated by the parties.

10. FIRE INSURANCE.

- A. No use shall be made or permitted to be made of the premises, nor acts done which will increase the existing rate of insurance upon the premises, or cause the cancellation of any insurance policy covering the premises or any part thereof, nor shall Lessee sell or permit to be kept, used, or sold in or about the premises, any article which may be prohibited by the standard form of fire insurance policies. Lessee shall at its sole cost and expense, comply with any and all requirements pertaining to the premises. Lessee agrees to pay to King County as additional rent, any increase in premiums on policies which may be carried by King County on the premises covering damages and loss of rent caused by fire and the perils normally included in extended coverage above the rates for the least hazardous type of occupancy for industrial, warehousing, office and distribution operations.
- B. Lessee shall maintain in full force and effect on all of its fixtures and equipment in the premises, a policy or policies of fire and extended-coverage insurance with standard coverage endorsement to the extent of at least eighty percent (80%) of their insurable value. During the term of this Lease, the proceeds from any such policy or policies of insurance shall be used for the repair or replacement of the fixtures and equipment so insured. King County shall have no interest in the insurance upon Lessee's equipment and fixtures and will sign all documents necessary or proper in connection with the settlement of any claim or loss by Lessee. King County will

not carry insurance on Lessee's property. Lessee shall furnish King County with a certificate of such policy and whenever required shall satisfy King County that such policy is in full force and effect within thirty (30) days of the commencement of this Lease.

- C. The Lessee will carry fire and extended coverage insurance with rent interruption endorsement in an amount equal to the full insurable value of all improvements, structures, and buildings located on the premises. The policy shall include King County as an insured for its vested interest in the property. A certificate of insurance must be provided to King County.
- D. In the event of the total or partial destruction by fire, regardless of origin, or otherwise of the building, structures, or facilities currently on the premises or subsequently constructed by the Lessee, the Lessee shall have the obligation to reconstruct such facilities to their original condition within six (6) months after their destruction.

11. INSURANCE REQUIREMENTS. By the date of execution of this Lease, the Lessee shall procure and maintain for the duration of this Lease, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with the performance of work hereunder by the Lessee, his agents, representatives, employees/subcontractors. The cost of such insurance shall be paid by the Lessee.

For all coverages: Each insurance policy shall be written on an "Occurrence" form, excepting that insurance for Professional Liability; Errors and Omissions, when required, may be acceptable on a "Claims Made" form.

If coverage is approved and purchased on a "claims made" basis, the Lessee warrants continuation of coverage either through policy renewals, or the purchase of an extended discovery period for not less than three years from the date of completion of the work which is the subject of this Lease.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

General Liability: Insurance Services Office Form No. GL 0002 Ed. 11-88, covering COMMERCIAL GENERAL LIABILITY; and, Insurance Services Office Form No. GL 0404 Ed. 5-81, covering BROAD FORM COMPREHENSIVE GENERAL LIABILITY ENDORSEMENT; OR, Insurance Services Office Form No. CG 00 01 Ed. 11-88, covering COMMERCIAL GENERAL LIABILITY.

B. Minimum Limits of Insurance

The Lessee shall maintain limits for General Liability no less than \$1,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage.

C. Deductibles and Self-insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by King County. At the option of King County, the insured shall instruct the insurer to reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, and employees. The deductible and or self-insured retention of the policies shall not limit or apply to the Lessee's liability to the County and shall be the sole responsibility of the Lessee.

D. Other Insurance Provisions

The insurance policies required in this Lease are to contain or be endorsed to contain the following provisions:

General Liability Policy:

1. King County, its officers, officials, employees, and agents are to be covered as insureds as respects liability arising out of activities performed by or on behalf of the Lessee in connection with this Lease.
2. To the extent of Lessee's negligence, the Lessee's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, and agents. Any insurance and or self-insurance maintained by the County, its officers, officials, employees, or agents shall not contribute with the Named Insured's insurance or benefit the Named Insured in any way.
3. The Lessee's insurance shall apply separately to each insured against whom a claim is made and or lawsuit is brought, except with respect to the limits of the insurer's liability.

All Policies:

Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, until after forty-five (45) days prior notice - return receipt requested, has been given to the County.

E. Acceptability of Insurers

Insurance is to be placed with insurers with a Bests' rating of no less than A:VIII, or if not rated with Bests' with minimum surpluses, the equivalent of Bests' surplus size VIII.

Professional Liability, Errors and Omissions' insurance may be placed with insurers with a Bests' rating of B+: VII. Any exceptions must be approved by the County.

If at any time, of the foregoing policies shall be or become unsatisfactory to the County, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the County, the Lessee shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit the same to the County, with the appropriate certificates and endorsements for approval.

F. Verification of Coverage

Lessee shall furnish the County with certificate(s) of insurance and with endorsement(s) required by this Lease. The certificate(s) and endorsement(s) for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on forms provided or approved by the County and are to be received and approved by the County prior to the commencement of activities associated with the Lease. The County reserves the right to require complete certified copies of all required insurance policies at any time.

12. MUTUAL RELEASE AND WAIVER. To the extent a loss is covered by insurance in force, King County and Lessee hereby mutually release each other from liability and waive all right of recovery against each other for any loss from perils insured against under their respective fire insurance policies, including any extended coverage endorsements hereto; provided that this Agreement shall be incapable if it would have the effect of invalidating any insurance coverage of King County or the Lessee.
13. SURRENDER OF PREMISES. At the expiration or earlier termination of this Lease, Lessee shall promptly surrender possession of the premises to King County, and shall deliver to King County all keys that it may have to any and all parts of the premises.

14. DEFAULT AND RE-ENTRY. If any rents above reserved or other obligations provided herein, or any part thereof shall be and remain unpaid when the same shall become due, or if Lessee shall violate or default on any of the covenants and agreements herein contained, then King County may cancel this Lease upon giving the notice required by law and re-enter said premises using such force as may be required. Notwithstanding such re-entry by King County, the liability of the Lessee for the rent provided for herein shall not be extinguished for the balance of the term of this Lease, and Lessee covenants and agrees to make good to King County any deficiency arising from a re-entry and reletting of the premises at a lesser rental than agreed to herein. The Lessee shall pay such deficiency each month as the amount thereof is ascertained by King County. In the event it becomes reasonably necessary to make any changes, alterations, or additions to the premises or any part thereof for the purpose of reletting said premises or any part thereof, Lessee shall also be responsible for such cost.
15. ASSURANCE OF PERFORMANCE. In the event a default in the performance of any obligation under this Lease which remains uncured for more than ten (10) days after demand, King County may request and the Lessee shall provide adequate assurance of the future performance of all obligations under this Lease. The adequacy of any assurance shall be determined according to commercially reasonable standards for Lessors of real property in the County of King, State of Washington. Adequate assurance shall include, but not be limited to, a deposit in escrow, a guarantee by a third party acceptable to King County, a surety bond, or a letter of credit. Lessee's failure to provide adequate assurance within twenty (20) days of receipt of a request shall constitute a material breach and King County may in its discretion terminate this Lease.
16. ADVANCES BY KING COUNTY FOR LESSEE. If Lessee fails to pay any fees or perform any of its obligations under this Lease other than payment of rent, King County will mail notice to Lessee of its failure to pay or perform. Twenty (20) days after mailing notice, if Lessee's obligation remains unpaid or unperformed, King County may pay or perform these obligations at Lessee's expense. Upon written notification to Lessee of any costs incurred by King County under this paragraph, Lessee will reimburse King County within twenty (20) days.
17. NON-WAIVER. It is hereby agreed that no waiver of any condition or covenant in this Lease or any breach thereof, shall be taken to constitute waiver of any subsequent breach.
18. SIGNS. No sign, advertisement, notice, or other lettering will be exhibited, inscribed, painted, or affixed by Lessee on any part of the outside of the premises without the prior written consent of King County, provided that such consent shall not be unreasonably withheld. If Lessee violates this provision, King County may remove the sign without any liability and may charge the expense incurred by such removal to the Lessee provided, however, King County shall give Lessee written notice of Lessee's violation of this provision and Lessee shall have forty-eight (48) hours after receiving said notice to comply with the terms of this provision. All signs erected or installed by Lessee shall be subject to any federal, state or local statutes, ordinances or regulations applicable to signs.
19. INSPECTION AND "FOR RENT" SIGNS. King County reserves the right to inspect the premises at any and all reasonable times throughout the term of this Lease, provided that King County shall not interfere unduly with Lessee's operations. The right of inspection reserved to King County hereunder shall impose no obligation on King County to make inspections to ascertain the condition of the premises, and shall impose no liability upon King County for failure to make such inspections. King County shall have the right to place and maintain "For Rent" signs in conspicuous places on the premises for thirty (30) days prior to the expiration or sooner termination of this Lease.

20. LIENS. It is understood and agreed that this Lease is executed and delivered upon the express condition that the Lessee will not and cannot contract any debt or debts for labor, materials, services, or otherwise which will or may become a lien against the interest of King County in the premises, and King County hereby denies to Lessee any right, power, or authority to do any act, or contract any obligation or liability which would in any way subject the interest of King County in the premises to any lien, claim, or demand whatsoever.

21. ASSIGNMENT OR SUBLEASE.

- A. Lessee shall not assign or transfer this Lease or any interest therein, nor sublet the whole or any part of the premises, nor shall this Lease or any interest thereunder be assignable or transferable by operation of law, or by any process or proceeding of any court or otherwise without obtaining the prior written consent of King County, which consent shall not be unreasonably withheld. If Lessee is a corporation, Lessee further agrees that if at any time during the term of this Lease one-half (1/2) or more of the outstanding shares of any class of stock of Lessee's corporation shall belong to any stockholders other than those who own one-half or more of the outstanding shares of that class of stock at the time of the execution of this Lease, or to members of their immediate families, such change in the ownership of the stock of the Lessee shall be deemed an assignment of this Lease within the meaning of this paragraph. If King County shall give its consent to any assignment or sublease, this paragraph shall nevertheless continue in full force and effect and no further assignment or sublease shall be made without the County's consent.
- B. If Lessee desires to assign, transfer, or sublease any portion of this Lease or any interest therein, Lessee shall notify King County in writing of said desire to assign or transfer and the details of the proposed agreement at least thirty (30) days prior to the proposed date of assignment, transfer, or sublease to a third party. The notification shall include but not be limited to a financial statement of the proposed assignee, including but not limited to a full disclosure of the monetary payment or any other considerations involved, and an affidavit from the proposed assignee stating he has examined this Lease, understands this Lease, agrees to assume and be bound by all of the Lessee's obligations and covenants under this Lease, the same as if it were the original Lessee hereunder, and the proposed date of assignment, transfer or sublease.
- C. King County will review the request and respond with either an approval or disapproval of the request not later than ten (10) days prior to the proposed date. Disapproval of any such request shall be final and binding on the Lessee and not subject to any arbitration, provided that any approval will not be unreasonably withheld. King County shall charge to the Lessee a reasonable fee for administrative costs in reviewing and processing any assignment or sublease. Lessee may assign this Lease to any wholly owned subsidiary without obtaining King County's consent or payment of fees.

22. CONDEMNATION.

- A. King County and Lessee will immediately notify the other in writing of the receipt of notice of any proceedings with respect to a condemnation or intent of any authority to exercise the power of eminent domain.
- B. If all of the premises are taken by any lawful authority under the power of eminent domain for a period which will end on or extend beyond the expiration of the term of this Lease, this Lease terminates as of the date condemner takes possession, and Lessee will have no claim or interest in or to any award

of just compensation except that the Lessee will be entitled to an amount equal to the fair market value of the Lessee's leasehold interest in any improvement taken by the condemner made to the premises by the Lessee, but not to exceed the amount of that part, if any, of the award attributable to the value of the improvements.

- C. If part of the premises is taken by any lawful authority under the power of eminent domain for a period which will end on or extend beyond the expiration of the term of this Lease, King County or Lessee may choose to terminate this Lease as of the date the condemner takes possession. If neither King County nor Lessee elects to terminate this Lease, the rent will be reduced in the same proportion that the value of the portion of the premises to be taken bears to the value of the entire premises as of the date the condemner takes possession. Lessee will have no claim or interest in or to any award of just compensation or damages except that the Lessee will be entitled to an amount equal to the fair market value of the Lessee's leasehold interest in the part taken by the condemner of any improvements made to the premises by the Lessee, but not to exceed the amount of that part, if any, of the award attributable to the value of the improvements.
- D. If temporary use of all or a portion of the premises is taken by any lawful authority for a period which would reduce the leasehold and, consequently, would cause the premises to be untenable for the use by Lessee for the purposes set forth in the section of this Lease titled "Use," then, at Lessee's determination, King County or Lessee may choose to terminate this Lease. If King County or Lessee elect to terminate the Lease, the Lease will terminate the date the condemner takes possession and Lessee will have no claim or interest in or to any award of just compensation except that the Lessee will be entitled to an amount equal to the fair market value of the Lessee's leasehold interest in any improvements made to the premises by the Lessee. If neither King County or Lessee elects to terminate this Lease, the Lease will continue in full force and Lessee will be entitled to receive any award from the condemner for the use of all or part of the premises, EXCEPT that Lessee may elect to have the rents reduced by the amount proportionally attributable to any partial temporary taking, in which event Lessee shall not be entitled to any portion of the award attributable to said use.
- E. It is understood and agreed that Lessee shall not be party to any negotiation or proceedings at law wherein King County claims compensation other than that which is defined statutorily as constituting "just compensation."

23. ANTI-DISCRIMINATION. In all services or activities and all hiring or employment made possible by or resulting from this Lease, there shall be no discrimination against any employee or applicant for employment because of sex, age (except minimum age and retirement provisions), race, color, creed, national origin, marital status, sexual orientation, or the presence of any sensory, mental, or physical handicap, unless based upon a bona fide occupational qualification. This requirement shall apply to but not be limited to the following: Employment, advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Lessee shall not violate any of the terms of R.C.W. 49.60, Title VII of the Civil Rights Act of 1964, King County Code 12.16.020, or any other applicable federal, state, or local law or regulations regarding non-discrimination. Any violation of this provision shall be considered a violation of a material provision of this Lease and shall be grounds for cancellation, termination, or suspension, in whole or in part of the lease by the County, and may result in ineligibility for further County agreements. The Lessee will also comply with other anti-discrimination laws or requirements of any and all jurisdictions having authority.

24. HEIRS, AGENTS, AND ASSIGNS. Without limiting any provisions of this Lease pertaining to assignment and subletting, the provisions of this Lease bind the heirs, successors, agents and assigns of any of the parties to this Lease.
25. CAPTIONS. The captions in this Lease are for convenience only and do not in any way limit or amplify the provisions of this Lease.
26. TIME IS OF THE ESSENCE. Time is of the essence of this Lease, and in the event of the failure of Lessee to pay any charges at the time in the manner herein specified, or to keep any of the covenants or agreements herein set forth, the Lessee shall be in default.
27. CUMULATIVE REMEDIES. No provision of this Lease precludes King County from pursuing any other remedies for Lessee's failure to perform his obligations.
28. ATTORNEY'S FEES/COLLECTION CHARGES. In the event legal action is brought by either party to enforce any of the terms, conditions, or provisions of this Lease, the prevailing party shall recover against the other party in addition to the costs allowed by law, such sum as the court may adjudge to be a reasonable attorney's fee. In addition to all other charges, Lessee shall pay a charge of \$150.00 to King County for preparation of a demand for delinquent rent or a notice of default.
29. HOLDING OVER. If the Lessee holds over after the expiration or earlier termination of the term hereof without the express written consent of King County, Lessee shall become a tenant at sufferance only at a rental rate equal to one hundred-fifty percent (150%) of the rent in effect upon the date of such expiration (prorated on a daily basis), and otherwise subject to the terms, covenants, and conditions herein specified so far as applicable. Acceptance by King County of rent after such expiration or earlier termination shall not result in a renewal of this Lease, nor affect King County's right of re-entry or any rights of King County hereunder or as otherwise provided by law. If Lessee fails to surrender the premises upon the expiration of this Lease despite demand to do so by King County, Lessee shall indemnify and hold King County harmless from all loss or liability including, without limitation, any claim made by any succeeding Lessee founded on or resulting from such failure to surrender and together with interest, attorney's fees, and costs.
30. HAZARDOUS SUBSTANCES. Lessee shall not without first obtaining King County's prior written approval, generate, release, spill, store, deposit, transport, or dispose of (collectively referred to as "Release") any hazardous substances, sewage, petroleum products, radioactive substances, medicinal, bacteriological, or disease-producing substances, hazardous materials, toxic substances or any pollutants or substances defined as hazardous or toxic as defined and in accordance with applicable federal, state, and local laws and regulations in any reportable quantities ("Hazardous Substances") in, on, or about the premises. In the event, and only in the event, King County approves such Release of Hazardous Substances on the Premises, Lessee agrees that such release shall occur safely and in compliance with all applicable federal, state, and local laws and regulations. Lessee shall indemnify and hold King County harmless from any and all claims, liabilities, lawsuits, damages, and expenses, including reasonable attorney's fees (hereinafter "Claim") for bodily injury or death, property damage or loss, or clean-up costs arising out of this Lease to the extent such injury, death, damage, loss, or costs are caused by the Release by Lessee or any of its agents, representatives or employees in, on, or about the Premises occurring during the term of this Lease.

Lessee shall be fully and completely liable to King County for any and all clean-up costs, and any and all other charges, fees, penalties (civil and criminal) imposed by any governmental authority with respect to Lessee's use, disposal, transportation, generation and/or sale of Hazardous Substances in or about the

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Premises, common areas, or buildings. Lessee shall indemnify, defend, and save King County harmless from any and all of the costs, fees, penalties, and charges assessed against or imposed upon King County (as well as King County's attorney's fees and costs) as a result of Lessee's use, disposal, transportation, generation and/or sale of hazardous substances.

Upon Lessee's default under this Section, King County shall be entitled to the following rights and remedies:

- (a) At King County's option, to terminate this Lease immediately; and/or,
 - (b) To recover any and all damages associated with the default, including but not limited to clean-up costs and charges, civil and criminal penalties and fees, adverse impact on marketing a space in the building, loss of business and sales by King County and other Lessees of the building, diminution of value of the premises and/or building, the loss or restriction of useful space in the premises and/or building, any and all damages and claims asserted by third parties and King County's attorney's fees and costs.
31. SEVERABILITY. If any term or provision of this Lease or the application of any term or provision to any person or circumstance is invalid or unenforceable, the remainder of this Lease, or the application of the term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected and will continue in full force.

END OF GENERAL TERMS AND CONDITIONS

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