



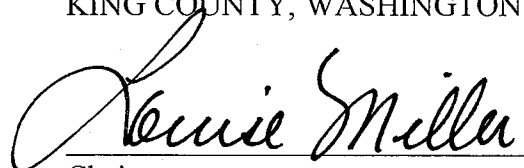
1 buildable land and thirty cents per foot per year for nonbuildable land, which is consistent  
2 with fair market value as determined by a recent appraisal.

3 SECTION 2. Additional language reflecting voluntary noise abatement procedures  
4 and protecting the county's financial interests in future subleases and assignment of leases  
5 will be added to the lease, consistent with council direction in previous lease approvals.


6 INTRODUCED AND READ for the first time this 24th day of May, 1999.

7 PASSED by a vote of 12 to 0 this 6th day of July, 1999.

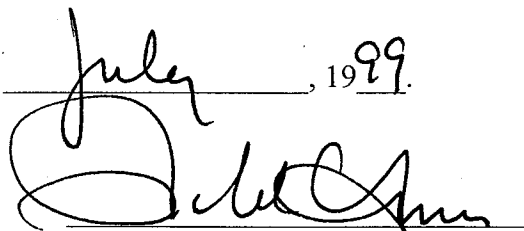
8 KING COUNTY COUNCIL  
9 KING COUNTY, WASHINGTON

10   
11 Chair

12 ATTEST:

13   
14 Deputy Clerk of the Council

15 APPROVED this 12 day of July, 1999.

16   
17 King County Executive

- 18 Attachments: A. Agreement and Amendment of Lease  
19 B. Map  
20 C. King County International Airport (KCIA) General Terms and  
21 Conditions

## ATTACHMENT "A"

Lease #7166

## AGREEMENT AND AMENDMENT OF LEASE

This Agreement and Amendment of Lease is made this \_\_\_\_ day of \_\_\_\_\_, 1999, by and between King County, a legal subdivision of the State of Washington, (hereinafter "the County") and Karen Walling, DBA: Classic Helicopters, (hereinafter "Lessee").

## RECITALS

- A. There is presently in effect a lease ("The Lease") dated October 15, 1993 from the County to Lessee of certain property located at 6501 Perimeter Road South at King County International Airport, also known as Boeing Field ("the Airport"). The lease is for a period of 30 years, and covers property totaling 118,293 square feet as shown on the attached Exhibit A.
- B. The County and Lessee have mutually agreed to increase the size of the leasehold by approximately 56,600 square feet for a total leasehold size of 174,839 square feet, and to extend the lease term by five (5) years to expire October 23, 2028.
- C. The Lessee agrees to construct tenant improvements consisting of a 25,000 square foot office/hangar facility and paving to accommodate aircraft parking and runway access at a cost of approximately \$2.4 million. Said improvements are subject to the Airport's approval and will be completed no later than two (2) years from the date of execution of this amendment.
- D. In consideration of this expansion of leasehold, Lessee agrees to accept the modified General Terms and Conditions dated April 1, 1999 of the lease to reflect current county standards.
- E. In addition to Leasehold Excise Tax, Lessee agrees to pay additional rent at the rate of \$0.60/foot/year for buildable land and \$0.30/foot/year for non-buildable land added to the leasehold, and to deposit the sum necessary to increase its present base rental security deposit to reflect a total of two (2) months rent plus leasehold excise tax. The additional rent and Leasehold Excise Tax will be due on the effective date of this amendment to lease.
- F. For any automobile parking located off the leasehold site, the Lessee agrees to pay its proportionate share of automobile parking and access thereto allocated according to the county's code requirements

NOW, THEREFORE, in consideration of the mutual promises contained herein, the County and Lessee agree as follows:

Karen Walling  
Lease #7166  
Page 2 of 2

1. The leasehold will be increased by approximately 56,600 SF for a total of 174,839 SF and the rate adjusted accordingly.
2. Improvements to the leased premises will be submitted for approval to King County International Airport and will be completed within two (2) years of the date of execution of this amendment.
3. The General Terms and Conditions of the lease will be replaced by those dated April 1, 1999.
4. A voluntary noise abatement agreement procedure will be executed by the Lessee.

Except as amended by this amendment, the lease identified herein is in all respects confirmed and ratified and remains in full force and effect.

LESSEE:  
KAREN L. WALLING

LESSOR:  
KING COUNTY, a political subdivision of the  
State of Washington

BY: \_\_\_\_\_

BY: \_\_\_\_\_  
David B. Preugschat, Manager  
Property Services Division

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

**KING COUNTY INTERNATIONAL AIRPORT**

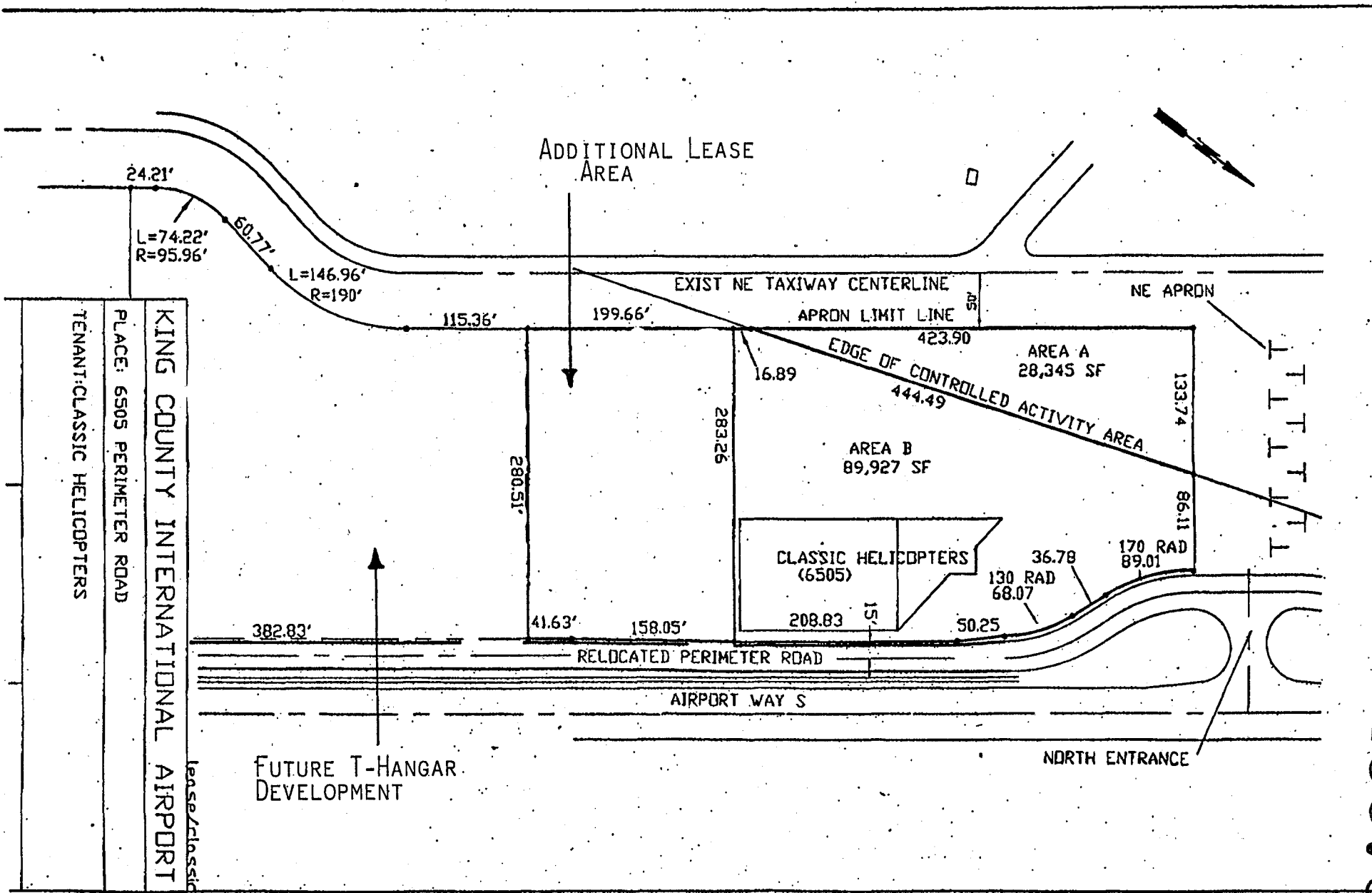
BY: \_\_\_\_\_  
Cynthia Stewart, Manager

DATE: \_\_\_\_\_

**APPROVED AS TO FORM:**

BY: \_\_\_\_\_  
Sr. Deputy Prosecuting Atty.

DATE: \_\_\_\_\_



13575

**1. LATE PAYMENT, TAXES, LICENSES, FEES AND ASSESSMENTS.**

- A. LATE PAYMENTS. There will be a late collection charge of FIFTY DOLLARS (\$50.00) or the maximum rate permitted by law, plus one and a half percent (1 1/2%) 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, if applicable, 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, TAXES AND FEES. Lessee shall pay throughout the term of this Lease all applicable taxes and all license and excise and other applicable fees including, but not limited to, fuel flowage fees and landing fees, covering the business conducted on the premises as provided for King County code 15 as now existing and as it may be amended.
- D. MITIGATION ASSESSMENTS.
- 1) KCIA is developing for future implementation, a plan for mitigation of existing noise, surface and groundwater, safety, and traffic conditions. This plan, subject to King County Council adoption, will be financed from mitigation fees which will be assessed to all Boeing Field users in proportion to their contribution to the circumstance which is being mitigated and/or their proportionate use of the improvement requiring mitigation investment.
  - 2) Lessee shall pay any mitigation assessments now in effect, or hereafter established by the County according to King County Council Motion #9523 dated march 28, 1995. This Lease shall be considered a "new lease" for purposes of said Motion #9523, and Lessee shall pay all such mitigation assessments commencing with the effective date of such assessments as promulgated by the County.
- E. OTHER CONSIDERATION. No offset, reduction, or credit toward rent shall be allowed unless it is in writing and signed by the Manager of the Property Services 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 then 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. 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. If in the future, a licensing requirement for real estate appraisers is imposed by any legislative body, each arbitrator shall be licensed. 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. As 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.
- D. COST OF ARBITRATION. The cost of the arbitration will be divided equally between Lessee and King County.
- E. 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 (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.

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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,

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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. 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. King County will not carry insurance on Lessee's property.

B. 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 exercise of the rights and privileges granted by this lease, by the Lessee, his agents, representatives, employees/subcontractors. The cost of such insurance shall be paid by the Lessee. If there is any inconsistency between the minimum insurance requirements set forth below in this Lease and the insurance required by King County in any other Airport agreement to which the Lessee is a party, the Lessee shall maintain the insurance required by the most recent of this Lease or any other Airport agreement.

**In consideration of the duration of this lease agreement, the parties agree that the Insurance Requirements Section herein, at the discretion of the King County Risk Manager, may be reviewed and adjusted with each amendment and within 90 days of the first 3<sup>rd</sup> year anniversary and each successive 3<sup>rd</sup> year anniversary thereafter.**

Any adjustments made as determined by the King County Risk Manager, shall be in accordance with reasonably prudent risk management practices and aviation insurance industry standards and shall be effective on the first day of each successive 3<sup>rd</sup> year period.

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Adjustment, if any, in insurance premium(s) shall be the responsibility of the tenant. Any failure by the County to exercise the right to review and adjust at any of the aforementioned timings shall not constitute a waiver of future review and adjustment timings.

For all coverages: Each insurance policy shall be written on an "Occurrence" form.

By requiring such minimum insurance, the County shall not be deemed or construed to have assessed the risks that may be applicable to the Lessee under this Lease. The Lessee shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

- (1) Aviation General Liability:  
Coverage shall include but not be limited to the following:
  - \* Aircraft liability for bodily injury, death, property damage, contractual and passenger liability.
  - \* Airport general liability for bodily injury, death, property damage (including explosion, collapse and underground), contractual, personal injury, liquor liability (if alcoholic beverages are sold or distributed), products/completed operations and hangar keepers liability.
- (2) Automobile Liability:  
Insurance Services Office form number (CA 00 01 ed. 12-90) covering BUSINESS AUTO COVERAGE, symbol 1 "any auto"; or the combination of symbols 2, 8, and 9.
- (3) Workers Compensation:  
Workers Compensation coverage, as required by the Industrial Insurance Act of the State of Washington.
- (4) Employers Liability or "Stop Gap";  
The protection provided by the Workers Compensation policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the General Liability policy.

B. Minimum Limits of Insurance

The Lessee shall maintain limits no less than, for:

- (1) Aviation General( Liability; combined single-limit in accordance with the following table:

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Maximum Gross Landing Weight	Minimum Requirement: (each Occurrence)
Over 15,000 lbs.	\$25,000,000
10,001 - 15,000 lbs.	\$15,000,000
5,000 - 10,001 lbs.	\$10,000,000
Under 5,000 lbs.	\$5,000,000

- (2) Automobile liability: \$5,000,000 combined single limit.
- (3) Workers Compensation: Statutory limits.
- (4) Employers Liability or "Stop Gap": \$1,000,000

C. Deductibles and Self-insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by King County. 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:

(1) Aviation Liability and Automobile Liability

a. The County, its officers, officials, employees and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Lessee in connection with this Agreement.

b. To the extent of the 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 Lessee's insurance or benefit the Lessee in any way.

c. 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.

(2) All Policies:

- a. Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, except by the reduction of the applicable aggregate limit by claims paid, until after forty-five (45) days prior written notice has been given to the County.

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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. If at any time, any 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 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 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 inapplicable 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

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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, no sublet the whole or any part of the premises, nor grant an option for assignment, transfer or sublease for the whole or any

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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 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, or grant an option for assignment, transfer or sublease, for the whole or part of the premises, or any portion of this Lease or any interest therein, Lessee shall notify King County in writing of Lessee's intent to assign or transfer and the details of the proposed agreement. Lessee must notify King County at least sixty (60) days prior to the proposed date of assignment, transfer, or sublease to a third party and describe the expected terms of the assignment and payments to be received by Lessee. Upon request by King County, the Lessee must provide:

- a current financial statement prepared by an independent certified public accountant for the proposed assignee, identifying the values of the improvements based on the remaining lease term.
- Full disclosure of the monetary payment and any other considerations to be received by Lessee arising out of the sublease or assignment, and
- an affidavit from the proposed assignee stating he/she has examined this Lease, has had the opportunity to consult with legal counsel regarding the terms of the lease and understands the implications, 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;
- the list of "Included Property" described below; and

- other documents requested by King County reasonably related to this transaction.

- C. King County reserves the right of opportunity in the event Lessee attempts to assign or sublease any portion of the above mentioned parcel to any party independent of itself unless the new assignment is necessary for purposes of financing. Lessee shall provide with its notice of intent to sublease or assign, a pro-ration of value as to "Included Property" as defined below and the value of the leased premises. Should the parties be in dispute of this pro-ration, Paragraph 2C of these General Terms and Conditions, ARBITRATION, shall prevail.
- D. If Lessee assigns its interest, other than to a subsidiary, affiliate or parent company of Lessee, Lessee (Assignor) shall pay King County, as Additional Rent, at least Seventy-five percent (75%)

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of the Assignment Premium derived from that assignment, less the credits described below. "Assignment Premium" shall mean all rent, additional rent, and/or other moneys, property, and other consideration of every kind whatsoever received by Lessee (Assignor) from the assignee for, or by reason of, the assignment of the lease (including all amounts received by Lessee for any Included Property).

- E. If lessee subleases, other than to a subsidiary, affiliate or parent company of Lessee, Lessee shall pay King County, as Additional Rent, Seventy-five percent (75%) of the Sublease Premium derived from that sublease, less the credits described below. "Sublease Premium" shall mean all rent, additional rent, and/or other moneys, property, and other consideration of every kind whatsoever received by Lessee from the sublessee for, or by reason of, the sublease (including all amounts received by Lessee for any Included Property).
- F. "Included Property" means only the leasehold improvements added by the Lessee, and any non-removable fixtures purchased by the Lessee attached thereto, that are transferred to the assignee or the sublessee as part of the transaction. The value of the included property will be documented by appropriate appraisals, financial statements or other business records prepared by an independent and qualified source. Lessee shall pay the Assignment Premium or Sublease Premium to King County as and when Lessee receives payment from such assignee.
- G. Credits. The following shall be subtracted from what otherwise would be owed for a Sublease Premium or Assignment premium:
- 1) Documented costs, fees, appraisals or commissions actually paid by Lessee (Assignor) to procure the assignment, amortized over the term of the assignment, including, without limitation, fees and commissions paid to commercial property appraisers, certified public accountants, attorneys and licensed real estate brokers;
  - 2) The actual cost of leasehold improvements undertaken by Lessee solely to prepare the space for the sublessee (amortized over the term of the sublease commencing on the effective date of the sublease):

- 3) The greater of the appraised fair market value or the unamortized cost of the improvements, attachments, or other Included Property, if any, determined on a cost basis over the term of the original lease, not the assignment or sublease, as certified to King County by Lessee's independent certified public accountant. Certifications, appraisals or assurances generated by Lessee's independent certified public accountant in support of the assignment or sublease will be obtained at Lessee's expense, the cost of which may be deducted from the Sublease or Assignment Premium);and
- 4) Fixed rent (base rent plus applicable leasehold excise tax) and additional rent (other amounts due such as late fees and penalties, utilities, taxes, insurance, maintenance and land lease costs) allocable to the space covered by such sublease.

H. King County will review the request and respond within thirty days if additional information is requested. An approval or disapproval of the request will be made not later than ten (10) days

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prior to the proposed effective 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.

I. King County shall charge to the Lessee a reasonable fee for administrative costs in reviewing and processing any assignment or sublease.

## **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 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.

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- 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. TERMINATION BY KING COUNTY.** King County reserves the right to cancel this lease upon twelve (12) months notice in writing to the Lessee or the persons in possession of the premises if the premises are required by King County for the improvement or development of Boeing Field for public airport uses and purposes, and under such cancellation the Lessee or persons in possession of premises shall be reimbursed by King County for the fair market value, as defined in Section 2A of this document, of any improvements placed on the premises by the Lessee in accordance with the terms of this lease. In the event that King County and Lessee cannot agree upon the value of said improvements, King County and Lessee shall submit to have the fair market value adjusted by arbitration in the manner described in Section 2C.

**24. 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.

25. **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.
26. **CAPTIONS.** The captions in this Lease are for convenience only and do not in any way limit or amplify the provisions of this Lease.
27. **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.
28. **CUMULATIVE REMEDIES.** No provision of this Lease precludes King County from pursuing any other remedies for Lessee's failure to perform his obligations.
29. **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

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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.

30. **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.

31. **Hazardous Materials and Environmental Compliance:**

**A. Definitions.** "Hazardous Materials" as used herein shall mean:

- (1) Any toxic substances or waste, sewage, petroleum products, radioactive substances, heavy metals, medical, corrosive, noxious, acidic, bacteriological or disease-producing substances; or
- (2) Any dangerous waste or hazardous waste as defined in:
- a. Washington Hazardous Waste Management Act as now existing or hereafter amended (RCW Ch. 70.105); or

b. Resource Conservation and Recovery Act as now existing or hereafter amended (42 U.S.C. Sec. 6901 et seq.); or

(3) Any hazardous substance as defined in:

a. Comprehensive Environmental Response, Compensation and Liability Act as now existing or hereafter amended (42 U.S.C. Sec. 9601 et seq.); or

b. Washington Model Toxics Control Act as now existing or hereafter amended (RCW Ch. 70.105D); or

(4) Any pollutants, contaminants, or substances posing a danger or threat to public health, safety or welfare, or the environment, which are regulated or controlled as such by any applicable federal, state or local laws, ordinances or regulations as now existing or hereafter amended.

### **B. Environmental Compliance.**

(1) In the conduct of its business at the Airport, and in its use and occupancy of the Leased Areas and the Public Areas, the Lessee shall, at the Lessee's own expense, comply with all federal, state and local laws, ordinances and regulations now or hereafter in effect related to Hazardous Materials and the environment, including, but not limited to, laws and regulations pertaining to stormwater discharges as set by the U.S. Environmental Protection Agency and the Washington Department of Ecology, as well as such rules concerning environmental matters as may be promulgated by the Airport Manager ("**the Environmental Laws**"). The Lessee warrants that its business and all its activities to be conducted or performed in, on, or about the Leased Areas and the Public Areas shall comply with all of the Environmental Laws. The Lessee agrees to change, reduce, or stop any non-complying activity, or install necessary equipment, safety devices, pollution control systems, or other installations as may be necessary at any time during the term of this Agreement to comply with the Environmental Laws.

(2) The Lessee shall not without first obtaining the County's prior written approval use, generate, release, handle, spill, store, treat, deposit, transport, sell or dispose of any Hazardous Materials in, on, or about the Leased Areas or the Public Areas. In the event, and only in the event, that the County approves any of the foregoing, the Lessee agrees that such activity shall occur safely and in compliance with the Environmental Laws.

(3) The Lessee shall not cause or permit to occur any violation of the Environmental Laws on, under, or about the Leased Areas and the Public Areas, or arising from the Lessee's use or occupancy of the Leased Areas and the Public Areas.

(4) The Lessee shall, in a timely manner and at the Lessee's own expense, make all submissions to, provide all information required by, and comply with all requirements of all governmental or regulatory authorities ("**the Authorities**" or "**Authority**") with jurisdiction under the Environmental Laws. If the Lessee fails to fulfill any duty imposed under this

paragraph within a reasonable time, the County may do so; and in such case, the Lessee shall cooperate with the County in order to prepare all documents the County deems necessary or appropriate to determine the applicability of the Environmental Laws to the Leased Areas and/or the Public Areas and the Lessee's use thereof, and for compliance with the Environmental Laws, and the Lessee shall execute all documents promptly upon the County's request. No such action by the County and no attempt made by the County to mitigate damages shall constitute a waiver of any of the Lessee's obligations under this Section 31, Hazardous Materials and Environmental Compliance.

(5) Should any Authority demand that a cleanup or remediation plan be prepared and that a cleanup or remediation be undertaken because of any deposit, spill, discharge or other release of Hazardous Materials that occurs during the term of this Agreement at or from the Leased Premises, or which arises at any time from the Lessee's use or occupancy of the Leased Areas and/or the Public Areas, then the Lessee shall, in a timely manner and at the Lessee's own expense, prepare and submit the required plans and all related bonds and other financial assurances; and the Lessee shall carry out all such cleanup or remediation plans. Any such cleanup or remediation plans are subject to the County's prior written approval. Although the County reserves the right to review and approve such cleanup or remediation plans, the County assumes no responsibility for such plans or their compliance with the Environmental Laws.

**C. Indemnification.**

(1) The Lessee shall be fully and completely liable to the County for any and all cleanup and/or remediation costs and expenses, and any and all other charges, expenses, fees, penalties (civil and criminal) imposed by any Authority arising out of the Lessee's use, disposal, transportation, generation, release, handling, spillage, storage, treatment, deposit and/or sale of Hazardous Materials in or about the Leased Areas or the Public Areas. The Lessee shall indemnify, defend, and save the County harmless from any and all of the costs, expenses, fees, penalties, and charges assessed against or imposed upon the County (as well as the County's reasonable attorney's fees, costs and expenses) by any Authority as a result of the Lessee's use, disposal, transportation, generation, release, handling, spillage, storage, treatment, deposit and/or sale of Hazardous Materials, or from the Lessee's failure to provide all information, make all submissions, and/or take all steps required by all Authorities under the Environmental Laws.

(2) The Lessee shall indemnify and hold the County harmless from any and all claims, liabilities, lawsuits, damages, and expenses, including reasonable attorney's fees, for injuries to persons or death, property damage, loss, or costs caused by or arising from the use, disposal, transportation, generation, release, handling, spillage, storage, treatment, deposit and/or sale of Hazardous Materials by the Lessee or any of its agents, representatives or employees in, on, or about the Leased Areas or the Public Areas.

**D. Reporting Requirements.** The Lessee shall comply with the Environmental Laws requiring the submission, reporting, or filing of information concerning Hazardous Materials with the Authorities, and shall provide to the County a full copy of any such submission, filing or report as submitted within 15 days of such submission.

**E. Right to Check on the Lessee's Environmental Compliance.** The County expressly reserves the right to conduct, and the Lessee shall fully cooperate in allowing, from time to time, such examinations, tests, inspections, and reviews of the Leased Areas as the County, in its sole and absolute discretion, shall determine to be advisable in order to evaluate any potential environmental problems.

**F. Remedies.** Upon any default by the Lessee under this Section 31, Hazardous Materials and Environmental Compliance, the County shall be entitled to the following rights and remedies in addition to any other rights and remedies that may be available to the County:

- (1) At the County's option, to terminate this Agreement immediately; and/or,
- (2) At the County's option, to perform such response, remediation and/or cleanup as is required to bring the Leased Areas and any other areas of the Airport affected by the Lessee's default into compliance with the Environmental Laws and to recover from the Lessee all of the County's costs and expenses in connection therewith; and/or
- (3) To recover from the Lessee any and all damages associated with the default, including but not limited to, response, remediation and cleanup costs, expenses and charges, civil and criminal penalties and fees, adverse impacts on marketing the Leased Areas or any other areas of the Airport, loss of business and sales by the County and other lessees of property at the Airport, diminution of value of the Leased Areas and/or other areas of the Airport, the loss of or restriction of useful space in the Leased Areas and/or other areas of the Airport, and any and all damages and claims asserted by third parties, and the County's attorneys' fees, costs and expenses.

**G. Remediation on Termination of Agreement.** Upon the termination of this Agreement, the Lessee shall remove, remediate or clean up any Hazardous Materials on, or emanating from, the Leased Areas caused by Lessee as required by applicable laws, and the Lessee shall undertake whatever other action may be necessary to bring the Leased Areas into full compliance with the Environmental Laws ("**Termination Cleanup**"). The process for such Termination Cleanup is subject to the County's prior written approval. Although the County reserves the right to review and approve the Termination Cleanup process, the County assumes no responsibility for it or its compliance with the Environmental Laws.

If the Lessee fails or refuses to commence the Termination Cleanup process, or fails to reasonably proceed toward completion of such process, the County may elect to perform such Termination Cleanup after providing the Lessee with written notice of the County's intent to commence Termination Cleanup, and after providing the Lessee a reasonable opportunity, which shall not be less than ninety (90) days after such notice (unless the County is given notice by a government or regulatory agency with jurisdiction over such matter that Termination Cleanup must commence within a shorter time), to commence or resume the Termination Cleanup process. If the County performs such Termination Cleanup after said notice and the Lessee's failure to perform same, the Lessee shall pay all of the County's costs and expenses.

**H. Survival.** The Lessee's obligations and liabilities under this Section 31, Hazardous Materials

and Environmental Compliance, shall survive the expiration of this Agreement.

- 32. PUBLIC USE AIRPORT.** The premises and KCIA are subject to the terms of certain sponsor's assurances made to guarantee the public use of the public airport area of KCIA as incidental to grant agreements between King County and the United States of America; provided, that in the event at any time during the term of this Agreement the terms of such assurances should effectively prohibit tenant's use of the premises in the general manner contemplated by the parties to this Agreement, then such effective prohibition shall be considered as taking by the public and the tenant or person or persons in lawful possession of the premises may, upon thirty (30) days prior written notice given to King County, terminate this Agreement.
- 33. RIGHT OF FLIGHT.** There is hereby reserved to King County, its successors and assigns, for the use and benefit of King County and the public a right of flight for the passage of aircraft in the air-space above the surface of the premises herein leased, together with the right to cause in said air-space such noise as may be inherent in the operation of aircraft, now known or hereafter used for navigation of or flight in the air, using said air-space or landing at, taking off from and operating aircraft on or over KCIA all in accordance with applicable safety and operating regulations of said Airport and the Federal Aviation Administration.
- 34. EMPLOYEE CONDUCT.** Tenant shall require and be responsible for the full compliance by its officers, agents, employees, customers and guests with the rules and regulations of the Federal Aviation Administration and KCIA.
- 35. 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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