

ORDINANCE NO. **9421**

AN ORDINANCE authorizing the executive to enter into a new multi-year interest bearing loan agreement with the Museum of Flight Authority and repealing Ordinance 8701.

PREAMBLE:

The loan agreement executed on January 17, 1989 between King County and the Museum of Flight Authority (MOFA) to build a restaurant, has been renegotiated. MOFA has reduced the scope of the restaurant and is requesting a lesser loan amount to construct a smaller facility.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. The King County executive is hereby authorized to enter into a new 30-year interest bearing loan agreement with the Museum of Flight Authority in the amount of \$2,000,000 with the funds coming from the Airport Operating Fund unencumbered fund balance, for the purpose of constructing a cafe/cafeteria facility at the present site of the Museum of Flight in accordance with the loan agreement included as Attachment A.

SECTION 2. Ordinance No. 8701 is hereby repealed.

INTRODUCED AND READ for the first time this 26th day of

March, 1990

PASSED this 23rd day of April, 1990.

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

Lois North
Chair

ATTEST:

Gerald A. Peterson
Clerk of the Council

APPROVED this 4th day of May, 1990.

[Signature]
King County Executive

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28
29
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32
33

EXHIBITS

Legal Description of the Property

SCHEDULES

Schedule 3.4 -- List of Outstanding Debts

Schedule 3.5 -- Existing Encumbrances

Schedule 3.7 -- Consents

LOAN AGREEMENT

BETWEEN

KING COUNTY

AND

KING COUNTY MUSEUM OF FLIGHT AUTHORITY

TABLE OF CONTENTS

	<u>Page</u>
RECITALS	1
1. DEFINITIONS	3
1.1. "Cafe Project"	3
1.2. "Cafe Project Fund"	3
1.3. "Cafe Sinking Fund"	3
1.4. "Certificate of Occupancy"	3
1.5. "Closing"	4
1.6. "Interest Rate"	4
1.7. "Improvements"	4
1.8. "Lease"	4
1.9. "Loan"	4
1.10. "Property"	4
2. LOAN TERMS	4
2.1. General Terms	4
2.2. Term	5
2.3. Interest	5
2.4. Payments of Principal and Interest	6
2.5. Prepayment	7
2.6. Disbursement of the Loan	7
2.7. Payment to the County	8
2.8. Operator Lease	8
2.9. Project Administration	9
2.11. Obligation of the Authority	10
3. REPRESENTATIONS AND WARRANTIES	10
3.1. Valid Organization	10
3.2. Power and Authority	10
3.3. Valid and Binding Agreement	10
3.4. No Breach or Default	11
3.5. Good Title	11
3.6. No Conflict or Breach	11
3.7. No Consents	11
3.8. No Litigation	12
4. CLOSING	12
4.1. Conditions to the County's Obligations at Closing	12
4.2. Conditions to the Authority's Obligation at Closing	13
5. SECURITY	14
5.1. Lease Bond	14
5.2. Cafe Project Fund	14
5.3. Cafe Sinking Fund	14

TABLE OF CONTENTS
(continued)

	<u>Page</u>
6. BORROWER'S COVENANTS	15
6.1. Use of Proceeds	15
6.2. Progress and Financial Reports	15
6.3. Maintenance, Repair, Alterations	15
6.4. Insurance	16
6.5. Hold Harmless	17
6.6. Notice	18
6.7. No Disposition	18
6.8. No Liens	18
6.9. Taxes, Assessments, Charges	19
7. DEFAULT	19
7.1. Events of Default	19
7.2. Acceleration	20
7.3. Remedies	20
8. MISCELLANEOUS	20
8.1. Entire Understanding; Amendments	20
8.2. Separability of Provisions	20
8.3. Survival of Representations, Warranties and Covenants	21
8.4. Parties in Interest	21
8.5. Attorneys' Fees	21
8.6. Governing Law	22
8.7. Audits and Inspections	22
8.8. Notices	22
8.9. No Assignment	23
8.10. Headings	23
8.11. Counterparts	23
8.12. Remedies	24
8.13. Further Actions	24
8.14. Limitation of Liability	24

EXHIBITS

Exhibit A - Legal Description of Property

SCHEDULES

- Schedule 3.4 - List of Outstanding Debts
- Schedule 3.5 - Existing Encumbrances
- Schedule 3.7 - Consents

LOAN AGREEMENT

THIS LOAN AGREEMENT (the "Agreement") is made as of _____, 1989, by and between KING COUNTY, a political subdivision of the State of Washington (the "County"), and the KING COUNTY MUSEUM OF FLIGHT AUTHORITY, a public corporation chartered by the County (the "Authority").

RECITALS

WHEREAS, the County chartered the Authority in 1985 "to provide a legal entity under RCW 35.21.730 and King County Ordinance 7444 to undertake, assist with or otherwise facilitate or provide for the development and operation of a first class air and space museum, which may include, but is not limited to, the following components:

(a) Operation of air and space museum, with related theater, educational, and archival-research activities;

(b) Operation of historical exhibits;

(c) Acquisition, display and maintenance of aircraft and aviation artifacts for museum purposes;

(d) Operation of gift shop in relation to museum activities;

(e) A restaurant or other food, beverage and banquet service facilities to enhance the attractiveness of the museum to visitors and increase the visibility of the museum to the public;

(f) Any other uses reasonably or necessarily related to the operation of a major air and space historical museum; and

(g) Ancillary parking; and

WHEREAS, the County has found in Ordinance No. 8707 that the Museum of Flight (the "Museum") serves substantially to enhance the facilities available at the King County International Airport and provides important public amenities to the County and its residents and visitors; and

WHEREAS, the Authority and the Museum of Flight Foundation (the "Foundation") have completed the Museum facilities with the exception of a museum cafe/cafeteria and related improvements; and

WHEREAS, the Authority and the Museum of Flight Foundation have made a good faith effort to develop a Museum cafe/cafeteria on their own but have been unable to identify an acceptable operator who would be prepared to finance development of such a facility; and

WHEREAS, the County continues to believe that the addition of a cafe/cafeteria and certain other related improvements serving the visitors and staff of the Museum would substantially enhance the Museum as a tourist attraction and its effectiveness as an educational facility; and

WHEREAS, such cafe/cafeteria would be consistent with the continuing economic development of the King County International Airport; and

WHEREAS, the County has determined that it is in the best interests of the public and the Museum to provide the financing for the construction of a cafe/cafeteria and certain other related improvements by the Authority and the Foundation; and

WHEREAS, the County and the Authority have agreed that the financing of the cafe/cafeteria must be consistent with the financial stability of the cafe/cafeteria and must provide a reasonable rate of return to the County; and

WHEREAS, the County and the Authority have agreed that a loan of funds on the terms and conditions set forth herein provides the best means of financing the construction of a cafe/cafeteria and certain other related improvements;

NOW, THEREFORE, in consideration of the mutual promises made herein, the County and the Authority hereby agree as follows:

AGREEMENT

1. DEFINITIONS.

1.1. "Cafe Project" shall mean the planning, financing, design, purchase, acquisition, rehabilitation, development, marketing, leasing, operation, construction, or equipping of the Improvements on the Property.

1.2. "Cafe Project Fund" shall mean the Museum of Flight Cafe Project Fund created by Section 5.2 of this Agreement for the purpose of acquiring, developing, constructing and installing the Cafe Project.

1.3. "Cafe Sinking Fund" shall mean the Museum of Flight Cafe Sinking Fund created by Section 5.3 of this Agreement for the purpose of paying interest on and principal of the Loan and capital expenditures for building maintenance and maintenance, replacement and refurbishment of Authority-owned equipment.

1.4. "Certificate of Occupancy" shall mean the certificate of occupancy issued by the County for Improvements.

1.5. "Closing" shall mean the closing of this loan on _____, 1989, at the offices of Preston, Thorgrimson, Ellis & Holman, 5400 Columbia Seafirst Center, Seattle, Washington 98104-7011 at 10:00 a.m., or such other time and place as the parties mutually agree to in writing prior to such date.

1.6. "Interest Rate" shall be defined as the rate calculated by the lender to the nearest one-hundredth of the numerical average of the coupon equivalent yield for United States Six Month Treasury Bills, as published by The Wall Street Journal (or other financial newspaper of general circulation), for the last four (4) sales of said Treasury Bills immediately preceding each date for establishing or adjusting the rate under Section 2.3 of this Agreement.

1.7. "Improvements" shall mean the cafe/cafeteria building, catering support facilities and equipment installed in the Museum, if any, parking lots (including exterior lighting and walkways), and any landscaping constructed on the Property.

1.8. "Lease" shall mean the lease with the operator of the cafe/cafeteria.

1.9. "Loan" shall mean the loan made by the County to the Authority pursuant to the terms of this Agreement.

1.10. "Property" shall mean that portion of the real property owned by the Authority whose legal description is attached as Exhibit A.

2. LOAN TERMS.

2.1. General Terms. Subject to the terms hereof, the County will lend the Authority a principal sum not to exceed Two

Million Dollars (\$2,000,000) from the County's Airport Construction Fund, disbursed in installments as provided in Section 2.6 hereof, to finance the construction of the Improvements on the Property. This Agreement shall be the sole evidence of such Loan. The proceeds of the Loan shall be used by the Authority solely to pay for the costs of the Cafe Project, except as otherwise permitted in this Agreement.

2.2. Term. The term of the Loan shall be for thirty (30) years.

2.3. Interest. The rate of interest to be charged the Authority on the actual principal balance of the Loan, from time to time outstanding, shall be determined pursuant to this Section 2.3.

2.3.1. Actual Principal Balance. The actual principal balance of the Loan on any day shall be the aggregate of all funds actually disbursed from the date of this Loan to that day, plus, when applicable, any accrued interest added to such balance pursuant to Section 2.3.2. hereof, less the aggregate of all principal repayments made on or before that day.

2.3.2. Accrued Interest. Beginning from the date of Closing, interest will be charged on the actual principal balance of the Loan, from time to time outstanding, at a rate equal to the Interest Rate determined as of the Closing. The interest so charged shall be added quarterly to the principal balance of the Loan and shall become a part of such principal balance until the earliest of (i) the date one (1) year from the date the Improvements receive a Certificate of Occupancy; or (ii) the date three

(3) years from the Closing; or (iii) an optional earlier payment date if chosen pursuant to Section 2.4.(iii) hereof.

2.3.3. Subsequent Adjustments. The interest rate charged on the principal balance of the Loan shall be adjusted to the then current Interest Rate on the earlier of (i) the date three (3) years from the date the Improvements receive a Certificate of Occupancy; or (ii) the date six (6) years from the Closing, and adjusted again every three (3) years thereafter until the principal balance of the Loan is paid in full. Any such adjustment shall not exceed the interest rate effective during the prior period by more than 25 percent, nor result in an Interest Rate lower than that in effect at Closing.

2.4. Payments of Principal and Interest. Payments will begin on the earliest of (i) eighteen (18) months after the Improvements receive a Certificate of Occupancy; (ii) the date three and one-half (3½) years from the Closing; or (iii) at the sole option of the Authority or its cafe operator, any earlier date, and will continue every six (6) months thereafter until the principal balance of the Loan is paid in full.

2.4.1. Interest Payable. Each semiannual payment shall include the amount of interest accrued on the actual principal balance of the Loan, from time to time outstanding, during the six (6) months prior to such interest payment date. Interest shall be calculated for the actual number of days elapsed on the basis of a year consisting of 365 days.

2.4.2. Each semiannual payment shall include a portion of the sum of the principal amount of the loan and the interest

which has accrued and been added to the principal pursuant to subsection 2.3.1 herein sufficient to fully repay such sum in approximately equal semiannual installments until such sum is paid in full thirty (30) years from the date of Closing. Notwithstanding the foregoing, the final payment shall equal the remaining outstanding balance of the sum of the principal amount of the loan and the interest which accrued and was added to the principal pursuant to subsection 2.3.1 herein and shall be due and payable on the date thirty (30) years from the date of Closing.

2.5. Prepayment. The Authority may, without the payment of penalty or premium, prepay the principal of the Loan plus any accrued interest thereon in whole or, from time to time, in part, any partial payment to be made in the sum of One Thousand Dollars (\$1,000) or an integral multiple thereof. All such partial prepayments shall be applied first against accrued interest, if any, and next against the installments of principal required by Section 2.2 hereof in the inverse order of the maturity thereof.

2.6. Disbursement of the Loan. Upon the Closing, the County shall pay 10 percent of the proceeds of the Loan directly to the Authority in immediately available funds or transfer such proceeds to the Authority's account at a bank designated by the Authority in writing.

Before construction of the Improvements begin, the County shall develop a procedure for timely review and prior approval of disbursements of up to 85 percent of the Loan proceeds for construction progress payments. The procedure shall provide for

timely submission and review of disbursement requests on a schedule that would enable the Authority to take advantage of customary contractor discounts for prompt payment. The County shall hold the Authority harmless for any unreasonable delays attributable to the County which cause the Authority to lose any such discounts where such delays are inconsistent with the agreed upon disbursement review procedure or not based on substantive objections to the Authority's requests.

Requests for disbursements for construction progress payments shall be similar in format to and accompanied by materials substantially similar to information that would be provided to a construction lender for a commercial project.

The County shall pay the remaining 5 percent of the Loan proceeds after a Certificate of Occupancy is issued for the cafe/cafeteria.

2.7. Payment to the County. All sums payable to the County hereunder shall be paid directly to the County in immediately available funds or shall be transferred to the County's account at a bank designated by the County in writing. The County shall send the Authority statements of all amounts due hereunder, which statements shall be considered correct and binding on the Authority unless the Authority notifies the County to the contrary within thirty (30) days of any statement which it deems to be incorrect.

2.8. Operator Lease. The cafe/cafeteria developed by the Authority with the proceeds of the Loan shall be operated by a qualified restaurateur. The operator shall be selected pursuant

to a process for requesting qualifications for operation of a food service facility. Both the selection process and the operator chosen shall be subject to the approval of the County, which approval shall not be unreasonably withheld. The lease or other agreement with the operator shall provide for payments to the Authority sufficient to enable the Authority to satisfy its obligations to the County under this Agreement. The form of the lease or other agreement with the operator shall be subject to the approval of the County, which approval shall not be unreasonably withheld. The Lease shall include a provision that, in the event the Authority is dissolved, the County shall be its successor in interest under such Lease.

2.9. Project Administration. The Authority shall be exclusively responsible for Cafe Project administration, including compliance with applicable law and regulations. The process for selecting the general contractor or contractors for construction of the Cafe Project shall satisfy the requirements of applicable State law for solicitation of proposals or bids by contractors who, in the determination of the Authority, are qualified to undertake the Cafe Project. The Authority shall administer the Cafe Project as if it were a "contract awarding authority" for purposes of achieving the utilization goals and requirements of the County Minority and Women's Business Enterprises Ordinance (KCC Ch. 4.18), and Cafe Project contractors shall be required to comply with the County Discrimination and Affirmative Action Ordinance (KCC Ch. 12.16).

2.10. Museum of Flight Foundation Contract Authorized. The Authority is authorized to contract with the Museum of Flight Foundation, a Washington not-for-profit corporation, for development and construction and project management services.

2.11. Obligation of the Authority. The Loan is a general obligation of the Authority, subordinate to the Authority's 1985 loan from Rainier National Bank and subject to the lease agreement between the Authority and the Foundation. Additionally, the Authority may not incur additional indebtedness for major capital projects without County approval, which approval shall not be unreasonably withheld.

3. REPRESENTATIONS AND WARRANTIES.

The Authority hereby represents and warrants as follows:

3.1. Valid Organization. The Authority is a public authority, duly organized and validly existing in good standing under the laws of the State of Washington and applicable King County ordinances.

3.2. Power and Authority. The Authority has full power and authority to execute this Agreement, to own its properties, including, without limitation, the Property, and to conduct its affairs as presently conducted and has taken all official action necessary to authorize the execution, delivery, and performance of this Agreement.

3.3. Valid and Binding Agreement. Upon their execution and delivery, this Agreement will constitute a valid and binding obligation of the Authority, enforceable in accordance with its terms.

3.4. No Breach or Default. The Authority is not in material default in the performance or observance of any obligation, agreement, covenant or condition contained in any bond, debenture, note or other evidence of indebtedness, or in any contract, indenture, mortgage, loan agreement, lease or other agreement or instrument to which it is a party or by which it, or any of its properties, may be bound. A complete list of all outstanding indebtedness incurred by the Authority is attached as Schedule 3.4.

3.5. Good Title. The Authority has good title to all of its assets, subject to no security interest, encumbrance, lien or claim of any third person, except as described on Schedule 3.5.

3.6. No Conflict or Breach. The acceptance of the obligations of this Agreement, the incurring of the obligations set forth herein, and the consummation of the transactions contemplated herein will not conflict with, result in a breach of any of the terms, conditions, or provisions of, or constitute a default under the Authority's Charter or Bylaws, any bond, debenture, note, contract, indenture, mortgage, loan agreement, lease or any other evidence of indebtedness, agreement or instrument to which it is a party or by which it or any of its properties may be bound, or result in the violation by it of any law, order, rule, or regulation of any court or governmental agency or body having jurisdiction over it or any of its properties.

3.7. No Consents. No consent, approval, authorization, or order of any court or governmental agency or body, or any party to any bond, debenture, note, contract, indenture, mortgage, loan

agreement, lease or any other evidence of indebtedness, agreement or instrument to which the Authority is a party or by which the Authority or any of its properties may be bound, is required of the Authority in order for the Authority to execute, deliver or perform any of its obligations under this Agreement, except such as will have been obtained prior to the Closing and are disclosed on Schedule 3.7.

3.8. No Litigation. There is no litigation at law or in equity and no proceedings before any commission or any other administrative authority pending or, to the Authority's knowledge, threatened against or affecting the Authority that would affect the ability or authority of the Authority to carry out the transactions contemplated by this Agreement.

4. CLOSING.

4.1. Conditions to the County's Obligations at Closing.

The obligation of the County to make the Loan hereunder is subject to the fulfillment on or prior to the Closing of each of the following conditions:

4.1.1. The execution and delivery of this Agreement by the Authority.

4.1.2. The delivery of a certified copy of the resolutions of the Authority's Board of Directors authorizing the execution, delivery and performance of this Agreement.

4.1.3. The delivery of a copy of the Authority's Charter, certified by the Clerk of the County Council, and a copy of the Authority's Bylaws, certified by the Secretary of the Authority.

4.1.4. The delivery of a certificate of the Clerk of the County Council as to the incumbency of each of the members of the Authority's Board of Directors.

4.1.5. The delivery of a certificate, dated the date of the Closing, signed by the President and Secretary of the Authority to the effect that:

(1) The representations and warranties set forth in Section 3 are true and correct as of the date of the Closing.

(2) No Event of Default hereunder, and no event which, with the giving of notice or the passage of time, would become such an Event of Default, has occurred as of such date.

(3) No material adverse change has occurred in the financial condition of the Authority since the date of the Agreement as of such date.

4.2. Conditions to the Authority's Obligation at Closing.

The obligation of the Authority to receive the Loan hereunder is subject to the fulfillment on or prior to the Closing of each of the following conditions:

4.2.1. The execution and delivery of this Agreement by the County.

4.2.2. The disbursement of 10 percent of the proceeds of the Loan into an account of the Authority pursuant to its direction.

5. SECURITY.

5.1. Lease Bond. The tenant under the Lease shall be required to provide a bond in an amount equal to the expected rental payments under the Lease for twelve (12) months, but in no event shall such lease bond be in an amount less than One Hundred Eighty-Four Thousand Dollars (\$184,000). Alternatively, in lieu of providing a lease bond, the Authority, or the tenant under the Lease, may deposit an equivalent amount of cash into an escrow account. The proceeds from such lease bond or the funds in such escrow account shall be pledged to make required payments of principal of or interest on the Loan in the event the tenant of the Improvements defaults on its obligations under the Lease.

5.2. Cafe Project Fund. The Authority shall establish the Cafe Project Fund and deposit all of the proceeds of the Loan therein. The Cafe Project Fund and any interest earnings thereon shall be used solely to pay for the costs of the Cafe Project, except as otherwise provided in this Agreement. Within thirty (30) days after an Event of Default occurs, any funds remaining in the Cafe Project Fund shall be returned to the County. Any such Funds returned to the County shall be considered prepayment of the Loan as provided in Section 2.5 herein.

5.3. Cafe Sinking Fund. Upon the signing of this Agreement, the Authority shall establish the Cafe Sinking Fund. The revenues collected for the purpose of paying principal of and interest on the Loan and other funds used to pay the Loan shall be deposited in the Sinking Fund no later than the date such funds are required for the payment of principal and interest on

the Loan. The Sinking Fund shall be drawn upon for the purpose of paying the principal of and interest on the Loan. Moneys in the Sinking Fund not needed to pay the interest or principal next due may temporarily be deposited in such institutions or invested in such obligations as may be lawful for the investment of County funds.

6. BORROWER'S COVENANTS.

As long as any portion of the Loan remains outstanding, the Authority does hereby consent and agree with the County that it will comply with the following covenants:

6.1. Use of Proceeds. The Authority will use the proceeds of the Loan only for the purposes described in Section 2.1 and will furnish the County such evidence as it may reasonably require with respect to such use.

6.2. Progress and Financial Reports. Until such time as the construction of the Improvements has been completed, the Authority shall make reports in such details and at such time periods as may reasonably be requested by the County, as to the actual progress of the Authority with respect to the design, construction and operation of the Improvements.

In addition to the progress reports described above, in the information which the Authority is required annually to submit to the County pursuant to its Charter, the Authority shall specifically discuss and separately account for financing, construction and operation of the Improvements.

6.3. Maintenance, Repair, Alterations. The Authority shall (i) maintain the Improvements in a good condition and repair;

(ii) promptly restore in like manner any Improvement which may be damaged or destroyed; (iii) pay or discharge, or cause to be paid or discharged, when due all claims for labor performed and materials furnished to repair, maintain or restore the Improvements; (iv) comply in all material respects with all laws, ordinances, regulations, covenants, conditions and restrictions, including, without limitation, such that require alterations, now or hereafter affecting the Improvements or any part thereof; and (v) keep and maintain the grounds, sidewalks, roads, parking and landscape areas surrounding the Improvements on the Property in good and neat order and repair. The Authority shall not (i) remove, demolish, or substantially alter (except such alterations as may be required by law, ordinance, regulation or court order or which have the written consent of the County) any of the Improvements; or (ii) commit or permit any waste or deterioration of the Improvements.

6.4. Insurance. (A) The Authority shall, at all times during the term of this agreement, at its cost and expense, carry and maintain fire and extended coverage casualty insurance insuring all Improvements on the property for their full replacement cost. The Authority shall also carry and maintain general public liability insurance against claims for bodily injury, personal injury, death or property damage occurring or arising out of services provided under this Agreement, which insurance shall cover such claims as may be occasioned by any act, omission or negligence of the Authority or its officers, agents, representatives, assigns or servants relating to the Project. The limits

of liability insurance, which may be increased from time to time as deemed necessary by the County, shall not be less than One Million Dollars (\$1,000,000) combined single limit personal injury and property damage insurance. The Authority may satisfy these insurance requirements by requiring the operator of the cafe/cafeteria to provide such insurance. The insurance required above shall be issued by an insurance company or companies authorized to do business in the State of Washington, and must be acceptable to the County. The County shall be specifically named as an additional insured on all such policies, and all such policy or policies shall be primary to any other valid and collectible insurance.

(B) Certificate or certificates or other evidence satisfactory to the County evidencing the existence and terms and conditions of all insurance required above shall be delivered to the County prior to the initial advance of loan funds. The policy or policies of insurance required to be maintained in accordance with this agreement shall not be canceled or given notice of nonrenewal nor shall the terms or conditions thereof be altered or amended without thirty (30) days' written notice being given to the County.

6.5. Hold Harmless. To the extent permitted by applicable law, each party shall hold the other party, its agents, employees, and officers, harmless from all suits, claims, demands, penalties, losses, damages or costs of any kind whatsoever ("claims") arising out of or incident to the indemnifying party's execution of, performance of, or failure to

perform this agreement; and in the event any such suit be filed against the indemnified party, the indemnifying party shall appear and defend the suit, and if judgment be rendered or settlement be made against the indemnified party, to pay the same, which payment, along with all costs and expenses of such defense, shall be a capital cost payable from the proceeds of any financing authorized herein; provided, however, that if such claims are caused by or result from the concurrent negligence of both parties, their agents, employees, or officers, this Section shall be enforceable only to the extent of the negligence of each party, its agents, employees, or officers.

6.6. Notice. The Authority shall notify the County immediately if it becomes aware of the occurrence of any Event of Default or if any fact, condition, or event that, only with the giving of notice or passage of time or both, could become an Event of Default.

6.7. No Disposition. The Authority shall not sell, transfer, lease (except for such leases which are permitted under the Assignment of Lease) or otherwise dispose of all or any part of the Improvements or the Property, without the consent of the County.

6.8. No Liens. The Authority shall not mortgage, pledge, grant or permit to exist a security interest in or lien upon the Improvements (except for such encumbrances which pre-exist this Loan and are disclosed on Schedule 3.5), without the consent of the County, which consent shall not be unreasonably withheld.

This prohibition shall not apply to fixtures, furniture or equipment provided by the cafe/cafeteria operator.

6.9. Taxes, Assessments, Charges. The Authority will pay all taxes, assessments, utility charges, and other charges and fees imposed against the premises before they become delinquent. On default in any such payment by the Authority, the County may pay the same, and all such payments shall be added to the obligation secured by this Agreement, and shall bear interest at the same rate as the principal sum hereunder.

7. DEFAULT.

7.1. Events of Default. The occurrence of any one or more of the following events shall constitute an Event of Default hereunder:

7.1.1. The Authority shall fail to pay when due any installment of principal or interest payable hereunder and such postsecondary failure shall continue for a period of thirty (30) days.

7.1.2. The Authority shall fail to observe or perform any other obligation to be observed or performed by it hereunder and such failure shall continue for thirty (30) days after (i) notice of such failure from the County; or (ii) the County is notified of such failure or should have been so notified pursuant to the provisions of Section 6.6, whichever is earlier.

7.1.3. The Authority shall fail to pay any indebtedness due any third person and such failure shall continue beyond any applicable grace period, or the Authority shall suffer

to exist any other event of default under any other agreement binding the Authority.

7.1.4. Any representation, warranty or certificate made or furnished by the Authority in connection with this Agreement shall be materially false, incorrect or incomplete when made.

7.2. Acceleration. At the option of the County, but only upon notice to the Authority, upon the occurrence of an Event of Default, all obligations hereunder shall immediately become due and payable without further action or any kind.

7.3. Remedies. After any acceleration, as provided in Section 7.2, the County shall have, in addition to the rights and remedies given it by this Agreement, all those allowed by all applicable laws.

8. MISCELLANEOUS.

8.1. Entire Understanding; Amendments. This Agreement and the other agreements and instruments set forth as schedules, certificates or exhibits hereto contain the entire understanding of the parties hereto with respect to the subject matter contained herein. No alteration, amendment or modification of any of the terms of this Agreement shall be valid unless made by an instrument signed by each of the parties hereto.

8.2. Separability of Provisions. In case any one or more of the provisions of this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, such provision or provisions shall be deemed to be modified in any respect necessary to make it or them consistent with the

applicable law, regulation or official interpretation, and the validity, legality and enforceability of the remaining provisions hereof and thereof and any other application hereof and thereof shall not in any way be affected or impaired.

8.3. Survival of Representations, Warranties and Covenants.

The respective representations, warranties and covenants of the Authority contained herein, or in any schedule, exhibit or certificate delivered pursuant hereto, shall survive the consummation of the transactions contemplated by this Agreement and the Closing Date.

8.4. Parties in Interest. Nothing in this Agreement or any schedule, exhibit or certificate delivered pursuant hereto, whether express or implied, is intended or shall be construed to confer any rights or remedies under or by reason hereof or thereof on any person other than the parties to it, nor is anything herein or therein intended to relieve or discharge the obligation or liability of any third person to any party hereto, nor shall any provision give any third party any right of subrogation or action over or against any party hereto.

8.5. Attorneys' Fees. In the event any action in law or equity or arbitration or other proceeding is brought for the enforcement of this Agreement or in connection with any of the provisions of this Agreement, the successful or prevailing party or parties shall be entitled to reasonable attorneys' fees and other costs reasonably incurred in such action or proceeding, including those incurred prior to the institution of such action or proceeding.

8.6. Governing Law. Insofar as reference to State law may be required to construe this Agreement, this Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

8.7. Audits and Inspections. The Authority shall maintain complete program and financial records involving transactions related to the Project. Such records shall clearly indicate total receipts and expenditures by source and object classification. All records shall be available to the County for such use as the County sees fit. All financial records prepared by the Authority shall be open for audit or inspection by the County or any duly authorized audit representative for the term of the loan; and in the event any such audits determine discrepancies in the financial records, adjustments or clarification shall be made accordingly. The Authority shall keep all records in a manner that will provide an audit trail to the expenditures for which the loan support is provided, and all records shall be kept in a common file to facilitate audits and inspections.

8.8. Notices. Any notices or other communications required or permitted under this Agreement shall be sufficiently given if (i) delivered by hand; or (ii) sent by registered mail or certified mail, return receipt requested, postage prepaid:

To the County:

With copies to:

To the Authority: King County Museum of Flight Authority
9404 East Marginal Way South
Seattle, Washington 98108
Attention: Howard Lovering

With copies to: B. Gerald Johnson
Preston, Thorgrimson, Ellis & Holman
5400 Columbia Seafirst Center
701 Fifth Avenue
Seattle, Washington 98104-7011

Jill D. Summers
Corporate Banking Officer
Rainier National Bank
Corporate Banking Division T23-3
Rainier Bank Tower
P.O. Box 3966
Seattle, Washington 98124

or at such other address as shall be furnished in writing by a party hereto. Any such notice or communication shall be deemed to have been given to a party to this Agreement as of the date so delivered or, if mailed, on the date actually received by the party to this Agreement to whom the notice or communication is addressed.

8.9. No Assignment. This Agreement may not be assigned by any party without the express written consent of the nonassigning parties hereto, which consent may not be unreasonably withheld. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of each party hereto and its successors and assigns.

8.10. Headings. The descriptive headings of the several Articles, Sections and subsections hereof are inserted for convenience only and do not constitute a part hereof.

8.11. Counterparts. This instrument may be executed in one or more counterparts, all of which shall be considered one and

the same agreement, and shall become effective when one or more counterparts have been signed by each of the parties hereto and copies or telecopies of the signature pages have been delivered to each of the other parties hereto.

8.12. Remedies. The parties hereto shall have any remedies for breach of this Agreement available to them provided by law or equity. Without limiting the generality of the foregoing, the parties agree that in addition to all other rights and remedies available at law or in equity, the parties shall be entitled to obtain specific performance of the obligations of each party to this Agreement and injunctive relief, and that in the event any action or proceeding is brought for specific performance, no party hereto will urge, as a defense, that there is an adequate remedy at law.

8.13. Further Actions. Each party hereto shall execute and deliver such other certificates, agreements and other documents and take such other actions as may reasonably be requested by the other parties in order to consummate or implement the transactions contemplated by this Agreement.

8.14. Limitation of Liability. The Authority is a public authority organized pursuant to Ordinance 7444 of King County, Washington, and Chapter 37, Laws of 1974, First Extraordinary Session (43rd Leg., 3d Ex. Sess.). Chapter 37, Laws of 1974, First Extraordinary Session (43rd Leg., 3d Ex. Sess.), provides as follows: "All liabilities incurred by such public corporation, commission or authority shall be satisfied exclusively from the assets and credit of such public

corporation, commission or authority and no creditor or other person shall have any right of action against the city, town or county creating such corporation, commission or authority on account of any debts, obligations or liabilities of such public corporation, commission or authority."

IN WITNESS WHEREOF, each of the parties hereto has executed this Agreement on this _____ day of _____, 1989.

KING COUNTY

By _____
Its _____

KING COUNTY MUSEUM OF FLIGHT
AUTHORITY

By _____
Its _____