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September 25 2018  
KAS Lease – LLC

Sponsor: Upthegrove

[khm]

Proposed No.: 2018-0283

1 **AMENDMENT TO PROPOSED ORDINANCE 2018-0283, VERSION 1**

2 Beginning on page 1, line 17, strike everything through page 2, line 19, and insert:

3        "SECTION 1. Contingent upon the execution by Kenmore Aero Services, LLC,  
4 and the county of a lease amendment in substantial the same form as Attachment B to this  
5 ordinance, the King County council authorizes the executive to execute a lease with  
6 Kenmore Aero Services, LLC, substantially in the form of Attachment A to this  
7 ordinance and authorizes the executive to take all actions necessary to implement the  
8 terms of the lease as amended by Attachment B to this ordinance."  
9

EAR  
9/25/18

10 Insert Attachment B, Lease Amendment No. 1, dated September 25, 2018.

11  
12 ***EFFECT: Adding Attachment B to this ordinance, the first amendment to the original***  
13 ***Lease Agreement, which is attachment A to this ordinance.***

14 ***The first amendment would clarify the distinction between transferring an equity***  
15 ***interest in the lessee or its individual members and assigning or transferring the lease.***

16 ***Adds provisions regarding a "transfer of interest" (change in more than one-third of***  
17 ***lessee's membership or a change in more than half of the interest in the lessee***

DV →  
adopted

18 *member's interests) to follow the existing provisions when the lessee seeks to assign or*  
19 *transfer the lease:*

- 20 • *Provides sixty day advance written notice of a transfer of interest,*
- 21 • *Provides for County to receive information to establish the financial*  
22 *wherewithal and managerial/operational experience of the new members,*
- 23 • *Requires County's consent to the transfer of membership interests*
- 24 • *Requires a "Transfer of Interest Premium" which equals 75% of premium*  
25 *derived from the transfer of interest excluding certain credits, and*
- 26 • *Provides the County with discretion to require assurances from new members*  
27 *(i.e. performance bond or personal guarantees).*

## LEASE AMENDMENT No. 1

This LEASE AMENDMENT No. 1 ("Lease Amendment") is made and entered into as of the date of the last authorized signature by and between Kenmore Aero Services, LLC, a Washington limited liability company ("Lessee") and King County, a political subdivision of the State of Washington ("Lessor"), together referred to as the "Parties."

### RECITALS

A. Lessor and Lessee are entering into a Lease for that certain Premises of approximately 415,568 square feet, located at 8535, 8555 and 8600 Perimeter Road South, Seattle WA 98108. Lessee executed the Lease on May 15, 2018 (the "Lease").

B. The Parties agree that Lessor's execution of the Lease is contingent upon the Lessee agreeing to the terms of this Lease Amendment and this Lease Amendment being executed by the Parties.

C. The Parties agree that this Lease Amendment may be executed by the Parties prior to, or simultaneously with, execution of the Lease.

D. The Parties desire to modify the Lease as set forth herein.

NOW THEREFORE, in consideration of the mutual promises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lessor and Lessee agree to amend the Lease pursuant to the terms and conditions contained herein. In the event of a conflict between terms defined in the Lease and in this Lease Amendment, the definitions herein shall control. The recitals are hereby incorporated into this Lease Amendment as if fully set forth below.

### AGREEMENT

1. Section 31 of the Lease is hereby deleted in its entirety and replaced with the following:

31. ASSIGNMENTS.

A. Lessee shall not assign, transfer, mortgage, encumber or allow any lien to attach to this Lease or any interest therein, nor grant an option for such an assignment or transfer for the whole or any part of the Premises, nor shall this Lease or any interest hereunder 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, conditioned or delayed. Lessee is a limited liability company, the members of which are also limited liability companies ("Original Upstream Members" which definition shall also include any transferees or assignees for the purposes of an Exempt Transfer as described in Section 31.A.1 below). By executing this Lease, Lessee agrees that if a Change of Control or Change of Majority Ownership (as defined below) of Lessee occurs at any time during the term of this Lease, then such an event shall be deemed a "transfer of interest" and shall

be subject to the provisions of Subsection 4 to this Section 31.A. The combined, overall interests of the Original Upstream Members in Lessee are referred to herein as the "Overall Equity Interests." A "Change of Control" shall be deemed to occur if one-third or more of the Overall Equity Interests are acquired or otherwise become owned or controlled, directly or indirectly, by persons or entities that were not, as of the date Lessee executed this Lease, either equity holders of Lessee or equity holders (directly or indirectly) of the Original Upstream Members (the "New Investors"). A "Change of Majority Ownership" shall be deemed to occur if one-half or more of the Overall Equity Interests in Lessee is acquired or otherwise become owned, directly or indirectly, by New Investors that were not, as of the date Lessee executed this Lease, either equity holders of Lessee or equity holders (directly or indirectly) of the Original Upstream Members. At the time of Lessee's executing this Lease, each Original Upstream Member owns a one-third equity interest in Lessee. For purposes of illustration based on the ownership interests of the Original Upstream Members at the time of execution of this Lease: (i) an acquisition by a New Investor of 100% of the equity interests of one of the Original Upstream Members would constitute a Change of Control but would not constitute a Change of Majority Ownership; (ii) an acquisition by a New Investor of more than 50% of the equity interests of any one of the Original Upstream Members would constitute a Change of Control but would not constitute a Change of Majority Ownership (iii) an acquisition by a New Investor of (A) less than 50% of the equity interests of any one of the Original Upstream Members and (B) less than 50% of the equity interests in another Original Upstream Member would not constitute a Change of Control and would not constitute a Change of Majority Ownership; (iv) an acquisition by a New Investor of (A) 100% of the equity interests of one of the Original Upstream Members and (b) an acquisition of more than 50% of the equity interests in another Original Upstream Member would constitute a Change of Control and would constitute a Change of Majority Ownership (v) an acquisition by a New Investor of Equity Interests from two or more Original Upstream Members that aggregate at least one-third of the Overall Equity Interests would constitute a Change of Control but would not constitute a Change in Majority Ownership; and (vi) an acquisition by one or more New Investors of Overall Equity Interests from one or more Original Upstream Members that aggregate at least 50% of the Overall Equity Interests would constitute a Change of Control and a Change of Majority Ownership. For purposes of this Section 31, Lessee may not engage in a series of transfers of equity interests from Original Upstream Members to New Investors that individually would not constitute a Change of Control or Change of Majority Ownership, as applicable, as a subterfuge to avoid the effects of this Section 31. For the purposes of this Section 31, Lessee executed this Lease on May 15, 2018.

1. The foregoing notwithstanding, the following (the following transactions are sometimes referred to hereinafter as an "Exempt Transfer") shall not be deemed an assignment and shall not require King County's consent and without right of termination or entitlement to any consideration: (a) a transfer (directly or indirectly) of membership interests or other equity interests in Lessee (or in any Original Upstream Member or equity holder thereof) (i) by reasons of the death of the person holding such interests or (ii) to any member

or members of the immediate family of a person holding such interests or to trusts for their benefit, (b) a transfer (directly or indirectly) of membership interests or other equity interests in Lessee (or in any Original Upstream Member or equity holder thereof) to any other Original Upstream Member (or direct or indirect owner thereof), or (c) an assignment of Lessee's leasehold estate and Lessee's interest in the Improvements for collateral purposes to a nationally recognized lending institution in connection with the financing of the initial Improvements or the lending institution's subsequent realization on such assignment of collateral. Any Exempt Transfer made in violation of this Section 31.A.1 shall be deemed a default under the Lease and subject to the provisions of Section 24 and no notice or cure provision shall apply. For this Section 31.A.1 only, any assignee or transferee of an Original Upstream Member shall be deemed an Original Upstream Member.

2. If King County shall give its consent to any assignment or transfer or if an assignment or transfer is made pursuant to this Section 31 that does not require King County's consent, this Section 31 shall nevertheless continue in full force and effect and no further assignment or transfer shall be made except in compliance with this Section 31.
3. If Lessee desires to assign or transfer, or grant an option for assignment or transfer, for the whole or part of the Premises, or any portion of this Lease or any interest herein, and such assignment or transfer requires King County's consent under Section 31.A, Lessee shall notify King County in writing of said desire and the details of the proposed agreement at least sixty (60) days prior to the proposed date of assignment or transfer, or grant of an option therefor, to an assignee/transferee. The notification shall include but not be limited to a financial statement of the assignee/transferee, including but not limited to a full disclosure of the monetary payment or any other consideration involved, and an affidavit from the assignee/transferee stating it has examined this Lease, and, understanding this Lease, agrees to assume and be bound by all of 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 grant of an option therefor. Lessee shall also provide any financial or other information regarding the proposed assignment or the assignee/transferee, demonstrating the assignee's ability to perform the Lessee's obligations under the Lease, reasonably requested by King County (all of the aforementioned documents are collectively referred to as the "Transfer Documents").
4. At least sixty (60) days prior to a transfer of interest event requiring King County's consent as described in Section 31.A (i.e., any Change of Control and/or any Change of Majority Ownership), Lessee and any affected equity holder shall provide written notice to King County of the proposed transfer of interest. Lessee and any affected equity holder shall also provide any financial or other information regarding the transfer of interest. At any time subsequent to the notice, the Lessee and affected equity holder agree to provide additional

information reasonably requested by King County so as to establish the related and relevant managerial and operational experience and financial wherewithal of the transferee. At most 30 days from the last date the Lessee has delivered the written notice of the proposed transfer of interest and all financial and other information required or requested to be provided to King County, unless more time is reasonably requested by King County, King County will advise the Lessee and any affected equity holder whether King County consents to the transfer of interest. Such determination shall not be unreasonably withheld, conditioned, or delayed by King County and Lessee may in good faith dispute the reasonableness of King County's disapproval of a request. Any consent by King County to a transfer of interest that constitutes a Change of Majority Ownership will require the payment of a "Transfer of Interest Premium." King County will determine this premium, in consultation with the Lessee and the affected equity holder, using the concepts set out in Section 31.E, including obtaining seventy-five (75%) of the premium derived from the transfer of interest. If the transfer of interest is completed without King County's written consent, the provisions of Section 31.F will apply. Additionally, and in its reasonable discretion, King County may condition its consent on any transfer of interest that constitutes a Change of Control or Change of Majority Ownership upon receipt of financial and other assurances reasonably satisfactory to King County, such as performance bonds or personal guarantees, as security for performance of Lessee's obligations, and other assurances specifically limited to the relevant managerial and operational experience of the transferee. Further, if any Change of Control or Change of Majority Ownership results in a change ownership structure from that in place at the time of execution of this Lease, the Parties shall cooperate in good faith to amend this Section 31 after the transfer of interest in order to take into account any such changes while also continuing to implement the principles of this Section 31.

- B. Except pursuant to a transfer or assignment that is an Exempt Transfer, King County reserves the Right of First Refusal (defined as a right to elect to take specified property or an interest therein, or an option, at the same price and on the same terms and conditions as those contained in a good faith offer by a third party if the Lessee manifests a willingness to accept the offer) in the event Lessee attempts to assign or transfer or grant an option for assignment or transfer, for the whole or part of the Premises, or all or any portion of this Lease or any interest herein in a transaction that under Section 31.A requires King County's consent, provided that King County shall not have a Right of First Refusal in connection with a Change of Control, but will for a Change of Majority Ownership. If King County exercises the Right of First Refusal, Lessee shall assign or transfer to King County, and King County shall acquire, the Lease or the interest therein, or the option therefor, on and subject to all of the terms and conditions of the proposed assignment or transfer or option therefor.
- C. Prior to any assignment, transfer or any option to assign or transfer of the whole or part of the Premises, or all or any portion of this Lease or any interest herein being

effective, excluding any Exempt Transfer, and excluding any transfer of interest not constituting a Change of Majority Ownership, Lessee shall pay King County seventy-five percent (75%) of the Assignment Premium derived from that assignment or transfer. "Assignment Premium" shall mean (1) all rent, additional rent, and/or other moneys, property, and other consideration of every kind whatsoever received by Lessee as assignor from the assignee/transferee for, or by reason of, the assignment or transfer (including all amounts received by Lessee for any Included Property), less (2) the credits detailed in Section 31.D. "Included Property" means only the leasehold improvements and fixtures and all machinery, equipment, furniture, furnishings, supplies, inventory and other personal property, owned by Lessee that are transferred to the assignee or transferee as part of the transaction. Lessee shall pay the Assignment Premium to King County when Lessee receives payment from such assignee or transferee.

- D. Credits. The following shall be subtracted from the consideration that otherwise would be included in the calculation of the Assignment Premium due to King County under Section 31.C:
1. Any transactional costs, fees or commissions actually paid by Lessee as assignor to procure the assignment or transfer, including, without limitation, fees and commissions paid to attorneys, professionals and other consultants (such as real estate advisors, aviation industry experts, environmental consultants, surveyors, certified public accountants, civil and other engineers and architects) and licensed real estate brokers, together with Lessee's actual internal costs and expenses reasonably allocable to the transaction in accordance with sound accounting practices, as itemized in a written report thereof provided by a certified public accountant in form and substance reasonably satisfactory to King County;
  2. The actual cost of alterations and improvements undertaken by Lessee, or undertaken by the transferee or assignee to the extent paid for or reimbursed by Lessee, solely to prepare the space for the assignee or transferee, including, without limitation, costs of planning, design, permitting and construction, including labor, materials and Washington state sales and use taxes, (if the consideration for the assignment or transfer is to be paid in installments, amortized over the period of payment, commencing with the date on which the assignment or transfer commences);
  3. The greater of either: a) the unamortized cost of the Included Property determined on a straight-line basis over the term of the Lease as certified to King County by Lessee's independent certified public accountant; or b) the fair market value of the Included Property as determined by an appraisal conducted by an independent and certified appraiser. Lessee shall pay the cost of such certification or appraisal and may deduct such costs from the Assignment Premium. If King County disputes the unamortized cost or fair market value of the Included Property as determined by the certified public accountant or

appraiser, the procedures set forth in Section 11.C shall be followed to determine the appropriate cost or fair market value; and

4. The unamortized transactional costs, fees or commissions, determined on a straight-line basis over the original term of the Lease, actually paid by Lessee (Assignor) to procure the Lease itself (or, if only a partial interest in the Lease is being assigned or transferred, a proportionate amount of such costs, fees and commissions), including, without limitation and without duplicating any of the costs included in Section 31.D.1, fees and commissions paid to attorneys, professionals and other consultants (such as real estate advisors, aviation industry experts, environmental consultants, surveyors, certified public accountants, civil and other engineers and architects) and licensed real estate brokers, together with Lessee's actual internal costs and expenses reasonably allocable to the transaction in accordance with sound accounting practices, as itemized in a written report thereof provided by a certified public accountant in form and substance reasonably satisfactory to King County.
5. The actual rental income value of any subleases that are part of the contemplated assignment based on an opinion of a certified public accountant as certified to King County in a form reasonably satisfactory to King County.
6. The "goodwill value" or "going concern value" of any business being sold or transferred as a part of the assignment. Unless otherwise agreed to by Lessee and King County, "goodwill value" or "going concern value" shall be determined by a qualified valuation expert employing standard and generally recognized methods of business valuation. Lessee shall pay the cost of such valuation and may deduct such costs from the Assignment Premium.

E. Credits Applicable to Transfers of Interest Only. The following shall be subtracted from the consideration that otherwise would be included in the calculation of the Transfer of Interest Premium due to King County under Section 31.A.4:

1. Any transactional costs, fees or commissions actually paid by Lessee as assignor to procure the transfer of interest, including, without limitation, fees and commissions paid to attorneys, professionals and other consultants (such as real estate advisors, aviation industry experts, environmental consultants, surveyors, certified public accountants, civil and other engineers and architects) and licensed real estate brokers, together with Lessee's actual internal costs and expenses reasonably allocable to the transaction in accordance with sound accounting practices, as itemized in a written report thereof provided by a certified public accountant in form and substance reasonably satisfactory to King County;
2. The actual cost of alterations and improvements undertaken by Lessee, or undertaken by the transferee or assignee to the extent paid for or reimbursed by Lessee, reasonably allocable on a proportional basis to the transfer of interest



and made to prepare the space for the assignee or transferee, including, without limitation, costs of planning, design, permitting and construction, including labor, materials and Washington state sales and use taxes, (if the consideration for the assignment or transfer is to be paid in installments, amortized over the period of payment, commencing with the date on which the transfer of interest occurs);

3. The greater of either: a) the unamortized cost of the Included Property determined on a straight-line basis over the term of the Lease and reasonably allocable on a proportional basis to the transfer of interest, as certified to King County by Lessee's independent certified public accountant; or b) the fair market value of the Included Property reasonably allocable on a proportional basis to the transfer of interest, as determined by an appraisal conducted by an independent and certified appraiser. Lessee shall pay the cost of such certification or appraisal and may deduct such costs from the Transfer of Interest Premium. If King County disputes the unamortized cost or fair market value of the Included Property as determined by the certified public accountant or appraiser, the procedures set forth in Section 11.C shall be followed to determine the appropriate cost or fair market value;
4. The unamortized transactional costs, fees or commissions, determined on a straight-line basis over the original term of the Lease, actually paid by Lessee (Assignor) to procure the Lease itself and reasonably allocable on a proportional basis to the interest being transferred, including, without limitation and without duplicating any of the costs included in Section 31.D.1, fees and commissions paid to attorneys, professionals and other consultants (such as real estate advisors, aviation industry experts, environmental consultants, surveyors, certified public accountants, civil and other engineers and architects) and licensed real estate brokers, together with Lessee's actual internal costs and expenses reasonably allocable to the transaction in accordance with sound accounting practices, as itemized in a written report thereof provided by a certified public accountant in form and substance reasonably satisfactory to King County; and
5. The "goodwill value" or "going concern value" of any business being sold or transferred as a part of the transfer of interest and that is reasonably allocable on a proportional basis to the interest being transferred. Unless otherwise agreed to by Lessee and King County, "goodwill value" or "going concern value" shall be determined by a qualified valuation expert employing standard and generally recognized methods of business valuation. Lessee shall pay the cost of such valuation and may deduct such costs from the Transfer of Interest Premium.

- F. Once King County has received the Transfer Documents pursuant to Section 31.A.3, King County will review the request and respond with either an approval or disapproval of the request (or, if King County so elects, King County's exercise of the

Right of First Refusal provided for in Section 31.B) at most 30 days from the date King County receives all the Transfer Documents unless more time is reasonably requested by King County. Approval of any such request will not be unreasonably withheld, conditioned or delayed and Lessee may in good faith dispute the reasonableness of King County's disapproval of a request. King County has the option, in its sole discretion, to charge to Lessee a reasonable fee for administrative costs actually incurred reviewing and processing any requests for assignment or transfer pursuant to this Section, not to exceed, however, \$1,500.00.

Tenant's sole remedy for King County's failure to timely respond to a request for its consent to an assignment shall be declaratory relief or specific performance, and shall not include monetary or consequential damages.

- G. Any assignment, transfer or transfer of interest made in violation of this Section 31 may be deemed by King County as a default under the Lease and subject to the provisions of Section 24 and no cure provision shall apply.

Except as herein above stated, all other covenants, agreements, stipulations or conditions of the Lease shall continue and remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have subscribed their names.

**LESSEE:**

**LESSOR:**

**KENMORE AERO SERVICES, LLC,**  
a Washington limited liability company

**KING COUNTY,** a political subdivision  
of the State of Washington

BY: \_\_\_\_\_  
Michael A. Luigs  
President

BY: \_\_\_\_\_  
Anthony Wright, Director  
Facilities Management Division

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

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

CONSENT:

KING COUNTY INTERNATIONAL AIRPORT

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

Michael Colmant, Interim Director

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

APPROVED AS TO FORM:

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

Timothy Barnes, Senior Deputy  
Prosecuting Attorney

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

STATE OF WASHINGTON )  
                                      ) ss.  
COUNTY OF KING            )

On this \_\_\_ day of \_\_\_\_\_, 2018, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Anthony Wright, to me known to be the Director of the King County Facilities Management Division, a Political Subdivision of the State of Washington, who executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that said person was authorized to execute the said instrument for King County.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

STATE OF WASHINGTON )  
                                      ) ss.  
COUNTY OF KING            )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2018, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Michael A. Luigs, to me known to be the President of Kenmore Aero Services, LLC, a Washington limited liability company, who executed the foregoing instrument and acknowledge the said instrument to be the free and voluntary act and deed of said company, for the uses and purposes therein mentioned, and on oath stated that said person was authorized to execute said instrument on behalf of Kenmore Aero Services, LLC.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_