

ORDINANCE 19305

ATTACHMENT A:

LEASE AGREEMENT

KING COUNTY INTERNATIONAL AIRPORT

7277 Perimeter Road South
Seattle, Washington 98108
(206) 296-7380

LEASE AGREEMENT

Air Cargo Provider

1. **PARTIES.** This Lease ("Lease"), dated the ____ day of _____ 2020 (for reference purposes only), is entered into between **King County**, a municipal corporation and a political subdivision of the State of Washington, and **United Parcel Service, Inc.**, an Ohio corporation ("Lessee").

2. **PREMISES.** King County hereby rents to Lessee, upon the following terms and conditions, premises located in King County, Washington (hereinafter referred to as the "Premises"), as more particularly described in **Exhibit A**, "Legal Description of Premises Leased" attached hereto and incorporated by this reference herein, including rights of access across adjoining land owned by Lessor (including taxiways) and **Exhibit A-1**, "Diagram of Premises Under Lease", attached hereto and incorporated by this reference herein, and commonly known as:

Perimeter Road South, Seattle WA 98108
(Approximately 564,000 square feet)

The Premises shall initially include the ramp area depicted in **Exhibit A-1**, "Ramp Area", attached hereto and incorporated by this reference herein. The Ramp Area is not included in Exhibit A, "Legal Description of Premises Leased."

The Premises are situated within King County International Airport with its principal place of business located at 7277 Perimeter Road South, Suite 200, Seattle, WA 98108 ("Airport" or "KCIA").

3. **TERM.**

A. **Lease Term.** The term of this Lease is for twenty (20) years (the "Lease Term"). The Lease shall commence on the ____ day of _____, 2020, (the "Commencement Date"), and expire on the ____ day of _____, 2040 (the "Expiration Date"), unless terminated earlier or extended in accordance with this Lease.

B. **Ramp Area Term.** The Ramp Area shall initially be part of the Premises, commencing on the Commencement Date and ending on the ____ day of _____, 2024 (the "Ramp Area Expiration Date")(collectively, the "Ramp Area Term").

C. **Extension Options.** Provided that Lessee is not in default of any of its obligations under this Lease, either at the time of the exercise of the options set forth herein or at the time of the commencement of the extension periods hereunder, Lessee may elect to extend the Lease Term ("Extension Option(s)") for the Premises, excluding the Ramp Area, for three (3) additional periods

of five (5) years each (collectively, the "Extension Periods"; individually the "First Extension Period"; the "Second Extension Period"; and the "Third Extension Period") by delivering to King County not later than six (6) months before the expiration of the Initial Lease Term or the First Extension Period or Second Extension Period, as the case may be, a written notice (the "Option Notice") of such election. The First Extension Period shall commence on the day immediately following the last day of the Initial Lease Term, and the Second Extension Period shall commence on the day immediately following the last day of the First Extension Period, and the Third Extension Period shall commence on the day immediately following the last day of the Second Extension Period, and each extension period shall be subject to all of the terms and conditions of this Lease, including but not limited to, fair market rental rate adjustments as provided in Section 11. The Extension Options set forth herein are not personal to Lessee and may be exercised by any assignee or transferee as permitted by Section 31, provided that no such Extension Option is assignable separate and apart from this Lease. Any reference to the "Lease Term" will include any Extension Periods which are then in effect. The Ramp Area is not subject to the Extension Options.

4. RENT. For purposes of the calculation of Rent, the Premises shall exclude the Ramp Area. Lessee shall pay to King County a monthly rent of \$89,300.00 payable in advance on or before the first day of each and every calendar month of the Lease Term starting on the Commencement Date through the four (4) year anniversary of the Commencement Date ("Rent"). The Rent is initially calculated based on 564,000 square feet of land at \$1.90 /sf/year. Commencing on the four (4) year anniversary of the Commencement Date, the monthly Rent shall be increased to \$144,290.00 which is calculated based on 564,000 square feet of land at \$3.07 /sf/year, payable in advance on or before the first day of each and every calendar month of the Lease Term, as may be extended, which increase shall not be subject to dispute or arbitration as otherwise provided in Section 11. Following the five (5) year anniversary of the Commencement Date, the Rent may be adjusted by King County as provided in Section 11. Lessee is exempt from payment of Leasehold Excise Tax for purposes of this Lease as provided in Section 10.B. If the Commencement Date or any subsequent rental rate adjustment date, or day an increase in Rent becomes due, falls on a day other than the first day of the month, Rent shall be prorated accordingly.

In lieu of payment of monthly rent for the Ramp Area, Lessee shall construct the Ramp Area Improvements at its sole cost of no less than One Million Eight Hundred Thousand (\$ 1,800,000.00), which equals an equivalent monthly rental rate of \$37,713 amortized on a straight-line basis over the Ramp Area Term. King County and Lessee agree that the cost of the Ramp Area Improvements amortized over the Ramp Area Term, along with other valuable consideration provided herein, constitutes fair market rental value for the Ramp Area.

All Rent shall be made payable to the KING COUNTY TREASURY and are to be received in the office of:

King County International Airport
7277 Perimeter Road South, Suite 200
Seattle, Washington 98108

The Rent is exclusive of any other sale, franchise, business or occupation, or other tax based on rents. Should any such taxes apply during the Lease Term, the Rent shall be increased by such amount.

5. SECURITY AND DAMAGE DEPOSITS. Intentionally Omitted.

6. USE. Lessee shall use said Premises for operation Lessee's business as a certified (14 CFR Part 121) major air cargo provider (the "Permitted Use"). Lessee's Permitted Use of the Premises shall be subject to, and this Lease shall be subordinate to, the Airport Minimum Standards, as amended from time to time, which are fully incorporated into the terms and conditions of this Lease. Lessee shall obtain, at Lessee's sole cost and expense, any and all licenses and permits necessary for Lessee's contemplated use of the Premises. Lessee agrees not to do or permit anything to be done in or about the Premises which will unreasonably and materially obstruct or interfere with the rights of other tenants or occupants of the Airport, constitute a nuisance, or injure or unreasonably annoy them, or use or allow the Premises to be used for any unlawful or unreasonably objectionable purpose. Lessee shall neither commit nor suffer any waste to the Premises and shall, at its sole cost and expense, keep and maintain the Premises and all improvements thereon in good order and repair and safe condition, and the whole of the Premises, including all Improvements (as defined below) and landscaping, in a clean, sanitary and attractive condition, reasonable wear and tear excepted.

No other uses, activities or operations, shall be conducted by the Lessee from the Premises without first obtaining the written consent of King County, which consent shall not be unreasonably withheld, conditioned or delayed. Lessee shall not engage in the provision of aeronautical services to the public or any third party without the advance written consent of King County at its sole discretion. Nothing herein shall prevent Lessee from self-fueling or servicing its own aircraft or performing any other service or activity permitted by the Federal Aviation Administration as a 14 C.F.R. Part 121 major air cargo provider.

To the best of King County's knowledge, there are no conditions, restrictions or encumbrances to which the Premises and Project (as defined below) are subject that would preclude the redevelopment and use of the Premises by Lessee as provided for in this Lease except for the limitations and conditions imposed by the EMF Agreement (as defined in Section 7).

7. CONSTRUCTION OF IMPROVEMENTS.

A. **Scope of Improvements.** Lessee shall construct the following on the Premises: a permanent cargo handling facility providing for sortation and containerization, space for operations, offices, equipment storage and maintenance, which at minimum shall include: onsite storm water collection and treatment (including oil/water separation); onsite deicing fluid collection and removal; Ramp Area Improvements (defined below); demolition of the 7300 Building ("7300 Building") and construction of a vehicle parking area; and any related accessory improvements as required by applicable development standards, (collectively, the "Improvements" or "Project"). Lessee shall employ the use of commercially reasonable development standards in design and construction of the Improvements. Upon execution of this Lease, Lessee shall submit to King

County a construction phasing plan containing a timeline for each phase of construction, including a planned completion date for the Project, which construction phasing plan Lessee shall update from time to time as needed.

B. Ramp Area Improvements. As part of the Improvements, Lessee shall also construct improvements to the Ramp Area (“Ramp Area Improvements”), as described and depicted in **Exhibit B**, “Conceptual Plan”, which Ramp Area Improvements shall be sufficient to accommodate Lessee’s Permitted Use. Lessee shall ensure that its contractors comply with RCW 39.12 for the construction of the Ramp Area Improvements.

C. 7300 Building Demolition. As an additional part of the Improvements, Lessee shall demolish the existing 7300 Building, as described and depicted in **Exhibit B**, “Conceptual Plan”, and construct a vehicle parking area for Lessee’s Permitted Use.

D. Plans and Permitting. King County hereby approves the conceptual plans for the Improvements as submitted by Lessee for the Premises, as depicted in **Exhibit B**, attached hereto and incorporated by this reference herein, subject to King County’s review and approval of Lessee’s detailed plans and specifications for the Improvements as provided below in this Section 7. Lessee acknowledges that King County’s Department of Local Services, Permitting Division (“Permitting Division”) is the building permitting agency for the Project. Lessee shall submit to the Permitting Division, a building permit application (including detailed plans and specifications) for the Improvements described in **Exhibit B** within ninety (90) days after execution of this Lease; however, by entering into this Lease, King County does not warrant that the Permitting Division will issue any required permit. Lessee shall also use commercially reasonable efforts to obtain all permits for the Project (in final, unappealable form) from agencies with jurisdiction, including the requirements set forth in Section 14.C of this Lease, in a form satisfactory to King County (“Project Approvals”) no later than one (1) year from the date of King County Council approval of the Lease (the “Outside Permit Date”). The Project Approvals do not include those for the demolition and redevelopment of the 7300 Building. Notwithstanding any provision to the contrary herein, the time limits provided in this Section 7.D shall not apply to the demolition of the 7300 Building. Lessee shall submit an application for the demolition of the 7300 Building to the Permitting Division within ninety (90) days of receiving written notification from King County that it has obtained regulatory approval to undertake such demolition.

E. Demolition and Construction of Improvements. Lessee shall commence demolition, at Lessee’s sole expense, of existing improvements on the Premises within thirty (30) days of the date all Project Approvals are obtained, or earlier at Lessee’s option, provided Lessee has obtained the necessary permits (the “Demolition Commencement Date”), except that the Demolition Commencement Date shall not apply to the demolition of the 7300 Building. Lessee shall thereafter undertake and complete the permitted Improvements within forty-eight (48) months following the date all Project Approvals are obtained, except that Lessee shall undertake and complete the Ramp Area Improvements within twenty-four (24) months following the date all Project Approvals are obtained. Notwithstanding the foregoing, Lessee shall commence the demolition of the 7300 Building within thirty (30) days of obtaining permits and approvals for such demolition and thereafter timely initiate redevelopment of the former 7300 Building site into a vehicle parking area. If Lessee determines, in its sole discretion, that it cannot obtain the Project

Approvals to enable it to achieve Substantial Completion for the Project, which for the purposes of this Lease means the date on which Lessee first obtains a Certificate of Occupancy from the Permitting Division for the Improvements, then Lessee may terminate this Lease by written notice to King County given within thirty (30) days following the Outside Permit Date, with all Rent paid forfeited by Lessee to King County and Lessee responsible for all costs it incurred arising out of or related to the Lease, including but not limited to permit costs, design and development expenses, construction costs, environmental remediation, and costs associated with the demolition of the existing improvements. If Lessee has timely filed applications for the Project Approvals but the Project Approvals have not been issued thirty (30) days prior to the Outside Permit Date, then Lessee may extend the Outside Permit Date one time by an additional six (6) months by providing written notice to King County. If Lessee is unable, in its sole discretion, to obtain the permits and approvals from the Permitting Division to demolish and redevelop the 7300 Building and complete the redevelopment within forty-eight (48) months from the date of King County Council approval of the Lease, Lessee may terminate this Lease as to the portion comprising the 7300 Building only, with all rentals paid forfeited by Lessee to King County and Lessee shall be responsible for all costs it incurred arising out of or related to the 7300 Building, including but not limited to, permit costs, design and development expenses, construction costs, environmental remediation and costs associated with any demolition of preexisting improvements. Should Lessee elect to terminate the portion of the Lease comprising the 7300 Building, King County shall adjust the Rent on a square foot basis as of the date of such termination of said portion.

Notwithstanding the foregoing, and with the exception of delays caused by Force Majeure (as defined below) which time shall be added to the time limits imposed herein, if Lessee fails to achieve Substantial Completion of the Improvements within forty-eight (48) months following the Outside Permit Date (the "Completion Date"), or twenty-four (24) months following the Outside Permit Date for the Ramp Area Improvements, as reasonably determined by King County, and fails to cure such lack of Substantial Completion within ninety (90) days after written notice from King County (or if such cure cannot reasonably be effected within said 90-day period, then Lessee shall commence such cure within said 90-day period and prosecute such cure to completion with diligence), then at the election of King County, this Lease may be terminated and all rentals paid shall be forfeited by Lessee to King County and Lessee shall be responsible for all costs it incurred arising out of or related to the Lease, including but not limited to, permit costs, design and development expenses, construction costs, environmental remediation and costs associated with any demolition of preexisting improvements. The foregoing notwithstanding, nothing herein shall be construed as limiting or preventing Lessee's right to pursue cost recovery from the Boeing Company as provided in the EMF Agreement (defined below). Notwithstanding the foregoing, failure of Lessee to commence demolition and redevelopment of the 7300 Building shall not constitute a basis for termination of this Lease.

In the event King County or Lessee exercises termination rights under this Section 7, Lessee shall have no obligation or liability with respect to reconstructing improvements or continuing to pursue the construction of new improvements on the Premises in the event Lessee has commenced or completed the demolition of the existing improvements in accordance with this Lease at the time of such termination.

The total Value of the Improvements described in this Section shall be at least Thirty-seven Million Dollars (\$37,000,000), as evidenced by written documentation to be approved of by King County prior to the commencement of construction. The "Value of the Improvements" as used in this Section 7, includes actual demolition costs, as well as permitting and actual costs associated with the design, permitting and construction of the Improvements to be erected on the Premises. The Value of Improvements satisfies the capital investment requirement of King County Code 4.56.180.A.2 for long-term leases on King County property. In accordance with Section 21, Lessee shall be required to provide King County with a Contractor's Performance and Payment surety bond or letter of credit for the full cost of the Improvements.

F. Current Conditions/EMF Agreement. The Boeing Company ("Boeing") is the responsible party for groundwater contamination related to a former electronics manufacturing facility previously located on the Premises, which is the focus of a groundwater remediation project. The remediation is continuing as of the Commencement Date of this Lease and further monitoring and removal of groundwater contaminants may be required by the United States Environmental Protection Agency ("EPA") in the future. Lessee shall cooperate with Boeing's active remediation efforts as well as any future monitoring and removal actions required by the EPA and Lessee acknowledges and agrees that this Lease is subordinate to the requirements of the "EMF Agreement and Lease Amendment," dated January 27, 2009, between King County and the Boeing Company (the "EMF Agreement"), and Lessee shall allow reasonable access to the Premises with reasonable advance notice from King County and/or Boeing for the purpose of maintaining monitoring wells associated with the groundwater remediation effort and any future monitoring of groundwater or removal of contaminants from beneath the ground. The EMF Agreement is attached to and fully incorporated into this Lease by this reference as **Exhibit C**. Lessee shall protect and preserve the monitoring wells related to the EMF Agreement (the "Boeing Wells") during all phases of construction of the Improvements and during the Lease Term (including any Extension Periods). If the monitoring wells are damaged during the Lease Term, as may be extended, or require relocation during construction of the Improvements or at any time during the Lease Term, Lessee shall repair or relocate (as applicable) the monitoring wells pursuant to the procedures established in the EMF Agreement, with any breach of Lessee's obligations regarding the Boeing Wells subject to the provisions of Section 24. Alternatively, if Boeing should elect to relocate or reinstall the Boeing Wells during the Lease Term, Lessee shall reasonably accommodate Boeing's work on the Premises. Should Lessee discover soil or groundwater contamination during construction of the Improvements that is attributable to known contamination by Boeing, as detailed in the EMF Agreement (the "Boeing Contaminants"), Lessee shall have the option, but not the obligation, to remediate any such contamination according to the procedures set forth in the EMF Agreement. Should Lessee elect to remediate or remove the Boeing Contaminants, King County shall fully cooperate with Lessee in pursuing Lessee's reimbursement from Boeing for any costs associated with such remediation or removal as provided in the EMF Agreement. Lessee shall further comply with any orders or guidance issued by the EPA to King County regarding the former EMF site whether issued prior to or subsequent to the Commencement Date.

G. King County Groundwater Remediation Wells. King County also operates two additional sets of monitoring wells on the Premises related to other environmental remediation not related to the EMF Agreement (the "King County Wells"), and Lessee shall

preserve and protect the King County Wells during construction of the Improvements at no cost to King County, or decommission and relocate the King County Wells at the election of King County at no cost to King County. The King County Wells are depicted in the attached **Exhibit C-1**. Failure of Lessee to perform its obligations as provided herein relating to the King County Wells during construction of the Improvements and during the Lease Term shall be subject to the provisions of Section 24. Should the King County Wells, other than those which may be decommissioned or relocated by Lessee, cease normal function as a result of any action taken by Lessee, Lessee shall timely initiate any necessary repairs required to return the King County Wells to normal function, at Lessee's sole cost and expense. Lessee shall grant King County access to inspect, maintain and repair the King County Wells, upon reasonable advanced notice and in a manner that will not interfere with Lessee's business operations on the Premises.

H. Environmental Remediation-- Construction. Notwithstanding the provisions of Section 42.B(7), and except for the Boeing Contaminants, Lessee is solely responsible for all environmental remediation or removal of Hazardous Material (as defined in Section 42) on the Premises during the construction of the Improvements, regardless of the source of the Hazardous Material or the party responsible for its generation, provided however, that nothing in this Lease shall preclude Lessee from seeking contribution and/or reimbursement from any other party potentially responsible for the costs of Hazardous Material remediation or removal under any Environmental Laws (as defined in Section 42), excluding King County, including reimbursement of costs arising from the EMF Agreement. Lessee shall remediate Hazardous Materials under this Section 7 to the applicable cleanup standards under Environmental Laws that will allow for unrestricted use of the Premises with no environmental covenant or other deed restriction required to be recorded, unless Lessor, in its sole discretion, agrees otherwise in writing. In no event shall Lessee pursue cost recovery or a contribution action against King County for environmental remediation performed pursuant to this Section 7.

I. Force Majeure. All dates and timelines contemplated herein related to design and construction of the Improvements are subject to Force Majeure, including but not limited to severe weather and any other significant and impactful issue or event not within the reasonable control or mitigation of Lessee, and including any delay attributable to Lessee's good faith compliance with the EMF Agreement.

8. ENTIRE AGREEMENT AMENDMENTS. This Lease and all exhibits expressly incorporated herein by reference and attached hereto shall constitute the whole agreement between the parties. There are no terms, current or past representations, obligations, covenants or conditions other than those contained herein. No modification or amendment of this Lease shall be valid or effective unless evidenced by an agreement in writing signed by both parties.

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

TO COUNTY: King County, Real Estate Services
500 Fourth Avenue, Suite 830
Seattle, WA 98104-2337
Attention: Lease Administration

With a copy to: Airport Director
King County International Airport
7277 Perimeter Road South
Seattle, WA 98108-3844

TO LESSEE: UPS Airport Properties
1400 N. Hurstbourne Parkway
Louisville, KY
40223

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

10. LATE PAYMENT, TAXES, LICENSES, FEES AND ASSESSMENTS.

- A. LATE PAYMENTS. Lessee acknowledges that the late payment by Lessee to King County of any Rent or other sums due under this Lease will cause King County to incur administrative, collection, processing and accounting costs and expenses not contemplated under this Lease, the exact amounts of which are extremely difficult and impractical to fix. Therefore, if any Rent or other sum due under this Lease is not received by King County from Lessee by the fifteenth calendar day of the month in which said Rent or other sum is due (the "Delinquency Date"), Lessee shall immediately on the Delinquency Date pay to King County a late charge equal to the greater of (i) five percent (5%) of the amount of such Rent or other sum, or (ii) Five Hundred Dollars (\$500.00). King County and Lessee agree that this late charge represents a reasonable estimate of such costs and expenses and is fair compensation to King County for its loss caused by Lessee's nonpayment. Should Lessee pay said late charge but fail to pay contemporaneously therewith all unpaid amounts of Rent or other sums due under this Lease, King County's acceptance of this late charge shall not constitute a waiver of Lessee's default with respect to Lessee's nonpayment or prevent King County from exercising all other rights and remedies available to King County under this Lease or under law. Additionally, all such delinquent Rent or other sums, and all late charges not paid when due, shall bear interest for each day following their Delinquency Date until paid at a percentage rate equal to the lesser of (i) one and one-half percent (1.5%) per month or (ii) the maximum rate permitted under applicable laws. Waiver of the late charge or interest with respect to any delinquent payment will not be deemed to constitute a waiver of the late charge or interest with respect to any subsequent delinquent payment. Any payments of any kind returned for insufficient funds will be subject to an additional charge of \$50.00 payable by Lessee to King County. In addition, if payments are received by check or draft from Lessee, and two (2) or more of such

checks or drafts are dishonored by the bank or other financial institution they were drawn upon in any twelve (12) month period, King County may thereafter require all Rent and other payments due hereunder from Lessee to King County to be made by bank cashier's or bank certified check or other similar means of payment and King County shall not be required to accept any checks or drafts of Lessee which do not comply with such requirements.

- B. LEASEHOLD TAX. A Leasehold Excise Tax, if applicable, is levied pursuant to the Revised Code of Washington (R.C.W.) Chapter 82.29A. Lessee is currently centrally assessed by the Washington Department of Revenue and, as such, is exempt from the Leasehold Excise Tax for the Premises. Should Lessee lose its exemption at any time during the Term (as extended) of this Lease, Lessee agrees to pay this tax to King County as provided in Section 4 herein. Lessee further agrees to indemnify, defend and hold harmless King County for any Leasehold Excise Tax arising from this Lease that may become due to the State of Washington, including any delinquent taxes, which indemnity shall survive expiration or earlier termination of this Lease. 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. Throughout the Lease Term, Lessee shall pay all applicable taxes and all license and excise and other applicable fees including, but not limited to, fuel flowage fees, aircraft parking fees and landing fees, covering the business conducted on the Premises as provided for in King County Code Title 15 as now existing and as it may be amended in the future.
- D. MITIGATION ASSESSMENTS. Lessee shall, subject to sixty (60) days prior notice and reasonable opportunity to object, pay any mitigation assessment now in effect or hereafter established, by any municipality, agency or organization, including King County, having jurisdiction over the Airport. Lessee's portion of the assessment will be based on their contribution, or pro rata share, of the condition and/or circumstance which is being mitigated and/or their proportionate use of the improvement requiring mitigation investment.
11. RENT ADJUSTMENT. To ensure a fair Rent based upon the fair market value of the Premises, King County may adjust the Rent (i.e., by increasing or decreasing the Rent) to the then current Fair Market Rental Value (as defined below) no sooner than every five (5) years. The first adjustment will occur no sooner than the anniversary of the Lease Commencement Date in 2025 and each subsequent Rent Adjustment Date, as defined below (the "FMV Adjustment"). Subsequent adjustments will take effect no sooner than the fifth (5th) anniversary of the previous FMV Adjustment. The date on which a FMV Adjustment becomes effective is referred to hereafter as "Rent Adjustment Date." The five (5) year period commencing on the Rent Adjustment Date is referred to hereafter as "the Succeeding Period."
- 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 temporary use of the Premises (excluding improvements to the Premises constructed at Lessee's expense made during the Lease Term), 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 at least thirty (30) days written notice of the adjusted Rent for the Succeeding Period. The Rent as adjusted shall take effect on the Rent Adjustment Date specified in the notice. Unless Lessee, within thirty (30) days following receipt of notice from King County, gives King County written notice of its rejection of the adjusted Rent together with Lessee's statement of the amount Lessee considers to be the Fair Market Rental Value, the Rent as adjusted by King County will become the Rent for the Succeeding Period. If Lessee so notifies King County of its rejection of the adjusted Rent, the parties may negotiate in good faith in an attempt to agree upon the Rent adjustment.

C. ARBITRATION.

1. If within thirty (30) days after King County receives Lessee's notice of its rejection of the Rent as adjusted by King County, Lessee and King County cannot agree upon the Rent adjustment, the Rent for the Succeeding Period will be adjusted by arbitration. Lessee and King County will each select one disinterested arbitrator, and the two selected arbitrators will select a third.
2. King County will give Lessee written notice of the name and address of its selected arbitrator and his or her qualifications. Unless otherwise agreed in writing by King County, Lessee shall give King County written notice of the name and address of Lessee's selected arbitrator and his or her qualifications within thirty (30) days after Lessee's receipt of King County's notice. If Lessee fails to so provide its written notice to King County, Lessee shall be deemed to waive its right to arbitration, the arbitration shall not proceed, and the Rent as adjusted by King County shall become the Rent for the Succeeding Period.
3. If the two arbitrators have not selected a third arbitrator within thirty (30) days after the selection of the last selected 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.
4. Each arbitrator will be a member of the American Institute of Real Estate Appraisers, the Society of Real Estate Appraisers, or other appraisal society or association having equivalent ethical and professional standards. If, in the future, a licensing requirement for real estate appraisers is imposed by any legislative body with jurisdiction, each

arbitrator shall also be licensed. The arbitrators shall not only be impartial, but also shall not have been an employee of, or retained under contract by, either party (King County or Lessee) for a period of one year before the arbitration, unless waved in writing by the parties, and shall have no financial interest in the subject of the arbitration. Within fourteen (14) days of a party receiving the written notice of the other party's selected arbitrator or within fourteen (14) days of the appointment of the third arbitrator, either party shall have the right to disqualify the other party's selected arbitrator or the appointed third arbitrator who does not meet the requirements of this Section 11 by sending a written notice to the other party and to all the arbitrators stating the grounds for disqualification. If the disqualified arbitrator is a party-appointed arbitrator, then that party shall, within fourteen (14) days after its receipt of the other party's notice of disqualification, appoint another arbitrator who meets the requirements of this Section 11 to serve in place of the party's disqualified arbitrator. If the disqualified arbitrator is the third arbitrator, then the two party-appointed arbitrators shall, within fourteen days after their receipt of a party's notice of disqualification, select a third arbitrator who meets the requirements of this Section 11 to serve in place of the disqualified arbitrator.

5. The arbitrators shall give the parties sixty (60) days' notice in writing of the date on which the arbitration is to commence. Unless otherwise agreed in writing by King County and Lessee, each party shall, no later than thirty (30) days before the arbitration is scheduled to commence, provide the other party with a copy of an appraisal report prepared by a member of the American Institute of Real Estate Appraisers, the Society of Real Estate Appraisers, or other appraisal society or association having equivalent ethical and professional standards, that supports that party's claim of Fair Market Rental Value. If Lessee fails to so provide a copy of its appraisal report to the County, Lessee shall be deemed to waive its right to arbitration, the arbitration shall not proceed, and the Rent as adjusted by King County shall become the Rent for the Succeeding Period.
6. The three arbitrators will determine a Rent for the Premises for the Succeeding Period based upon the Fair Market Rental Value as defined in Section 11.A hereof, which is in accordance with King County Code 4.56.010. The decision of a majority of the arbitrators will bind both Lessee and King County. Both King County and the Lessee agree that all non-mandatory provisions of RCW 7.04A are waived and that, unless requested by a majority of the arbitration panel, no formal hearing will be held, no witnesses will testify, no attorneys will participate in the arbitration, and the arbitrators will be the final determiners of both fact and law. At the conclusion of the arbitration, the arbitrators will submit a written report in counterpart copies to Lessee and King County, which shall state their determination of the Rent to be paid by Lessee for the

Succeeding Period. The report shall contain all pertinent evidence that led to their conclusion together with an explanation of their reasoning for such conclusion.

- D. COST OF ARBITRATION. Each party shall pay for its appraisal and shall bear the expense of its own counsel (except for attorney's fees arising from Section 11.C(3), which shall be subject to the provisions of Section 40) and any other of its representatives and/or experts that may be required to prepare for or, in the event it is requested by the arbitration panel, participate in the arbitration. Each party shall also pay the fees and expenses of its selected arbitrator. The fees and expenses of the third arbitrator and all other costs of the arbitration will be divided equally between Lessee and King County.
- E. RENT PENDING ADJUSTMENT AND RETROACTIVITY. In the event resolution of the rental adjustment is not completed either by negotiation or arbitration prior to the Rent Adjustment Date:
1. Lessee shall, pending resolution of such Rent adjustment, continue to pay King County the Rent then in effect;
 2. The adjusted Rent, as determined either by negotiation or arbitration, shall be retroactive to the Rent Adjustment Date.;
- F. ANNUAL RENT ADJUSTMENTS DURING NON-APPRAISAL YEARS. The annual Rent increase for intervening years between FMV Appraisals is 2.5 percent. If the rental adjustment is made due to a new FMV Appraisal, and that value is different than the prior year's Rent, then the new FMV Appraisal becomes the new Rent, and the new base for the application of future adjustments. Rent shall be adjusted on January 1 of each year and shall take effect on the anniversary of the Rent Adjustment Date, or in the case where the Rent has not been adjusted by FMV Appraisal, the Commencement Date. Annual rental adjustments made under this Subsection F are not subject to arbitration.
12. 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 12 by giving notice of demand for compliance in any instance.
13. 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 the Premises so that the same shall not become a lien against the Premises.
14. IMPROVEMENTS AND ALTERATIONS.

- A. Other than alterations, improvements and fixtures located entirely inside the Improvements, Lessee shall make no significant 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 prior written approval from King County, approval which will not be unreasonably denied, conditioned or delayed.
- B. All improvements and alterations erected or made on the Premises by Lessee shall be and remain the property of Lessee during the Lease Term and Extension Periods, except the Ramp Area Improvements which are subject to the Ramp Area Term. The surrender of the Improvements and Ramp Area Improvements shall be governed by Section 23 of this Lease. Unless otherwise stipulated, all improvements or alterations erected or made on the Premises (not including personal property, equipment and removable fixtures, which shall remain the property of Lessee) 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 with the exception of the Ramp Area Improvements.
- C. Lessee agrees to comply with the notification, review and approval requirements contained in Title 14 C.F.R., Part 77 (Safe, Efficient Use, and Preservation of the Navigable Airspace) and Form Federal Aviation Administration 7460-1 (Notice of Proposed Construction or Alteration) in the event that any future structure or building is planned for the Premises, or in the event of any modification or alteration of any future building or structure situated on the Premises.
- D. Lessee covenants and agrees that no equipment or fixtures shall be installed or operated on the Premises which would produce electromagnetic radiation or radio signals, telecommunication signals, or the like, that would violate any FAA rule or regulation.
- E. Lessee agrees to furnish King County with "as-built" drawings for all improvements and alterations within one hundred twenty (120) days of completion of construction, including the Improvements. As-built drawings will be provided in both electronic and paper format as may be requested by King County.
- F. Following the expiration of the Ramp Area Term, the Ramp Area Improvements shall revert to the ownership of King County as provided in Section 23. Thereafter, Lessee shall have preferential use of the Ramp Area for aircraft parking as specified Lessee's Airline Operating Permit, issue by KCIA and subject to applicable fees as prescribed in Title 15 of the King County Code.

15. CONDITION OF PREMISES.

- A. Lessee has inspected and knows the condition of the Premises, and accepts the Premises "AS IS."
- B. Lessee acknowledges that the Premises may contain Hazardous Materials, as defined in Section 42 of this Lease, and subject to the provisions of Section 7, Lessee accepts the Premises "AS IS", including, without limitation, the presence of any Hazardous Materials or underground storage tanks, or the actual or threatened release, deposit, seepage, migration or escape of Hazardous Materials at, from or into the Premises, and the compliance or noncompliance of the Premises with applicable federal, state, county and local laws and regulations including, without limitation, the Environmental Laws as defined in Section 42 of this Lease.
- C. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS LEASE, KING COUNTY DOES NOT MAKE AND SPECIFICALLY DISCLAIMS ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE PREMISES, AND NO OFFICIAL, EMPLOYEE, REPRESENTATIVE OR AGENT OF KING COUNTY IS AUTHORIZED OTHERWISE. WITHOUT LIMITATION, EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS LEASE, THE FOREGOING SPECIFICALLY DISCLAIMS WARRANTIES WITH RESPECT TO THE CONDITION OF THE PREMISES FOR DEVELOPMENT AND/OR USE BY LESSEE, THE PRESENCE OF ANY HAZARDOUS MATERIALS OR UNDERGROUND STORAGE TANKS, OR THE ACTUAL OR THREATENED RELEASE, DEPOSIT, SEEPAGE, MIGRATION OR ESCAPE OF HAZARDOUS MATERIALS AT, FROM OR INTO THE PREMISES, AND THE COMPLIANCE OR NONCOMPLIANCE OF THE PREMISES WITH APPLICABLE FEDERAL, STATE, COUNTY AND LOCAL LAWS AND REGULATIONS, INCLUDING, WITHOUT LIMITATION, THE ENVIRONMENTAL LAWS.
- D. King County shall not have any obligation to Lessee to make any changes or improvements, or to incur any expenses whatsoever for the maintenance, monitoring, repair or remediation of the Premises.
- E. Lessee acknowledges and agrees that King County shall have no liability to Lessee for, and that Lessee shall have no recourse against King County for, any defect or deficiency of any kind whatsoever in the Premises without regard to whether such defect or deficiency was discoverable by Lessee or King County.
- F. King County reserves the right to further develop or improve the Airport as it sees fit, regardless of the desires or opinions of Lessee, and without interference or hindrance by Lessee. (FAA Order 5190.6B - AGL-600).

- G. King County reserves the right, but shall not be obligated to Lessee, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, together with the right to direct and control all activities of Lessee in this regard. (FAA Order 5190.6B - AGL-600).
- H. No right or privilege granted herein shall operate to prevent any person or persons, firm, or corporation, operating aircraft at the Airport from performing any services on its own aircraft with its own regular employees (including but not limited to, maintenance and repair) that it may choose to perform. Self-fueling and fuel storage shall be permitted, except that Lessee must at all times comply with applicable Airport regulations and standards pertaining thereto.
- I. No lessee at the airport may be granted in fact or by written instrument any exclusive right as prohibited by Section 308(a) of the Federal Aviation Act of 1958, as amended. The Federal Aviation Administration ("FAA") shall make the final determination of the existence of a prohibited exclusive right, and such determination shall be final and dispositive. If the FAA determines that any provision of this Lease or practice in fact constitutes a grant of a prohibited exclusive right, such provision or grant shall be deemed null and void for all purposes.
- J. All of Lessee's aircraft must be compliant with 14 CFR Part 36. Lessee shall provide King County with proof that all aircraft being used for air cargo service meet the requirements of 14 CFR Part 36 with regard to noise generation. Lessee shall comply with the Airport's "Voluntary Noise Agreement" in order to minimize noise impacts on the local community.
- K. Lessee acknowledges that no representative or agent of King County has made any representation or promise with respect to the provisions of this Section 15 that are not expressly provided herein.

16. 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.

17. MAINTENANCE.

- A. Throughout the Lease Term, Lessee shall, without cost or expense to King County, keep and maintain the 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 except for any demolition of improvements contemplated by Section 7 of the Lease. Upon the expiration or sooner termination of the Lease, including expiration or earlier termination of the Ramp Area, Lessee shall forthwith return the Premises, and the Ramp Area, as the case may be, in good condition, reasonable wear and tear excepted.
- B. If, after thirty (30) days' notice from King County, or immediately in case of potential harm to life safety or property, Lessee fails to maintain or repair any part of the Premises or any improvement, landscaping, fixtures or equipment thereon, King County may, but shall not be obligated to, enter upon the 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 Section shall be payable as additional rent on the next Rent payment date due following the written demand and will bear interest at a percentage rate equal to the lesser of (i) one and one-half percent (1.5%) per month or (ii) the maximum rate permitted under applicable laws.

18. GENERAL INDEMNITY AND HOLD HARMLESS. The Lessee agrees to indemnify, defend, and hold King County harmless as provided herein to the maximum extent possible under law. Accordingly, the Lessee agrees for itself, its agents, contractors, successors, and assigns, to defend, indemnify, and hold harmless King County, its appointed and elected officials, and its employees and agents, from and against liability for all claims, demands, suits, and judgments, including costs of defense and attorney fees thereof, for injury to persons, death, or property damage which is caused by, arises out of, or is incidental to Lessee's rights and obligations under this Lease, except to the extent of King County's sole negligence. The Lessee's obligations under this Section 18 shall include:

- A. The duty to promptly accept tender of defense and provide defense to the County at the Lessee's own expense, including attorney fees;
- B. Indemnification of claims made by the Lessee's own employees or agents; and,
- C. Lessee agrees to defend, indemnify, and hold King County harmless for claims by Lessee's employees and agrees to waive, as respects King County only, its immunity under Title 51 R.C.W., which waiver has been mutually negotiated by the parties.

Lessee agrees to hold harmless and indemnify King County for any and all costs associated with damage to owned, non-owned or hired aircraft in the Lessee's care, custody and control.

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 18, 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, the Lessee agrees to defend, hold harmless, and indemnify King County to the maximum extent permitted thereunder. Lessee shall include the same indemnification language in this Section 18 in its sub-leases protecting, indemnifying and defending King County, its appointed and elected officials, and its employees and agents.

The provisions of this Section 18, "Indemnity and Hold Harmless", shall survive the expiration or termination of this Lease with respect to any event that occurs prior to, or on the date of, such expiration or termination.

Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Lease.

19. INSURANCE REQUIREMENTS – LESSEE/LEASEHOLD. 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 Lessee's rights and obligations under this Lease, by the Lessee, its agents, representatives, employees and/or subcontractors. The insurance required to be provided by Lessee under this Lease may be provided under blanket policies that cover Lessee and the Premises as well as other entities and properties. The cost of such insurance shall be paid by or on behalf of 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 most stringent insurance required.

In consideration of the duration of this Lease, the parties agree that the Insurance Requirements Section 19, at the discretion of the King County Risk Manager, may be reviewed and adjusted with each amendment and within ninety (90) days of the end of the first five (5) year period of the Lease Term and the end of each successive five (5) year period thereafter.

Any adjustments made as determined by the King County Risk Manager, with regard to limits, scope and types of insurance, 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 five (5) year period.

Adjustment, if any, in insurance premium(s) shall be the responsibility of the Lessee. Any failure by King 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.

Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of the coverage afforded, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policy(s). Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Lease.

- A. MINIMUM SCOPE AND LIMIT OF INSURANCE. The Lessee shall obtain and maintain the minimum insurance set forth below. By requiring such minimum insurance, King 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. Each insurance policy shall be written on an "occurrence" form; excepting that insurance for professional liability, errors and omissions and environmental impairment, may be acceptable on a "claims made" form. If coverage is approved and purchased on a "claims made" basis, the Lessee warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three (3) years from the date of termination of this Lease. Insurance coverage shall be at least as broad as stated below and with limits no less than:

1) Commercial General Liability (Aviation General Liability). Coverage in the amount of \$50,000,000 combined single limit per occurrence, and for those policies with aggregate limits, a \$50,000,000 aggregate limit shall be maintained.

2) Aircraft Liability. (Owned, Leased and Non-owned Aircraft) Aircraft liability for bodily injury, death, property damage, contractual and passenger liability with a combined single limit per occurrence, other than passenger liability, of \$100,000,000.

3) Aircraft Hull and Machinery. Lessee agrees to insure owned and/or leased aircraft commensurate with the value of the aircraft and machinery and waive all rights of subrogation against the Lessor.

4) Liquor Liability. Required if alcoholic beverages are sold or distributed, a limit of \$1,000,000 per occurrence and for those policies with aggregate limits, a \$1,000,000 limit.

5) Automobile Liability. Coverage shall be at least as broad as Insurance Services Office form number CA 00 01 covering **BUSINESS AUTO COVERAGE**, symbol 1 "any auto"; or the combination of symbols 2, 8, and 9. \$50,000,000 combined single limit per accident. If the work involves the transport of pollutants (as defined by the standard auto policy exclusion of pollution) the auto policy shall be endorsed to include endorsement CA 9948 (or its equivalent) and MCS 90.

6) Workers' Compensation. Statutory requirements of the State of residency. Coverage shall be at least as broad as Workers' Compensation coverage, as

required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this work by applicable Federal or "other States" State Law.

7) Employer's Liability or "Stop Gap". Coverage with minimum limits of \$1,000,000 each occurrence shall be at least as broad as 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.

8) Hangar Keepers Liability. Bailee's coverage for non-owned aircraft held in the Lessee's care, custody and control at a limit equal to maximum value of aircraft hangared at any one time per occurrence, and in the aggregate.

9) Environmental Impairment. Pollution coverage for all clean-up and remediation costs and expense arising out of Lessee's use of the Premises for both sudden and accidental discharges or gradual or repeated contamination. \$5,000,000 per claim and in the aggregate.

10) Property Insurance. The Lessee will carry "All Risk" property insurance in an amount equal to the full replacement value of all improvements, structures, and buildings located on the Premises and business interruption coverage to provide for the continued payment of rent to the owner, in an amount equal to twelve month's rental payment obligation. Coverage shall include the perils of earthquake and flood provided the limits of flood coverage may be a reasonable amount that is less than full replacement value. King County will not carry insurance on Lessee's property or business personal property. Waiver of subrogation must be shown on evidence of insurance. King County shall be named as loss payee on Lessee's property insurance as its interests may appear.

B. DEDUCTIBLES AND SELF-INSURED RETENTIONS. Any deductibles or self-insured retentions must be declared to King County. The deductible and or self-insured retention of the policies shall not limit or apply to the Lessee's liability to King County and shall be the sole responsibility of the Lessee.

C. OTHER INSURANCE PROVISIONS. The insurance policies required in this Lease are to contain or be endorsed to contain the following provisions:

- 1) All liability policies except workers compensation:
 - a. King 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 Lease. King County shall be named as additional insured regarding the total limits of liability maintained by Lessee.

- b. The Lessee's insurance coverage shall be primary insurance as respects King County, its officers, officials, employees and agents. Any insurance and/or self-insurance maintained by King 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 below those required by this Lease, without replacement of the coverage in question with insurance that satisfies the requirements of the Lease until after thirty (30) days prior written notice has been given to King County.

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

E. VERIFICATION OF COVERAGE. Lessee shall furnish King 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 King County and are to be received and approved by King County prior to the commencement of activities associated with the Lease.

F. 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 property 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.

20. INSURANCE REQUIREMENTS - BUILDINGS/STRUCTURES/FACILITIES UNDER CONSTRUCTION.

Prior to commencement of any construction relating to any alteration or improvement, including the Improvements, and until construction is complete and accepted by the Lessee, the Lessee shall cause its construction contractor(s) to procure and maintain insurance against claims for injuries to persons or damages to property which may arise from, or in connection with the activities related to said construction. The cost of such insurance shall be paid by the Lessee and/or any of the Lessee's contractors.

Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of the coverage afforded, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policy(s). Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Lease.

- A. MINIMUM SCOPE AND LIMIT OF INSURANCE. The Lessee shall require its contractors to obtain and maintain the minimum insurance set forth below. By requiring such minimum insurance, King County shall not be deemed or construed to have assessed the risks that may be applicable to Lessee under the construction contract between Lessee and its General Contractor. The Lessee shall assess its own risks and if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage. Each insurance policy shall be written on an "occurrence" form; excepting that insurance for professional liability, errors and omissions when required, may be acceptable on a "claims made" form. If coverage is approved and purchased on a "claims made" basis, the Lessee warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three years from the date of completion of the work which is the subject of this Lease. Insurance coverage shall be at least as broad as stated below and with limits no less than:

1) General Liability. Coverage shall be at least as broad as Insurance Services Office form number CG 00 01 covering **COMMERCIAL GENERAL LIABILITY**. \$5,000,000 combined single limit per occurrence, and for those policies with aggregate limits, a \$5,000,000 aggregate. Such limits may be satisfied with the use of an umbrella/excess liability policy, which is at least as broad as the underlying policy. Coverage shall not exclude explosion collapse and underground damage (XCU).

2) Automobile Liability. Coverage shall be at least as broad as Insurance Services Office form number CA 00 01 covering **BUSINESS AUTO COVERAGE**, symbol 1 "any auto"; or the combination of symbols 2, 8, and 9. \$5,000,000 combined single limit per accident. The required limits may be satisfied with the use of an umbrella/excess liability policy, which is at least as broad as the underlying policy. If the work involves the transport of pollutants (as defined by the standard auto policy exclusion of pollution) the auto policy shall be endorsed to include endorsement CA 9948 (or its equivalent) and MCS 90.

3) Workers' Compensation. Statutory requirements of the State of residency.

Coverage shall be at least as broad as Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this work by applicable Federal or "other States" State Law.

4) Employer's Liability or "Stop Gap". Coverage in the amount of \$1,000,000 per each occurrence. Such coverage shall be at least as broad as 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.

5) Professional Liability Errors and Omissions. In the event that services delivered pursuant to this Lease either directly or indirectly involve or require Professional services, Professional Liability Errors and Omissions coverage shall be provide at a limit of \$1,000,000 per claim and in the aggregate.

6) Builder's Risk/Installation Floater. Lessee shall procure and maintain, or cause it's general contractor to procure of maintain, during the life of the contract to construct the Improvements ("construction contract"), or until acceptance of the Improvements/Project by the Lessee, whichever is longer, "All Risk" Builders Risk or Installation Floater Insurance at least as broad as ISO form number CP0020 (Builders Risk Coverage Form) with ISO form number CP0030 (Causes of Loss – Special Form) including coverage for collapse, theft, off-site storage and property in transit. The coverage shall insure for direct physical loss to property of the entire construction project, for 100% of the replacement value thereof and include earthquake and flood. The policy shall be endorsed to cover the interests, as they may appear, of Lessee, King County and the general contractor as a named insured. In the event of a loss to any or all of the work and/or materials therein and/or to be provided at any time prior to the final close-out of the contract and acceptance of the project by Lessee, the Lessee shall require the contractor to promptly reconstruct, repair, replace or restore all work and/or materials so destroyed. Nothing herein provided for shall in any way excuse the Lessee or its surety from the obligation of furnishing all the required materials and completing the work in full compliance with the terms of the construction contract.

7) Contractor's Pollution Liability. \$5,000,000 per claim/aggregate. Lessee and/or its contractor shall provide Contractor's Pollution Liability coverage to cover sudden and non-sudden bodily injury and/or property damage to include the destruction of tangible property, loss of use, mitigation, clean-up costs and the loss of use of tangible property that has not been physically injured or destroyed, and if applicable, coverage for non-owned disposal sites. If asbestos, lead or PCB's are a potential exposure, such insurance shall not exclude pollution arising out of such substances.

- B. DEDUCTIBLES AND SELF-INSURED RETENTIONS. Any deductibles or self-insured retentions must be declared to King County. The deductible and or self-insured retention of the policies shall not limit or apply to the Lessee's liability to King County and shall be the sole responsibility of the Lessee.
- C. OTHER INSURANCE PROVISIONS. The insurance policies required in this Lease are to contain or be endorsed to contain the following provisions:
- 1) All liability policies except workers compensation and professional liability:
 - a. King 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 or its contractor in connection with this Lease. King County shall be named as additional insured regarding the total limits of liability maintained by the Lessee and its contractor.
 - b. The contractor's insurance coverage shall be primary insurance as respects King County, its officers, officials, employees and agents. Any insurance and/or self-insurance maintained by King County, its officers, officials, employees or agents shall not contribute with the Lessee's or its contractor's insurance or benefit the Lessee or its contractor in any way.
 - c. The contractor'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 below those required by this Lease, without replacement of the coverage in question with insurance that satisfies the requirements of the Lease until after thirty (30) days prior written notice has been given to King County.
- D. 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 King County, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to King County, the Lessee and its contractor shall, upon notice to that effect from King County, promptly obtain a new policy, and shall submit the same to King County, with the appropriate certificates and endorsements for approval.

- E. VERIFICATION OF COVERAGE. Prior to commencement of construction Lessee and its contractor shall furnish King 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 King County and are to be received and approved by King County prior to the commencement of activities associated with the Lease.
- F. MUTUAL RELEASE AND WAIVER. To the extent a loss is covered by insurance in force, King County and Lessee and its contractor 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 property 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 or its contractor

21. CONTRACTOR'S SURETY BOND. Prior to commencing construction of any of the Improvements, Lessee shall furnish to King County a general contractor's performance and payment surety bond in the amount of the total estimated construction costs for the Improvements. The performance and payment surety bond shall be acceptable to the King County in its commercially reasonable discretion and shall state the following:

- (i) Lessee and King County shall be named as dual obligees on the performance and payment surety bond.
- (ii) That it is conditioned to secure the completion of the proposed construction, free from all liens and claims of contractors, subcontractors, mechanics, laborers, and material suppliers.
- (iii) That the construction work shall be fully and faithfully performed by Lessee, the general contractor, or, on their default, the surety.
- (iv) That in default of such completion and payment, such part of the amount of the surety bond as shall be required to complete the work shall be paid to King County as liquidated and agreed damages for the nonperformance of this Lease; it being agreed that the amount of King County's damages is extremely difficult to ascertain and determine.

That the surety will defend and indemnify King County against all loss, costs, damage, expense, claims, and liabilities arising out of or connected with the construction by Lessee.

In lieu of a single performance and payment surety bond, Lessee may furnish multiple performance and payment surety bonds supplied by Lessee's general contractor and/or subcontractors, provided such payment and performance surety bonds contain the same conditions as stated in (i) through (iv) above, are issued

jointly to Lessee and King County, and in the aggregate equal to the total estimated construction cost of the Improvements.

All payment and performance surety bonds required by this Section 21 must be issued by a surety company licensed to do business in the State of Washington, acceptable to King County in its commercially reasonable discretion, and shall remain in effect until the entire cost of the Improvements shall have been paid in full and the Improvements shall have been insured as provided in this Lease or as otherwise agreed to in writing by King County.

In lieu of the above performance and payment surety bonds, Lessee may provide some other instrument satisfactory to King County, including a letter of credit, or cash deposit which shall guarantee to King County completion of the Improvements.

22. PROPERTY RECONSTRUCTION FOLLOWING CASUALTY. In the event of the total or partial destruction by casualty or otherwise of the building, structures, or facilities currently on the Premises or the Improvements to be subsequently constructed by the Lessee, Lessee shall have the obligation to reconstruct such facilities or Improvements to their former condition and usability and proceed with reasonable diligence to prepare plans and specifications for and carry out, all work necessary (a) to repair and restore the facilities or Improvements on the Premises damaged by the casualty to the former condition, or (b) to replace the facilities or Improvements with a new facilities or Improvements on the Premises of a like quality and usefulness of the facilities or Improvements which were damaged. The foregoing notwithstanding, if, upon completion of the repair and reconstruction required by this Section 22, there would be five (5) or fewer years remaining in the Lease Term including any Extension Periods, Lessee shall have the right to elect, by written notice given to King County within ninety (90) days after the casualty, not to repair or reconstruct the facilities or Improvements on the Premises, provided, however, that Lessee has maintained the property insurance required by Section 19(A) above. If, under the preceding sentence, Lessee elects not to repair or reconstruct the facilities or Improvements on the Premises after a casualty, (1) the Lease shall terminate on the date Lessee gives notice of its election or upon such later date as Lessee may specify in such notice (not to be more than ninety (90) days after such notice is given) and (2) Lessee shall assign to King County all proceeds of Lessee's property insurance attributable to the facilities or Improvements payable in respect to the casualty in question and shall deliver to King County all of such proceeds received by Lessee and not applied to the preservation and protection of the facilities or Improvements on the Premises prior to the date on which the Lease terminates.

23. SURRENDER OF PREMISES. Upon expiration or termination of this Lease as contemplated herein, Lessee shall surrender to Lessor the Premises and Improvements, including but not limited to, structures, fixtures and building equipment supplied by Lessee as part of the Improvements, including the Ramp Area Improvements upon expiration of the Ramp Area Term, without compensation, allowance or credit to Lessee, subject to Lessee's covenants to maintain and repair accruing to the date of expiration or termination of the Lease Term as provided in this Lease. Except for Improvements allowed to remain under Section 14.B above Lessee shall remove all improvements, structures, fixtures, building equipment, alterations or any other items

belonging to Lessee unless allowed to remain on the Premises as agreed upon in writing from Lessor. Upon the Expiration Date or Ramp Expiration Date (as the case may be) or earlier termination, all right, title and interest to the Premises, Improvements, and Ramp Area Improvements shall vest in King County, free and clear of any liens and encumbrances and at no cost of any kind to King County.

24. DEFAULT AND RE-ENTRY. If any Rent 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, after any applicable cure period, King County may terminate this Lease upon giving five (5) days' notice (in the case of monetary defaults) and thirty (30) days' notice (in the case of non-monetary defaults). Lessee may cure any such default by its payment or performance within said periods, provided that if a non-monetary default cannot be cured within said 30-day period, then Lessee shall not be in default if Lessee commences its cure within said 30-day period and takes actions and steps to cure the non-monetary default within a commercially reasonable amount of time. Upon an uncured default, King County may 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 Lease Term, 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. In reletting the Premises, King County shall make a good faith effort to obtain terms comparable to those contained in this Lease and otherwise seek to mitigate any damages it may suffer as a result of Lessee's default.

25. ASSURANCE OF PERFORMANCE. In the event of a default in the performance of any obligation under this Lease which remains uncured for a period longer than specified in Section 24 above, King County may request and the Lessee shall provide adequate assurance of the future performance of all obligations under this Lease. The adequacy of any assurance shall be determined according to commercially reasonable standards for lessors of real property in the County of King, State of Washington. Adequate assurance shall include, but not be limited to, a deposit in escrow, a guarantee by a third party acceptable to King County, a surety bond, or a letter of credit. Lessee's failure to provide adequate assurance within twenty (20) days of receipt of a request shall constitute a material breach and King County may in its discretion terminate this Lease.

26. 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, but is not obligated to, pay or perform these obligations at Lessee's expense. Upon written notification to Lessee of costs actually incurred by King County under this Section 26, Lessee will reimburse King County within twenty (20) days. Failure to comply with this Section 26 will result in a Lease default subject to the terms and conditions set forth in Section 24.

27. 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.

28. 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 actually 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.

29. INSPECTION AND MARKETING. King County reserves the right to inspect the Premises at any and all reasonable times throughout the Lease Term, provided that King County shall give Lessee not less than twenty-four (24) hours prior notice (except in an emergency, in which case King County shall give such advance notice as is practicable under the circumstances), shall not interfere unduly with Lessee's operations and shall use reasonable efforts to cooperate with any security measures Lessee may then have in effect. 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 market and show the Premises to prospective tenants for one hundred and eighty (180) days prior to the expiration or sooner termination of this Lease, subject to reasonable advance notice and Lessee's reasonable requirements not to disrupt Lessee's operations.

30. LIENS. It is understood and agreed that this Lease is executed and delivered upon the express condition that the Lessee will not and cannot take any action (or omission) which will or may become a lien against the interest of King County in the Premises. Lessee shall ensure that if any liens are placed on King County's interest in the Premises through the acts or omissions of Lessee, Lessee shall (i) within thirty (30) days of receipt of written notice from King County of such liens remove any such liens to the full satisfaction of King County, or (ii) if any such lien is being contested in good faith by Lessee, post a bond satisfactory to King County in the amount of such lien.

31. ASSIGNMENTS.

- A. Lessee is a publicly traded corporation listed on the New York Stock Exchange. Lessee shall not assign or transfer 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. It shall not be deemed unreasonable for King County to withhold, condition or delay its consent for a transfer or assignment of this Lease, in whole or in part, that would entail a use other than the Permitted Use.

- B. The foregoing notwithstanding, the assignment of the Lease or transfer of stock or other equity interests in Lessee, provided that such assignment or transfer is in connection with a bona fide sale, acquisition or restructuring, by purchase of equity interests or assets, merger or otherwise, of the principal business engaged in by Lessee, where the transferee/assignee is a publicly-traded corporation, and the Premises will be used for the Permitted Use, shall be considered an "Exempt Transfer" and shall not require the consent of King County nor be subject to the Assignment Premium. An assignment or transfer, in whole or in part, of this Lease and Lessee's rights and obligations hereunder to any entity that is wholly owned and directly controlled by Lessee shall also be considered an Exempt Transfer and shall not be subject to the Assignment Premium. 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.
- C. 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 above, 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 a third party. The notification shall include but not be limited to a financial statement of the third party, including but not limited to a full disclosure of the monetary payment or any other consideration involved, and an affidavit from the third party stating it has examined this Lease, and, understanding this Lease, agrees to assume and be bound by all of the Lessee's obligations and covenants under this Lease, the same as if it were the original Lessee hereunder, and the proposed date of assignment, transfer or grant of an option therefor. Lessee shall also provide any financial, corporate 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, including information evidencing the managerial, operational and financial wherewithal of the assignee or transferee, as reasonably requested by King County (all of the aforementioned documents are collectively referred to as the "Transfer Documents").
- D. Prior to any assignment or transfer being effective, other than an Exempt Transfer, Lessee (Assignor) 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 (assignor) from the assignee/transferee for, or by reason of, the assignment or transfer (including all amounts received by Lessee (assignor) for any Included Property), less (2) the credits detailed in Section 31.E below. "Included Property" means only the leasehold improvements and fixtures and all machinery, equipment, furniture, furnishings, supplies, inventory and other personal property, tangible

and intangible, owned by the Lessee that are transferred to the assignee or transferee as part of the transaction. Lessee shall pay the Assignment Premium to King County as and when Lessee receives payment from such assignee or transferee.

- E. Credits. The following shall be subtracted from the consideration that otherwise would be included in the calculation of the Assignment Premium:
- 1) Any transactional costs, fees or commissions actually paid by Lessee (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 leasehold 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, (amortized, if the consideration for the assignment or transfer is to be paid in installments, 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;
 - 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 an interest in the Lease is being assigned or transferred, a ratable portion of such costs, fees and commissions), including, without limitation and without duplicating any of the costs included in Section 31.E(1) above, 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.

- F. Once King County has received all necessary information and documentation pursuant to this Section 31 of this Lease, King County will review the request and respond with either an approval or disapproval of the request at most thirty (30) days from the date King County receives all Transfer Documents, unless more time is reasonably requested by King County. Approval of any assignment request will not be unreasonably withheld and Lessee may in good faith dispute the reasonableness of King County's disapproval of a request. It shall not be deemed unreasonable for King County to condition an assignment or transfer on receipt of financial and other assurances, such as performance bonds or financial guarantees from the assignor or transferor, as security for the assignee's or transferee's performance of the Lessee's obligations under the Lease. King County has the option, in its sole discretion, to charge to the 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, \$1500.00. If any proposed assignment or transfer results in a change in corporate ownership structure from that which was in place at the time of execution of this Lease, King County and Lessee shall amend this Section 31, concurrently with the assignment or transfer taking effect, for the purpose of accounting for such change in ownership structure (e.g., transfer from a publicly traded corporation to a limited liability company), which amendment shall be in a form and substance acceptable to King County in its sole discretion.

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

- G. Any assignment or transfer made in violations 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

32. SUBLEASES.

- A. Unless the sublease sought to be entered into is to an entity that controls, is controlled by or is under common control with Lessee (an "Exempt Sublease"), Lessee shall not sublet the whole or any part of the Premises, nor grant an option for sublease for the whole or any part of the Premises without the prior written consent of King County, which consent shall not be unreasonably withheld, conditioned or delayed. King County shall not withhold its consent to a proposed

sublease or grant of an option for sublease on the ground of the subtenant's proposed use if such use is consistent with the Permitted Use in Section 6 of this Lease. If King County shall give its consent to any sublease, this Section 32 shall nevertheless continue in full force and effect and no further sublease shall be made without the County's consent. No sublease authorized under this Section 32 shall relieve or release the Lessee from any obligation or responsibility required of the Lessee under this Lease.

- B. Except with respect to an Exempt Sublease, if Lessee desires to sublease, or grant an option for 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 said desire and the details of the proposed agreement at least sixty (60) days prior to the proposed date of sublease, or grant of an option therefor, to a third party. The notification shall include but not be limited to a financial statement of the third party, including but not limited to a full disclosure of the monetary payment or any other considerations involved, the proposed date of the sublease, and a copy of the sublease agreement between the Lessee and new tenant. Lessee shall also provide any financial, corporate or other information regarding the proposed sublease or the sublessee reasonably requested by King County.
- C. If Lessee subleases all or any portion of the Premises (other than an Exempt Sublease), Lessee shall pay King County seventy-five percent (75%) of the Sublease Premium derived from that sublease. "Sublease Premium" shall mean (1) 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 (excluding all amounts received by Lessee for any Included Property) less (2) the credits detailed in Section 32.F below. Lessee shall pay the Sublease Premium to King County within thirty (30) days from Lessee's receipt of payment from such sublessee.
- D. Credits. The allocable portion of the credits set forth in Sections 31.E(2), (3) and (5) above, as applicable, and without duplicating any such allocable portion, the following shall be subtracted from what otherwise would be included in the consideration used to calculate the Sublease Premium:
 - 1) Any costs, fees or commissions actually paid by Lessee (sublessor) to procure the sublease, 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 procuring the sublease 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) An allocable portion (based on the square footage subject to the proposed sublease as compared to the square footage of the entire Premises) of the unamortized transactional costs, fees or commissions, determined on a straight-line basis over the Lease Term, actually paid by Lessee (sublessor) to procure the Lease itself, 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; and
- 3) The Rent, other amounts payable under this Lease as Rent and leasehold excise tax allocable to the space covered by such sublease (as reasonably determined by King County) and paid by Lessee to King County after the date of, and commensurate with the term of, such sublease.

- E. Once King County has received all necessary information and documentation pursuant to this Section 32 of this Lease, King County will review the request and respond with either an approval or disapproval of the request not later than ten (10) days prior to the proposed date of the sublease. 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 and Lessee may in good faith dispute the reasonableness of King County's disapproval of a request. King County, at its sole discretion, may charge to the Lessee a reasonable fee for administrative costs in reviewing and processing any sublease, or grant of an option therefor, not to exceed \$1500.00.
- F. Lessee's sole remedy for King County's failure to timely respond to a request to sublease, including a Ground Sublease, shall be declaratory relief or specific performance, and shall not include monetary or consequential damages.
- G. Any assignment or transfer made in violation of this Section 32 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.

33. 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 Lease Term, this Lease terminates as of the date condemnor 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, as determined by the court having jurisdiction over the condemnation, of the Lessee's leasehold interest in any improvement made to the Premises by the Lessee and taken by the condemnor. The fair market value amount determined pursuant to this subsection shall be paid to Lessee out of proceeds deposited into the court registry by the condemnor.

- 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 Lease Term, and such taking results in a material adverse effect on Lessee's use or enjoyment of the Premises, Lessee may choose to terminate this Lease as of the date the condemnor takes possession. If Lessee does not elect 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 condemnor 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, as determined by the court having jurisdiction over the condemnation, of the part of the Lessee's leasehold interest in any improvements made to the Premises by the Lessee taken by the condemnor. The fair market value amount determined pursuant to this subsection shall be paid to Lessee out of proceeds deposited into the court registry by the condemnor.
- 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 Section 6 of this Lease, then, at Lessee's determination, Lessee may choose to terminate this Lease. If Lessee elects to terminate the Lease, the Lease will terminate the date the condemnor 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, as determined by the court having jurisdiction over the condemnation, of the Lessee's leasehold interest in any improvements made to the Premises by Lessee, to be paid to Lessee out of proceeds deposited into the court registry by the condemnor. If Lessee does not elect to terminate this Lease, the Lease will continue in full force and Lessee will be entitled to receive any award from the condemnor for the use of all or part of the Premises, not to exceed that portion of the Rent paid by Lessee attributable to the portion of the Premises subject to the temporary taking (based on the square footage subject to the temporary taking as compared to the square footage of the entire Premises); EXCEPT that Lessee may elect to have the Rent reduced by the amount proportionally attributable to any partial temporary taking, in which event Lessee shall not be entitled to any portion of the award attributable to said use.

E. It is understood and agreed that Lessee shall not be party to any negotiation or proceedings at law wherein King County claims compensation other than that which is defined statutorily as constituting "just compensation."

34. TERMINATION BY KING COUNTY. King County reserves the right to terminate 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 KCIA for public airport uses and purposes, and under such termination the Lessee or persons in possession of Premises shall be reimbursed by King County for the fair market value of this Lease, 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 the Improvements, King County and Lessee shall submit to have the fair market value adjusted by arbitration in the manner described in Section 11.C.

35. NON-DISCRIMINATION.

A. Lessee shall not discriminate on the basis of race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression, age (except by minimum age and retirement provisions), or presence of any sensory, mental or physical disability, unless based upon a bona fide occupational qualification, in the employment or application for employment or in the administration or delivery of services or any other benefits under King County Code Ch. 12.16.125. Lessee shall comply fully with all applicable federal, state and local laws, ordinances, executive orders and regulations that prohibit such discrimination. These laws include, but are not limited to, chapter 49.60 RCW, and Titles VI and VII of the Civil Rights Act of 1964.

B. The Lessee, for itself, its heirs, personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this Lease for a purpose for which a U.S. Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said regulations may be amended.

C. The Lessee, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression, age (except by minimum age and retirement provisions), or presence of any sensory, mental or physical disability shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any

improvements on, over, or under such land and the furnishing of services thereof, no person on the grounds of race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression, age (except by minimum age and retirement provisions), or presence of any sensory, mental or physical shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Lessee shall use the Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

- D. The Lessee assures that in its use of the Premises it will substantially observe and promptly comply with pertinent statutes, executive orders and such rules as are promulgated to assure that no person shall, on the grounds of race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expressions, age (except by minimum age and retirement provisions), or presence of any sensory, mental or physical disability be excluded from participating in any activity conducted with or benefiting from federal assistance. This provision obligates the Lessee or its transferee for the period during which Federal assistance is extended to the airport program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, the provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property.
- E. Lessee will include the provisions of this Section 35, "Non-Discrimination", in all subleases of all or part of the Premises, and in all agreements at any tier for the use of all or part of the Premises.
- F. Any violation of this Section 35, "Non-Discrimination", shall be considered a default of this Lease and, in addition to any other remedies available to the County, shall be grounds for termination of this Lease by the County, and may result in ineligibility for further County agreements.

36. HEIRS, AGENTS, AND ASSIGNS. Without limiting any provisions of this Lease pertaining to assignment, transfer and subletting, the provisions of this Lease bind the heirs, successors, agents and assigns of the parties to this Lease.

37. CAPTIONS. The captions in this Lease are for convenience only and do not in any way limit or amplify the provisions of this Lease.

38. 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.

39. CUMULATIVE REMEDIES. No provision of this Lease precludes King County from pursuing any other remedies for Lessee's failure to perform his obligations.

40. ATTORNEY'S FEES/DEFAULT CHARGE. 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, its litigation expenses and such sum as the court may adjudge to be a reasonable attorney's fee.

41. HOLDING OVER. If the Lessee holds over after the expiration or earlier termination of this Lease, Lessee shall become a tenant from month-to-month at a rental rate equal to one hundred-fifty percent (150%) of the Rent in effect upon the date of such expiration or termination, and otherwise subject to the terms, covenants, and conditions of this Lease, except those clearly inapplicable to the month-to-month tenancy. 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, together with interest, reasonable attorney's fees, costs, and expenses. This Section 41, HOLDING OVER," shall not apply to the Ramp Area and Lessee shall have no holdover rights thereto.

42. 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. Washington Model Toxics Control Act as now existing or hereafter amended (RCW Ch. 70.105D); or
 - c. 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. 70.105.D); 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 Premises and the areas of the Airport outside the Premises that are available for use by the Lessee and others (“the Public Areas”), the Lessee and Lessee’s sublessees, assigns, contractors, agents, employees, or representatives (the “Lessee Parties”) shall, at the Lessee’s own expense, comply with all federal, state and local laws, ordinances, regulations, permits, decrees or other governmental requirements now or hereafter in effect related to Hazardous Materials and other environmental laws, including, but not limited to, laws and regulations pertaining to storm water 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 (“Environmental Laws”). The Lessee warrants that its and the Lessee Parties’ business and all activities to be conducted or performed in, on, or about the Premises 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 Lease term to comply with the Environmental Laws.
- 2) The Lessee shall not without first obtaining King County’s prior written approval use, generate, handle, store, treat, transport, or sell of any Hazardous Materials in, on, or about the Premises or the Public Areas. In the event, and only in the event, that King 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 Premises and the Public Areas, or arising from the Lessee’s use or occupancy of the Premises and the Public Areas. Lessee shall not undertake, or allow others, including the Lessee Parties, to undertake by Lessee’s permission, acquiescence, failure to act, or negligent activities that result in a release or threatened release of Hazardous Materials. If Lessee’s or a Lessee Parties’ act, omission or breach of obligation under this Lease results in a release of Hazardous Materials into the environment on, about, or migrating from the Premises or the Airport that exceeds regulatory cleanup levels for unrestricted use

of the Premises, Lessee shall, at Lessee's sole expense, promptly take all actions necessary to fully and completely remove (and to dispose of such in accordance with applicable law) all of such Hazardous Materials.

- 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 Environmental Laws. If the Lessee fails to fulfill any duty imposed under this Section 42 within the time specified by applicable law, or if no time is specified within a reasonable time, King County may take action; and in such case, the Lessee shall cooperate with King County in order to prepare all documents King County deems necessary or appropriate to determine the applicability of the Environmental Laws to the Premises 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 King County's request. No such action by King County and no attempt made by King County to mitigate damages shall constitute a waiver of any of the Lessee's obligations under this Section 42. Lessee shall promptly notify County if Lessee becomes aware of any of the following: (a) a release or threatened release of Hazardous Materials on the Premises (other than the Boeing Contaminants); (b) any actual or alleged violation of any of the Environmental Laws, including any inspection reports or any other notice received from any Authority that Lessee or the Lessee Parties may be in violation of any Environmental Law with respect to the Premises; and (c) any notification from any Authority that investigation, remediation or removal of Hazardous Materials is or may be required at the Premises.
- 5) Should any Authority demand that a remedial investigation and/or 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 Lease term and arises from the Lessee's or the Lessee Parties' use or occupancy of the Premises, or which arises at any time from the Lessee's or the Lessee Parties' use or occupancy of the Premises 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 investigation and/or cleanup or remediation plans. Any such plans are subject to King County's prior written approval, such approval not to be unreasonably withheld. Although King County reserves the right to review and approve such plans, King County assumes no responsibility for such plans or their compliance with Environmental Laws.

- 6) If King County determines in its sole discretion that an emergency exists (i) because of the deposit, spill, discharge or other release of Hazardous Materials at or from the Premises or (ii) which arises from the Lessee's or the Lessee Parties' use or occupancy of the Premises and/or the Public Areas, King County will take such action as King County, in its sole discretion, considers reasonable to contact the Lessee and advise it of the emergency situation. If the Lessee is unreachable, or is unwilling to take immediate action, King County may, but is not required to, take immediate action to address the emergency situation, and Lessee will reimburse the County for all of its costs and expenses related thereto, provided, with respect to clause (i) above, that the deposit, spill, discharge or other release of Hazardous Materials arises from the Lessee's use or occupancy of the Premises. The fact that King County takes immediate action shall not relieve Lessee of any of its responsibilities under this Lease and the Environmental Laws including, without limitation, Lessee's responsibility for complying with applicable reporting requirements.
- 7) In the event Lessee discovers Hazardous Materials on or under the Premises during Lessee's construction of Improvements (including during demolition and grading activities associated with such construction), and such Hazardous Materials were not caused by Lessee or generated or released during Lessee's control of the Premises and excluding the Boeing Contaminants (as defined in Section 7), then Lessee shall promptly notify King County of such discovery (the "Environmental Notice Date"). Lessee may terminate this Lease by written notice to King County given within 90 days of the Environmental Notice Date, during which 90-day period all Rent under this Lease shall abate. If Lessee does not so terminate this Lease within the 90-day period, then this Lease shall remain in full force and effect and Lessee shall be responsible to pay to the County all Rent abated, which shall be due and owing with the next monthly Rent payment but shall not be deemed late unless Lessee fails to make that payment. In the event of termination under this paragraph, and in King County's sole discretion, any above ground Improvements or above ground structures erected by Lessee, excluding the Ramp Area Improvements, shall be removed by Lessee. Lessee shall remove and appropriately handle and dispose of, and not stockpile or otherwise leave on site, any Hazardous Materials that have been excavated or otherwise disturbed by Lessee. Lessee shall leave the Premises in substantially the same condition as prior to Lessee's discovery of Hazardous Materials, subject to the provisions of this paragraph, and shall not leave any Hazardous Materials uncovered or otherwise exposed to humans.

C. Indemnification and Release.

Lessee shall be fully and completely liable to King County for, and shall indemnify hold King County harmless and release from and against, any

and all claims, liabilities, lawsuits, damages, demands, suits, losses, judgments, and costs, including but not limited to removal, remedial action, or other costs recoverable under CERCLA or MTCA; any and all other requirements, charges, interest, fees, oversight costs, or penalties (civil or criminal or both) imposed by any Authority; and all other expenses including but not limited to claims for bodily injury or death, property damage, diminution in value or loss of use, including attorney's fees and other costs of defense ("Claims") caused by or arising from (1) Lessee's or Lessee Parties' use, disposal, transportation, generation, past, present or future release or threatened release, handling, spillage, storage, treatment, deposit and/or sale of Hazardous Materials in, on, around, about, or emanating from the Premises, including but not limited to Lessee's remediation activities conducted under Section 7 or this Section 42 of this Lease, or from Lessee's activities on adjoining property, occurring during the Lease Term or at any time if caused by Lessee, including exacerbation or disturbance of existing Hazardous Materials that were released in, on or about the Premises prior to the Lease (except for the Boeing Contaminants, the costs of which are governed by the EMF Agreement); or (2) Lessee's failure to comply with any obligation in Section 42 of this Lease; or (3) any actions by King County under Sections 42(B)(6) or 42(C) of this Lease; provided that the foregoing is subject to the provisions of Section 42(B)(7). Without limiting the generality of the foregoing, the Parties acknowledge that Claims, as defined herein, are not limited to third party Claims, but include Claims made or incurred by Lessee. Lessee's duties under this paragraph include the duty to pay or reimburse King County's direct and indirect costs to monitor or oversee Lessee's cleanup or other corrective work, including but not limited to engineering and other consulting services, sampling and studies, confirmatory testing, compliance monitoring, and administrative costs and expenses incurred in procuring and managing the same; provided, however, that such Claims do not include costs arising from the Boeing Contaminants.

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 King 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. King 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 Premises as King 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 42, "Hazardous Materials and Environmental Compliance," and the expiration of the notice and cure period provided in Section 24 above, "Default and Re-Entry," King County shall be entitled to the following rights and remedies in addition to any other rights and remedies that may be available to King County:

- 1) At King County's option, to terminate this Lease pursuant to Section 34 above, but effective immediately; and/or,
- 2) At the County's option, to perform such action as is required to bring the Premises 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 King 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 Premises or any other areas of the Airport, loss of business and sales by King County and other Lessees of property at the Airport, diminution of value of the Premises and/or other areas of the Airport, the loss of or restriction of useful space in the Premises and/or other areas of the Airport, and any and all damages and claims asserted by third parties, and King County's reasonable attorneys' fees, costs and expenses.

G. Remediation on Termination of Lease. Upon the expiration or termination of this Lease, the Lessee shall remove, remediate or clean up any Hazardous Materials on, or emanating from, the Premises caused by Lessee as required by applicable laws ("Termination Cleanup"). The process for such Termination Cleanup is subject to King County's prior written approval, such approval not to be unreasonably withheld. Although King County reserves the right to review and approve the Termination Cleanup process, King 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, within the time specified by law or within a reasonable time if no time is specified, King County may elect to perform such Termination Cleanup after providing the Lessee with written notice of King 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 King 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 King County performs such Termination Cleanup after said notice and the Lessee's failure to perform same, the Lessee shall pay all of King County's costs and expenses.

- H. Subordination. This Lease shall be subordinate to that certain EMF Agreement.
- I. Survival. The Lessee's obligations and liabilities under this Section 42, Hazardous Materials and Environmental Compliance, shall survive the expiration or termination of this Lease.

43. PUBLIC USE AIRPORT. The Premises and Airport are subject to the terms of certain sponsor's assurances made to guarantee the public use of the public area of the Airport as incidental to grant agreements between King County and the United States of America; provided, that in the event at any time during the Lease Term the terms of such assurances should effectively prohibit Lessee's use of the Premises as provided in Section 6, then such effective prohibition shall be considered grounds for termination and the Lessee or person or persons in lawful possession of the Premises may, upon thirty (30) days prior written notice given to King County, terminate this Lease.

44. RIGHT OF FLIGHT. There is hereby reserved to King County, as the sponsor of the Airport, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the Premises. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from, or operation on the Airport.

The right of free passage of aircraft shall be in the airspace over the above described Premises at the height prescribed by Part 77 of the Federal Aviation Regulations (14 C.F.R. Part 77) to an infinite height above said mean sea level and shall be for the exclusive benefit of King County, its successors and assigns (the "Aviation Right of Way"). Lessee represents that the use of the Premises, as defined in this Lease, does not and, upon completion, will not interfere with the King County's Aviation Right of Way.

King County shall have the continuing right to prevent the erection or growth upon the Premises of any building, structure, trees or any other object extending into the airspace above said surface at the height prescribed by Part 77 and to remove from said airspace, or at the sole option of King County, to mark and light as obstructions to air navigation, any such building, structure, trees or other objects now upon, or which in the future may be upon the Premises, together with the right of ingress to and egress from and passage over all the Premises (airspace and surface space) for such purposes.

In the event Lessee (or anyone holding through Lessee) interferes with King County's Aviation Right of Way, King County reserves the right to enter upon the Premises and to remove the offending structure or object, which removal shall be at the expense of Lessee.

Lessee by accepting this Lease agrees for itself, its successors and assigns that it will not make use of the Premises in any manner that might interfere with the Aviation Right of Way, the landing and taking off of aircraft from the Airport or anything that would otherwise constitute an aviation hazard. In the event the aforesaid covenant is breached, King County reserves the right to enter upon the Premises and cause the abatement of such interference at the expense of Lessee.

45. EMPLOYEE CONDUCT. Lessee shall require and be responsible for the full compliance by its officers, agents, employees, customers and guests with the rules and regulations of the FAA and the Airport, as currently exist or may be amended in the future.

46. 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.

47. GOVERNING LAW/VENUE. This Lease shall be governed by, and construed and enforced in accordance with, the laws of the State of Washington. Venue for any legal proceeding shall be exclusively in King County Superior Court, Seattle, Washington.

48. QUIET ENJOYMENT. So long as Lessee is not in default under this Lease, subject to Sections 48.A and .B below, King County shall at all times during the Lease Term and subject to the provisions of this Lease ensure that Lessee shall peacefully and quietly have and enjoy the possession of the Premises without any encumbrance or hindrance.

A. This Lease and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire affecting the control, operation, regulation, and taking over of said Airport or the exclusive or non-exclusive use of the Airport by the United States during the time of war or national emergency.

B. This Lease shall be subordinate to the provisions of and requirements of any existing or future agreement between Lessor and the United States relative to the development, operation, or maintenance of the Airport. (FAA Order 5190.6AB-AGL-600).

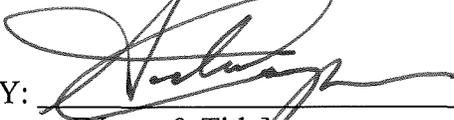
49. EXHIBITS

- A Legal Description of Premises Leased (excluding Ramp Area)
- A-1 Diagram of Premises Under Lease (including Ramp Area)
- B Conceptual Plan
- C EMF Agreement
- C-1 King County Wells Diagram

IN WITNESS WHEREOF, the parties hereto have subscribed their names as of the _____ day of _____, 2020.

LESSEE:

UNITED PARCEL SERVICE, INC

BY: 

[Name & Title]

Andrew Cooper, Assistant Secretary

DATE: 3/9/2020

LESSOR:

KING COUNTY

BY: _____
Anthony Wright, Director
Facilities Management Division

DATE: _____

CONSENT:

KING COUNTY INTERNATIONAL AIRPORT

BY: 

John Parrott, Airport Director

DATE: 3-10-20

APPROVED AS TO FORM:

BY: _____
Timothy P. Barnes,

Senior Deputy Prosecuting Attorney

DATE: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this ____ day of _____, 2020, 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 Kentucky)
) ss.
COUNTY OF Jefferson)

On this 9 day of March, 2020, before me, the undersigned, a Notary Public in and for the State of ~~Washington~~ Kentucky, duly commissioned and sworn, personally appeared, Andrew Cooper, to me known to be the Asst. Sec. of UNITED PARCEL SERVICE, a Delaware 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 UNITED PARCEL SERVICE.

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

Sheila B Cecil
Printed Name: Sheila B Cecil
NOTARY PUBLIC in and for the State of
Kentucky, residing at Louisville
My Commission Expires: 01/31/2024

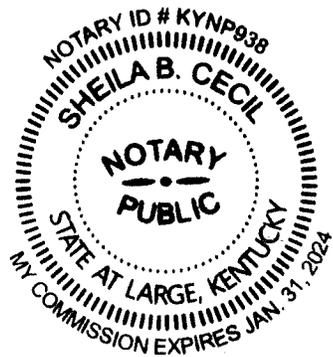


Exhibit A

KING COUNTY INTERNATIONAL AIRPORT
UPS LEASE AREA DESCRIPTION

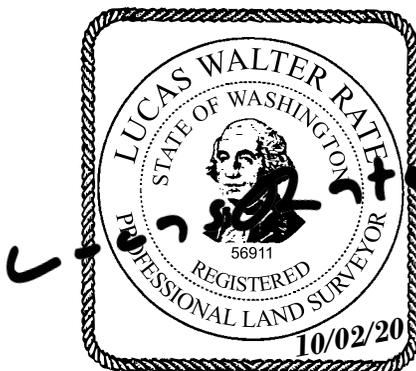
THREE TRACTS OF LAND IN THE SOUTHEAST AND SOUTHWEST QUARTERS OF SECTION 28, TOWNSHIP 24 NORTH, RANGE 04 EAST, WILLAMETTE MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 28, THENCE SOUTH $86^{\circ}56'42''$ EAST ALONG THE NORTH LINE OF SAID SECTION, A DISTANCE OF 2,637.19 FEET TO THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION;
THENCE DEPARTING SAID NORTH LINE, SOUTH $00^{\circ}56'31''$ WEST, ALONG THE EAST LINE OF SAID NORTHWEST QUARTER, A DISTANCE OF 2,681.72 FEET TO THE CENTER OF SAID SECTION;
THENCE SOUTH $00^{\circ}56'31''$ WEST, ALONG THE EAST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION, A DISTANCE OF 652.56 FEET TO A POINT ON THE SOUTHWESTERLY RIGHT OF WAY MARGIN OF AIRPORT WAY SOUTH;
THENCE SOUTH $37^{\circ}37'55''$ WEST, ALONG SAID MARGIN LINE, A DISTANCE OF 31.37 FEET TO **POINT OF BEGINNING**;

THENCE CONTINUING ALONG SAID MARGIN LINE, SOUTH $37^{\circ}37'55''$ EAST, A DISTANCE OF 1,147.36 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 2,610.38 FEET;
THENCE ALONG SAID CURVE, A DISTANCE OF 365.85 FEET THROUGH A CENTRAL ANGLE OF $8^{\circ}01'48''$ TO THE BEGINNING OF A COMPOUND CURVE TO THE RIGHT, CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 30.00 FEET;
THENCE ALONG SAID CURVE, A DISTANCE OF 41.76 FEET THROUGH A CENTRAL ANGLE OF $79^{\circ}45'52''$;
THENCE SOUTH $55^{\circ}04'11''$ WEST, A DISTANCE OF 72.39 FEET;
THENCE SOUTH $62^{\circ}04'06''$ WEST, A DISTANCE OF 439.29 FEET;
THENCE NORTH $28^{\circ}13'14''$ WEST, A DISTANCE OF 997.54 FEET;
THENCE NORTH $61^{\circ}46'31''$ EAST, A DISTANCE OF 42.50 FEET;
THENCE NORTH $28^{\circ}13'29''$ WEST, A DISTANCE OF 17.52 FEET;
THENCE NORTH $51^{\circ}45'07''$ EAST, A DISTANCE OF 234.64 FEET;
THENCE NORTH $37^{\circ}54'36''$ WEST, A DISTANCE OF 464.11 FEET;
THENCE NORTH $52^{\circ}10'44''$ EAST, A DISTANCE OF 118.16 FEET TO THE **POINT OF BEGINNING**.

THE ABOVE-DESCRIBED LEASE AREA CONTAINS AN AREA OF 549,342 SQUARE FEET, OR 12.61 ACRES, MORE OR LESS.

SITUATE IN THE CITY OF SEATTLE, KING COUNTY, WASHINGTON.



KING COUNTY INTERNATIONAL AIRPORT
LUCAS W. RATE, PLS NO. 56911
BRH JOB NO. 2017096.02
OCTOBER 2, 2020

BUSH, ROED & HITCHINGS, INC.
2009 MINOR AVENUE EAST
SEATTLE, WA 98102
(206) 323-4144

IN THE WEST HALF OF THE SE 1/4 SEC. 28, TWP. 24 N., RGE. 04 E.,
AND EAST HALF OF THE SW 1/4 SEC. 28, TWP. 24 N., RGE. 04 E., W.M.

LEGEND



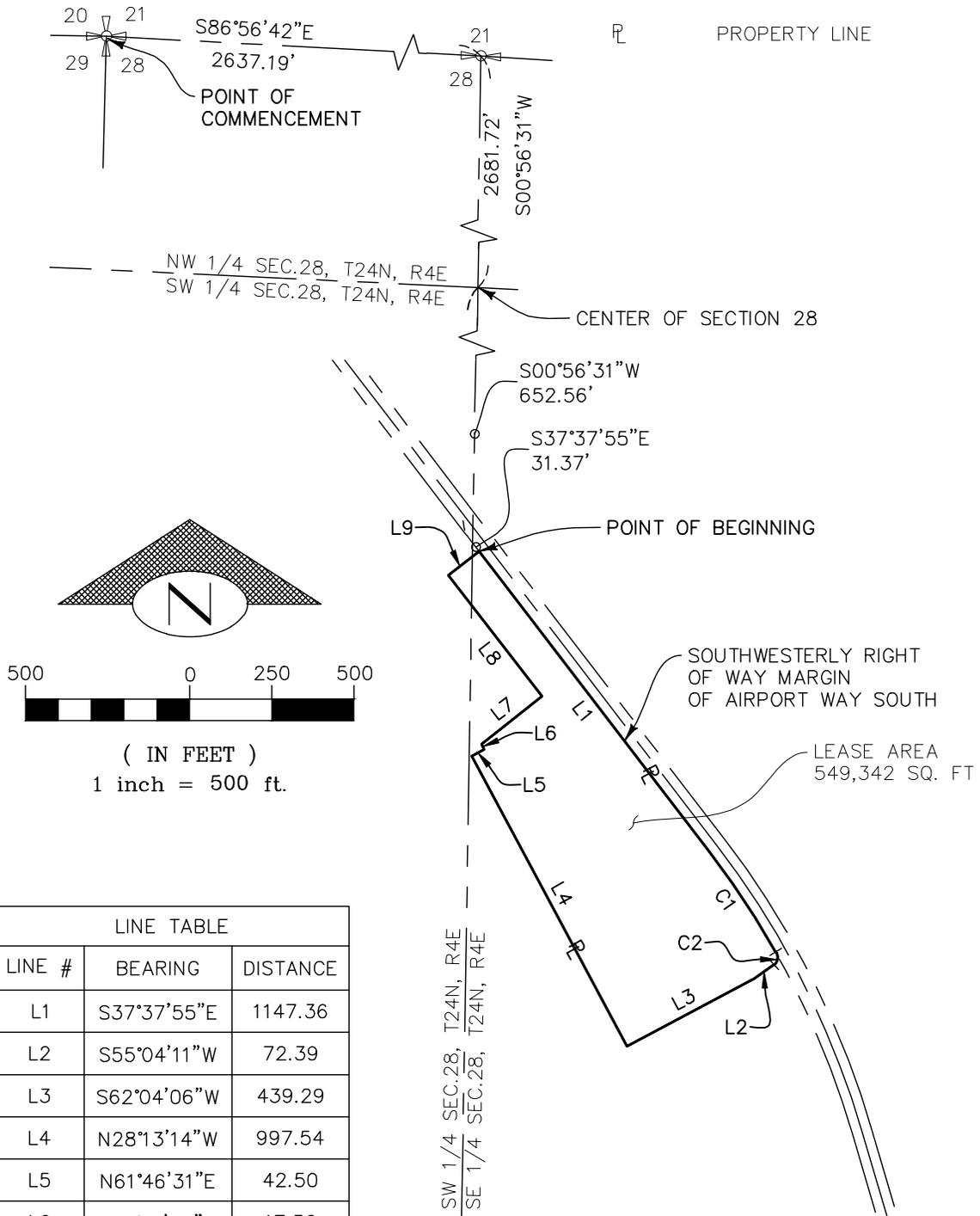
SECTION CORNER



QUARTER SECTION CORNER

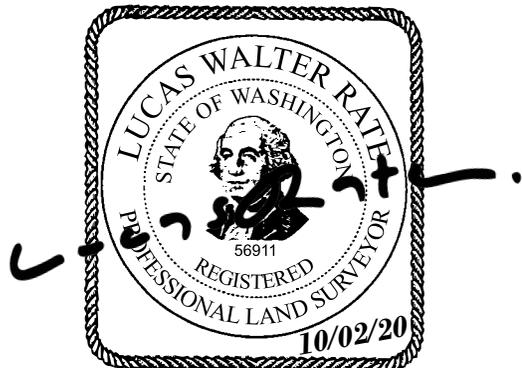


PROPERTY LINE



LINE TABLE		
LINE #	BEARING	DISTANCE
L1	S37°37'55"E	1147.36
L2	S55°04'11"W	72.39
L3	S62°04'06"W	439.29
L4	N28°13'14"W	997.54
L5	N61°46'31"E	42.50
L6	N28°13'29"W	17.52
L7	N51°45'07"E	234.64
L8	N37°54'36"W	464.11
L9	N52°10'44"E	118.16

CURVE TABLE			
CURVE #	RADIUS	DELTA	LENGTH
C1	2610.38	8°01'48"	365.85
C2	30.00	79°45'52"	41.76



UPS LEASE AREA EXHIBIT
KING COUNTY
INTERNATIONAL AIRPORT
SEATTLE KING COUNTY WASHINGTON



BUSH, ROED & HITCHINGS, INC.
LAND SURVEYORS & CIVIL ENGINEERS

2009 MINOR AVE. EAST
SEATTLE, Washington
98102-3513

(206) 323-4144
DATE: 10/02/20
JOB NO.: 2017096.02

Exhibit A-2



Exhibit A-2



The information included on this map has been prepared by King County International Airport Boeing Field. It is not intended to be used for any purpose other than the purpose for which it was prepared. King County International Airport Boeing Field is not responsible for any errors or omissions on this map. The information is provided as a service to the public and is not intended to be used for any other purpose. King County International Airport Boeing Field is not responsible for any errors or omissions on this map. The information is provided as a service to the public and is not intended to be used for any other purpose.

Date: 1/20/2020

EMF AGREEMENT AND LEASE AMENDMENT

^{JANUARY RTA}
This EMF Agreement and Lease Amendment ("Agreement") is entered into as this 27th day of 2009 between King County, Washington, a political subdivision of the State of Washington (the "County") and The Boeing Company, a Delaware corporation ("Boeing").

A. The County and Boeing are parties to a lease dated September 14, 1955 (the "Basic Lease") pursuant to which the County leases to Boeing and Boeing leases from the County certain parcels of land on or in the vicinity of King County International Airport (the "Airport") including the parcel of land identified in Exhibit A (the "EMF Site"). Prior to its demolition in the spring of 1996, the EMF Site was improved with a building known as the Electronics Manufacturing Facility or EMF Building (the "Building"). The Building had a first floor footprint area of 78,753 square feet.

B. The County and Boeing are parties to an "Agreement to Remove the EMF Building and Remediate the EMF Site" dated April 29, 1996 (the "EMF Removal Agreement"). Pursuant to the EMF Removal Agreement, Boeing was to demolish the EMF Building (as defined in the EMF Removal Agreement) and to perform a remediation of environmental conditions at the EMF Site. Upon the completion of such environmental remediation, the EMF Removal Agreement provided for the parties to amend the Basic Lease by terminating Boeing's leasehold as it relates to the EMF Site, and for the County to make certain payments to Boeing in consideration of such demolition and such lease termination. According to the EMF Removal Agreement, the target date for completion of remediation and return of the EMF Site to County control was February 1997.

C. Boeing has demolished the EMF Building and has pursued the remediation of environmental conditions at the EMF Site, but has not been able to complete said remediation. In addition, it has been discovered that contamination from the EMF Site has migrated off the EMF Site in a southwesterly direction. It is Boeing's opinion that the completion of remediation of environmental conditions at the EMF Site will require an extended period of time.

D. In light of the change in circumstances relating to the EMF Site and the EMF Removal Agreement that were not anticipated at the time the EMF Removal Agreement was originally executed, the parties have agreed to replace the 1996 EMF Removal Agreement and enter into this new agreement with respect to the EMF Site.

AGREEMENT

In consideration of the mutual promises of the parties set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. **EMF Removal Agreement.** This Agreement replaces the 1996 EMF Removal Agreement and the 1996 EMF Removal Agreement is hereby rescinded.
2. **Basic Lease Amendment.** As of January 1, 2009, the Basic Lease shall terminate as to the EMF Site. Boeing shall vacate and, unless its subtenant(s) enter an agreement with the County for continued occupancy (it being understood that the County will not enter into any such agreement unless it is in form and substance satisfactory to the County in its sole discretion), ensure that all of its subtenants vacate, the EMF Site as of that date, except that Boeing may keep on the EMF Site equipment and structures associated with groundwater remediation provided for in Paragraph 3.J of this Agreement. After termination of the Basic Lease as to the EMF Site, the property leased to Boeing under the Basic Lease will be reduced by 241,208 square feet. The EMF Site shall be returned to the County in its then "as is" condition, but the return of the EMF Site in such "as is" condition is not intended to affect Boeing's obligation to defend and indemnify the County or perform the cleanup and remediation activities as provided for in this Agreement.
3. **Boeing's Obligation to Complete Cleanup and Remediation.**
 - 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. Washington Model Toxics Control Act as now existing or hereafter amended (RCW Ch. 70.105D); or
 - c. 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);

- (4) Contaminated soils and contaminated dredged material as defined in WAC 173-350; or
- (5) 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. Clean-up Obligation.

- (1) **Obligation to Remediate.** Notwithstanding the rescission of the EMF Removal Agreement, Boeing will, at its own cost, continue to perform and will complete the remediation of environmental conditions resulting from the past and future releases attributable to Boeing of Hazardous Materials at the EMF Site. It is understood and acknowledged by Boeing that such remediation activity will extend beyond the boundaries of the EMF Site and will include remediation of other County-owned property outside the EMF Site impacted by the releases of Hazardous Materials by Boeing at and from the EMF Site ("Other Affected Areas").
- (2) **Order.** Boeing is a respondent to a Settlement Agreement and Order on Consent (Order) with the Environmental Protection Agency for performance of a non-time critical removal action for the EMF site issued under the authority of Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). A copy of the Order is attached as Exhibit C. The purpose of the Order is to complete the characterization of the EMF plume and develop and analyze removal alternatives to enable EPA to select further removal activities.
- (3) **Compliance with Order.** As part of its obligation under this Agreement to Remediate, Boeing agrees to pursue remediation of the EMF Site and the Other Affected Areas in accordance with the Order. Boeing further agrees to obtain the County's approval of any change in the cleanup remedies being used by Boeing on the date of this Agreement in connection with remediation of Hazardous Materials released at or from the EMF Site by Boeing, PROVIDED that if such change in the cleanup remedies being used by Boeing has been directed by the EPA, Boeing shall not be required to obtain the approval of the County to implement such change. Promptly following Boeing's receipt of notice of any such change directed by EPA, Boeing shall provide notice of such change to the County and the County may at its option comment to the EPA regarding such change.
- (4) **Other Remediation.** In the event that other remediation activities are required to be performed by Boeing pursuant to CERCLA or other applicable law, such as implementation of other cleanup actions, monitoring, or

reporting, Boeing agrees to perform such activities (subject to the provision by the County of any reasonably necessary access).

- (5) **Institutional Controls.** In the event that a removal action or approved cleanup remedy is conditioned upon the implementation of so-called "institutional controls" including without limitation a restrictive covenant prohibiting the use of groundwater at the Airport for drinking or domestic purposes or restricting the property for industrial/commercial use, the County agrees to make reasonable efforts to seek approvals necessary to record documents necessary to effect such institutional controls, as long as such institutional controls do not interfere with or impair the use of the EMF Site for Airport-related purposes. Boeing will diligently pursue the remediation of the EMF Site and Other Affected Areas and will use commercially reasonable good faith efforts to perform all work specified in the Order.

C. Access to Other Affected Areas.

The County agrees to provide Boeing such cooperation as Boeing shall reasonably request in order to allow Boeing reasonable access to the Other Affected Areas, provided that such access shall be subject to FAA regulations, shall not interfere with air operations at the Airport, shall be subject to any prior rights of other tenants at the Airport, and shall be subject to the prior approval of the Airport Manager or designee. The Airport Manager or designee may impose reasonable conditions on the time, place and manner of Boeing's access hereunder to minimize impacts to operations at the Airport and the tenants and users thereof. In addition, notwithstanding such prior approval, the County reserves the right to temporarily suspend Boeing's remediation activities if such activities cause or threaten to cause injury to persons or damage to property. Any such suspension will be lifted by the County at such time as the problem causing the suspension has been cured by Boeing at its own cost.

D. County's Cooperation.

The County agrees to cooperate with Boeing and to cause any person or party under the control of the County to cooperate with Boeing for the purposes of complying with the Order, and agrees to the conditions of Sections VIII Paragraph 20.b (notification of transfer), IX (site access), and X (access to information) of the Order.

E. Compliance with Environmental Laws.

In conducting the remediation required pursuant to this Paragraph 3 on the EMF Site and the Other Affected Areas, Boeing shall, at Boeing's own expense, comply with all federal, state and local laws, ordinances and regulations now or hereafter in effect related to land use, 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 necessary to ensure compliance with such laws ordinances, and regulations ("**the Environmental Laws**"). Boeing warrants that its such remediation conducted or performed in, on, or about the EMF Site or the Other Affected Areas shall comply with all of the Environmental Laws. Boeing agrees to change, reduce, or stop any non-complying activity, or install necessary equipment, safety devices, or other installations as may be necessary to comply with the Environmental Laws after receipt by Boeing of notice thereof from the applicable regulatory authority or the Airport Manager.

F. Non-waiver.

Compliance with the requirements of Section 3 of this Agreement shall not constitute a release or waiver of Boeing's liability to King County arising from the deposit, spill, discharge or other release of Hazardous Materials at or from the EMF Site which occurs or has occurred as a result of Boeing's use or occupancy of the EMF Site.

G. County's Response to Emergent Conditions.

If King County determines in its sole discretion that an emergency exists because of the deposit, spill, discharge or other release of Hazardous Materials at or from the EMF Site or which arises from Boeing's remediation activities, King County will take such action as King County, in its sole discretion, considers reasonable to contact Boeing and advise it of the emergency situation. If Boeing is unreachable, or is unwilling to take immediate action, King County may, but is not required to, take immediate action to address the emergency situation, and Boeing will reimburse the County for all of its costs and expenses related thereto. The fact that King County takes immediate action shall not relieve Boeing of any of its responsibilities under this Agreement and the Environmental Laws.

H. Right to Monitor Boeing's Environmental Compliance.

The County expressly reserves the right to conduct, and Boeing shall fully cooperate in allowing, from time to time, such examinations, tests, inspections, and reviews of Boeing's remediation activity on County property as the County, in its sole and absolute discretion, shall determine to be advisable in order to evaluate any potential environmental problems.

I. Continuing Obligation.

If Boeing fails or refuses to complete the remediation in accordance with this Agreement or to diligently pursue bringing the EMF Site and the Other Affected Areas into compliance with the Environmental Laws ("Cleanup"), or fails to reasonably proceed toward completion of such process, within the time specified

by this Agreement or by law or within a reasonable time if no time is specified, the County may elect to perform such Cleanup after providing Boeing with written notice of the County's intent to commence Cleanup, and after providing Boeing 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 Cleanup must commence within a shorter time), to commence or resume the Cleanup process as determined by the County provided that in taking such action, the County, acting reasonably, may elect in its discretion which portions of the Cleanup to undertake, is not required to cure all such failures by Boeing, and is not required to pursue any such Cleanup actions to completion. If the County performs such Cleanup after said notice and Boeing's failure to perform same, Boeing shall pay all of the County's costs and expenses associated with the Cleanup.

J. Boeing Right of Access to EMF Site.

Following termination of the Basic Lease and subject to the limitations of this Section 3, Boeing, its employees, agents, and contractors will have use and access to the EMF Site as follows:

- (1) In connection with remediation activity, Boeing may maintain on the EMF Site equipment and structures associated with environmental remediation activities, and any replacements, renewals, and additions to such equipment and structures (the "Remediation Equipment"); provided that (i) the Remediation Equipment shall be located and operated in such a manner as will not interfere with development or operation of the EMF Site by the County or future tenants of the EMF Site, and (ii) Boeing will relocate and/or reconfigure the Remediation Equipment at its cost if requested by the County in order to avoid interference with development of the EMF Site by the County or future tenants of the EMF Site. In the event that the County determines that the Remediation Equipment interferes unreasonably with operations at the EMF Site by the County or by future tenants of the EMF Site, Boeing, the County, and such future tenant shall consult with each other and shall work together in good faith to develop one or more solutions that minimize interference with the operations of the County or such future tenant while limiting to the extent feasible interference with, or the requirement to relocate, the Remediation Equipment.
- (2) To the extent it does not interfere with the development or use of the EMF Site, weekly access for the operation and maintenance of the existing or relocated groundwater remediation equipment, monthly access to monitoring wells for conducting periodic groundwater sampling, access for activities specified under the Order, access to address emergencies and emergent conditions, as provided below, and other access as specifically granted by King County for the installation or removal of groundwater monitoring wells, implementation of alternative groundwater cleanup remedies, or other

remediation activities required under this Agreement. Boeing will coordinate all access with the County and the tenants of the EMF Site. In the case of an emergency, Boeing may make an entrance without providing notice, but Boeing's activities during such entrance without notice shall be limited to addressing emergent conditions. For this purpose, emergencies and emergent conditions shall be deemed to include those specified in Section XIII (Emergency Response and Notification of Releases) of the Order and any matter that the U.S. Environmental Protection Agency, the Washington State Department of Ecology, or any other governmental agency having jurisdiction directs Boeing to address on an emergency basis.

- (3) The rights to use and access granted in this Section 3.J. shall expire upon Boeing's receipt of a Notice of Completion of Work as provided for in Section XXVIII of the Order.

4. **King County Development of EMF Site and Boeing's Related Obligations.** Following the termination of the Basic Lease as to the EMF Site, King County, its contractors, and/or lessees of King County will have the right to develop the EMF Site. Facilities developed on the site may house industrial, commercial or Airport-related activities that involve intensive human occupancy as well as public access and use. Development may entail the full spectrum of construction activities associated with preparing a site and constructing new facilities including, but not limited to, excavation, tunneling, trenching, drilling, and removal of soils. The existence of contamination at the EMF Site may result in increased development costs and necessitate the planning for, handling and treatment of contamination or Hazardous Materials as a part of development activities. Boeing shall be responsible for development costs related to the existence of contamination at the EMF Site as provided for in Exhibit B hereto. The County, its contractors or tenants may (but are not required to) undertake such activities, including without limitation handling of contaminated soils and remediation of portions of the EMF Site as part of construction or to accommodate such development. Subject to Exhibit B, nothing herein precludes or limits such activities by the County, its contractors or tenants or reduces or relieves Boeing's obligations under Section 3. In addition and provided for in Exhibit B hereto, facilities constructed on the EMF Site may need to have special designs, materials and systems as a result of the contamination and Hazardous Materials thereon, the costs of which shall be Boeing's obligation. Notwithstanding anything to the contrary in this Agreement, Boeing will not be responsible for any development, planning, construction, or occupancy costs that would have been incurred regardless of the presence of Hazardous Materials that have been released by Boeing.

5. **Indemnification.**

- A. Boeing agrees for itself, its successors, and assigns, to defend, indemnify, and hold harmless King County, its appointed and elected officials, its employees

and future tenants of the EMF Site 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 Boeing's obligations, rights or privileges granted by this Agreement. Boeing's obligations under this section shall include:

1. The duty to promptly accept tender of defense and provide defense to the County at Boeing's own expense;
2. Indemnification of claims made by Boeing's own employees, agents or future tenants of the EMF Site; and,
3. Waiver of Boeing'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 or other indemnified parties to incur attorneys' fees, legal expenses or other costs to enforce the provisions of this section, all such fees, expenses and costs shall be recoverable from Boeing.

B. Boeing shall be fully and completely liable to the County and other indemnified parties herein for any and all cleanup and/or remediation costs and expenses, and any and all other charges, expenses, fees, penalties (civil and criminal) imposed or required by any Authority arising out of Boeing's prior or ongoing use, disposal, transportation, generation, release, handling, spillage, storage, treatment, deposit and/or sale of Hazardous Materials in, about or from the EMF Site. Boeing shall indemnify, defend, and hold the County harmless from any and all of the costs, expenses, fees, penalties, and charges assessed against or imposed upon or required of the County (as well as the County's reasonable attorney's fees, costs and expenses) by any Authority as a result of Boeing's use, disposal, transportation, generation, release, handling, spillage, storage, treatment, deposit and/or sale of Hazardous Materials at or from the EMF Site, or from Boeing's failure to provide all information, make all submissions, and/or take all steps required by all Authorities under the Environmental Laws in performing remediation activities.

C. Boeing shall indemnify and hold the County and other indemnified parties herein harmless from any and all claims, liabilities, lawsuits, damages, costs and expenses, including reasonable litigation costs and attorneys' fees, for injuries to persons or death, property damage, loss or costs caused by or arising from: (a) the existence, use, disposal, transportation, generation, release, handling, spillage, storage, treatment, deposit and/or sale of Hazardous Materials by Boeing or any of its agents, representatives or employees in, on, from or about the EMF Site, or (b) King County's immediate emergency action as described in Section 3 above. "Loss or costs" shall include, but not be limited to, increased development and

operational costs incurred or damages suffered by the County, its contractors and/or its lessees arising from the presence of the Hazardous Materials on the EMF Site or the Other Affected Areas. "Development and operational costs" as used herein shall include, but not be limited to, all costs of development including design, site preparation, construction, project management and on-going operational costs of the development.

D. The County will act in accordance with and will require any tenant or developer at the EMF Site to act in accordance with and comply with applicable Environmental Laws and with the provisions of Exhibit B relating to design, development, and construction considerations.

E. Boeing shall in no event be required to release, indemnify, hold harmless, or otherwise compensate the County for any losses, costs, or liabilities of any kind to the extent that they result from the negligence or willful misconduct of the County, its officials, employees, agents, contractors, tenants, or developers.

6. **Payment to Boeing for Early Termination of Lease.** Upon Boeing's return of the EMF Site to the County the County shall make a payment to Boeing for early termination of the Basic Lease as to the EMF Site. This payment will be determined using the \$1,800,000 amount called for in the EMF Removal Agreement as a base. For the purposes of this Agreement, the parties agree that the \$1,800,000 amount was made up of two equal parts. The first part (\$900,000) was intended to compensate Boeing for the value of its remaining leasehold interest based on the assumption that Boeing would surrender a remediated EMF Site to the County in February 1997. Owing to the passage of time, Boeing will be surrendering about 34 percent less leasehold time than had been anticipated. Consequently, the first part of the payment shall be \$593,010. The second part (\$900,000) was intended to compensate Boeing for the cost of removing the EMF Building based on the assumption that the County would garner virtually all of the economic benefit of the increased commercial utility of the EMF Site that resulted from EMF demolition. Subsequent to removal of the EMF Building, however, Boeing has retained control of the Site and benefited from the EMF Building removal by leasing the 78,753 square foot first floor footprint formerly occupied by the Building to a freight carrier. The cumulative rent payments received by Boeing for this portion of the EMF Site total \$ 696,069. These payments partially compensate Boeing for the cost of removing the EMF Building. Consequently the second part of the payment, including \$416,931 in interest, shall be \$620,862.

7. **Miscellaneous Provisions.**

Waiver and Amendments. Waiver of any breach of any term or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. This Agreement shall not be modified except by an instrument in writing, signed by the parties hereto.

No Third Party Rights. Except as otherwise provided herein, nothing contained herein is intended to, nor shall it be construed to, create any rights in any third party or to form the basis for any liability on the part of the County or Boeing or their officials, employees, agents, or representatives, to any third party.

Entire Agreement. This Agreement is the complete expression of the agreement of the parties with respect to this subject matter and any representations or understandings, whether oral or written, not set out herein are excluded and superseded.

Notices. Notices under or in connection with this Agreement shall be sent to the addresses, and in the manner, provided for notices in the Basic Lease.

Severability. That any provision of this Agreement is invalid, void, or illegal shall in no way affect, impair, or invalidate any other provision of this Agreement and such other provision shall remain in full force and effect.

Time. Time is of the essence of this Agreement and each of its provisions.

Cumulative Remedies. No remedy or election under this Agreement shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

Interest. Any sums due from Boeing to the County under this Agreement that are not paid within thirty (30) days of invoice shall bear interest at the rate of one and one-half percent (1 1/2%) per month, or the maximum rate permitted by law, whichever is lower.

Governing Law/Venue. This Agreement will be governed by the laws of the State of Washington. Venue for any legal proceedings arising out of this Agreement shall be in King County Superior Court, Seattle, Washington.

Executed in duplicate as of this 27th day of 2009. ETA
JANUARY

KING COUNTY

By: Harold M. Kelly
Title: Acting Mgr - Real Estate
Date: January 14, 2009

THE BOEING COMPANY

By: Deborah A. Smith
Title: Authorized Signatory
Date: January 27, 2009

