

Port of Benton Richland/Prosser Airport Ground Lease Agreement

The parties hereto are the PORT OF BENTON, a municipal corporation of the State of Washington, (hereinafter "Port"), and _____, LLC, a Washington limited liability company, (hereinafter "Lessee").

FOR AND IN CONSIDERATION of the mutual covenants hereinafter contained, there parties agree as follows:

1. **LEASE AND DESCRIPTION.** Upon the terms and conditions hereinafter set forth, Port does hereby lease to Lessee and the Lessee does hereby lease from Port those certain premises situated in the Port of Benton, County of Benton, State of Washington, being a part of the Richland/Prosser Airport, described as follows:

See legal description and map attached hereto as Exhibit "A" which is incorporated herein by reference, hereinafter called "premises."

2. **BUSINESS PURPOSE.** The premises are to be used for aircraft hangars and aircraft storage only; provided that no use may be made of the premises which can or does interfere with use of the airport by aircraft by reasons of electrical, electronic, or smoke emanations, lighting conditions, height of any structure or appurtenance, or any use which may attract birds. Unauthorized development of residential living quarters, whether by Lessee or any subtenant, is prohibited and may be declared an event of default under the lease. Port may declare any noncomplying subleases null and void under this provision.

3. **TERM.** The term of this lease shall be for thirty (30) years, commencing _____, 20____ ("Commencement Date"), and ending at midnight on December 31, 20____.

3.1 Upon the expiration of the initial term of the lease, the Lessee shall have the option to extend this Lease for up to two (2) additional terms of ten (10) years each at the end of the initial term prior to the final renewal term if both the Lessee and the Port mutually agree upon the extension.

3.2 The option to extend this Lease shall be deemed to have been exercised only if the Lessee gives the Port written notice of its intent to exercise an option at least ninety (90) days prior to termination of the initial term or any renewal term except the final renewal term.

3.3 The Lessee may only exercise the right to extend the term of this Lease if the Lessee is not in material default in the performance of the terms of this Lease at the time the Lessee exercises the option or at the time an option is deemed to be exercised under Section 3.2 and after Port approval.

3.4 The Lessee may only exercise the right to extend the term of this Lease if the Lessee is in compliance with the performance of the terms of this Lease as specified in Section 8, "Condition Assessment" at the time the Lessee exercises the option or at the time an option is deemed to be exercised under Section 3.2.

3.5 Pursuant to RCW 14.08.120, any lease [for aircraft manufacturing or aircraft industrial purposes or to any manufacturer of aircraft or aircraft parts or for any other business, manufacturing, or industrial purpose or operation relating to, identified with, or in any way dependent upon the use, operation, or maintenance of the airport, or for any commercial or industrial purpose] made for a longer period than ten years shall contain provisions requiring the municipality and the lessee to permit the rentals for each five-year period thereafter (that is, thereafter the initial ten year period), to be readjusted at the commencement of each such period if written request for readjustment is given by *either party to the other at least thirty days before the commencement of the five-year period for which the readjustment is requested*. If the Port and Lessee cannot agree upon the rentals for the five-year period, they shall submit to have the disputed rentals for the period adjusted by arbitration. The lessee shall pick one arbitrator, and the Port shall pick one, and the two so chosen shall select a third. After a review of all pertinent facts the board of arbitrators may increase or decrease such rentals or continue the previous rate thereof.

3.6 In the event the Lessee elects not to exercise the Lease extensions as provided in this Section, then this Lease shall terminate and the Lessee shall have no further rights under the terms of the Lease.

4. RENTAL. The annual rental for the period from January 1, 2022 through Dec. 31, 20_____, shall be paid in advance on the first day of each rental period, commencing January 1, 2022, and shall be mailed or hand delivered to the Port at 3250 Port of Benton Blvd., Richland, WA 99354, and shall be in the following amounts:

First Rental Period: (January 1, 2022 to December 31, 2022) the annual sum of \$_____ (\$0.____ per square foot per year, prorated), plus leasehold excise tax of \$_____.

Second Rental Period: (January 1, 2023 to December 31, 2023) the annual sum of \$_____ (\$0.____ per square foot per year, prorated), plus leasehold excise tax of \$_____.

Third Rental Period: (January 1, 2024 to December 31, 2024) the annual sum of \$_____ (\$0.____ per square foot per year, prorated), plus leasehold excise tax of \$_____.

Future Rental Periods: An annual sum to be determined by Port based upon a reappraisal of land at the Richland/Prosser Airport (including the lease premises) by an MAI appraiser employed by Port for that purpose. Said sum shall be computed by the following formula:

$$R=LRR \times N$$

Where: R= annual rental sum;

LRR = Land Rental Rate, the rate per acre fixed by the most current appraisal of land at Port of Benton, Richland/Prosser Airport. Appraisal to be conducted by an MAI appraiser employed by Port for valuation of land every 5 years;

N= number of acres in parcel leased by Lessee.

4.1 FUTURE REAPPRAISALS. Port anticipates having a professional reappraisal of all airport land conducted every five years. The reappraisal shall provide the basis for computation of the rents for the five-year period thereafter, using the formula as set forth above.

4.2 READJUSTMENT AND ARBITRATION

4.2.1 The rental sums for the remaining years of the term of this lease shall be readjusted at the commencement of each five-year term thereof, if written request for readjustment is given by either party to the other at least 30 days prior to the commencement of the five-year period concerning which readjustment is requested. If the parties cannot agree upon the Land Rental Rate for the five-year period, the Land Rental Rate for the subsequent five-year Rental Period shall be established by binding arbitration as provided by RCW 14.08.120(e), as now enacted or subsequently amended. The only issue subject to arbitration is the Land Rental Rate (LRR) that Port has established.

4.2.2 Within fifteen (15) days after Lessee's written objection to the proposed adjusted rent, Lessee and Port will each select one arbitrator. The two selected arbitrators will select a third arbitrator. If the two arbitrators have not selected a third arbitrator within thirty (30) days after the last selection of the two, either Lessee or Port will apply to the presiding judge of the Superior Court of Benton County for the appointment of a third arbitrator. Each arbitrator will hold the MAI designation (or equivalent) with at least five (5) years commercial, industrial, and /or business park appraisal experience and will be a Washington State Certified Appraiser. The three arbitrators will determine the Land Rental Rate (LRR) thereon, and no other matter. The decision of a majority of the arbitrators will bind both Lessee and Port. At the conclusion of the arbitration, the arbitrators will submit a written report to Lessee and Port containing their decision. The costs of the arbitration will be divided equally between Lessee and Port. Each party shall otherwise be responsible for their own legal, consulting, and other costs.

4.2.3 In the event resolution of the rental adjustment is not completed prior to the commencement of the Rental Period being considered, Lessee shall, pending resolution of such rental adjustment, continue to pay Port the Rent then in effect and Port, at its option, may elect to require that interest in the amount of twelve percent (12%) per annum be payable on any sum due as a result of a retroactive rental increase determined under the terms of this lease.

4.3 LEASEHOLD EXCISE TAX/PERSONAL PROPERTY TAX. In addition to the rent, the lessee shall pay to Port at the same time the rent is paid such leasehold excise tax or other taxes as shall have been or may be lawfully levied by the State of Washington or Benton County, which leasehold excise tax or other tax may rise or fall as rentals increase or decrease, or as applicable laws may change.

4.4 LEASEHOLD EXCISE TAX PROVISIONS. In the event that the Lessee does not own the improvements as would be stated in Section 1 of the General Lease Terms and Conditions of this lease, then for the purpose of compliance with the State of Washington leasehold excise tax law, the Lessee shall within five days after demand of Port furnish to Port all information as to the actual cost of any improvements placed on the premises by the Lessee (and at least annually during the term of the Lease to furnish all information as to the actual cost of any improvements placed on the premises following construction of the building placed thereon), and if demanded, such information shall be in the form of a sworn affidavit. It is understood that said information may be furnished to the Washington State Department of Revenue for the purpose of auditing and regulating the payment or collection of such tax, and the tax may be based upon the information furnished. If Port shall in the future determine that it must adopt some other or different method of securing information to enable it to comply with said law, the Lessee agrees to cooperate fully and promptly in such manner and to furnish all information demanded of it, including but not limited to depreciation schedules used for federal income tax purposes.

4.5 LATE CHARGES. There shall be assessed and the Lessee shall pay upon any

installment of rent or portion thereof not paid within 10 days after such rent installment is due and payable, a late charge penalty for each month or fraction thereof the rent or portion thereof is not paid equal to five percent (5%) of the amount of such rent or portion thereof (plus accrued late charge penalties, if any) due and payable. The amount of such late charge penalty shall be added to the amount due each month, and total thereof shall be subject to a late charge for each succeeding month or fraction thereof in the amount of five percent (5%) of the total. A payment, if partial, would first be applied towards the accrued late fees and then towards the balance due.

5. GENERAL TERMS AND CONDITIONS/INCORPORATION BY REFERENCE. Attached hereto as Exhibit "B" and incorporated herein by this reference is that document entitled "Port of Benton General Terms and Conditions" (hereinafter "the General Terms and Conditions"). Compliance with said document is a material element of Lessee's performance under and obligations under this Lease. Minimum Standards for Commercial Aeronautical Activity shall also apply for those leases providing these services. Also incorporated by reference herein as though fully set forth herein are the terms and provisions of that certain Development Agreement between the parties dated _____, 202____ (the Development Agreement), a copy of which is attached as Exhibit "C" hereto.

6. SECURITY. The Lessee shall provide the Lessor with a rent security deposit or bond, as deemed acceptable to the port, in the amount of \$_____ which is equal to the rent and Leasehold Tax to be paid during the initial year of the Lease. A deposit of funds with the Port or an assignment of a savings account in the amount specified above which cannot be released without the approval of the Port will be acceptable in lieu of a rent bond. In the event the rent is adjustable as provided in Section 4, then the security bond or security deposit shall be adjusted so the amount of the security equals the rent and leasehold excise tax due during the year.

7. MAINTENANCE AND REPAIR. Lessee has viewed the Premises and accepts them in their present "AS-IS" condition, with all faults and defects. The Port makes no representations about the condition or fitness for purpose of the Premises. **The Port makes no representation about the condition of the Premises. Hazardous Substances may exist in, on, under or above the Premises. Lessee should, but is not required to, conduct environmental assessments or investigations of the Premises prior to or during this Lease to determine the existence, scope and location of any Hazardous Substances. If there are any Hazardous Substances in, on, under or above the Premises as of the Commencement Date, User shall exercise the utmost care with respect to the Hazardous Substances, the foreseeable acts or omissions of third parties affecting the Hazardous Substances, and the foreseeable consequences of those acts or omissions.**

8. ALTERATIONS AND IMPROVEMENTS. Lessee shall make no alterations or improvements to the Premises without first having obtained the written consent of the Executive Director or designee. Upon termination, the Port has the option to require User to remove such improvements at User's sole expense. If not removed, improvements shall become the property of the Port.

9. COMPLIANCE WITH LAWS. Lessee shall comply with all state, federal and local laws and regulations and the rules of the Port, as amended from time to time. User shall indemnify, defend, and hold the Port harmless from all expense directly or indirectly related to the noncompliance by User of governing law, regulations and/or rules of the Port.

Lessee expressly represents that all of Lessee's operations on the Premises shall be in strict compliance with governing environmental, land use, regulations and ordinances, and that User

specifically shall not use, store, keep or maintain in, on or about the Premises any hazardous substances and/or wastes, toxic materials, or solid wastes.

10. SITE SPECIFIC REQUIREMENTS. User shall limit authorized activities to User, its officials, employees, and volunteers. All participants and visitors shall remain clear of active runways and taxiways. No participant shall cross any active runway.

11. SAFETY RULES, TIME OF USE. Lessee shall be solely responsible for the safety and security of all participants and visitors. The Port of Benton and its representatives assume no responsibility for the safety of participants or visitors.

12. INDEMNIFICATION, LIABILITY INSURANCE. The Port and its employees/agents shall not be liable for any injury to any persons or for damage to any property, including, but not limited to, damage by rain, flood or bursting water pipes, abnormal temperature, mechanical or electrical failure, sewage/septic system failure, fire, smoke, water from sprinklers, earthquake, environmental damage, aircraft accident, or any infestation, or otherwise, regardless of how such injury or damage may be caused, as a result of the condition which in any way is related to the use of the Premises or the operations of the User in, on or about the Premises by User, its employees, agents, volunteers and invitees. User agrees to indemnify, defend and hold harmless the Port from and against all liability, claims, to include liability, claims and actions brought by User, its employees, agents, volunteers and invitees based upon or arising out of injuries, death, damages to person or property, caused by or resulting from the negligence of the User, the User's employees, agents, volunteers and invitees while engaging in or arising from the User's use of the airport pursuant to the terms of this Use Agreement. In addition, User shall maintain general liability insurance coverage in a minimum amount of \$2,000,000 per occurrence, and \$2,000,000 aggregate. The Port shall be named as an additional insured, and the policy will contain a restriction that the policy cannot be canceled without first having given the Port thirty (30) days advance written notice of an intended cancellation. User shall furnish certificates of such insurance to the Port prior to occupying the Premises.

11.1 PROOF OF COMPLIANCE. The Lessee shall name the Port as an additional insured on the public liability insurance policy required to be maintained by the terms of this Lease. Port may require Lessee to deliver to Port in the manner required for notices a copy or certificate of all insurance policies required by this Lease. Lessee shall include a provision in each of its insurance policies requiring the insurance carrier to give Port at least thirty (30) days prior written notice before such policy terminates. Lessee shall not substantially modify any of the insurance policies required by this Lease without giving at least thirty (30) days prior written notice to Port. Policy limits shall be no less than \$2,000,000 aggregate / each occurrence.

13. INDUSTRIAL INSURANCE WAIVER. FOR PURPOSES OF THE FOREGOING INDEMNIFICATION PROVISION ONLY, AND ONLY TO THE EXTENT OF CLAIMS AGAINST LESSEE BY LESSOR UNDER SUCH INDEMNIFICATION PROVISION, LESSEE SPECIFICALLY WAIVES ANY IMMUNITY IT MAY BE GRANTED UNDER THE WASHINGTON STATE INDUSTRIAL INSURANCE ACT, TITLE 51 RCW. THE INDEMNIFICATION OBLIGATION UNDER THIS LEASE SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE TO OR FOR ANY THIRD PARTY UNDER WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS, OR OTHER EMPLOYEE BENEFIT ACTS.

The foregoing provision was specifically negotiated and agreed upon by the parties hereto.

Port Initials _____

Tenant Initials _____

14. **ASSIGNMENT OR SUBLEASE.** Lessee shall not assign, transfer or sublet the Premises without the express written consent of the Port of Benton, which will not be unreasonably withheld should the proposed Lessee/Sub-Lessee comply with the described "Business Use" above.

15. **LEASEHOLD MORTGAGES.** Lessee shall have the right during the term of this Lease to mortgage the Lessee's interest in this Lease, without the prior consent of the Port, and to assign the Lessee's interest in this Lease as collateral security for such leasehold mortgage. All rights acquired by the holder of the leasehold mortgage shall be subject to each and every term, covenant and condition of this Lease and to all rights and interests of the Port. None of the terms, covenants or conditions of the Lease shall be waived by the Port by reason of the right given to the Lessee to assign its interest in this Lease for security purposes.

15.1 The Leasehold Mortgage shall contain provisions providing that no purchaser or transferee of the Lease at any foreclosure sale or other transfer authorized by law or by reason of a default under the mortgage where no foreclosure sale is required shall further assign or transfer any right, title or interest in or to this Lease or the leasehold estate covered by the Leasehold Mortgage unless the Port has approved the assignee or transferee in writing.

15.2 In the event the Lessee assigns this Lease for security purposes as provided in this Section 15, after receipt of a written notice from the Lessee giving the name and address of the leasehold mortgagee, the Port agrees that whenever the Port sends a notice to the Lessee under the terms of this Lease, the Port will contemporaneously send a copy of the notice to the leasehold mortgagee.

15.3 The Port further agrees that it will not accept a voluntary cancellation or surrender of the Lease by the Lessee without prior written consent of the leasehold mortgagee and the Port will not enter into any amendments of the lease which modifies any material provision of the lease without prior written approval of the leasehold mortgagee. No merger shall result from the acquisition by or the devolution upon any one entity of the fee and leasehold estates in the property.

15.4 In the event of a notice of default from the Port to the Lessee, the leasehold mortgagee may cure any default within the time provided for in the lease after the leasehold mortgagee's receipt of the notice of default. The Port agrees to accept a tender of cure of default from the leasehold mortgagee as if the cure were tendered by the Lessee. Provided, however, that if it takes the leasehold mortgagee more than thirty (30) days to cure a default (other than the payment of any money due under the lease) because the leasehold mortgagee is not in possession of the property, the lease shall not be in default if the leasehold mortgagee promptly undertakes to obtain possession of the property and diligently pursues its right to possession. No tender of cure of a default by the leasehold mortgagee shall require the leasehold mortgagee to cure any future defaults by the Lessee or require the leasehold mortgagee to perform any other term or condition of this Lease.

15.5 In the event of a default by the Lessee which has not been cured by the Lessee or by the leasehold mortgagee and which would permit the Port to forfeit or otherwise terminate this Lease or in the event the leasehold mortgagee forecloses upon its leasehold mortgage and becomes the holder of the Lessee's interest in this Lease, the Port agrees to accept the leasehold mortgagee as the Lessee under this Lease, provided the leasehold mortgagee performs all of the obligations and covenants of the Lessee contained in this Lease which are capable of being

performed by the leasehold mortgagee.

15.6 In the event of a default which is personal to the Lessee (such as a bankruptcy) and which cannot be cured by the leasehold mortgagee and the Lessee's interest under this Lease has been terminated or canceled, then at the written request of the leasehold mortgagee, the Port agrees to enter into a new lease with the leasehold mortgagee under the same terms and conditions as this Lease and for any unexpired term of the lease. The Port's execution and delivery of the lease shall be without any representation or warranty of any kind, including any representations or warranties regarding title to the Property, the improvements or the priority of such new lease.

15.6.1 The Port shall be obligated to enter into a new lease with the leasehold mortgagee only if the leasehold mortgagee has remedied and cured all monetary defaults of the Lessee under this Lease and has remedied and cured or has commenced and is diligently completing the cure of all non-monetary defaults susceptible to cure by any party other than the original Lessee. The leasehold mortgagee shall pay all costs and expenses of the Port, including, but not limited to, attorney fees, real property transfer taxes, escrow fees and recording fees incurred in connection with the preparation and execution of a new lease and any related conveyances.

15.6.2 If more than one leasehold mortgagee requests a new lease or in the event of a dispute between the Lessee and a leasehold mortgagee, the Port shall have no duty to determine the relative priority of the leasehold mortgages and the Port shall have no obligation to enter into a new lease with any leasehold mortgagees unless the dispute is resolved to the Port's satisfaction within ninety (90) days of the termination of this Lease.

15.6.3 Upon the execution of the new lease by the leasehold mortgagee and the Port, the Port will convey to the leasehold mortgagee by quit claim deed, title to any improvements on the Property by the Lessee in which the leasehold mortgagee has a recorded mortgage or other security interest. The conveyance of the improvements shall be in "as is" condition without any warranty or representation by the Port concerning the condition of the improvements. The Port will not warrant the title to the improvements and the leasehold mortgagee shall accept the title to the improvements subject to any existing encumbrances.

15.6.4 Upon the execution of a new lease and the conveyance of title to improvements, if any, it shall be the responsibility of the leasehold mortgagee to cancel and discharge this Lease and remove any persons occupying the premises. The leasehold mortgagee shall indemnify the Port and hold it harmless from any obligations, claims, actions, damages, costs or expense, including attorney fees, which may arise from such action or from the Port's compliance with any of the provisions of this Section 15.6.

16. **ENVIRONMENTAL STATUS.** Lessee accepts the property in its present condition. For purposes of determining the Lessee's compliance with environmental laws as set forth in paragraph 13 of the General Terms and Conditions, Lessee warrants that: (a) it has had the opportunity to inspect the premises and conduct at its expense any and all studies, environmental audits, or other examinations of the property; and (b) that no contamination of the soil or other violations of environmental law exists on the site at the commencement of this Lease.

17. **REVERSION.** At the end of the initial thirty-year term, all improvements shall revert to the Port as the Airport Sponsor. Should the Lessee desire to exercise their option to extend the Lease

for an additional ten (10) years, subject to all provisions of Section 2, then the Lessee may do so. An appraisal shall occur prior to the start of the additional ten-year term to set a new rental rate at fair market value terms.

At the termination of the Lease, whether in the midst of the initial 30-year term, at the end of the 30 year term, during or at the end of the first optional ten year term, or during or at the end of the second optional ten year term, all ownership, rights, and title to Improvements made by Lessee shall revert to the Port.

Ninety days prior to the termination of the lease, the Port and Lessee shall communicate. At the Port's option, the Port may require that the Lessee remove some or all improvements at Lessee's own expense. The Port may require the Lessee to bring the site back to its original site-ready development parcel in an unimproved state. In the event the Lessee has failed to maintain the Property as required by this Lease or the Property is contaminated by toxic or hazardous materials as the result of the actions of the Lessee or its successors such that in any event the value of the improvements is less than the cost of removal, remediation or renovation to bring the Property into compliance, then the Port may require the Lessee to remove any improvements or trade fixtures. The Lessee shall repair at Lessee's expense any damage to the Property resulting from such removal. Any improvements remaining on the property after the term of the lease, if Port deems acceptable, shall become the property of the Port.

18. CONDITION ASSESSMENT. The Port shall require the Lessee to provide to the Port Condition Assessment reports on their facilities during the term of the lease. The Lessee is required to have a professional engineer or building inspector perform an assessment of the condition of the facilities every five (5) years, as well as within the last year of the Lease. The engineer/inspector is hired by and paid for by the tenant but must be approved by the Port. This Condition Assessment will look at the building's structural components, as well as items such as the electrical and plumbing systems, heating and air conditioning system, etc. If the Lessee has parking spots or aircraft ramp/apron on their leasehold that they are responsible for, then those are assessed, too.

If there are major items of deferred maintenance, the Port may require that those items are addressed to the satisfaction of the Port during the term of the lease, as well as before reversion occurs. By having this assessment done on a scheduled basis during the term of a lease, it sets forth clear expectations for both parties. Should Lessee fail to remedy any items of concern within a reasonable and timely manner, the Port may deem such failure a default under the Lease.

19. MISCELLANEOUS.

19.1 Inspection. The Port reserves the right to enter and inspect the Premises at any reasonable time without prior notification or authorization.

19.2 Rules and Regulations. User agrees to comply with all applicable rules, regulations and covenants of the Port pertaining to the Premises for the general safety and convenience of the Port, invitees, licensees and the general public, including but not limited to vehicle posted speed, litter enforcement, signs, excessive noise, annoying lights, irritating odors, or discarding of any type of liquids or solids to either the Port's property or adjoining property.

19.3 ENVIRONMENTAL AND PREMISES CLEANUP COSTS. User shall be fully and completely liable to the Port for any and all cleanup costs and any and all other charges, fees and

penalties imposed by any governmental authority with respect to dangerous or waste substances, or discharges to the water, ground water or air, in or about the Premises, common areas or Port facilities by User. User shall indemnify, defend and save the Port harmless from any and all of the costs, fees, penalties and charges assessed against or imposed upon the Port, as well as the Port's attorneys' and engineers' fees and costs, as a result of User's use, disposal, transportation, generation and/or sale of hazardous, dangerous or waste substances, or discharges to the water, ground water or air on the Premises.

19.4 RECORDING OF LEASE. Either party to this Lease may record the Lease with the Auditor of Benton County. In lieu of recording the entire Lease, either party may record a memorandum of lease setting forth the legal description of the property, the parties and the term of the Lease, together with any additional information which the party deems to be relevant and, as long as the information in the memorandum is accurate, the other party agrees to sign the memorandum of lease.

20. GENERAL CONDITIONS.

20.1 NONMERGER. If both Port's and Lessee's estates in the Property or the improvements or both become vested in the same owner, this Lease shall nevertheless not be destroyed by application of the doctrine of merger except by the express election of the owner and the consent of the mortgagee or mortgagees under all mortgages existing upon the Property.

20.2 CAPTIONS AND TABLE OF CONTENTS. The Table of Contents of this Lease and the captions of the various paragraphs are for convenience and ease of reference only and do not define, limit, augment or describe the scope, content or intent of this Lease or of any part or parts of this Lease.

20.3 EXHIBITS AND ADDENDA. All exhibits and addenda to which reference is made in this Lease are incorporated in the Lease by the respective references to them. References to "this Lease" include matters incorporated by reference.

20.4 SUCCESSORS. Subject to the provisions of this Lease on assignment and subletting, each and all of the covenants and conditions of this Lease shall be binding upon and inure to the benefit of the heirs, successors, executors, administrators, assigns and personal representatives of the respective parties. The Port agrees that if the Property is sold, assigned or conveyed, except for any conveyance to the United States, the Port will place a provision in any conveyance making the conveyance subject to the terms and conditions of this Lease. The Port represents that if this Lease is recorded, any subsequent conveyance of the Property by the Port will be subject to the terms of this Lease, with the exception of any conveyance to the United States.

20.5 NO BROKERS. Each party warrants and represents that it has not dealt with any real estate brokers or agents in connection with this Lease. Each party will indemnify and hold the other harmless from any cost, expense or liability (including costs of suit and reasonable attorney fees) for any compensation, commission or fees claimed by any broker or agent in connection with this Lease.

20.6 NO UNREASONABLE WITHHOLDING OR DELAY OF CONSENT. Whenever this Lease requires the consent of either party to an action by the other, the party whose consent is requested shall not unreasonably withhold or delay its consent.

20.7 WARRANTY OF AUTHORITY. The persons executing and delivering this Lease on behalf of Port and Lessee each represent and warrant that each of them is duly authorized to do so and that the execution of this Lease is the lawful and voluntary act of the person on whose behalf they purport to act.

20.8 QUIET POSSESSION. The Port agrees that upon compliance with the terms and conditions of this Lease, the Lessee shall at all times have the right to the quiet use and enjoyment of the Property for the term of the Lease and any extensions.

20.9 LEASE CERTIFICATION. Upon the request of the Lessee, the Port agrees to provide a written certification of the status of the Lease, to the best knowledge of the Port at the time of the certification, setting forth the following: i) whether the Lease is in full force and effect; ii) whether there have been any amendments or modifications to the Lease; iii) whether the Lessee is current in the payment of the rent and other charges under the terms of the Lease; and iv) whether the Port is aware of any default or breach on the part of the Lessee. The Port may charge a \$200 administrative fee for this written certification.

20.10 NON-DISTURBANCE AND ATTORNMENT. This Lease shall be superior to any mortgage, deed of trust or other lien which may be placed on the Property after the effective date of this Lease. If a mortgage is placed upon the Property, the Port shall deliver to the Lessee a Non-disturbance and Attornment Agreement in recordable form which shall covenant that this Lease is superior to such mortgage or deed of trust and, provided the Lessee is not in default under the Lease, neither the Lease nor the Lessee's rights under the Lease shall be terminated by any sale, foreclosure, transfer, assignment or hypothecation of the Property.

21. MODIFICATIONS. This lease constitutes the entire agreement between the parties, and may not be changed or modified except by a written agreement signed by both parties.

22. SEVERABILITY. If any term or provision of this lease or the application of any term or provision to any person or circumstance is declared 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 whom it is held invalid or unenforceable, shall not be affected and will continue in full force and effect.

IN WITNESS WHEREOF the parties hereto have executed this Lease on the _____ day of
_____, 202_____.

LANDLORD
PORT OF BENTON

By: _____
Diahann Howard, Executive Director

ATTEST:

By: _____
David Billetdeaux, General Counsel

LESSEE:

By: _____
Name: _____
Title: _____

State of Washington)
) :ss
County of Benton)

On this _____ day of _____, 202_____, before the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____ and _____, to me known to be the Executive Director and General Counsel, respectively, of the Port of Benton, the municipal corporation that executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes herein mentioned, and on oath stated that they are authorized to execute the said instrument and that the seal affixed (if any) is the corporate seal of said municipal corporation.

GIVEN under my hand and official seal this _____ day of _____, 202___.

NOTARY PUBLIC in and for the State of Washington,
Residing at: _____

My Commission Expires: _____

State of Washington)
) :ss
County of Benton)

On this _____ day of _____, 202_____, before the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____ to me known to be a member of _____, LLC, the limited liability company that executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said company, for the uses and purposes herein mentioned, and on oath stated that he was authorized to execute said instrument on behalf of said limited liability company.

GIVEN under my hand and official seal this _____ day of _____, 202___.

NOTARY PUBLIC in and for the State of Washington,
Residing at: _____
My Commission Expires: _____

**LEASE
PERSONAL GUARANTY**

FOR AND IN CONSIDERATION of financial accommodations given to _____, LLC, a Washington limited liability company, by the Port of Benton ("Port"), and in consideration of the Port agreeing to deal with the entity, the undersigned hereby jointly and severally guarantees payment to the Port of all obligations of the foregoing lease, as more particularly described above.

The Port shall not be bound to exhaust its recourses or take any action against the entities or other parties before being entitled to payment by the undersigned of all amounts hereby guaranteed but may make such demand and take such actions as it deems advisable.

Notice of default on the part of the entities is hereby waived and the undersigned agrees to remain bound, notwithstanding any extension or renewals of any indebtedness or any liabilities hereby guaranteed or any part thereof, and consent is hereby given to _____, LLC, to make such renewals and extensions as the company, at its option, may choose to grant or accept.

The undersigned guarantees and represents that he is a member of or is financially interested in _____, LLC.

Date:

Name: _____

State of Washington)
) :ss
County of Benton)

On this _____ day of _____, 202____, before the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____ to me known to be the individual that executed the within and foregoing instrument and acknowledged that he signed the same as his/her/their free and voluntary act and deed for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this _____ day of _____, 202___.

NOTARY PUBLIC in and for the State of Washington,
Residing at: _____
My Commission Expires: _____

EXHIBIT A
LEGAL DESCRIPTION

RICHLAND/PROSSER Airport

Lot _____

[INSERT LEGAL DESCRIPTION]

SITE MAP FOR EXHIBIT A

EXHIBIT B

GENERAL LEASE TERMS & CONDITIONS

1. BUILDING CONSTRUCTION ON PREMISES.

1.1 Any building construction proposed on the premises shall be submitted prior to and approved by the Port of Benton to meet any building code requirements of the City of Richland or City of Prosser (depending on the location of the proposed hangar). Any buildings so constructed shall be done strictly in accordance with full plans and specifications, (including drawings and elevations showing the appearance and color of the finished building) approved by the Port prior to commencing construction. Prior to construction said plans and specifications shall be approved by the Port and must have valid permits issued by the requisite City. The building shall be placed upon the lot at the location shown on the plot plan submitted to the Port, which must be first approved by the Port's Executive Director or designee. Any timber, gravel, or excess soil from this construction shall remain the property of the Lessor and shall be removed from the site by Lessee to another location on the Airport property determined by the Executive Director or their designee. A copy of all "as builts" for the site to include Building, Utility, Drainage and Paving plans shall be furnished to the Port in electronic format acceptable to the Airport upon completion of construction. All buildings shall be used for the business purpose(s) set forth in paragraph 2 of this lease.

1.2 The Lessee shall commence construction of a building pursuant to the terms of the Development Agreement between the parties. The time for construction may be extended for the period of any delay caused to Lessee by any strike, unavailability of materials or work forces, weather, or similar conditions beyond the control of Lessee. If the Lessee shall not receive the permits necessary to construct its proposed building, then the Lessor or Lessee shall have the right to terminate this Lease.

1.3 It shall be the responsibility of Lessee to secure at Lessee's sole expense all permits and approvals required for the use of the premises and construction of any building thereon. As part of the approval process, it shall be the responsibility of the Lessee to submit a completed 7460 Form to the FAA for their review. Lessee must provide proof of FAA approval to Port prior to issuance of the Building Permit. The height and configuration of any and all buildings shall be subject to any restrictions imposed by the FAA and caused by existing landing, runway, or taxiway requirements of the airport. Work and/or materials not in accord with the foregoing shall be corrected, removed, replaced, and/or repaired by Lessee at its expense upon written notice by the Port. If such work and/or material is not so corrected, removed, replaced or repaired by Lessee within a reasonable time of such notice, Port may correct, remove, replace and/or repair such work or material at Lessee's expense, including the costs of utility installation, relocation, or removal required by the construction and its use and occupancy of the premises.

1.4 All work by Lessee shall be performed in a safe manner both on the leased premises and with respect to other Port property at the airport which might be utilized or affected by any activity of Lessee. Work shall be performed so as not to interfere with the use of other airport property by Port, its other tenants, or other users of airport property. During any construction, Lessee shall keep the leased premises and any other airport property free of waste materials and rubbish caused by the work; provided, however, that during construction Lessee may temporarily store waste materials and rubbish caused by the work on the Premises if said waste material and rubbish are reasonably screened from view of the public or otherwise kept in a slightly manner. Material and/or equipment shall not be placed or stored upon airport property

other than the leased Premises without the prior consent of the Executive Director or his or her designee.

1.5 In the event of termination as provided for herein, Port may retain all rents therefor received by it, and all rights of Lessee shall absolutely terminate. In the event that any rent is owing by Lessee at the effective date of termination herein, Lessee shall pay said rent (together with leasehold or other tax thereon) within ten (10) days of said effective date. This shall not be construed as limiting the Landlord's potential obligation to mitigate damages in the event of termination nor permit acceleration of rent without court order.

1.6 During the initial term of this lease, all buildings and improvements to the property shall be the property of Lessee. At the expiration of the initial term of the lease, Port shall have the option in its sole discretion to accept a deed or other conveyance of the improvements constructed hereunder, or of requiring Lessee to remove any buildings or other improvements made to the premises and restore the premises to the same condition as when first leased.

2. CLEARING AND GRADING PREMISES. Lessee shall perform at Lessee's own expense any clearing or grading of the premises required. Grading and clearing shall be done in the manner and to the standards and grades set forth in the approved plans and specifications and subject to the conditions, if any, of any grading permit that may be required prior to commencement of any grading. The "Reversion" and "Condition Assessment" provisions of an individual Lessee's Lease Agreement shall control.

3. REPAIRS. The premises have been inspected and are accepted in their present condition, and Lessee will at all times keep the premises neat, clean and in a sanitary condition, and will replace any glass of all broken windows and doors of the building as may become cracked or broken, and except for reasonable wear and tear and damage by fire or other unavoidable casualty, will at all times preserve said premises in as good repair as they now are or may hereafter be put to. All repairs shall be at Lessee's sole cost and expense. Lessee agrees that at the expiration or sooner termination of this lease Lessee will quit and surrender said premises without notice and in a neat and clean condition and will deliver to Port all keys to all buildings on the premises.

4. UTILITIES AND GARBAGE. Lessee hereby covenants and agrees to pay all charges for electricity, water and sewer, and for all other public utilities which shall be used in or charged against the Leased premises during the full term of this lease. Lessee shall at its cost construct and keep in repair a suitable lawful sewage system, in accordance with Benton County health and sanitary regulations. Any permits therefor which may be required shall be secured by Lessee at Lessee's expense prior to installation. Lessee is responsible for disposing all trash/garbage/waste that they produce. Lessee must either set up waste removal services for a designated area at the airport or haul waste off-airport.

5. WATER SERVICE. Public water has been extended to the premises by Port. Lessee shall pay any connection charges required by city ordinance. Lessee shall be entirely responsible for the extension into the leased premises of said water for its own and any subtenant's purposes, and shall pay the entire cost thereof, including but not limited to labor, pipes, meter box, all necessary fittings, and the cost of any permits. Prior to installation, Port shall approve all plans and specifications for the water service within the premises to assure that said service meets all applicable building and other codes, laws, rules and regulations, and shall inspect and approve the same prior to covering any water lines or appurtenances. Nothing herein shall be construed as obligating Port at any time to make changes in the water service to the premises, such as

increasing the size of the water line.

6. ACCIDENTS-INDEMNITY. All personal property on said leased premises shall be at the risk of Lessee. Port shall not be liable for any damage, either to person or property, sustained by Lessee or others, caused by any defects now in said premises or hereafter occurring therein, or due to the condition of any buildings hereafter erected to any part or appurtenances thereof becoming out of repair, or caused by fire or by the bursting or leaking water, gas, sewer or steam pipes, or from any act or neglect of Port, its employees, its elected and appointed officials, tenants or other occupants of said buildings, or any other persons, including Port, or due to the happening of any accident from any cause in or about said buildings. Lessee covenants to protect, save and indemnify Port, its elected and appointed officials and employees while acting within the scope of their duties as such, harmless from and against all claims, demands and causes of action of any kind or character, including the cost of defense thereof, arising in favor of Lessee's employees or third parties on account of personal injuries, death or damage to property arising out of the premises leased by Lessee or in any way resulting from the willful or negligent acts or omission of Lessee and/or its agents, employees or representatives.

7. NO OCCUPANCY OF BUILDING(S) PRIOR TO ISSUANCE OF CERTIFICATE OF OCCUPANCY. Lessee shall not occupy or use any building hereafter erected on the Premises until a final or temporary certificate of occupancy thereof shall have been issued by Port's Building Official.

8. CARE OF PREMISES. Port shall not be called upon to make any improvements or repairs of any kind upon said premises and said premises shall at all times be kept and used in accordance with the laws of the State of Washington, ordinances of the Port of Benton, rules and regulations and minimum standards of the Port and in accordance with all directions, rules and regulations of the health officer, fire marshal, building official or other proper officer of any pertinent and authorized public authority, at the sole cost and expense of Lessee. Lessee will commit or permit no waste, damage or injury to the premises, and at Lessee's own cost and expense, will keep all drainage pipes free and open and will protect water, heating and other pipes so that they will not freeze or become clogged, and will repair all leaks, and will also repair all damages caused by leaks or by reason of Lessee's failure to protect and keep free, open and unfrozen any of the pipes and plumbing on said premises.

9. LAWs AND REGULATIONS

9.1 Lessee shall conduct and carry on in said premises only the business for which said premises are leased and shall not use the premises for illegal purposes. The premises shall not be used for residential purposes. Lessee shall comply with all applicable laws, ordinances, codes and airport rules and regulations, and minimum standards both those in existence at the commencement of this lease as well as those in existence in the future. Lessee shall be responsible for securing and maintaining all permits and paying, when due, all costs, fees, taxes, and other charges or benefits incidental to the lease, construction, and use of the leased premises.

9.2 Under the requirements imposed upon the Port as recipient of Federal Aid, Funds, Grants, and Assurances, the parties agree as follows:

9.2.1 Lessee covenants that it will not, in its operation at the Port Airport, on the basis of race, color, creed, or national origin, discriminate or permit discrimination against any person or group of persons in any manner prohibited by Part 21 of the Federal Aviation

Regulations (49 CFR), and in the event of such discrimination, Lessee agrees that Port has the right to take such action as the United States Government may direct to enforce this covenant.

9.2.2 With respect to any aeronautical services, Lessee agrees:

9.2.2.1 To furnish said aeronautical service on a fair, equal, and not unjustly discriminatory basis to all users thereof, and

9.2.2.2 To charge fair, reasonable and not unjustly discriminatory prices for each unit of service, provided, that Lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

10. COMPLIANCE WITH FAA LEGAL REQUIREMENTS

10.1 The LESSEE, in the performance of this Agreement, shall comply with all applicable federal, state or local laws and ordinances, including regulations for licensing, certification and operation of facilities, programs and accreditation, and licensing of individuals, and any other standards or criteria as described in this Agreement to assure quality of services.

10.2 The LESSEE specifically agrees to pay any applicable business and occupation (B&O) taxes which may be due on account of this Agreement.

10.3 Access To Records And Reports. The LESSEE must maintain an acceptable cost accounting system. The LESSEE agrees to provide the sponsor, the Federal Aviation Administration, and the Comptroller General of the United States or duly authorized representatives, access to any books, documents, papers, and records of the LESSEE which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The LESSEE agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

10.4 General Civil Rights Provisions. The LESSEE agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision binds the LESSEE and subtier contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

10.5 Title VI Solicitation Notice: The Port, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

10.6 Compliance with Nondiscrimination Requirements. During the performance of this

contract, the LESSEE, for itself, its assignees, and successors in interest (hereinafter referred to as the "LESSEE") agrees as follows:

10.6.1 Compliance with Regulations: The LESSEE will comply with the Title VI List of Pertinent Nondiscrimination Acts And Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

10.6.2 Non-discrimination: The LESSEE, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The LESSEE will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

10.6.3 Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the LESSEE for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the LESSEE of the LESSEE'S obligations under this contract and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.

10.6.4 Information and Reports: The LESSEE will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts And Authorities and instructions. Where any information required of a LESSEE is in the exclusive possession of another who fails or refuses to furnish the information, the LESSEE will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

10.6.5 Sanctions for Noncompliance: In the event of a LESSEE's noncompliance with the Nondiscrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

10.6.5.1 Withholding payments to the LESSEE under the contract until the LESSEE complies;

10.6.5.2 Cancelling, terminating, or suspending a contract, in whole or in part.

10.6.6 Incorporation of Provisions: The LESSEE will include the provisions of paragraphs 10.6.1 through 10.6.5.2 in every subcontract, including procurements of materials and leases of equipment, Required Contact Provisions Issued on January 29, 2016 Page 19 AIP Grants and Obligated Sponsors Airports (ARP) unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The LESSEE will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance.

Provided, that if the LESSEE becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the LESSEE may request the sponsor to

enter into any litigation to protect the interests of the sponsor. In addition, the LESSEE may request the United States to enter into the litigation to protect the interests of the United States.

10.6.7 The Lessee for itself, its heirs, 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:

10.6.7.1 In the event facilities are constructed, maintained, or otherwise operated on the property described in this lease for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the Lessee will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

10.6.7.2 With respect to this Lease, in the event of breach of any of the above Nondiscrimination covenants, the City will have the right to terminate the lease and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the lease had never been made or issued.

10.7 Applicable Nondiscrimination Statutes. During the performance of this contract, the LESSEE, for itself, its assignees, and successors in interest (hereinafter referred to as the "LESSEE") agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation-Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100 209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age

Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not);

- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 - 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

10.8 Texting While Driving. In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving" (10/1/2009) and DOT Order 3902.10 "Text Messaging While Driving" (12/30/2009), the FAA encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or sub-grant.

In support of this initiative, the Owner encourages the LESSEE to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. The LESSEE must include the substance of this clause in all sub-tier contracts exceeding \$3,500 and involve driving a motor vehicle in performance of work activities associated with the project.

10.9 Energy Conservation Requirements. LESSEE and its subcontractors agree to comply with mandatory standards and policies relating to energy efficiency as contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201et seq.).

10.10 Federal Fair Labor Standards Act. All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers. The LESSEE has full responsibility to monitor compliance to the referenced statute or regulation. The LESSEE must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor - Wage and Hour Division

10.11 Occupational Safety and Health Act of 1970. All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. LESSEE must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The LESSEE retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (29 CFR Part 1910). LESSEE must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor- Occupational Safety and Health Administration.

10.12 Trade Restriction Certification. By submission of an offer, the LESSEE certifies that with respect to this solicitation and any resultant contract, the LESSEE:

10.12.1 is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (U.S.T.R.);

10.12.2 has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country included on the list of countries that discriminate against U.S. firms as published by the U.S.T.R; and

10.12.3 has not entered into any subcontract for any product to be used on the Federal on the project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001. The LESSEE must provide immediate written notice to the Owner if the LESSEE learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The LESSEE must require subcontractors provide immediate written notice to the LESSEE if at any time it learns that its certification was erroneous by reason of changed circumstances.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a LESSEE or subcontractor:

10.12.3.1 who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R. or

10.12.3.2 whose subcontractors are owned or controlled by one or more

citizens or nationals of a foreign country on such U.S.T.R list or

10.12.3.3 who incorporates in the public works project any product of a foreign country on such U.S.T.R. list;

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of LESSEE is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

The LESSEE agrees that it will incorporate this provision for certification without modification in all lower tier subcontracts. The LESSEE may rely on the certification of a prospective subcontractor that it is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by U.S.T.R, unless the LESSEE has knowledge that the certification is erroneous.

This certification is a material representation of fact upon which reliance was placed when making an award. If it is later determined that the LESSEE or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through the Owner cancellation of the contract or subcontract for default at no cost to the Owner or the FAA.

10.13 Veteran's Preference. In the employment of labor (excluding executive, administrative, and supervisory positions), the LESSEE and all sub-tier contractors must give preference to covered veterans as defined within Title 49 United States Code Section 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 U.S.C. 632) owned and controlled by disabled veterans. This preference only applies when there are covered veterans readily available and qualified to perform the work to which the employment relates.

10.14 Certification Regarding Lobbying. The LESSEE certifies by signing and submitting this agreement, to the best of his or her knowledge and belief, that:

10.14.1 No Federal appropriated funds have been paid or will be paid, by or on behalf of the LESSEE, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

10.14.2 If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

10.14.3 The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-

grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

10.15 Clean Air and Water Pollution Control. LESSEE agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 U.S.C. § 740-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). The LESSEE agrees to report any violation to the Owner immediately upon discovery. The Owner assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration.

10.16 Certification of LESSEE regarding Debarment. The LESSEE certifies that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

10.17 Certification of LESSEE regarding Tax Delinquency and Felony Convictions

10.17.1 LESSEE represents that it is not a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

10.17.2 The LESSEE represents that it is not a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months.

10.18 Disadvantaged Business Enterprises Provisions. LESSEE shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The LESSEE shall carry out applicable requirements of 49 CFR part 26 in the award and administration of Department of Transportation-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Port deems appropriate, which may include, but is not limited to:

- 10.18.1** Withholding monthly progress payments;
- 10.18.2** Assessing sanctions;
- 10.18.3** Liquidated damages; and/or
- 10.18.4** Disqualifying the Contractor from future bidding as non-responsible.

10.19 Breach of Contract. Any violation or breach of terms of this contract on the part of the contractor or its subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement.

Port will provide LESSEE written notice that describes the nature of the breach and corrective actions the LESSEE must undertake in order to avoid termination of the contract. The Port reserves the right to withhold payments to LESSEE until such time the LESSEE corrects the breach or the Port elects to terminate the contract. The Port's notice will identify a specific date by

which the LESSEE must correct the breach. Port may proceed with termination of the contract if the LESSEE fails to correct the breach by deadline indicated in the Port's notice.

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

11. **LIENS AND INSOLVENCY**. Lessee shall keep the leased premises and the property in which the leased premises are situated free from any liens arising out of any work performed, materials furnished or obligations incurred by Lessee. If any liens are filed on the property, Lessee shall promptly discharge the same and shall take all steps required to protect Port's interests, including discharging the lien or placing funds in escrow in an amount acceptable to Port. Lessee shall pay all of Port's expenses relating to the filing of liens, including, but not limited to, Port's attorney fees relating in any way to the lien filing. If Lessee becomes insolvent, voluntarily or involuntarily bankrupt, or if a receiver, assignee or other liquidating officer is appointed for the business of Lessee, Port may cancel this lease at Port's option.

12. **ENVIRONMENTAL ISSUES AND HAZARDOUS SUBSTANCES**.

12.1 **Hazardous Substances**. The term "Hazardous Substances", as used in this Lease, shall include, without limitation, any polychlorinated biphenyls, petroleum products, asbestos, and any other hazardous, toxic or radioactive substance or waste, the release, discharge, emission, storage, handling or disposal of which is or becomes regulated by any existing or future laws.

12.2 **Lessee's Restrictions**. Lessee shall not cause or permit to occur:

12.2.1 Any violation of any federal, state or local law, ordinance, or regulation now or hereafter enacted, related to environmental conditions on, under, or about the Premises or anywhere on the Airport, or arising from Lessee's use or occupancy of the Premises or the Airport, including, but not limited to, soil and ground water conditions; or

12.2.2 The use, generation, release, manufacture, refining, production, processing, storage, or disposal of any Hazardous Substance on, under, or about the Premises or anywhere on the airport, or the transportation to or from the Premises or Airport of any Hazardous Substance, except as specifically disclosed in this Lease.

12.3 **Environmental Clean-up**.

12.3.1 Lessee shall, at Lessee's own expense, comply with all laws regulating the use, generation, storage, transportation, or disposal of Hazardous Substances ("Laws").

12.3.2 Lessee shall, at Lessee's own expense, make all submissions to provide all information required by and comply with all requirements of all governmental authorities (the "Authorities") under the Laws.

12.3.3 Should any Authority or any third party demand, pursuant to applicable law, that a cleanup plan be prepared and that a cleanup be undertaken because of any deposit, spill, discharge, or other release of Hazardous substances that occurs during the Term of this Lease, at or from the Premises or on the Airport, or which arises at any time from Lessee's use or

occupancy of the Premises or the Airport, then Lessee shall, at Lessee's own expense, prepare and submit the required plans and all related bonds and other financial assurances required by law; and Lessee shall carry out all such cleanup plans. This provision shall not be considered a waiver of any right of Tenant to challenge the legality of such demand.

12.3.4 Lessee shall promptly provide all information regarding the use, generation, storage, transportation, or disposal of Hazardous Substances that is requested by Port. If Lessee fails to fulfill any duty imposed under this Paragraph 12.3 within a reasonable time, Port may do so; and in such case, Lessee shall cooperate with Port in order to prepare all documents Port deems necessary or appropriate to determine the applicability of the Laws to the Premises and Lessee's use thereof, and for compliance therewith, and Lessee shall execute all documents promptly upon Port's request. No such action by Port and no attempt made by Port to mitigate damages under any Law shall constitute a waiver of any of Lessee's obligations under this Paragraph 12.3.

12.3.5 Lessee's obligations and liabilities under this Paragraph (12.3) shall survive the expiration of this Lease.

12.4 Lessee's Indemnity.

12.4.1 Lessee shall indemnify, defend, and hold harmless Port, its elected and appointed officials, agents, and employees from all fines, suits, procedures, claims, and actions of every kind, and all costs associated therewith (including attorneys' and Lessees' fees) arising out of or in any way connected with any deposit, spill, discharge, or other release of Hazardous Substances that occurs during the term of this Lease, at or from the Premises, anywhere on the Airport as a result of the Lessee's activities and/or involving Lessee's equipment and/or employees or which arises at any time from Lessee's use or occupancy of the Premises, or from Lessee's failure to provide all information, make all submissions, and take all steps required by all Authorities under the laws and all other environmental laws. The term "Hazardous Substances" as used herein shall mean any substance heretofore or hereafter designated as hazardous under the Resource Conservation and Recovery Act, 42 USC Sec. 6901 et seq; the Federal Water Pollution Control Act, 33 USC Sec. 1257 et seq.; the Clean Air Act, 42 USC Sec. 2001 et seq.; the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 USC Sec. 9601 et seq.; or the Hazardous Waste Cleanup Model Toxic Control Act, RCW 70.105D, all as amended and subject to all regulations promulgated there under.

12.4.2 Lessee's obligations and liabilities under this Paragraph 12.4 shall survive the expiration of this Lease.

12.5 Compliance With Future Laws. Lessee shall comply with all federal, state, county, municipal, and other governmental laws, ordinances, rules and regulations now or hereafter affecting the Premises, Lessee's business, or any activity or condition on or about the Premises, including, without limitation, all environmental laws and any other laws relating to the improvements on the Premises or the air in and around the Premises (collectively, the "Laws"). Lessee warrants that its business and all activities to be conducted or performed in, on, or about the Premises shall comply with all of the Laws. Lessee agrees to change, reduce, or stop any such activity, or install necessary equipment, safety devices, pollution control systems, or other installations at any time during the lease to so comply.

If, during the lease Lessee is required to alter, convert, replace the HVAC system serving the

Premises in order to comply with any of the Laws concerning indoor air pollution or quality, or in order to meet any applicable limitation on, standard for, or guideline relating to indoor air quality or the emission of any indoor air pollutant, including, without limitation, those adopted by the Occupational Safety and Health Administration, the American Society of Heating, Refrigeration, and Air Conditioning Engineers, or the Environmental Protection Agency, Lessee shall be responsible for paying all costs or any such conversion or replacement, including without limitation, the purchase and installation of new equipment, and the alteration of existing HVAC equipment in the Premises to accommodate any new equipment.

12.6 Reporting Requirements. Each party agrees to comply with all local, state and federal laws, rules, regulations or statutes requiring the submission, reporting, or filing of information about the storage, use, or discharge of chemical or other substances at the Premises or in the Building, and provide to the other a full copy of any such filing or report as submitted within 15 days of such submission.

12.7 Limited Use of Hazardous Substances by Lessee. Notwithstanding the foregoing, Lessee may handle, store, use or dispose of products containing small quantities of Hazardous Materials (such as aerosol cans containing insecticides, toner for copiers, paints, paint remover and the like) to the extent customary and necessary for the use of the Premises for general light industrial or office purposes; provided that Lessee shall always handle, store, use, and dispose of any such Hazardous Materials in a safe and lawful manner and never allow such Hazardous Materials to contaminate the Premises, and appurtenant land or the environment.

Lessee hereby agrees that the premises may not be used for any purpose which, *in Port's sole discretion*, exposes the building or those occupying it to an unreasonable danger of exposure to electromagnetic rays and/or fields. Breach of this provision by Lessee shall entitle Port, in addition to any other remedies which it may have, to injunctive relief, *it* being acknowledged that monetary damages are insufficient.

12.8 Right to Confirm Lessee's Environmental Compliance. Lessee shall fully cooperate in allowing, from time to time, such examinations, tests, inspections, and reviews of the premises as Port, in its sole and absolute discretion, shall determine to be advisable in order to evaluate any potential environmental problems. Port expressly reserves the right to conduct examinations, tests, (including but not limited to a geohydrologic survey of soil and subsurface conditions), inspections, and reviews of the premises as Port in its sole and absolute discretion may determine to be necessary. Any such testing shall be at Port's expense, subject to any right of reimbursement which may exist under applicable law.

The right reserved to Port in this provision to conduct such examinations, test, inspections, and reviews of the premises as Port, in its sole and absolute discretion, shall determine to be advisable shall be exercised by Port in a reasonable fashion. More specifically, no such test shall be conducted during the normal business hours of Lessee, unless Lessee specifically agrees otherwise. Port shall take all reasonable steps to restore the premises to the condition in which they existed prior to the taking of such steps. Port shall take all reasonable steps to ensure that no conditions on the premises associated with such testing shall create an unreasonable risk or an unreasonable hazard.

13. WASTE WATER. This lease is subject to all statutes and regulations of the state of Washington with respect to waste water disposal. If Lessee's use of the premises results in the discharge or the potential for discharge of any waste waters other than domestic waste waters from the premises, Lessee shall immediately apply to the Washington State Department of Ecology

for a State Waste Water Discharge Permit. Lessee shall advise the Port which storm drains or other waste water facilities Lessee will utilize in disposing of waste waters. Port may designate storm sewers or other facilities which Lessee may use to dispose of waste waters. Sanitary sewers shall not be used for storm drainage or the discharge of any effluent deemed by the Airport Director to be harmful to the sanitary sewer system. No hazardous or toxic materials shall be discharged into the sanitary or storm sewer systems. Lessee shall complete the Industrial/Commercial Waste Discharge Permit application.

14. WETLANDS. Lessee shall not damage or destroy and shall maintain and preserve Wetlands existing on the leased premises. Any wetlands destroyed by Lessee shall be replaced as required by law.

15. ASSIGNMENT AND SUBLetting.

15.1 The Lessee's interest in this lease may be assigned by Lessee with the prior written consent of Port, to an assignee such as a bank for security for money loaned or advanced to Lessee for construction on the premises or other business purposes of Lessee. Port's consent thereto shall not be unreasonably withheld or delayed. Port shall execute such instruments in recordable form as Lessee's lenders may reasonably require, provided said instruments do not materially adversely affect any of Port's rights or materially increase any of Landlord's obligations under this Lease.

15.2 This lease may be assigned by Lessee in whole only to an assignee other than for security purposes whose use of the premises has prior to such assignment been approved in writing by Port. In such latter case, such assignment may only be made to an assignee for a use of the premises for such business purpose as is consistent with the zoning restrictions for the premises. Finally, in such latter case, the assignee must be shown to Port to be of such financial standing and responsibility at the time of such assignment as to give reasonable assurance to Port of prompt payment of all rents and other amounts to be paid under this lease, and of full compliance with all other terms, covenants, conditions and provisions of the lease. No such assignment may be made or be of any force or effect if at the time of such assignment Lessee is in default in any of the terms, covenants, conditions and provisions of the lease, including default in the payment of rent: provided, however, the assignee may cure the default(s) prior to taking possession of the premises. No such assignment for any purpose shall be of any force or effect unless Port first shall in writing have consented to said assignment and has received a true copy of the proposed assignment. The Port may not refuse to consent to such assignment for any purpose herein above set forth. Such assignment shall include the then-unexpired balance of the term of this lease.

15.3 Lessee may sublet the whole or any portion of any buildings on the premises, but not the real property (other than that part of the real property which is beneath the buildings), to a subtenant or subtenants; provided: (1) that the use to be made of the buildings is consistent with the terms of the Lease and applicable zoning restrictions and federal grant assurances for the premises and federal grant assurances, (2) Port has in writing been given notice of the sublease and contact information for the proposed subtenant (3) Any proposed sublease includes a section stating that the sublease is bound to the conditions of the master lease, (4) the subtenant shall meet the insurance requirements of the primary lease, which shall be evidenced by the Lessee providing proof of insurance for all subtenants to Port and shall comply with all hold harmless and indemnification provisions of this lease; and (5) any other conditions as may be required by the most current Airport Sublease Policy. Port may not refuse to consent to such a sublease where the sublease meets the above requirements.

15.4 If all or any part of the leased premises be sublet or occupied by anybody other than Lessee, Port may, after default by Lessee, and subject to any prior rights of Lessee's lenders, collect rent and leasehold tax from any and all subtenants or occupants, and apply the net amount collected to the rent reserved herein, but no such collection shall be deemed a waiver of any agreement, term, covenant or condition hereof nor the acceptance by Port of any subtenant or occupant as tenant.

15.5 The Port may charge a \$500.00 administrative fee for the work it must perform to complete all tasks associated with an Assignment of Lease. This fee must be paid prior to formal board approval.

16. ACCESS. Lessee will allow Port or Port's agents free access at all reasonable times and upon at least twenty-four (24) hours' notice to said premises during normal business hours for the purpose of inspection. Nothing herein shall be construed as in any way limiting the authority of Port's rights under existing law.

17. INDEMNITY AND HOLD HARMLESS. The Lessee agrees to indemnify and hold Port harmless as provided herein to the maximum extent possible under law. Accordingly, Lessee agrees for itself, its successors, and assigns, to defend, indemnify, and hold harmless Port, its appointed and elected officials, and employees from and against liability for all claims, demands, suits, and judgments, including costs of defense thereof for injury to persons, death, or property damage which is caused by, arises out of, or is incidental to Lessee's exercise of rights and privileges granted by this lease Agreement.

The Lessee's obligations under this section shall include:

17.1 Indemnification for such claims whether or not they arise from the sole negligence of Lessee or the concurrent negligence of both parties, except to the extent of Port's negligence or the negligence of one or more third parties;

17.2 The duty to promptly accept tender of defense and provide defense to Port at Lessee's own expense;

17.3 Indemnification of claims made by Lessee's own employees or agents; and,

17.4 Waiver of Lessee's immunity under the industrial insurance provisions of Title 51R.C.W. but only to the extent necessary to indemnify Port, which waiver has been mutually negotiated by the parties.

In the event it is necessary for Port 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 Lessee.

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

18. FIRE INSURANCE.

18.1 Lessee will carry fire and extended coverage insurance with rent interruption endorsement in an amount equal to the full insurable value of all improvements, structures, and buildings located on the Premises. The policy shall include Port as an insured for its vested interest in the property. A certificate of insurance shall be provided to Port.

18.2 In the event of the total or partial destruction by fire (or otherwise) of the building, structures, or facilities currently on the Premises or subsequently constructed by lessee, Lessee shall have the obligation to reconstruct such facilities to their original condition within six (6) months after their destruction, or to demolish the buildings, structures or facilities and restore the Premises to the same condition as when leased to Lessee

18.3 Lessee shall maintain in full force and effect on all of its fixtures and equipment in the Premises, a policy or policies of fire and extended-coverage insurance with standard coverage endorsement to the extent of at least eighty percent (80%) of their insurable value, or to the extent of at least the minimum required insurance limit as stated in the Airport's most current policy, whichever is greater. During the term of this lease, the proceeds from any such policy or policies of insurance shall be used for the repair or replacement of the fixtures and equipment so insured. Port shall have no interest in the insurance upon Lessee's equipment and fixtures and will sign all documents necessary or proper in connection with the settlement of any claim or loss by Lessee. Lessee shall furnish Port with a certificate of such policy and whenever required shall satisfy Port that such policy is in full force and effect within thirty (30) days of the commencement of this Lease. Port will not carry insurance on Lessee's property.

19. LIABILITY INSURANCE REQUIREMENTS.

19.1 Insurance Term. The Lessee shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the Lessee's operation and use of the leased Premises.

19.2 No Limitation. Lessee's maintenance of insurance as required by the agreement shall not be construed to limit the liability of the Lessee to the coverage provided by such insurance, or otherwise limit the Public Entity's recourse to any remedy available at law or in equity.

19.3 Minimum Scope of Insurance. Lessee shall obtain Commercial General Liability insurance which shall be at least as broad as Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover premises and contractual liability. Port shall be named as an additional insured on Lessee's Commercial General Liability insurance policy using ISO Additional Insured-Managers or Lessors of Premises Form CG 20 11 or a substitute endorsement providing at least as broad coverage.

19.4 Minimum Amounts of Insurance. Lessee shall maintain Commercial General Liability insurance which shall be written with limits no less than \$2,000,000 each occurrence, \$2,000,000 general aggregate. Lessee shall maintain environmental or pollution liability insurance for fueling operations and cover the gradual, sudden and accidental discharge or spill of pollutants including first party cleanup and remediation of the Premises. The policy shall be in an amount of not less than \$2 million per claim. Lessee warrants that any retroactive date on the policy shall precede the effective date of this lease. If Lessee is conducting a Commercial Aeronautical Activity, the Lessee shall maintain those limits set forth in the Minimum Standards for Commercial Aeronautical Activity adopted by the Port.

19.5 Other Insurance Provisions. The Lessee's Commercial General Liability insurance policy or policies are to contain or be endorsed to contain that they shall be primary insurance as respects Port. Any Insurance, self-insurance, or self-insured pool coverage maintained by Port shall be excess of the Lessee's insurance and shall not contribute with it.

19.6 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.

19.7 Verification of Coverage. Lessee shall furnish Port with certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Lessee.

19.8 Notice of Cancellation. The Lessee shall provide Port with written notice of any policy cancellation within two business days of their receipt of such notice.

19.9 Failure to Maintain Insurance. Failure on the part of the Lessee to maintain the insurance as required shall constitute a material breach of lease, upon which Port may, after giving ten (10) business days' notice to the Lessee to correct the breach, terminate the Lease or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to Port on demand.

19.10 Port Full Availability of Lessee Limits. If the Lessee maintains higher insurance limits than the minimums shown above, Port shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Lessee, irrespective of whether such limits maintained by the Lessee are greater than those required by this contract or whether any certificate of insurance furnished to Port evidences limits of liability lower than those maintained by the Lessee.

20. MUTUAL RELEASE AND WAIVER. To the extent a loss is covered by insurance in force, Port and Lessee hereby mutually release each other from liability and waive all right of recovery against each other for any loss from perils insured against under their respective fire insurance policies, including any extended coverage endorsements hereto; provided that this Agreement shall be inapplicable if it would have the effect of invalidating any insurance coverage of Port or Lessee.

21. NOTICE. All notices and consents hereunder shall be given in writing, delivered in person or mailed by certified mail, postage pre-paid, to the receiving party at its address below, or to such other address as the receiving party may notify the sender beforehand referring to this lease.

22. GOVERNMENTAL FEES. All fees due under applicable law to the Port, City, County or State on account of any inspection made on leased premises by any officer thereof, shall be paid by Lessee.

23. SIGNS. All signs and symbols placed in the windows or doors or elsewhere about the premises, or upon the exterior part of the building, shall be subject to the approval of Port or Port's agents. Any signs so placed on the premises shall be so placed upon the understanding and agreement that Lessee will remove same at the termination of the tenancy herein created and repair any damage or injury to the premises caused thereby, and if not so removed by Lessee, then Port may have the same removed at Lessee's expense. Lessee shall in respect to signs

conform to all requests of the Port of Benton Sign Policy and pay applicable fees.

24. ALTERATIONS. Lessee shall not make any alterations, additions or improvements to any building, not owned by Lessee and placed on said premises without consent of Port in writing first hand obtained, and all alterations, additions and improvements which shall be made, shall be at the sole cost and expense of Lessee, and shall become the property of Port, and shall remain in and be surrendered with the premises as a part thereof at the termination of this lease, without disturbance, molestation or injury. In addition, for any building which is owned by the Lessee and placed on the premises, Lessee shall not make any alterations, additions or improvements without consent of Port in writing first hand obtained, if such consent is required by law or regulation, and all alterations, additions and improvements which shall be made, shall be at the sole cost and expense of Lessee and if Port decides at the end of the lease to accept a deed or other conveyance of the building, all alterations, additions and improvements shall remain in and be surrendered with the premises as a part thereof without disturbance, molestation or injury. If Lessee shall perform work with the consent of Port, as aforesaid, Lessee agrees to comply with all laws, ordinances, rules and regulations of the pertinent and authorized public authorities. Lessee further agrees to save Port free and harmless from damage, loss or expense arising out of the said work. Heating systems, plumbing systems (including hot water tanks) and all lighting and electrical systems and parts thereof shall be considered fixtures and become part of the real estate upon being installed in any building.

25. DEFAULT AND RE-ENTRY.

25.1 EVENTS OF DEFAULT. Each of the following events shall be a default by Lessee and a breach of this Lease.

25.1.1 The failure or refusal to pay when due any installment of rent or other sum required by this Lease to be paid by Lessee or the failure to perform as required or conditioned by any other covenant or condition of this Lease.

25.1.2 The appointment of a receiver to take possession of the Property or improvements or of Lessee's interest in the leasehold estate or of Lessee's operations on the Property for any reason, unless such appointment is dismissed, vacated or otherwise permanently stayed or terminated within sixty (60) days after the appointment.

25.1.3 An assignment by Lessee for the benefit of creditors or the filing of a voluntary or involuntary petition by or against Lessee under any law for the purpose of adjudicating Lessee a bankrupt; or for extending time for payment, adjustment or satisfaction of Lessee's liability; or for reorganization, dissolution or arrangement on account of or to prevent bankruptcy or insolvency, unless the assignment or proceeding and all consequent orders, adjudications, custodies and supervision are dismissed, vacated or otherwise permanently stayed or terminated within sixty (60) days after the assignment, filing or other initial event.

25.2 NOTICE. As a precondition to pursuing any remedy for an alleged default by Lessee, Port shall give written notice of default to Lessee in the manner herein specified for the giving of notices. Each notice of default shall specify the alleged event of default and the intended remedy.

25.3 LESSEE'S RIGHT TO CURE. If the alleged default is nonpayment of rent,

taxes or other sums to be paid by Lessee as provided in this Lease, Lessee shall have ten (10) days after receipt of written notice to cure the default. For the cure of any other default, Lessee shall have thirty (30) days after receipt of written notice to cure the default, provided, however, that if it takes more than thirty (30) days to cure a default, the Lessee shall not be in default if it promptly undertakes a cure and diligently pursues it.

25.4 TIME OF THE ESSENCE. Time is of the essence of this Lease and for each and every covenant or condition which must be performed hereunder.

25.5 RE-ENTRY. If Lessee shall violate or default in any of the covenants and agreements therein contained where such violation or default shall continue for longer than the period contained within 26.3, then Port may terminate this lease upon giving the notice required by law, and re-enter said premises. Notwithstanding such re-entry by Port, the liability of Lessee for the rent provided for herein shall not be extinguished for the balance of the term of this lease, and Lessee covenants and agrees to make good to Port any deficiency arising from a re-entry and re-letting of the premises at a lesser rental than herein agreed to. Lessee shall pay such deficiency each month as the amount thereof is ascertained by Port, together with leasehold tax.

26. PORT'S REMEDIES. If any default by Lessee continues uncured after receipt of written notice of default and the period to cure as required by this Lease for the period applicable to the default, subject to the provisions of Section 25.3, the Port has the following remedies in addition to all other rights and remedies provided by law or equity to which Port may resort cumulatively or in the alternative:

26.1 Without terminating this Lease, Port shall be entitled to recover from Lessee any amounts due hereunder or any damages arising out of the violation or failure of Lessee to perform any covenant, condition or provision of this Lease.

26.2 Port may elect to terminate this Lease and any and all interest and claim of Lessee by virtue of such lease, whether such interest or claim is existing or prospective, and to terminate all interest of Lessee in the Property and any improvements or fixtures thereon (except trade fixtures). In the event this Lease is terminated, all obligations and indebtedness of Lessee to Port arising out of this Lease prior to the date of termination shall survive such termination. In the event of termination by Port, Port shall be entitled to recover immediately as damages the total of the following amounts:

26.2.1 The reasonable costs of re-entry and re-letting, including, but not limited to, any expenses of cleaning, repairing, altering, remodeling, refurbishing, removing Lessee's property or any other expenses incurred in recovering possession of the Property or re-letting the Property, including, but not limited to, reasonable attorney's fees, court costs, broker's commissions and advertising expense.

26.2.2 The loss of rental on the Property accruing until the date when a new Lessee has been or with the exercise of reasonable diligence could have been obtained.

26.3 Port may re-enter the Property and take possession thereof and remove any persons and property by legal action or by self-help and without liability for damages and Lessee shall indemnify and hold the Port harmless from any claim or demand arising out of such re-entry and removal of persons and property. Such re-entry by the Port shall not terminate the Lease or release the Lessee from any obligations under the Lease. In the event Port re-enters the Property

for the purpose of re-letting, Port may re-let all or some portion of the Property, alone or in conjunction with other properties, for a term longer or shorter than the term of this Lease, upon any reasonable terms and conditions, including the granting of a period of rent-free occupancy or other rental concession, and Port may not be required to re-let to any Lessee which Port may reasonably consider objectionable.

26.4 In the event Port re-lets the Property as agent for Lessee, Port shall be entitled to recover immediately as damages the total of the following amounts.

26.4.1 An amount equal to the total rental coming due for the remainder of the term of this Lease, computed based upon the periodic rent provided for herein and without discount or reduction for the purpose of adjusting such amount to present value of anticipated future payments, less any payments thereafter applied against such total rent by virtue of the new lease.

26.4.2 The reasonable costs of re-entry and re-letting, including, but not limited to, any expense of cleaning, repairing, altering, remodeling, refurbishing, removing Lessee's property or any other expenses incurred in recovering possession of the Property or re-letting the Property, including, but not limited to, attorneys' fees, court costs, broker's commissions and advertising expense.

26.5 All payments received by Port from re-letting shall be applied upon indebtedness and damages owing to Port from Lessee, if any, and the balance shall be remitted to Lessee.

27. **COSTS AND ATTORNEY FEES**. If by reason of any default on the part of either party, litigation is commenced to enforce any provision of this lease or to recover for breach of any provision of this lease, the prevailing party shall be entitled to recover from the other party's reasonable attorney fees in such amount as is fixed by the court, and all costs and expenses incurred by reason of the breach or default by the other under this lease. Arbitration is an action or proceeding for the purpose of this provision. The "prevailing party" means the party determined by the court or the arbitrator to most nearly have prevailed.

28. **LIQUIDATED DAMAGES IN CERTAIN INSTANCE**. If by reason of any breach of this lease by Lessee, Port gives written notice to Lessee of termination of this lease or any notice to pay rent or vacate to perform a covenant or cease breaching any covenant or agreement herein, and if Lessee remedies said breach and the termination of the lease is not carried through and Lessee continues as a Lessee, then each such time at the option of Port, Lessee shall and does hereby covenant to pay to Port as liquidated damages within ten (10) days after mailing by Port by ordinary first class mail of a demand to pay such sum, the sum of Three Hundred Dollars (\$300.00). Failure to pay such sum within such time shall be considered as an additional breach of the covenants of this lease.

29. **NON-WAIVER OF BREACH**. The failure of either party to insist upon strict performance of any of the covenants and agreements of this lease, or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such strict performance or of the exercise of such option, or any other covenants or agreements but the same shall be and remain in full force and effect.

30. **REMOVAL OF PROPERTY**. In the event of any entry in, or taking possession of, the leased premises as aforesaid, Port shall have the right, but not the obligation, to remove from the leased premises all personal property located therein or thereon, and may store the same in any place selected by Port, including but not limited to a public warehouse, at the expense and risk of

the owners thereof, with the right to sell such stored property without notice to Lessee, after it has been stored for a period of at least sixty (60) days, the proceeds of such sale to be applied first to the cost of such sale, second to the payment of the charges for storage, if any, and third to the payment of any other sums of money which may then be due from Lessee to Port under any of the terms hereof, and the balance, if any, to be paid to Lessee.

31. **HEIRS AND SUCCESSORS.** Subject to the provisions hereof pertaining to assignment and subletting, the covenants and agreements of this lease shall be binding upon and inure to the benefit of the heirs, executors, administrators, legal representatives, successors and assigns of any or all of the parties hereto.

32. **HOLD OVER.** If Lessee shall, with the written consent of Port, hold over after the expiration of the term of this lease, such tenancy shall become a month-to-month tenancy as provided by the laws of the State of Washington. During such tenancy Lessee agrees to pay Port an amount equal to one hundred twenty five percent (125%) of the equivalent of the rental for the last month of the lease, unless a different rate is agreed upon, and to be bound by all of the terms, covenants and conditions as herein specified, so far as applicable.

33. **SECURITY FOR LESSEE'S OBLIGATIONS.** In addition to the security provided for in Section 6 of the Lease (or any other Section of the Lease entitled "Security"), in order to secure the prompt, full and complete performance of all of Lessee's obligations under this Lease, including, but not limited to, Lessee's obligations to protect and indemnify Port from any liability subject to the lien, if any, of the holder of the first mortgage against the property, Lessee hereby grants to Port a security interest in and assigns to Port all of Lessee's right, title and interest in and to all rents and profits from the Property, any personal property located upon the premises and improvements thereon, and all equipment, fixtures and furnishings in the premises as collateral to secure all of Lessee's obligations under this Lease as collateral to secure all of Lessee's obligations under this Lease. In the event Lessee defaults in any of its obligations hereunder, Port shall have the right at any time after the period for cure provided in paragraph 25.3, without notice or demand, to collect all rents and profits directly and apply all sums so collected to satisfy Lessee's obligations hereunder, including payment to Port of any sums due from Lessee. The assignment of rents to the Port shall be subordinate to any assignment of rents to a leasehold mortgagee for security purposes. Such remedy shall be in addition to all other remedies under this Lease.

34. **RESTRICTIONS AND CONSENTS.** This lease shall be and is subject to all the terms, covenants, restrictions, reservations and agreements contained in Quit Claim Deed dated December 21, 1966, by the United States of America, to the Port of benton, recorded in Benton County, Washington on April 26, 1972, in Volume 1 of Deeds, under Auditor's File No. 633654, records of said County, including the written consent of the Federal Aviation Agency if the leased premises are to be used for other than airport purposes. This lease is also subject to the most current and any future federal grant obligations, Airport rules and regulations, Airport Minimum Standards and policies', including the written consent of the Federal Aviation Agency if the leased premises are to be used for other than airport purposes. This lease is also subject to the most current and any future federal grant obligations, Airport rules and regulations, Airport Minimum Standards and policies.

35. **LANDSCAPING.** Lessee covenants to landscape the grounds pursuant to any relevant provisions of the City Municipal Code, in order to make the entire premises attractive both for the beneficial effect it will have upon commercial property at the airport and as an example to and in order to encourage other tenants to do the same. The landscape and drainage plan shall be

submitted to Port at the same time as the building and plot plans herein before mentioned. Failure of Lessee to fully carry out this agreement shall be a breach of covenant of this lease.

36. MAINTENANCE OF GROUNDS. Lessee covenants to maintain the rented premises and the materials installed and used in landscaping the premises in a neat, sightly, and attractive condition at all times, and to water and care for the same in a professional manner. Failure of the lessee to fully carry out this covenant shall be a breach of covenant of this lease.

37. STORAGE OF MATERIALS, SUPPLIES, ETC. Lessee covenants to not store or deposit materials, supplies or other objects on the leased premises without the permission of Port and only then by the erection of a sight-obscuring fence or hedge which is acceptable to Port. Non-aeronautical items shall not be stored on premises leased for aeronautical purposes. Failure of Lessee to fully carry out this agreement shall be a breach of covenant of this lease.

38. MOTOR VEHICLE PARKING ON PREMISES. Lessee shall provide on the leased premises in accordance with an approved plan and specifications sufficient parking facilities for all motor vehicles in connection with Lessee's business and shall at all times see that all such vehicles park within the leased premises.

39. REIMBURSEMENT FOR COST OF SURVEY. If Port shall have had the premises herein surveyed for the purpose of this lease, Lessee shall within ten (10) days after being billed by Port thereof, reimburse Port for the cost of such surveying.

40. VENUE. The venue of any suit which may be brought by either party under the terms of this lease or growing out of the tenancy under this lease shall at the option of Port be in court or courts in Benton County, Washington.

41. SITE PLAN. Development of the site shall be in strict compliance with the site plan submitted to and approved by the City and the Port. Any deviations from the site plan shall require written approval by the City and Port. Where reference is made in this lease to a plot plan or site plan, it is understood and agreed between the parties that such plan must include as a minimum those matters hereinafter set forth and shall be in the form of a scale drawing of the entire leased premises with all of those matters set forth to scale and legibly thereon:

- a. Location of all structures and sizes and heights thereof, together with size, height, and location of any future structures which Lessee anticipates may be placed on the premises.
- b. Location of all roads, driveways, entrances, and exits.
- c. Location of all parking areas and description of method of delineating such areas by curbs or other methods.
- d. Location of all utilities, including but not limited to those hereinafter mentioned in this paragraph, and in case of underground utilities, mention thereof.
- e. Landscaping. (See other paragraph(s) of this lease for further details.)
- f. Open storage areas, and methods of screening such areas if such screening is to be done. (See Paragraph 34 hereof.)
- g. Interior and exterior drainage.
- h. Location and type of all fencing and gates.
- i. Site and exterior building lighting.
- j. Location of runways, taxiways, taxilanes and ramps and their distances from all proposed structures.

42. RIGHT OF FLIGHT. There is hereby reserved to Port, its successors and assigns, for the

use and benefit of Port and the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises herein leased, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, nor known or hereafter used for navigation of or flight in the air, using said airspace or landing at, taking off from and operating aircraft on or over the Richland Airport or Prosser Airport, all in accordance with applicable safety and operating regulations of said Airport and the Federal Aviation Administration. Lessee shall not allow any structures or objects to be erected or located upon the premises which would penetrate the imaginary surfaces described in Part 77 of the Federal Aviation Regulations.

43. AIRPORT CLOSURES. The Port may at times be required to close the Airport, its runways, or access taxiways for the purposes of maintenance or due to unsafe conditions. During such events, the Port will notify lessees with as much advance warning as possible in order to allow lessees to relocate aircraft, notify their customers, etc. The Port is not held responsible for revenue losses for airport businesses during such closures.

44. FAA Required Lease Provisions. In addition to the minimum terms and conditions listed in Section 9, each Lease shall contain the following provisions regarding subordination, emergency leasing to the United States, and non-discrimination. The language for these provisions is as follows:

44.1 Lease Subordinate to Agreement between Port and the United States: This lease shall be subordinate to the provisions of any existing agreement between the Port of Benton and the United States, relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the expenditure of federal funds for the development of the Airport.

44.2 Emergency Lease to United States. During times of war or national emergency, the Port shall have the right to lease the landing area or any part thereof to the United States Government for military or naval use, and if any such lease is executed, the provisions of this instrument in so far as they are inconsistent with the provisions of the lease to Government shall be suspended._

All facilities of the Airport developed with federal financial assistance and all facilities usable for landing and takeoff of aircraft will be available to the United States for the use by Government aircraft, (or their contractor) in common with all other aircraft at all times without charge, except, if the use by Government aircraft is substantial, a charge may be made for a reasonable share, proportional to such use of the cost for operating and maintaining the facilities used.

EXHIBIT C

AFTER RECORDING, RETURN TO:

PORt OF BENTON
3250 Port of Benton Blvd
Richland, WA 99354

DEVELOPMENT AGREEMENT (IF APPLICABLE)

Developer/Owner	_____, LLC, a Washington limited liability company
Grantee:	Port of Benton, Washington, a Washington municipal corporation
Abbreviated Legal	A Portion of the NE 1/4 of Section 28, Township 31 N, Range 5
Assessor's Tax Parcel ID	XXXXXXXXXXXXXXXXXX
Reference Nos. of Related	N/A

The parties to this Development Agreement ("Agreement") are the Port of Benton, a Washington municipal corporation ("Port"), and _____, LLC, a Washington limited liability company ("Developer"). All references herein to Developer shall be deemed to include any of its successors and/or assigns. The parties enter into this Agreement to promote the development of certain real property located within the Port of Benton.

RECITALS

TO BE DRAFTED