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NO. 94328-1

SUPREME COURT  
OF THE STATE OF WASHINGTON

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CITY OF MUKILTEO, a municipal corporation; and SAVE OUR  
COMMUNITIES, a Washington non-profit corporation,

Appellants,

vs.

SNOHOMISH COUNTY and  
PROPELLER AIRPORTS PAINE FIELD, LLC, a Delaware LLC,

Respondents.

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RESPONDENT PROPELLER AIRPORTS PAINE FIELD, LLC'S  
ANSWER OPPOSING DISCRETIONARY REVIEW

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 ORIGINAL

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## **I. IDENTITY OF RESPONDENTS**

Respondent Propeller Airports Paine Field, LLC (“Propeller Airports”), opposes discretionary review. This Answer refers jointly to Petitioners the City of Mukilteo and Save Our Communities as “the City.”

## **II. COURT OF APPEALS DECISION**

The Court of Appeals correctly applied settled Washington law to affirm the dismissal of the City’s complaint attempting to raise a SEPA challenge to Snohomish County’s execution of a contract for an option to lease in a January 23, 2017 unpublished opinion *City of Mukilteo v. Snohomish County*, \_\_ Wn. App. \_\_, \_\_ P.3d \_\_, 2017 WL 326241 (2015) (hereafter “the Decision”) (attached as App. A to the Petition).

## **III. RESTATEMENT OF THE ISSUE PRESENTED FOR REVIEW**

Did the trial court correctly grant summary judgment dismissing Petitioners’ SEPA challenge because (1) the “Option to Lease Land at the Snohomish County Airport Contingent on Compliance with SEPA” is not a lease and is not, therefore, a “project action” under WAC 197-11-704. While not before the Court because a “non-action,” the Option would be categorically excluded from SEPA review by WAC 197-11-800(5)(c) because use of the property “will remain essentially the same as the existing use for the term of the agreement,” and could not result in a lease unless the condition for successful completion of SEPA review was satisfied?

#### IV. COUNTER STATEMENT OF THE CASE

To allow exploration of the feasibility of constructing and operating a commercial passenger terminal at Paine Field in Everett and to meet its obligations to the FAA, the County negotiated an option to lease with Propeller Airports.<sup>1</sup> CP 235. The option contains a big “out.” The option terminates, and the parties will not execute the contemplated lease, if the condition for successful completion of environmental review under SEPA is not satisfied. CP 77-78.

**A. Reinstitution of Commercial Air Passenger Service Is a Goal of the Paine Field Master Program.**

Reinstitution of commercial air passenger service is a goal of the Paine Field Master Plan approved by the Federal Aviation Administration (“FAA”) for the airport. CP 565-96, 661.<sup>2</sup> Pursuant to federal grants, the County must abide Assurance 22(a), which requires the County to “make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public as

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<sup>1</sup> The Option is attached hereto as **Appendix A-1**.

<sup>2</sup> The FAA previously considered all of the impacts alleged by the City and issued a Finding of Nonsignificance, which determination was upheld by the Ninth Circuit Court of Appeals in *City of Mukilteo v. U.S. Dep’t of Transportation*, 815 F.3d 632 (9th Cir. 2016). The 2002-2021 Airport Master Plan Update is found at <http://www.paineairport.com/153/Airport-Master-Plan> (last visited 4/22/17).

the Airport,” and to make areas available for lease. CP 659;  
<http://paineairport.com/DocumentCenter/View/286> (last visited 4/22/2017).

**B. The County and Propeller Air Executed the “Option to Lease Land at the Snohomish County Airport Contingent on Compliance with SEPA” To Allow Propeller Air to Conduct Due Diligence for a Possible Lease.**

Snohomish County and Propeller Airports executed in March 2015 a conditional option to lease portions of Paine Field titled “Option to Lease Land at the Snohomish County Airport Contingent on Compliance with SEPA” (the “Option”). CP 77 (Appendix 1). The conditional Option established a license allowing Propeller Airports to access Paine Field to explore and conduct due diligence regarding possible use of the land for commercial passenger service. CP 236, 78 at § 4.1. During the three-year term of the Option, Propeller Airport’s only right regarding use of the property is to access the property “to make engineering studies” to “determine the suitability of the Property for Propeller’s proposed use.” *Id.* The Option further provided that “[n]o construction may begin on the Property until the Lease has been executed and delivered by Propeller and Propeller has taken possession of the Property.” CP 78 at § 6.

Implementation of any project proposal will occur via submittal of land use applications subject to both substantive SEPA review and the decision-making authority of the Director of Planning and Development Services. CP 237-38 ¶ 19. The Option is exclusive, providing Propeller

Air assurance that its investment in performing due diligence for the proposed project would not be lost. CP 77 § 1.

The Option expressly requires completion of full SEPA review prior to execution of any lease, and reserves to the County full SEPA authority, as follows:

2. ....This Option may be exercised following completion of environmental review as provided in paragraph 7 herein ....

\*\*\*

**7. Exercise of Option Subject to SEPA Compliance.** Exercise of the Option and execution of the Lease are subject to compliance with RCW 43.21C, the State Environmental Policy Act ("SEPA"). Propeller and County agree that a SEPA process must be completed prior to exercise of the Option and execution of the Lease.

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CP 77-78. Execution of a lease is specifically conditioned on completion of SEPA review. Upon submittal of applications and permits by Propeller Air to facilitate the project, the County retains discretion through its SEPA Responsible Official to determine the type or level of SEPA review. CP 236.

Mukilteo and Save Our Communities voiced opposition to commercial service at Paine Field during the environmental review process under the National Environmental Policy Acts due to concerns including noise and traffic impacts. CP 661. Regarding reinstatement of commercial



service, the mayor of the City of Mukilteo stated in February 2009 that Mukilteo would “[m]ake it time consuming, expensive and stretch it out. We’ll fight the terminal legally.” Respondent’s Brief at App. 3. Their legal arguments, however, failed in the Ninth Circuit, as noted in note 1.

**C. Current Status of SEPA Review/Land Use Decision-Making.**

Since the Option became effective in March 2015, Propeller Airports has successfully obtained a Mitigated Determination of Nonsignificance (“MDNS”) dated February 26, 2017 for its proposal to construct commercial passenger facilities. The County issued a Notice of Decision (“NOD”) for Land Disturbing Activity on February 26, 2017.<sup>3</sup> The City participated in these review processes, but the City (neither Mukilteo nor Save our Communities) did not appeal the MDNS or the NOD, and are thus foreclosed from doing so.

An administrative appeal filed by an interested citizen group was resolved and the appeal dismissed on April 17, 2017, Snohomish Hearing Examiner No. MSNS 16-109244, 16-10944 LDA, HEA-2017-01.<sup>4</sup> The Land Disturbing Activities approval was effective on April 26, 2017, once the administrative appeal was dismissed.

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<sup>3</sup> See <http://www.heraldnet.com/news/commercial-passenger-flights-at-paine-another-step-closer/> (last visited 4/24/2017). These outcomes are consistent with the outcome of the Federal environmental review already mentioned and established by *City of Mukilteo v. U.S. Dep’t of Transportation*, *supra*, n. 1.

<sup>4</sup> See Appendix A-2.

**D. The Superior Court Dismissed the City's Complaint Alleging That Execution of the Option Violated Provisions of SEPA, Which Dismissal the Court of Appeals Affirmed.**

The City filed a petition for judicial review, writ of review, and a declaratory judgment order asking the King County Superior Court to declare the Option void. CP 1-7. The City alleged that the County approved the Option in violation of SEPA. *Id.* The parties filed cross-motions for summary judgment. CP 439-62 (City); CP 209-31 (Propeller Airports); CP 22-74 (Snohomish County).

The Superior Court dismissed the complaint, concluding that execution of the Option was not a “‘project action’ as defined under RCW 43.21C.031(1) and WAC 197-11-704(2)(a).” CP 655-57.

The City appealed. CP 653-54. The Court of Appeals denied the appeal in the Decision.

**V. ARGUMENT: THIS COURT SHOULD DENY THE PETITION BECAUSE THE CRITERIA ASSERTED TO JUSTIFY REVIEW—SUPPOSED “CONFLICTS” AND SUBSTANTIAL PUBLIC INTEREST—ARE NOT MET**

Review is unwarranted. The Decision is not in conflict with appellate opinions in Washington. No substantial public interest is shown.

The City’s repeated attempts to conflate the Option with a lease ignore the plain language of the agreement. The City refuses to acknowledge that the Option expressly conditions Propeller Air’s rights to a lease on completion of a successful SEPA review. The City has

unsuccessfully attempted to have the lower courts focus on an eventual lease that might result. The courts have properly kept their eyes on the Option. Execution of the Option is, after all, the alleged “project action” that the City imprudently challenged.

**A. The Decision Does Not Conflict with Any Decisions by this Court.**

Addressing the City’s arguments in the order presented, the Decision first does not conflict with “several opinions of this Court” regarding the nature of option contracts to warrant review under RAP 13.4(b)(1), as vaguely claimed by the City. *See* Petition V.B.1 at 11. The City fails to identify any decision in conflict. Instead, the City simply argues why other decisions would support a different conclusion. This is not demonstrating a “conflict” with other decisions, but only presenting a legal argument already rejected by the lower courts. The cases referenced by the City can be harmonized and distinguished, as the Decision demonstrates. The City does not satisfy RAP 13.4(b)(1).<sup>5</sup>

Contrary to the City’s argument, the Decision does not conflict with Supreme Court cases “that hold that SEPA requires environmental review

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<sup>5</sup> To qualify under RAP 13.4(b)(1), a conflict should be express or premised on contradictory holdings or legal rules. *See Grisby v. Herzog*, 190 Wn. App. 786, 808-09, 362 P.3d 763 (2015) (conflict for purposes of RAP 13.4(b)(2) means “inconsistent opinions” that only the Supreme Court can resolve). *See also* Mark DeForrest, *In the Groove or in a Rut? Resolving Conflicts between the Divisions of the Washington State Court of Appeals at the Trial Court Level*, 48 Gonz. L. Rev. 455, 459 (2012/13) (demonstrating that a conflict is a “disagreement between divisions” that the Supreme Court has the role to resolve).

at the earliest possible state.” See Petition V.B.2 at 13-17. This argument suffers from the same defect as the first: failure to identify an actual conflict. The City presents general briefing to argue for the outcome it seeks, but does not identify disagreements or contradictory holdings within or between the opinions cited. The City merely argues a general principle to which exceptions and statutory definitions apply. No opinion by this Court is shown to contain a conflict with the Decision. RAP 13.4(b)(1) is unsatisfied. Moreover, the legal question is much more precise than the City portrays. The City fails to identify any decision of this Court inconsistent with the conclusion of the Court of Appeals’ that the Option was not a “project action” that required completion of an EIS.

This Court need not accept review to reconcile with the Decision the law’s concern with “snowball” effects as expressed in *King County v. Washington State Boundary Review Board for King County*, 122 Wn.2d 648, 860 P.2d 1024 (1993). The Decision relies on *King County* to determine that there is no snowball effect. Decision 19-20. The Decision observes this area of law, correctly concluding that no snowball effect is created in these circumstances, like in *Int’l Longshore & Warehouse Union, Local 19 v. City of Seattle*, 176 Wn. App. 512, 309 P.3d 654 (2013), where a memorandum of understanding was at issue. In both cases the contracts at issue included agreement about how the parties would comply with SEPA

before taking actions that could have an adverse environmental impact.

Decision 20.

The Decision is correct, moreover, when it concludes that the County's decision to approve the Option is not only not a "project action" under RCW 43.21C.031(1) and WAC 197-11-704(2)(a), it is categorically exempt from SEPA review under WAC 197-11-800(5)(c). Decision 15-16.<sup>6</sup> As the County has argued in its Answer, the City's Petition fails to address this contention which supports affirmance. Authorized use of the property will remain essentially the same as the existing use during the term of the option agreement. Agreements like the Option are exempted from environmental review "to avoid the high transaction costs and delays that would result from case by case review of categorically exempt types of actions that do not have a probable significant adverse environmental impact." *Dioxin/Organochlorine Center v. Pollution Control Hearings Bd.*, *supra*. The conclusion that this action is not subject to SEPA review is consistent with this Court's opinions and the statutory scheme.

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<sup>6</sup> WAC 197-11-800(5)(c) reads:

(5) Purchase or sale of real property. **The following real property transactions by an agency shall be exempt [from SEPA compliance requirements]:**

\*\*\*

(c) **Leasing, granting an easement for, or otherwise authorizing the use of real property when the property use will remain essentially the same as the existing use for the term of the agreement ...**

WAC 197-11-800(5) (emphasis added).

The Decision is not in conflict with *Columbia Riverkeeper v. Port of Vancouver*, 185 Wn.2d 1002, 366 P.3d 1243 (2016). To begin, a significant distinction exists because *Columbia Riverkeeper* involved a lease, not an option. The “action” by the County is not comparable to the action by the Port of Vancouver at issue in *Columbia Riverkeeper*. Leases are project actions (*see* WAC 197-11-704(2)(ii)) and are not exempt, unlike options. SEPA is not triggered by the action at issue in this case. *Columbia Riverkeeper*, therefore, has little relevance and creates no conflict.

Additionally, this Court denied the SEPA challenge in *Columbia Riverkeeper*, like the Court of Appeals denied the City’s SEPA challenge. The City attempts to distinguish this outcome at the same time it argues the decisions conflict. The decisions are in accord. The Court should reject the City’s argument that unlike the lessor the Port of Vancouver in *Columbia Riverkeeper*, here the County cannot “make alterations to the lease in response to environmental review.” Petition 16. This argument is unavailing because the County would not have to alter the lease “in response to environmental review,” because rejection of the lease would be self-executing. If the condition of completion of successful environmental review were not satisfied, Propeller Airports would have no right to exercise the Option. The parties could choose to negotiate a different lease and make

whatever adjustments they wished based on the outcome of the environmental review, but the Option would be defunct.

Fundamentally, the Option does not preserve a right to a lease unless the project successfully satisfies environmental review. While the Port of Vancouver had the option to “back out” of or modify its lease, here the County would not even have to “back out” because the Option would simply terminate on its terms. This Option and the lease in *Columbia Riverkeeper* accomplish the same thing: the contemplated projects will observe the outcome of an environmental review process, or they will not alter the status quo. And, in the case at bar, a party like the City can challenge the environmental review process which may serve as a prerequisite for a lease.

In sum, the outcome and rationale of the Decision is consistent with the outcome and rationale of this Court’s prior decisions including *Columbia Riverkeeper*.

**B. The Decision Does Not Conflict With Another Court of Appeals Decision.**

The Decision also does not conflict with *Magnolia Neighborhood Planning Council v. City of Seattle*, 155 Wn. App. 305, 230 P.3d 190 (2010), contrary to the City’s argument. See Petition 17-18. In *Magnolia Neighborhood*, the City of Seattle approved a specific plan for residential development of a former military base without environmental review.

Critically, there was no mechanism to trigger or require environmental review upon any future action if the project obtained federal approval. Rather, because the approval had “binding effect,” the City would be committed to pursue the project without environmental review. 155 Wn. App. at 314.

The present situation is different, as the Court of Appeals correctly concluded. *See* Decision 8, 11-12. The Option “is not ‘binding’ as that word is used in *Magnolia*.” Decision 8. Additionally, here the Option is conditioned on environmental review occurring. When the environmental review occurs according to the County’s processes, those decisions will be subject to administrative and potentially judicial review under SEPA. *See Int’l Longshore, supra*, 176 Wn. App. at 519 (citing *State v. Grays Harbor County*, 122 Wn.2d 244, 250-51, 857 P.2d d1039 (1993)). Whereas the City bound itself with no environmental review in *Magnolia Neighborhoods*, here the Option is not binding and is expressly conditioned on environmental review occurring.

No conflict is shown.

**C. A Substantial Public Interest Is Not Shown.**

This appeal presents no compelling issue regarding SEPA review that other cases have not addressed. RAP 13.4(b)(4) is not met.



The issues presented are not novel. The Court of Appeals resolved them by drawing upon a developed body of case law concerning SEPA review. This Court issued the *Columbia Riverkeeper* decision only a few months ago in April 2017. The Decision is consistent with that guidance. Nothing demonstrates that this Court should so soon take up similar issues or that any clarification is needed.

As noted, *infra*, p.5, the process has moved on since this lawsuit was filed in the King County Superior Court. Propeller Airports concurs with Snohomish County that the dispute is moot. *See County Answer*.

An option is very specific to the precise facts and circumstances. The City does not explain how addressing use of an option – or reviewing the unique terms of such a device – presents a question of “substantial public interest.”

The proper venue to pursue the City’s substantive environmental concerns, if any, was in the administrative proceedings noted above. The City relinquished the opportunity to appeal the MDNS, yet continues this misguided attack on the Option through the Petition for Review filed on April 5, 2017. This weighs against a conclusion that the Petition presents issues of substantial public concern regarding the environmental impacts of the contemplated project that the City can substantiate.

**OFFICE RECEPTIONIST, CLERK**

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**From:** OFFICE RECEPTIONIST, CLERK  
**Sent:** Friday, April 28, 2017 1:15 PM  
**To:** 'Jon'; supreme@courts.wa.gov.  
**Cc:** bricklin@bnd-law.com; brooks@bnd-law.com; telegin@bnd-law.com; 'Hart, Alethea'  
**Subject:** RE: City of Mukilteo, v. Snohomish County, and Propeller Airports Paine Field, LLC

Rec'd 4/28/17

Supreme Court Clerk's Office

**From:** Jon [mailto:jon@ddrlaw.com]  
**Sent:** Friday, April 28, 2017 1:13 PM  
**To:** supreme@courts.wa.gov.  
**Cc:** bricklin@bnd-law.com; brooks@bnd-law.com; telegin@bnd-law.com; 'Hart, Alethea' <Alethea.Hart@co.snohomish.wa.us>  
**Subject:** City of Mukilteo, v. Snohomish County, and Propeller Airports Paine Field, LLC

Re *City of Mukilteo, v. Snohomish County, and Propeller Airports Paine Field, LLC*  
Supreme Court, No. 94328-1

Dear Clerk,

Please find attached for filing **Respondent Propeller Airports Paine Field, LLC's Answer Opposing Discretionary Review** by Dennis D. Reynolds (WSBA# 04762) in the above referenced matter. Due to the size of the Appendices, **Appendix A-1** and **Appendix A-2** will be mailed separately.

Sincerely,

Jon Brenner, Paralegal  
Dennis D. Reynolds Law Office  
200 Winslow Way West, #380  
Bainbridge Island, WA 98110  
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Snohomish County Public Field  
Survey 4305/RR0306-108  
Sector 2 – Lease Legal  
December 9th, 2014

EXHIBIT "A" 1

Lease Area: (See Exhibit A1)

That portion of the southeast quarter of Section 15, Township 28 North, Range 4 East, W.M., described as follows:

**Commencing** at the southeast corner of said Section 15:

Thence N88°42'22"W along the south line of said section, a distance of 1233.84 feet to the **True Point of Beginning (TPOB):**

Thence N45°00'00"E, a distance of 162.36 feet;

Thence N0°00'00"E, a distance of 14.83 feet;

Thence N64°52'01"W, a distance of 232.25 feet;

Thence S45°00'00"W, a distance of 257.66 feet;

Thence S0°00'00"E, a distance of 23.28 feet;

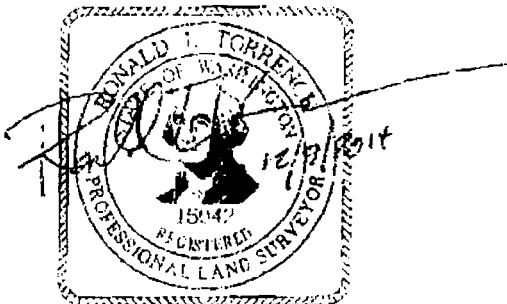
Thence S45°00'00"E, a distance of 217.10 feet;

Thence N90°00'00"E, a distance of 12.97 feet;

Thence N45°00'00"E, a distance of 91.57 feet to the **TPOB**.

Situate in the County of Snohomish, State of Washington.

Containing an area of 60,238 square feet, more or less.



SAPW\_Project\_Data\_Management\6-PROJECTS\UPI Year\_2011\11-012 - COURSE SOURCE  
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Page 1 of 2

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Snohomish County Paine Field  
Survey 4305/RR9306-105  
Sector 2 – Lease Legal  
December 9th, 2014

**EXHIBIT "A" 2**

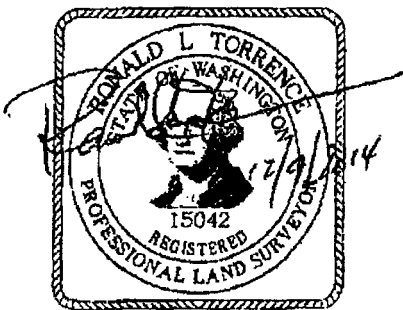
**Lease Area:** (See Exhibit A2)

That portion of the southeast quarter of Section 15, Township 28 North, Range 4 East, W.M., described as follows:

**Commencing** at the southeast corner of said Section 15;  
Thence N88°42'22"W along the south line of said section, a distance of 953.33 feet;  
Thence N1°17'38"E, a distance of 507.47 feet to the **True Point of Beginning (TPOB)**;  
Thence N45°00'00"W, a distance of 179.61 feet;  
Thence S46°37'57"W, a distance of 318.91 feet;  
Thence S45°00'00"E, a distance of 124.28 feet;  
Thence N45°00'00"E, a distance of 113.87 feet;  
Thence N90°00'00"E, a distance of 65.67 feet;  
Thence N64°08'19"E, a distance of 54.87 feet;  
Thence N45°00'00"E, a distance of 106.63 feet to the **TPOB**.

Situate in the County of Snohomish, State of Washington.

Containing an area of 48,989 square feet, more or less.



S:\PW\_Project\_Data\_Management\6-PROJECTS\UPI Year\_2011\11-0121-1\3 RESOURCE  
GROUPS\_WorkInProgress\Survey (3SURVY)\Office Data (Hardcopy)\Legal\Sector2Lease A2 -  
TerminalBoundary.doc

*JS* AA

Snohomish County Paine Field  
Survey 4305/RR0306-105  
Sector 2 - Lease Legal  
December 9th, 2014

EXHIBIT "A" 3

**Lease Area:** (See Exhibit A3)

That portion of the southeast quarter of Section 15, Township 28 North, Range 4 East, W.M., described as follows:

Commencing at the southeast corner of said Section 15;  
Thence N88°42'22"W along the south line of said section, a distance of 1920.29 feet;  
Thence N45°02'38"E, a distance of 85.25 feet to the **True Point of Beginning (TPOB)**;  
Thence N45°00'53"W, a distance of 491.08 feet;  
Thence N45°00'00"E, a distance of 233.51 feet;  
Thence S45°00'00"E, a distance of 176.23 feet;  
Thence N45°00'00"E, a distance of 170.00 feet;  
Thence N45°00'00"W, a distance of 140.00 feet;  
Thence N45°00'00"E, a distance of 39.19 feet;  
Thence N43°03'04"E, a distance of 150.64 feet;  
Thence S45°00'00"E, a distance of 250.00 feet;  
Thence S45°00'00"W, a distance of 9.00 feet;  
Thence S45°00'00"E, a distance of 440.58 feet;  
Thence S45°00'00"W, a distance of 272.55 feet;  
Thence N45°00'00"W, a distance of 121.19 feet;  
Thence S45°00'00"W, a distance of 45.00 feet;  
Thence S84°57'41"W, a distance of 170.19 feet;  
Thence S45°02'38"W, a distance of 136.33 feet to the **TPOB**.

Situate in the County of Snohomish, State of Washington.

Containing an area of 327,846 square feet, more or less.



S:\P\Project\_Data\_Management\6-PROJECTS\UPI Year\_2011\11-0121-1\3 RESOURCE GROUPS\_WorksInProgress\Survey (3SURV)\Office Data (Hardcopy)\Legals\Sector2Lease A3 - TerminalBoundary.doc

*RS* A4

Snohomish County Pine Field  
Survey 4305/RR9306-105  
Sector 2 - Lease Legal  
December 9th, 2014

**EXHIBIT "A" 4**

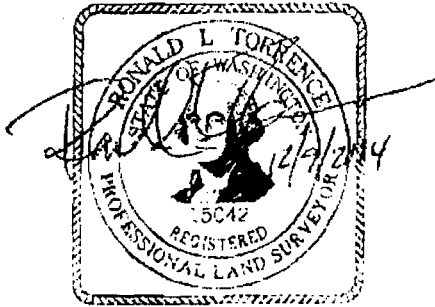
**Lease Area:** (See Exhibit A4)

That portion of the northeast quarter of Section 22, Township 28 North, Range 4 East, W.M., described as follows:

Commencing at the northeast corner of said Section 22;  
Thence N88°42'22"W along the north line of said section, a distance of 995.09 feet;  
Thence S1°17'38"W, a distance of 502.80 feet to the **True Point of Beginning (TPOB)**;  
Thence S0°00'00"E, a distance of 198.47 feet;  
Thence N88°45'31"W, a distance of 120.67 feet;  
Thence N1°14'29"E, a distance of 193.48 feet;  
Thence N88°48'25"E, a distance of 116.48 feet to the **TPOB**.

Situate in the County of Snohomish, State of Washington.

Containing an area of 23,230 square feet, more or less.



S:\PW\_Project Data Management\6-PROJECTS\UPI Year 2011\11-0121-1\3 RESOURCE GROUPS\_ WorksInProgress\Survey (3SURY)\Office Data (Hardcopy)\Legals\Sector2Lease A4 - TerminalBoundary.doc

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# EXHIBIT OVERALL A 5

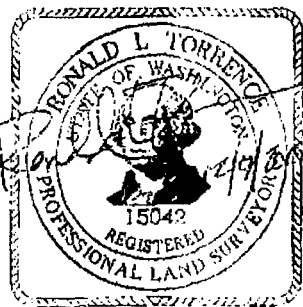
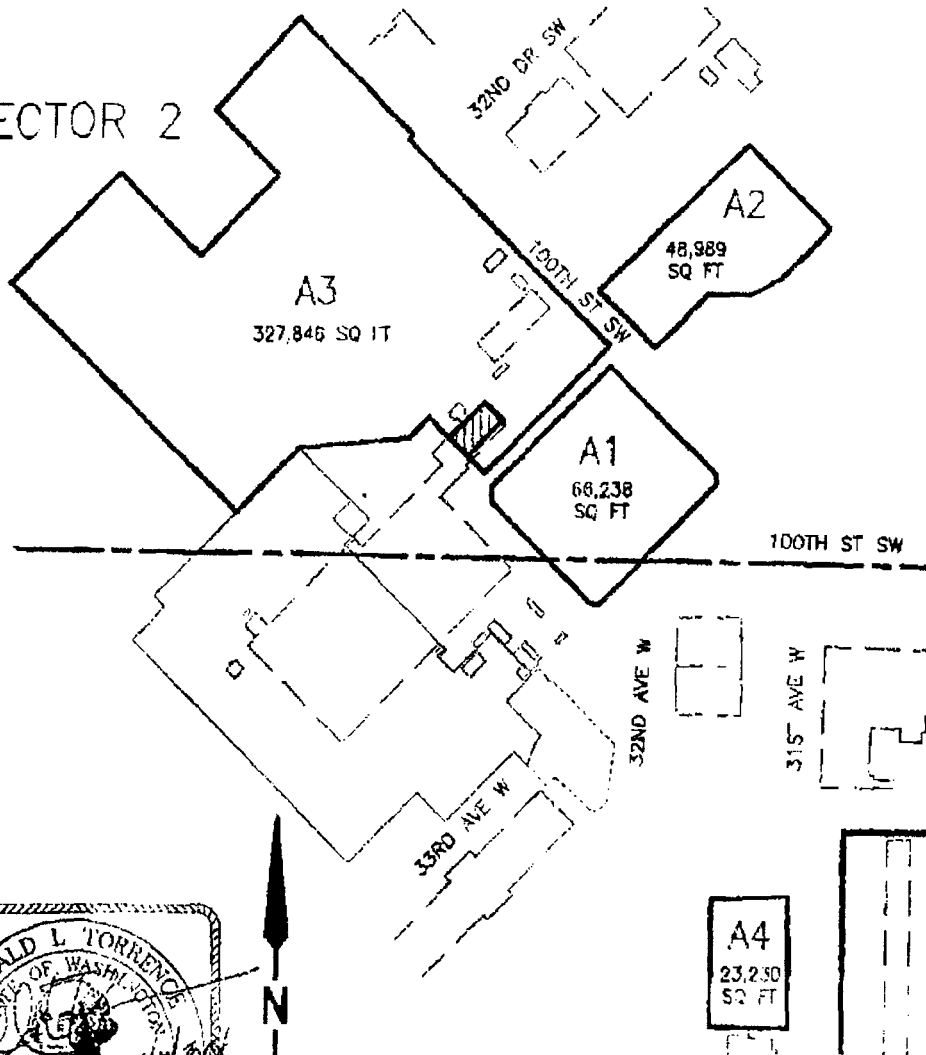
PAINE FIELD AIRPORT - SECTOR 2  
RR9306-105



SEC. 22, T. 28 N., R. 04 E., W.M.

PAGE 1 OF 1

SECTOR 2



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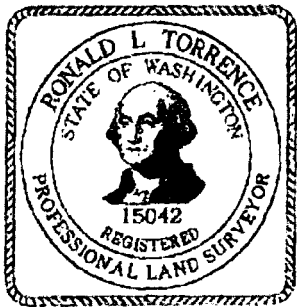
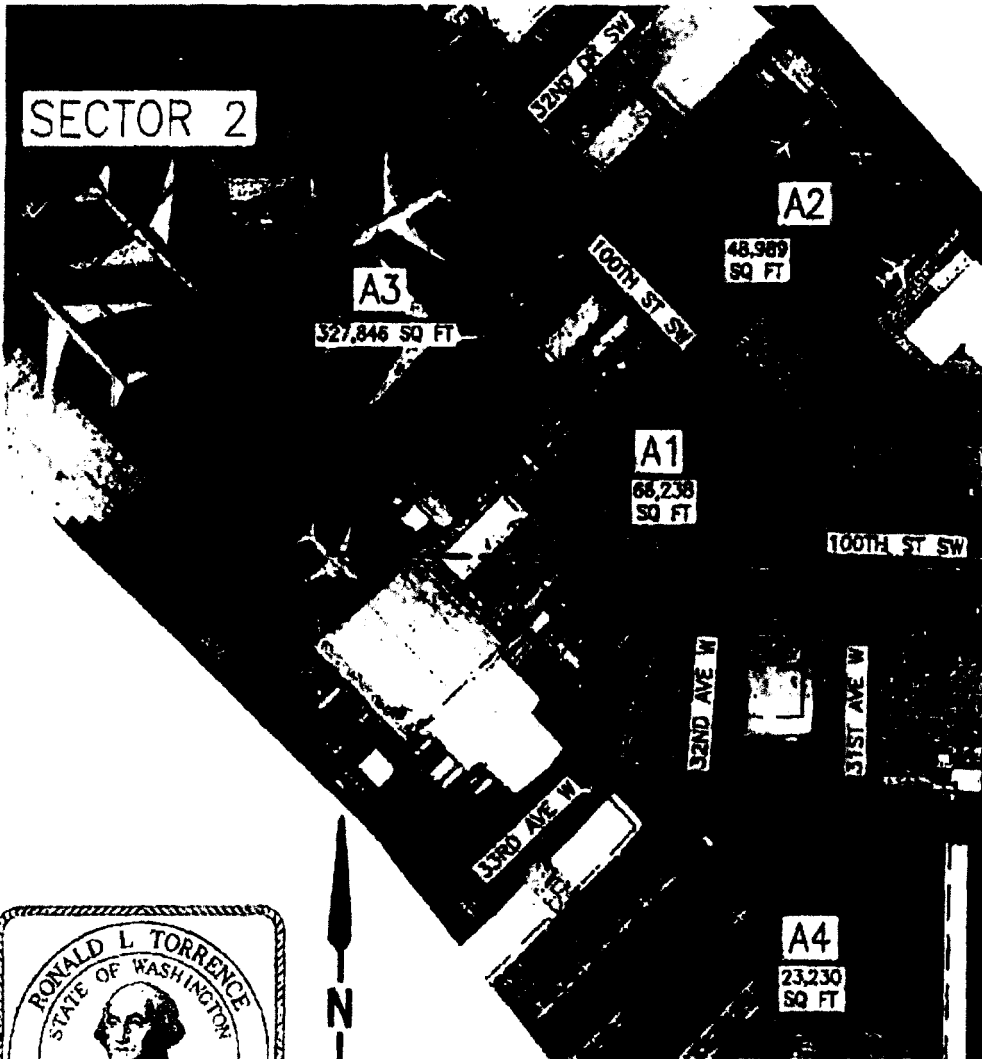
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PAINE FIELD AIRPORT - SECTOR 2  
RR9306-105

SEC. 22, T. 28 N., R. 04 E., W.M.



PAGE 1 OF 1



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Data\drawings\Survey (2SURY)\Legal Exhibits\Terminal - Exhibits.dwg

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Exhibit B

Lease

Return Address:

Snohomish County Property  
Management  
3000 Rockefeller, M/S 404  
Everett, WA 98201

**Document Title(s)** or transactions contained therein):

Land Lease (Construction by Lessee)

**Lessor(s)** (Last name first, then first name and initials)

Snohomish County

**Lessee(s)** (Last name first, then first name and initials)

Propeller Airports Paine Field LLC, a Delaware limited liability company

**Legal description** (abbreviated: i.e. lot, block, plat or section, township, range, qtr./qtr.)

Portions of SE & NE Quarter of Sec 15, TWN 28 N, Range 4E, WM and a  
Portion of NE Quarter of Sec 22, TWN 28 N Range 4E, WM

Additional legal is on Exhibits A-1, A-2, A-3, and A-4 of document

**Reference Number(s)** of Documents assigned or released:

N/A

**Assessor's Property Tax Parcel/Account Number**

Portions of 28041500400101, 28041500400101, and 28042200100100

The Auditor/Recorder will rely on the information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information.

**SNOHOMISH COUNTY AIRPORT**  
**LAND LEASE**

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**EXHIBIT ATTACHED**

Exhibits A-1, A-2, A-3, A-4, A-5 & A-6	Legal Description and Diagrams of the Property
Exhibit B	The Project (to be inserted during Option Period)
Exhibit C	Operating Procedures (to be refined during Option Period)
Exhibit D	Rent Schedule
Exhibit E	Revenue Sharing Calculation
Exhibit F	Building C-4 Lease Area (to be remediated)
Exhibit G	Grant Assurances

**LAND LEASE  
SNOHOMISH COUNTY AIRPORT  
PASSENGER TERMINAL PROJECT**

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THIS LEASE, dated as of \_\_\_\_\_ (the "Effective Date") is made by and between SNOHOMISH COUNTY (the "County") and Propeller Airports Paine Field LLC, a Delaware limited liability company ("Propeller").

**RECITALS AND DEFINITIONS**

A. County is the owner and operator of Paine Field, a Part 139 airport located in the County (the "Airport").

B. County is required by federal Grant Assurances, federal law, 49 U.S.C. 47107, and regulations and policies of the Federal Aviation Administration to make reasonable accommodations for Passenger Airlines who desire to serve Paine Field.

C. County has determined that it is in the best interests of the County and the travelling public and consistent with its legal obligations to accommodate passenger facilities at the Airport to do so in a manner that minimizes operational and financial risk to the County and to the Airport.

D. County believes that a public-private partnership is the most appropriate means by which to provide accommodations for Passenger Airlines.

E. Because the Airport does not currently have a terminal for Passenger Airlines and is not currently served by Passenger Airlines, the County has the opportunity to enter into an arrangement by which services for Passenger Airlines are provided by a contractor or tenant under the supervision of the County.

F. County believes that accommodating the development of a small terminal will be sufficient to accommodate needs for Passenger Airlines for the foreseeable future.

G. County has cooperated with the Federal Aviation Administration in review and analysis of the environmental impacts of the development of a terminal and ancillary services for Passenger Airlines.

H. Propeller is in the business of leasing, developing, managing and operating both general aviation and commercial service airports.

I. The County and Propeller desire to enter into this Lease for the design, construction, maintenance and operation of a commercial air carrier terminal and related facilities to serve Passenger Airlines at the Airport

J. As used herein "Lease" shall refer to this Land Lease and all attachments and exhibits hereto.

K. As used herein, "Passenger Airline(s)" shall mean persons operating or intending to operate civil aircraft as an air carrier or commercial operator, or both, in air commerce as defined in 14 CFR Part 119.1 and whose operations are conducted under 14 CFR Parts 121, 125, 129 or 135.

## ARTICLE I - PROPERTY

### 1.01 Description of Property.

a. The County hereby leases to Propeller and Propeller hereby leases from County the property situated in Snohomish County, State of Washington, Snohomish County Airport and legally described in Exhibits A-1, A-2, A-3, and A-4 attached hereto and hereinafter called the "Property". For illustrative purposes Exhibit A-5 Overall Diagram and Exhibit A-6 Overall Photo are attached to show the overall spatial relationship of the Property.

b. The Property will be transferred to Propeller free and clear of all liens, claims and other encumbrances in each case except as otherwise expressly set forth in this Lease.

### 1.02 Use of the Property

a. Propeller shall use the Property only for the construction and operation of a passenger terminal complex consisting of certain buildings and improvements located on the Property (the "Terminal") and related automobile parking facilities and other uses ancillary and incidental thereto in accordance with

the terms and provisions of this Lease and for no other purpose without the written consent of the County. The Terminal, together with the related automobile parking and ancillary facilities are described in **Exhibit B** attached hereto, and made a part hereof and are collectively referred to herein as the "Project."

b. No delay or failure of the County to object to any improper or illegal use or other use contrary to terms of this Lease shall constitute a waiver of the County's right to claim a breach for such use.

c. Propeller shall keep, maintain, and surrender the Property in a neat, clean, and safe condition consistent with the normal operation of an airport terminal facility and in as good condition as the same now is (as improved by the Project), reasonable wear and tear excepted. At the end of the Term (as defined in section 2.01) or earlier termination or retaking of possession, the County shall, within ten (10) days, give Propeller written notice of any defaults by Propeller hereunder. If Propeller does not remedy same within thirty (30) days after delivery of the written notice (which thirty (30) day period shall be extended for an additional thirty (30) days, if the same cannot reasonably be cured within thirty (30) days and Propeller shall have commenced the cure within such thirty (30) day period and is diligently using reasonable efforts to cure same), the County may cure such defaults with its own personnel or independent subcontractors, charging the actual, out-of-pocket cost of the same to Propeller. Any cost charged, including lost rent, shall be immediately due and payable by Propeller.

d. Propeller shall keep the visible area of the Property and the Project and access, loading and parking areas free of debris and in a neat, safe and attractive condition consistent with the operation of a passenger terminal. Propeller shall not use such areas for storage or for other than normal Airport operations and loading and parking activities and shall not obstruct the access, parking, or loading areas of other tenants or users of the Airport.

e. Propeller shall not create any fire, safety, or health hazard on any Airport property, shall not use or permit any use of the Property in a manner that is inconsistent with the normal operation of an airport terminal facility so as to produce noxious or dangerous fumes, odors, smoke, physical waste or unlawful noise, and shall not make or permit any other use of the Property which constitutes a nuisance, physical waste or an unlawful use, materially interferes with the use and occupancy of other Airport property, or cause cancellation of any insurance policy on the Property.

1.03 Inspection. County reserves the right to inspect the Property and improvements thereon at any and all reasonable times throughout the Term of this Lease in order to confirm compliance with this Lease, the Operating Standards as set forth in **Exhibit C** (the "Operating Standards"), federal grant assurance



obligations (of which Tenant has been notified or is otherwise aware) and other applicable local, state and federal laws and regulations. A copy of the currently applicable grant assurances is attached hereto as **Exhibit F** and incorporated herein by this reference. County shall provide Propeller with at least 24 hours' notice of any such inspection (except in the case of emergency, in which event, no prior notice shall be required), and such inspection shall not interfere unduly with Propeller's operations. The right of inspection reserved to the County hereunder shall impose no obligation on the County to make inspections to ascertain the condition of the Property and shall impose no liability upon the County for failure to make such inspections. Propeller shall allow access for an annual certificate of occupancy fire and safety inspection by the County Fire Marshall. Propeller shall pay the cost of the annual certificate of occupancy fire and safety inspection and any re-inspection in the event of a violation requiring correction caused by Propeller. Propeller shall allow access for other fire, safety and insurance inspections by the County, provided that such inspections shall be without charge to Propeller, undertaken at reasonable times and upon reasonable advance notice to Propeller and shall not materially interfere with Propeller's use and occupancy of the Project.

#### 1.04 Construction by Propeller

a. Propeller, solely at its cost, shall design and construct or cause to be constructed the Project on the Property. It is understood that the plans and specifications for the Project are not necessarily in complete detail; and that the final plans, specifications, details, and location of construction of the Project within the Property shall be subject to the approval of the Airport Director prior to the construction. A duly licensed architect selected by Propeller will prepare necessary construction plans and specifications for the Project at the expense of Propeller. The Airport Director will not unreasonably withhold, condition or delay approval of such plans, specifications, detail and location. The goals of the construction plans are to endeavor to achieve system integrity and safety, promote sustainability and protect airport operations capacity and expansion options. A reproducible PDF and CAD disc copy of all as-built building and utility plans constructed as part of the Project shall be furnished to the Airport Director upon completion of construction.

b. Except as provided in this section, the Project shall be constructed consistent with approvals already provided by the Federal Aviation Administration ("FAA") through its Environmental Assessment, Finding of No Significant Impact ("FONSI") and Record of Decision ("ROD") dated December 4, 2012. If Propeller desires to construct facilities for which FAA has not otherwise provided environmental clearance and regulatory approvals (including, without limitation, Airport Layout Plan approval), Propeller shall be responsible for all

aspects and costs of securing any FAA approvals required for such facilities. The County will, at no outside cost to the County, cooperate with Propeller in its effort to seek such additional approvals and promptly execute all necessary applications and other documentation as may be required in connection therewith.

c. Propeller shall commence construction of the Project within six (6) months of the Effective Date and shall complete construction of the Project within twenty-four (24) months after commencement of construction, subject to any event or condition beyond the control of Propeller, including, without limitation, strikes, labor disputes, acts of God, the elements, governmental restrictions, regulations or controls, government moratorium on issuing permits or approvals, enemy action, civil commotion, fire, casualty, accidents, mechanical breakdowns or shortages of, or inability to obtain, labor, utilities or materials, which causes delay or similar conditions that are beyond the control of Propeller. Failure to meet the completion deadline due to the intentional act or omission by Propeller shall constitute a breach under this Lease.

d. Propeller shall be fully responsible for all construction and all activities incidental thereto (subject to cooperation of the County as set forth in clause (b) above). Propeller shall cause Propeller's construction work, if any, to be performed by licensed contractors. The contractors shall provide a performance and payment bond covering all construction work.

e. Enumeration of obligations in this section shall not exclude Propeller, during construction, from obligations which are stated elsewhere herein. Obligations stated in this section shall be imposed upon other activities of Propeller, to the extent applicable and reasonable.

f. Propeller shall pay all costs of constructing the Project, including grading, paving or any other development costs, including all permits, and costs of utility installation, relocation, or removal required by the Project and Propeller's use and occupancy of the Property. The County shall not bear any cost whatsoever of the design or construction of the Project or financing or refinancing of the cost of the design or construction of the Project. Propeller is not an agent or employee of the County but undertakes any activity hereunder solely in its own behalf. All risks of loss to any improvements now or hereafter constructed by Propeller shall rest on Propeller, unless any such claims, damages, liability, loss, cost or expense arise out of or are due to the sole negligence or willful misconduct of the County, the Airport Director or their respective representatives, agents, employees, licensees, invitees or consultants.

g. All work and material shall be of good quality, free of defects and accomplished in a workmanlike manner in conformity with approved plans and specifications.

h. Propeller agrees that the height and configuration of any and all buildings and improvements set out on **Exhibit B** shall be subject to any restriction caused by existing landing, runway, or taxiway requirements of the Airport as indicated in the Master Plan and other public planning documents that have been made available to Propeller prior to the Effective Date. Work and/or material not in accord with the foregoing shall be corrected, removed, replaced, and/or repaired at Propeller's expense upon written notice by the Airport Director. If such work and/or material is not so corrected, removed, replaced, and/or repaired by Propeller within a reasonable time of such notice, the County may correct, remove, replace, and/or repair such work and/or material at Propeller's expense.

i. All construction shall comply with requirements imposed by federal regulatory agencies including, without limitation, the TSA, FAA, and (if applicable) Customs and Border Protection. Propeller shall submit all construction plans to the County for review to ensure compliance with regulatory requirements.

j. Any water systems associated with the Project shall be installed and maintained by Propeller according to the requirements of the Mukilteo Water District, subject to the approval of the Airport Director (such Airport Director's approval not to be unreasonably withheld, conditioned or delayed).

k. Propeller shall comply with applicable rules and regulations of the County Mukilteo Water and Wastewater District, the City of Everett, or other applicable sewer district as pertains to sewage disposal. Such system shall not be used for storm drainage or the discharge of any effluent deemed by the Airport Director (such determination to be reasonably made) or the Mukilteo Water and Wastewater District or City of Everett (if applicable) to be harmful to the system.

l. All work by Propeller shall be performed in a safe manner both on the Property and with respect to any other County property at the Airport which might be utilized or affected by any activity of Propeller. Work shall be performed so as not to materially interfere with the use of other Airport property by the County, its other tenants, or other users of Airport property. Propeller shall keep the Property, and any other Airport property, free of waste materials and rubbish caused by the work. Material and/or equipment shall not be placed or stored upon Airport property other than the leased Property without the advance written consent of the Airport Director.

m. The County shall not be liable for any damages in connection with the approval or disapproval of any plans and specifications or any construction or other activities of Propeller on the Property, or the enforcement or failure to enforce any provisions of this Lease. The County's approval of plans and specifications shall not constitute the assumption of any responsibility by the

County or its representatives of the accuracy, efficiency, or sufficiency thereof, and Propeller shall be solely responsible therefore.

n. Propeller agrees to indemnify, defend and hold harmless the County if and to the extent that any liability is imposed upon the County as a result of or related to construction of the Project that is the responsibility of and is to be performed by or caused to be performed by Propeller.

o. Subject to the County's approval, which approval shall not be unreasonably withheld, conditioned or delayed and subject to the terms and provisions of section 1.09, the County acknowledges that Propeller may enter into collateral assignments of all of Propeller's right, title and interest in and to the Project, including, without limitation, the Project contracts, the Project plans and specifications, licenses and permits, all personal property and appurtenances and additions thereto and all machinery and equipment located thereon, in favor of a leasehold mortgagee.

p. Subject to the requirements of any permitted leasehold mortgage in effect at such time or in effect thereafter (as same may be amended, modified, supplemented, extended or replaced from time to time) and subject to the terms and provisions of sections 1.08 and 1.09, prior to the commencement of construction of the Project, and thereafter in connection with any additions, replacements or substitutions to or for contracts relating to the development and construction of the Project as security for the substantial completion of the Project and the performance of Propeller's obligations under this section, Propeller hereby collaterally assigns to the County, subject to the superior rights and interests of a leasehold mortgagee (a) the benefits inuring to and the obligations for the benefit of Propeller under any and all contracts relating to the construction and development of the Project and the right to enforce the same in the County's name, following the occurrence of a default and the expiration of any notice and cure period set forth in section 7.01, and (b) the right to the use of the Project plans and specifications in connection with such enforcement.

1.05 Action Request Forms. All requests by Propeller for action by the County regarding the Property shall be in writing and submitted to the Business Manager at the Snohomish County Airport Office. All complaints by Propeller concerning the conduct of County employees shall be in writing and submitted to the Business Manager at the Snohomish County Airport Office. Action Request Forms may be obtained at the Snohomish County Airport Office.

1.06 Tenant Improvement Forms. Prior to making any material changes or improvements to the Property, and after issuance of the certificate of occupancy, Propeller shall submit a Tenant Improvement Form to the County for approval by the Airport Director (such approval not to be unreasonably withheld,

conditioned or delayed). Tenant improvement forms may be obtained at the Snohomish County Airport Office. Propeller shall maintain all improvements made pursuant to this section.

#### 1.07 Other Construction Related Provisions

Any general contractor agreement shall require that the general contractor or the contractors (and in the absence of a general contractor) ("Contractor") to warrant, subject to customary exclusions, that the work in question shall be free of defective materials and workmanship at least one (1) year following the substantial completion of the work in question.

Any contractor agreement associated with the Project shall provide that it shall be governed by the laws of the State of Washington.

##### A. INSURANCE DURING CONSTRUCTION:

Contractor's Insurance:

Prior to the County's approval of construction at the Property (such approval not to be unreasonably withheld, conditioned or delayed) and permitting contractors access and/or the performance of any construction at the Property, the Contractor shall provide to Propeller and the County Certificates of Insurance and Endorsements acceptable to the County meeting the requirements of the contractor's agreement (specific insurance coverage limits are set forth below). Coverage shall be maintained without interruption from the commencement of the Contractor's work until such work is complete in accordance with the terms of the contractor agreement. Each policy obtained by Contractor shall be endorsed to provide Propeller with 30 days notice of material changes to or cancellation of such policy.

If the scope of the contractor's agreement is significantly expanded, or if the aggregate limits on any of the Contractor's policies are eroded, the County may require Propeller to cause the Contractor to obtain additional coverage or reinstate eroded coverage. If the need for additional coverage is due to the fault of the Contractor or any of its subcontractors, the Contractor shall be responsible for the cost of such additional coverage or any of its subcontractors coverage. The Contractor shall provide proof of additional insurance required because of changed work (Change Orders)

If the Contractor is required to correct damaged, defective or incomplete work (i.e., punch list items) after the work is substantially completed, it shall obtain at its own expense such insurance coverage as is required by the Contract for the

construction period. Such coverage shall be maintained throughout the period in which corrective work is performed.

Review of Contractor's insurance by Propeller or the County shall not relieve or decrease the duty of the Contractor to comply with the requirements of the contractor agreement.

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

#### B. WAIVER OF SUBROGATION

Propeller shall cause the Contractor to waive, pursuant to the contractor agreement, all rights against Propeller, the County or their respective consultants, or any separate contractors, and their agents and employees, for damages caused by fire or other perils to the extent such damage cost is actually paid by property insurance applicable to the work. The contractor agreement shall require the Contractor to require similar waivers from all subcontractors. This provision shall be valid and enforceable only to the extent permissible by the applicable property insurance policies.

#### C. EVIDENCE OF INSURANCE.

The Contractor shall furnish Propeller and the County with Certificates of Insurance and endorsements required by this Lease and the contractor agreement. All evidences of insurance must be certified by a properly authorized officer, agent, general agent or qualified representative of the insurer(s) and shall certify the name of the insured, the type and amount of insurance, the location and operations to which the insurance applies, the expiration date of the policy. All subcontractors shall be required to include Propeller, the County and Contractor as additional insureds on all Liability policies except Workers' Compensation and Professional Liability Errors and Omissions.

#### D. MINIMUM SCOPE AND LIMITS OF INSURANCE.

The Contractor shall be required pursuant to the contractor agreement to obtain and maintain the minimum insurance set forth below. By requiring such minimum insurance, neither Propeller nor the County shall be deemed or construed to have assessed the risks that may be applicable to the Contractor under the contractor agreement. The Contractor shall assess its own risks and if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage. Each insurance policy shall be written on an "occurrence" form; excepting that insurance for professional liability, errors and omissions when required, may be acceptable on a "claims made" form. If coverage is approved and purchased on a "claims made"

basis, the Contractor shall warrant continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three years (or such other period as shall be acceptable to the Contractor) from the date of completion of the work which is the subject of the contractor agreement. Insurance coverage shall be at least as broad as stated below and with limits no less than:

D.1 General Liability. Coverage shall be at least as broad as Insurance Services Office form number CG 00 01 covering COMMERCIAL GENERAL LIABILITY, \$5,000,000 combined single limit per occurrence, and for those policies with aggregate limits, a \$5,000,000 aggregate limit.

D.2 Explosion & Collapse, Underground Damage (XCU). Coverages shall apply for the same limits as the General Liability. Evidence of Insurance must specifically state coverage has not been excluded.

D.3 Automobile Liability. Coverage shall be at least as broad as Insurance Services Office form number CA 00 01 covering BUSINESS AUTO COVERAGE, symbol 1 "any auto"; or the combination of symbols 2, 3, and 9. \$5,000,000 (air-side)/\$1,000,000 (land-side) combined single limit per accident.

D.4 Workers' Compensation. Statutory requirements of the State of residency. Coverage shall be at least as broad as Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this work by applicable Federal or "other States" State Law.

D.5 Employer's Liability or "Stop Gap". Coverage shall be at least as broad as the protection provided by the Workers' Compensation policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the general liability policy.

D.6 Builder's Risk/Installation Floater. The Contractor shall procure and maintain during the life of the construction, "All Risk" Builders Risk or Installation Floater Insurance at least as broad as ISO form number CP0020 (Builders Risk Coverage Form) with ISO form number CP0030 (Causes of Loss – Special Form). The coverage shall insure for direct physical loss to property of the entire construction project, for 100% of the replacement value thereof and include earthquake and flood. Nothing herein provided for shall in any way excuse the Contractor or its surety from the obligation of furnishing all the required materials and completing the work in full compliance with the terms of the contract.

D.7 Professional Liability Errors and Omissions. \$1,000,000 per claim/aggregate. The Contractor shall submit proof of Insurance as part of the

required submittals or provide evidence of compliance from its subcontractor that these insurance requirements have been met 15 days prior to beginning of the work designated to be performed by a professional pursuant to the contractor agreement.

**E. DEDUCTIBLES/SELF-INSURED RETENTIONS.**

The deductible and/or self-insured retention of the policies shall not limit or apply to the Contractor's liability to Propeller or the County and shall be the sole responsibility of the Contractor.

**F. OTHER INSURANCE PROVISIONS.**

The insurance policies required of the Contractor in the contractor's agreement are to contain and be endorsed to contain the following provisions:

1. With respect to all Liability Policies except Professional Liability and Workers Compensation:

a) The County, Propeller, and their respective officers, officials, employees, and agents and consultants are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Contractor in connection with the contractor's agreement.

(b) The Contractor's insurance coverage shall be primary insurance as respects the County, Propeller, and their respective officers, officials, employees, agents, and consultants. Any insurance and/or self-insurance maintained by the County, Propeller or their respective officers, officials, employees, agents and consultants shall not contribute with the Contractor's insurance or benefit the Contractor in any way.

(c) The Contractor's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

**G. ACCEPTABILITY OF INSURERS.**

Unless otherwise approved by the County:

1. Insurance is to be placed with insurers with a Best's rating of no less than A:VIII, or, if not rated with Best's, with minimum surpluses the equivalent of Best's surplus size VIII.



days following receipt of such notice from the County to give written notice of rejection of the adjusted rent. In the event of such a dispute, the parties shall submit the rent adjustment to arbitration within 10 days of disputing same. Within such 10-day period, Propeller shall select and pay the fees for one arbitrator and County shall select and pay the fees for one arbitrator. Within 10 days of their selection, these two arbitrators shall select a third arbitrator. Each arbitrator shall be a commercial real estate M.A.I. appraiser conducting business in Snohomish County, Washington and have not less than five (5) years active experience as a commercial real estate appraiser in the leasing market in Snohomish County, Washington. The Board of Arbitrators shall together determine Fair Market Rental Value of the Property. The Board of Arbitrators, after a review of all pertinent facts, may increase or decrease such rents, or continue the previous rate thereof. Any rental during the period for which readjustment is being done by the Board of Arbitrators shall be paid at the rate fixed by the Board of Arbitrators and shall be retroactive to the commencement of each three (3) year period. All fees, costs and expenses of the third arbitrator shall be shared equally between the parties. The determinations made by the Board of Arbitrators shall be final and binding upon the parties. This section shall not in any manner be construed to limit the right to readjustment if required by statutes of the State of Washington.

**3.05 Late Payment of Rent.** Rent shall be delinquent if not paid within fourteen (14) days after due. If payment is received after such date, there will be a .0333% per day interest charge on the unpaid balance for each day past the due date until paid. A late payment charge of .01665% per day will also be charged on rent not paid by the 15th of each month for each day past the due date until paid. In addition, a charge in the amount provided by current County ordinance will be made on any payment by check which is returned unpaid to the Airport because of insufficient funds, account closed, forgery, or any other reason.

**3.06 Adjustments of Leased Space and Rent**

a. Subject to and in compliance with the terms and provisions of Sections 4.04, 4.05 and 4.06, the parties may mutually agree to reduce or increase the total amount of leased space comprising the Property. If the County desires to reasonably increase or decrease the leased space, County will present a detailed letter and exhibits to Propeller and Propeller will review and provide written acceptance or denial. If Propeller desires to reasonably increase or decrease the leased space, Propeller will present a detailed letter and exhibits to the County and County will review and provide written acceptance or denial. The rent for the adjusted space will begin on an agreed date by both parties and shall be subject to adjustment as provided in section 3.04.

b. Rent adjustments as agreed to in this section and/or as provided in section 3.04 will be authorized by an amendment to this Lease with only affected sections changed (unless other amendments to this Lease shall be agreed between the parties).

3.07 Traffic Mitigation Fee. Propeller shall pay the County traffic mitigation fees at the time of permit issuance consistent with applicable county ordinances. These one-time costs are currently estimated at \$333,262.85

3.08 Surface Water Management Fees. Propeller shall pay County surface water management fees based upon impervious surface calculations reasonably determined by the Airport for charges assessed by Snohomish County Public Works Surface Water Management, provided that Propeller shall be provided with a copy of the assessment and the calculation thereof.

3.09 Storm Water Facility Policy. Propeller shall comply with the Snohomish County Airport Storm Water Facility Policy and make payments required by that Policy, a copy of which has been provided to Propeller.

a. Connection to Storm Water Detention Pond. Propeller shall pay County a one-time connection fee of \$[ ] for connection to the Airport Storm Water Facility upon receipt of an invoice therefor.

b. Pond Rent; Pond Maintenance. Propeller shall pay a monthly pond rent of \$[ ] plus leasehold excise tax adjusted pursuant to section 9.04 and monthly pond maintenance of \$[ ] plus leasehold excise tax adjusted annually on April 1 each year by the Consumer Price Index for the Seattle-Tacoma area. Pond rent and pond maintenance will be based upon the prorated share of the pond(s) supporting use of the property.

3.10 Aircraft Rescue and Fire Fighting (ARFF) Personnel. Propeller shall reimburse the County for the costs of additional aircraft rescue and firefighting personnel required by federal regulations or the Airport Security Plan related to Passenger Airlines servicing the Terminal. The parties currently estimate that two personnel will be necessary but recognize that federal requirements will dictate the actual requirements.

3.11 Airport Security Plan and Related Implementation Costs. Propeller shall reimburse the County for the costs of implementing revisions to its Airport Security Plan solely to comply with applicable Federal regulatory requirements, within ten (10) days after presentation of appropriate documentation of such costs, provided that such costs are solely related to Propeller providing Passenger Airlines at the Terminal. The following additional costs have been identified but are not intended to be an exhaustive list since such costs will be the result of

regulatory requirements imposed on the County by TSA, FAA or other regulatory agencies:

a. Costs related to additional badging and background checks related to the existence of passenger service at the Terminal.

b. Costs of County law enforcement officers (LEOs) and associated personnel costs required by Federal regulations or local requirements arising from such federal regulations attributable to the existence of passenger service at the Terminal (and the need for security either inside or outside the Terminal or the Property). The County agrees to apply for any TSA or other federal/state/local grants which are available to cover the costs of such LEO positions, with any grant proceeds used to cover Propeller's obligation under this section.

c. Overtime costs associated with incremental LEO and ARFF personnel as required pursuant to clause (b) above attributable to the existence of passenger service at the Terminal.

d. As required by Federal regulations, costs associated with extending service to international points (if applicable).

3.12 TSA Coordination and Grants. The County will keep Propeller advised of TSA and similar agency requirements on a timely basis and upon being informed by Propeller of the existence of any and all TSA grants that are eligible for the Terminal, shall apply for any and all such grants as the same become available, including but not limited to grants that cover the costs of the required law enforcement staff and costs for the screening of passengers and their baggage.

3.13 Utilities and Other Charges. Propeller shall pay, within thirty (30) days after receipt of an invoice therefor, charges for sewer, water, gas, electricity, telephone, surface water management fees, joint mailbox systems, security and fire equipment maintenance and monitoring, annual certificate of occupancy fire and safety inspection fee and re-inspection fee in the event of a violation requiring correction, and all other charges for utilities and services furnished or made available to the Property at Propeller's order or consent.

3.14 Future Actions by the County. The County agrees that it shall not, and shall cause its officers, representative, legislators and agent not to, (i) impose upon Propeller, or cause Propeller to be liable for or responsible to pay, any taxes, costs, fees, expenses, charges, impositions or assessments as a result of any act or legislation imposed, adopted or approved by the County or Airport Director, other than as expressly provided in this Lease and (ii) permit the circumvention of the economic terms of this Lease through actions specifically targeting aviation operations and/or entities within the County. For the avoidance of doubt, the

provisions of this Section 3.14 shall not apply to County laws, regulations or acts applicable, in general, to all businesses operating in the County or to the laws, regulations or acts of any governmental entity other than the County or the Airport Director.

#### ARTICLE IV - OPERATION AND MAINTENANCE OF TERMINAL

4.01 Concession for Non-Aeronautical Facilities. The parties understand that Propeller is constructing the Project in order to operate a terminal complex for Passenger Airlines and related facilities serving the general public. County does not contemplate the need for additional terminal facilities at the Airport and therefore hereby provides Propeller the concession to provide those non-aeronautical facilities which are necessary or desirable for passengers, customers and employees of Passenger Airlines at the Airport including, without limitation, paid automobile parking facilities, terminal passenger facilities and inside and outside terminal concessions, including access for rental cars, taxis and ground transportation (collectively, "Non-Aeronautical Facilities").

a. The grant of the concession herein recognizes that the existing fixed base operator has a concession to provide car rental services for its customers. Propeller acknowledges that, notwithstanding the concession granted herein, the fixed base operator can continue to provide car rental services for its customers.

4.02 Operating Standards. Propeller shall be responsible for all operations and maintenance of the Terminal, and County shall have no obligations related to such operation and maintenance. Propeller shall manage and operate the Terminal in accordance with the Operating Standards attached as Exhibit C. The parties understand the Operating Standards are intended to address such items, without limitation, as general facilities cleaning; maintenance of the Terminal building including structure and roof; HVAC, water, electric, computer, signage and other systems; equipment outage frequency and preventative maintenance. The County shall have the right to make reasonable revisions in the Operating Standards if such revisions are required by federal or state law or regulations, or by order of a court of competent jurisdiction, (provided that the County shall provide written notice to Propeller of any and all such revisions) or by mutual agreement of the parties.

4.03 Maintenance Reserve Fund. In addition to any requirements set forth in the Operating Standards, Propeller shall establish, and at all times maintain, a maintenance reserve fund equal to the budgeted operations and maintenance costs for the Project for one year as shall be established by Propeller based upon actual or projected annual operations and maintenance expenditures.

4.04 Accommodations. Propeller shall accommodate all Passenger Airlines who wish to serve the Airport except as provided in this Lease. The Airport must grant such access and accommodations consistent with FAA regulations.

4.05 Insufficient Space. This section shall apply only in the instance in which a Passenger Airline desires to provide service at the Airport but Propeller determines that there is insufficient space to accommodate all Passenger Airlines who wish to provide such service within the Terminal or on the Property.

a. If either Propeller or the County receives an expression of interest from a Passenger Airline who is not presently accommodated at the Terminal or from an incumbent Passenger Airline who desires to increase service for which there is insufficient space, Propeller and the County will negotiate in good faith to find necessary space in close proximity to the Terminal to accommodate such operations.

b. In the event that additional space is identified adjacent or in proximity to the Project, Propeller will be responsible for all design, construction and operating costs for such additional space but, at Propeller's discretion, Propeller may require such airline to sign the existing airline use agreement, or the amended agreement resulting from the costs associated with the additional space, as such agreements may be amended, supplemented or otherwise modified from time to time. This Lease will be amended as necessary to identify such additional space as additional leasehold property together with associated rents and charges.

c. County shall not construct additional non-aeronautical facilities to serve Passenger Airlines, their passengers, users, customers or employees unless it first gives Propeller an option to design, construct and operate such facilities on substantially the same terms as in this Lease.

4.06 Minimum Standards. The County confirms that its existing minimum standards do not allow for (a) the construction of a passenger terminal on the Airport on any property smaller than the Property or (b) the operation of a passenger terminal of a size smaller than the Terminal. The County shall not modify the minimum standards during the Term in a manner that would adversely affect Propeller or its substantial investment in the Project or that would allow the development or operation of another terminal smaller than permitted by this Lease or terminal facilities on property smaller than the Property.

4.07 Capital Improvements. Propeller shall perform ongoing capital improvements to the Property and the Project necessary to provide on-site service modifications or improvements to the Terminal, including the new terminal building,

baggage claim building and support facilities including security, auto parking and operations support activities as reasonably determined by Propeller and approved by the County in accordance with section 1.06. Any such Capital Improvements shall require submission of a Tenant Improvement Form in accordance with section 1.06.

4.08 Subtenants, Passenger Airlines and Concessionaires. The County acknowledges that Propeller will be entering into subleases, licenses and concession agreements with Passenger Airlines and concessionaires in connection with the operation of the Property. All such agreements will be subject to County approval which cannot be unreasonably withheld, conditioned or delayed. All agreements must contain at least the following provisions: (a) the agreement will be subordinate to County's Grant Assurance obligations to the federal government; (b) the agreement will contain such nondiscrimination provisions as are required by the County and the applicable Grant Assurances; (c) the agreement will provide that the subtenant's, licensee's or concessionaire's rights to leased property will be forfeited if it remains unused for a defined period of time; (d) the agreement will provide a procedure for sharing or release of space if needed for other Passenger Airlines or concessionaires; (e) the agreement will contain a provision requiring the sublessee, licensee or concessionaire to attend to the County in the event that the County elects to terminate this Lease if Propeller defaults hereunder after the expiration of all applicable notice and cure periods. The Airport Director or his designee shall have the right to review but not copy any and all such subleases, licenses and concession agreements at reasonable times upon reasonable advance notice.

4.09 Hours of Operations. Propeller shall be entitled to operate the facilities located at the Property on a 24 hour basis, consistent with the operation of a passenger aviation terminal.

#### ARTICLE V - PROPELLER'S OTHER OBLIGATIONS

5.01 Condition of Property. Propeller has examined the Property, including any structure, grounds, and access thereto, and accepts the same in the condition in which they now are. It is agreed that the County shall not be bound by any warranty, representation, or condition regarding the Property except as stated herein. The County represents and warrants that the certificate of occupancy for the Property and any zoning resolution in effect as of the date of this Lease permits the use of the Property as herein provided and that the Property is fully in compliance with all Federal, State and local laws.

5.02 Maintenance and Repairs. Propeller, at its sole expense, shall keep the Property as now or hereafter constituted with all buildings and improvements made thereon and the adjoining sidewalks, curbs, walls, parking areas,

landscaping, access roads, and vaults clean and in good condition. Propeller shall make all repairs, replacements, and renewals, whether ordinary or extraordinary, seen or unforeseen, including all structural repairs, necessary to maintain the Property. All repairs, replacements, and renewals shall be at least equal to that as originally constructed herein under section 1.04.

#### 5.03 Surrender of Leasehold Improvements

a. During the term of this Lease and any subsequent renewals pursuant to section 2.02, Propeller shall have title to any and all buildings, fixtures and improvements constructed or installed by Propeller. At the expiration of the Term hereunder and any subsequent renewals pursuant to section 2.02, the County shall have title to any and all buildings, fixtures and improvements constructed or installed by Propeller; PROVIDED however, the County shall have the option to request Propeller to remove any and all fixtures and improvements (other than buildings) constructed or installed by Propeller at the sole cost and expense of Propeller and restore the Property.

b. Propeller shall peaceably and quietly leave, surrender and deliver to County the Property, together with any buildings and improvements, and any and all subsequent alterations, additions, and replacements which may have been made upon the Property to which the County has assumed title, in good repair, ordinary wear and tear excepted.

5.04 Liens. Propeller agrees to pay, when due, all sums of money that may become due for any labor, services, materials, supplies, utilities, furnishings, machinery, or equipment, which have been furnished or ordered with Propeller's consent, to be furnished to or for Propeller in, upon, or about the Property herein leased, which may be secured by any mechanics', materialmen's, or other lien against the Property herein leased or County's interest therein, and will cause any such lien which has been filed to be fully discharged and released within thirty (30) days after same attaches, provided that Propeller may in good faith contest any mechanics' or other liens filed or established, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest.

5.05 Personal Property. Propeller shall keep all personal property, equipment, trade fixtures and furniture insured against fire or other casualty to their full replacement cost and provide insurance policies and certificates of renewal to the County upon request.

5.06 Equipment. Any machinery, tools, appliances and/or other personal property of any kind and nature placed on the Property by Propeller shall remain the property of Propeller; provided that:

a. Propeller shall remove such machinery, etc., prior to the expiration or termination of this Lease and restore the building to its original as-built condition, reasonable wear and tear excepted;

b. Any such machinery, etc. which is not removed by Propeller before the expiration, retaking of possession, or termination of this Lease may, at the County's option upon the County giving Propeller written notice thereof, become the property of the County.

c. If such machinery, etc., is not removed by Propeller as provided above, the County has the right to remove and store any or all of such property at the expense of Propeller. The County shall have a lien on such property for reasonable storage, and removal charges, and any other charges the County may have against Propeller pursuant to the terms of this Lease and shall have the right to sell any or all of such property and dispose of the proceeds as provided in RCW 60.60.030 and .040. At all times, Propeller shall bear all risk of loss or damage to any machinery, etc., or personal property placed in or on the Property or any other Airport property by Propeller.

5.07 Prevailing Wages. Pursuant to Snohomish County Code 4.46.335, Propeller agrees that all contracts for the Project and improvements to the Property, other than ordinary maintenance, shall require the contractor or developer to comply with the prevailing wage provisions of RCW 39.12.010 through 39.12.030. Failure of Propeller to comply with the prevailing wage provisions shall constitute a default of the Lease resulting in termination unless said default is cured within sixty (60) days after written notice thereof.

5.08 Waste Water. This Lease is subject to all statutes and regulations of the State of Washington with respect to waste water disposal. If Propeller's use of the Property or construction of the Project on the Property results in the discharge or the potential for the discharge of any waste waters except domestic waste waters from the Property in violation of such statutes and regulations, Propeller shall immediately apply to Washington State Department of Ecology (DOE) for a State Waste Water Discharge Permit. Upon request, Propeller shall advise the Airport which drains or other waste water facilities Propeller will utilize in disposing of waste waters. The Airport may designate sewers or other facilities which Propeller may utilize to dispose of waste waters.

5.09 Sewage System

a. It is understood that the County is presently under contract with Mukilleo Water and Wastewater District for sewage disposal. In its use of the sewage system (or any sewage system operated by the City of Everett, if applicable), Propeller shall comply with all applicable reasonable rules and



regulations of the Airport and all applicable rules and regulations of the Mukilteo Water and Wastewater District or other applicable sewer districts. Such system shall not be used for storm drainage or the discharge of any effluent deemed by the Airport Director (such determination to be reasonably made) or the Mukilteo Water and Wastewater District (or other applicable sewer district) to be harmful to the system.

b. In addition to the rental provided herein, Propeller shall pay the County such reasonable charges for sewer service as are fixed by the Airport Director.

5.10 Assignment. Propeller shall not assign or encumber the Property or any part thereof without the prior written consent of the Airport Director except as provided in sections 4.01 and 4.08 concerning subleases or licenses to Passenger Airlines and concessionaires. Notwithstanding the foregoing, the following transfers ("Permitted Transfers") shall not require County's prior consent so long as the transferee engages only in the same use as contemplated by Propeller: (a) any transfer to a subsidiary, parent, affiliate, division or corporation controlled by or under common control with Propeller; or (b) any successor corporation, limited liability company, partnership or other entity to Propeller as a result of merger, consolidation, reorganization, sale of substantially all of Propeller's assets and business, or government action (each such transferee a "Permitted Transferee"). As used herein, the term "control" "controlled by" or similar term shall mean the ownership of more than fifty percent (50%) of the outstanding voting stock or voting equity interests together with the sole power to vote said equity interests. The Airport Director shall not unreasonably withhold, condition or delay its consent to such assignment or encumbrance provided that Propeller provides evidence in a form and substance satisfactory to the Airport Director, that the proposed assignee is capable, financially and otherwise, to perform Propeller's obligations under this Lease. Propeller shall advise prospective assignees that Snohomish County Code, Section 15.08.400 requires Airport Director approval of commercial operations. Prior to any consent, Propeller shall deliver to the Airport Director a written statement of intent to assign or encumber. Any assignment or encumbrance without the written consent of the Airport Director (if such consent is required hereunder) is null and void. If this Lease is assigned, or if the Property or any part thereof is occupied or used by anyone other than Propeller (other than sublessees, licensees or concessionaires as contemplated in sections 4.01 and 4.08) without the prior consent of County, County may, upon default by Propeller, collect rent and any other charges under this Lease from the assignee or occupant and apply the net amount collected to Propeller's rent and other charges herein reserved. Other than in the case of written consent of County, no such assignment, occupancy or collection, shall be deemed a waiver of this covenant, the acceptance of the assignee or occupancy as a tenant, or a release of Propeller

from further performance by Propeller of the covenants including the payment of rent and other charges in this Lease; and Propeller shall remain liable for all of its obligations, except for rentals paid, under this Lease. Any consent by the Airport Director shall not be construed to relieve Propeller from obtaining the consent of the Airport Director to any further assignment or occupancy. For the avoidance of doubt, the restrictions set forth in this Section 5.10 shall not apply to a transaction in which equity of Propeller is issued to one or more third parties.

#### 5.11 Hazardous Waste, Substances, and Pollutants and Contaminants

a. The County, its agents, representatives and employees have not received written notice from any governmental agency regarding the presence of any Hazardous Substances (as hereinafter defined) or any present or past generation, recycling, reuse, sale, storage, handling, transport and/or disposal of any Hazardous Substances on the Property that asserts or claims a violation of or failure to comply with any Environmental Laws (as hereinafter defined) which has not been remedied except for Building C-4 Land Lease area (described on Exhibit F) which has elevated concentrations of hydrocarbon and lead. Other than Building C-4 Land Lease area, to the County's knowledge, there has been no Hazardous Substances located upon, stored, handled, installed or disposed in, on or about the Property or any other location within the vicinity of the Property in amounts or quantities which would constitute a violation of any Environmental Law. County will terminate the Building C-4 lease and require the tenant currently occupying Building C-4 prior to this Lease to remove Building C-4 and remediate elevated concentrations of hydrocarbon and lead within six (6) months of Effective Date of this Lease. No rent shall be charged to Propeller for Building C-4 Land Lease area until remediation is complete, and Propeller shall have no liability or responsibility for same in any manner whatsoever at any time.

b. Propeller agrees that it will not cause or permit in any manner, including accidental or non-negligent acts or omissions, a release of any Hazardous Substance into, upon or from any Airport property in violation of any Environmental Laws. Propeller shall notify the Airport Director, the State Department of Ecology, and any other involved agency in writing of any such release. Propeller shall be liable for any and all consequences of such a release caused or permitted by Propeller, including all liability under any Environmental Law. Propeller shall indemnify and hold the County harmless from any and all liability resulting from such a release and shall have full responsibility for completely cleaning up any and all contamination from a release as may be required by any governmental agency. After clean-up of such a release, Propeller shall provide County a copy of a "No Further Action" letter from the State Department of Ecology containing no restrictions on the Property. Upon any release of a Hazardous Substance in violation of Environmental Laws, the County

may enter the Property and take whatever steps it deems appropriate to cure the consequences of such release, all at the expense of Propeller. Propeller represents and warrants that it has inspected the Property and, to Propeller's knowledge, there is no Hazardous Substance located thereon in violation of Environmental Laws. Any Hazardous Substance placed upon the Property by Propeller, its agents or employees during the term of this Lease shall be removed by Propeller not later than the cancellation or termination of this Lease.

c. As used in this section, "Hazardous Substances" means any chemical, substance, material, waste or similar matter defined, classified, listed or designated as harmful, hazardous, extremely hazardous, dangerous, toxic or radioactive or as a contaminant or pollutant, or other similar term, by, and/or which are subject to regulation under, any Environmental Laws.

d. As used in this section, "Environmental Laws" means all federal, state and local laws, statutes, ordinances and regulations, now or hereafter in effect, in each case as amended or supplemented from time to time, including, without limitation, all applicable judicial or administrative orders, applicable consent decrees and binding judgments relating to the regulation and protection of human health, safety, the environment and natural resources (including, without limitation, ambient air, surface water, groundwater, wetlands, land surface or subsurface strata, wildlife, aquatic species and vegetation), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §§ 9601 et seq.), the Hazardous Material Transportation Act, as amended (49 U.S.C. §§ 1801 et seq.), the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. §§ 136 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. §§ 6901 et seq.), the Toxic Substance Control Act, as amended (15 U.S.C. §§ 2601 et seq.), the Clean Air Act, as amended (42 U.S.C. §§ 7401 et seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. §§ 1251 et seq.), the Safe Drinking Water Act, as amended (42 U.S.C. §§ 300f et seq.), any state or local counterpart or equivalent of any of the foregoing, and all state and federal common law, and any federal, state or local transfer of ownership notification or approval statutes.

e. Propeller shall disclose and deliver to County copies of any environmental reports, tests, studies or other documentation relating to any investigation of the Property for Hazardous Substances.

f. Propeller shall perform a phase one environmental inspection of the Property 30 days prior to the expiration of this Lease. Propeller shall provide County a copy of the phase one environmental report upon expiration or earlier termination of this Lease. In the event the phase one inspection does not

reasonably satisfy County, County may require Propeller to perform a phase two investigation of the Property. Propeller shall provide County a copy of the phase two environmental report.

#### ARTICLE VI - INDEMNITY AND INSURANCE

##### 6.01 Indemnification and Hold Harmless

a. To the maximum extent permitted by law and except to the extent caused by the gross negligence or willful misconduct of the County or its agents, representatives, employees, invitees or licensees, Propeller shall indemnify and hold harmless the County, its officers, officials, agents and employees, from and against any and all suits, claims, actions, losses, costs, penalties and damages of whatsoever kind or nature arising out of any act or omission of Propeller, its agents, representatives, employees, invitees, sublessees and licensees in connection with the occupancy and or activity of or on the Project. In addition, Propeller shall assume the defense of the County and its officers and employees in all legal or claim proceedings arising out of or in connection with its indemnification obligations hereunder and shall pay all defense expenses, including reasonable attorney's fees, expert fees and costs incurred by the County on account of such litigation or claims. This indemnification obligation shall include, but is not limited to, all claims against the County by an employee or former employee of Propeller, and Propeller, by mutual negotiation, expressly waives all immunity and limitation on liability, as respects the County only, under any industrial insurance act, including Title 51 RCW, other Worker's Compensation act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim. In the event that the County incurs any judgment, award and/or cost including reasonable attorney's fees arising from the provisions of this subsection, or to enforce the provisions of this subsection, any such judgment, award, fees, expenses and costs shall be recoverable from Propeller. In the event of litigation between the parties to enforce the rights under this subsection, reasonable attorney fees shall be allowed to the prevailing party.

b. In the event the County incurs attorney fees and/or costs in the defense of claims under this provision such attorney fees and costs shall be recoverable from Propeller to the extent same are reasonable. In addition Snohomish County shall be entitled to recover from Propeller its reasonable attorney fees, and costs incurred to enforce the provisions of this section.

c. The indemnification, protection, defense and save harmless obligations contained herein shall survive the expiration, abandonment or termination of this Lease.

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

#### 6.02 Insurance

a. As of the Effective Date, Propeller, at its own cost, shall have procured and will maintain for the duration of this Lease, insurance within the Minimum Scope and Limits of Insurance, as set forth in section 6.02(c). Propeller shall furnish the County with certificates of insurance and endorsements required by this Lease. The County reserves the right to require complete, certified copies of all required insurance policies at any time.

b. Each insurance policy shall be written on an "occurrence" form unless otherwise approved by the County.

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

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

#### e. Minimum Scope and Limits of Insurance

Propeller shall maintain limits no less than,

1. General Liability: \$5,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage, and for those policies with aggregate limits, a \$10,000,000 aggregate limit. CG 00 01 current edition.

2. Automobile Liability: \$5,000,000 (air-side)/\$1,000,000 (land-side) combined single limit per accident for bodily injury and property damage. CA 0001 current edition, Symbol 1, unless otherwise approved by Risk Management.

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

#### f. Other Insurance Provisions and Requirements

The insurance coverage(s) required in this Lease are to contain, or be endorsed to contain the following provisions:

General and Automobile Liability:

1. The County, its officers, officials, employees and agents are to be covered as an additional insured as respects liability arising out of or in connection with this Lease. Such coverage shall be primary and non-contributory insurance as respects the County, its officers, officials, employees and agents. The additional insured endorsement shall be included with the certificate of insurance, CG 20 11 or its equivalent is required.

2. Propeller's insurance coverage shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

3. Any deductibles or self-insured retentions must be declared to, and approved by, the County (such approval not to be unreasonably withheld, conditioned or delayed). The deductible and/or self-insured retention of the policies shall not limit or apply to Propeller's liability to the County and shall be the sole responsibility of Propeller.

4. Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, until after thirty (30) calendar days' prior written notice to the County.

5. Insurance coverage is to be placed with insurers with a Bests' rating of no less than A: VIII, or, if not rated with Bests', with minimum surpluses the equivalent of Bests' surplus size VIII.

g. If at any time any of the foregoing policies fail to meet the minimum requirements set forth herein, Propeller shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit the same to the County, with the appropriate certificates and endorsements, for approval.

6.03 All Risk Insurance. Propeller shall obtain and maintain continuously all risk insurance including earthquake and flood insuring to their full insurable value, any and all buildings and improvements constructed by Propeller upon the Property against all loss or damage for the benefit of both County and Propeller and named insureds. Full insurable value shall mean actual replacement value. Propeller shall maintain, restore and keep in good condition and repair all such buildings and improvements. Propeller shall provide duplicate insurance policies and certificates of renewal to the County.

6.04 Mutual Waiver of Subrogation. Propeller and County each releases and relieves the other and waives its entire right of recovery against the other for loss or damage arising out of or incident to the perils covered by all risk insurance, including earthquake and flood coverage, approved for use in Washington which occur in, on or about the Property, whether caused by the negligence of either party, their agents, employees, or otherwise. Each party shall obtain from its insurer(s) provisions permitting waiver of any claim for loss or damage within the scope of the above insurance. The release and waiver of recovery contained herein shall be limited by, and shall be co-extensive with, the waiver provisions of the insurance policies procured and maintained by the parties pursuant to this Lease. If either County or Propeller is unable to obtain its insurer's permission to waiver of any claim against the other party, such party shall promptly notify the other party of such inability.

6.05 Destruction and Restoration.

a. If any building, structure or facility which was constructed or located on the Property by Propeller (collectively, "Propeller's Improvements") is destroyed or damaged by fire, the elements, or any other cause, Propeller shall repair the same to its condition at the time of loss. Propeller, at its option, shall have the right, at its own expense, either to promptly repair and rebuild such Propeller Improvements, or to delay the commencement of such repair or rebuilding until the proceeds of all insurance policies covering such casualty are available. After commencement of repair or rebuilding Propeller shall continue the work with reasonable diligence until completion, subject to events or circumstances beyond Propeller's control (i.e., "force majeure" events). Except as otherwise provided in this Lease, this Lease shall not terminate or be affected in any manner by reason of the damage or destruction of Propeller's Improvements by fire, the elements, or any other cause, and the fixed rent reserved in this Lease, as well as all other charges payable hereunder, shall be paid by Propeller without abatement or reduction on account of such damage or destruction. All risk of loss to Propeller's Improvements shall be on Propeller.

b. Notwithstanding anything to the contrary contained in this Lease, in the event of any casualty affecting or condemnation of a "material portion" of Propeller's Improvements shall occur after the twentieth (20<sup>th</sup>) year of this Lease, Propeller may elect, by written notice to the County, to terminate this Lease, which notice shall be effective on the twentieth (20<sup>th</sup>) day after delivery of such notice to the County. In exercising said option, Propeller shall assign any and all rights to insurance proceeds to the County. If said proceeds are insufficient to bring Propeller improvements to a pre-loss condition because deductibles or self-insured retentions or of Propeller's failure to maintain the insurance required pursuant to the terms of this Lease, Propeller shall tender to the County the

insufficient difference of insurance proceeds. As used herein, "material portion" means the casualty shall require the expenditure of more than fifty percent (50%) of the total value of Propeller's Improvements or any taking which causes a diminution in value of the Property in excess of 50% or eliminates or materially restricts access to the Project or the intended development, use or operation thereof.

6.06 Increased Limits. If during the term of this Lease, higher limits of insurance than those mentioned shall be required by the then current version of Snohomish County Airport Rules and Regulations and Minimum Standards, and such higher limits are reasonable, then upon request by the County, Propeller shall procure such insurance with higher limits.

#### 6.07 Insurance Review

In consideration of the duration of this Lease, the parties agree that the Insurance section herein, at the discretion of the County Risk Manager, may be reviewed and adjusted with each amendment and within ninety (90) days of the end of the first five (5) year period of this Lease and the end of each successive five (5) year period thereafter. Any adjustments made as determined by the County Risk Manager, shall be in accordance with reasonably prudent risk management practices and insurance industry standards and shall be effective on the first day of each successive five (5) year period. Adjustment, if any, in insurance premium(s) shall be the responsibility of Propeller. Any failure by the County to exercise the right to review and adjust at any of the aforementioned timings shall not constitute a waiver of future review and adjustment timings.

### ARTICLE VII - DEFAULT

7.01 Propeller's Default. Propeller shall be in default of Lease if Propeller:

a. Fails to pay when due any sum payable by Propeller hereunder and fails to make full payment thereof within fifteen (15) days of Propeller's receipt of the County's written demand for payment, or

b. Breaches any non-monetary, material term, covenant or condition of this Lease and Propeller fails either to begin to cure the breach within thirty (30) days of Propeller's receipt of the County's written notice of such breach or to complete the cure of the breach within a reasonable time thereafter. If Propeller timely commences to cure such breach with such thirty (30) day period, Propeller shall not be in default if Propeller continues in timely good faith its efforts to cure following such thirty (30) day period, or



c. Either makes any general assignment or general arrangement for the benefit of creditors; files a petition in bankruptcy, including reorganization or arrangement, except in the case of a petition filed against Propeller when the same is dismissed within 90 days after filing; suffers the appointment of a trustee or receiver to take possession of substantially all of Propeller's assets located at the Property or of Propeller's interest in this Lease; or

d. Suffers a cancellation of a guaranty of Propeller's obligations by a guarantor, if any, or

e. Fails to comply with the same material Lease term or covenant on two occasions within any 12-month period even if such breach is cured within the applicable cure period, or

f. Fails to comply with the Operating Standards and/or the Airport Rules and Regulations in any material respect, unless such failure is cured within 10 days after notice (which ten (10) day period shall be extended for an additional twenty (20) days, if the same cannot reasonably be cured within ten (10) days and Propeller shall have commenced the cure within such ten (10) day period and is diligently using reasonable efforts to cure same).

7.02 Remedies. Statement of any remedy herein shall not prevent a party to this Lease from pursuing any other legal remedy available to it. Upon pursuing any remedy, a party to this Lease, in addition to any other charges provided herein, shall be entitled to all costs and expenses incurred by it, including reasonable attorney's fees and expenses incurred in putting the Property in order.

#### 7.03 Abandonment/Removal of Property

a. Propeller shall not vacate or abandon the Property at any time during the term of this Lease for a period in excess of thirty (30) days.

b. In the event Propeller shall abandon, vacate or surrender said Property, or be dispossessed by process of law, for a period in excess of thirty (30) days, County shall have the right, but not the obligation, to remove from the Property all personal property located therein, and may store the same in any place selected by County, including but not limited to a public warehouse, at the expense and risk of the owners thereof, with the right to sell such property and dispose of the proceeds as provided in RCW 60.60.030 and .040.

#### 7.04 Bankruptcy

a. For the purposes of this section, Propeller shall be deemed to have filed for bankruptcy when it (i) applies for or consents to the appointment of a

receiver, trustee or liquidator of all or a substantial portion of its assets; admits in writing its inability to pay its debts as they come due; (iii) makes an assignment for the benefit of its creditors; (iv) files a petition for reorganization or an arrangement with its creditors or seeks to take advantage of any insolvency laws; (v) files an answer admitting the material allegations of a petition filed against it in any bankruptcy, reorganization or insolvency proceeding; or (vi) performs any other act of bankruptcy.

b. Propeller commits to provide the County as much advance notice as possible of its potential inability to meet performance and financial standards, including without limitation, its intent to file bankruptcy, but in no event less than ten (10) days, to provide time for the parties to develop a plan to insure the continued operation of the Terminal and related facilities, in order to ensure safety and compliance with federal law and obligations to tenants and Passenger Airlines.

c. In the event of a filing by Propeller under the federal bankruptcy laws, the County has the right (to the extent permitted by applicable law) but not the obligation to enter and operate the Terminal. County will not be entitled to collect fees or rents from subtenants or otherwise to affect flow of net income to Propeller as a result of its operation of the Terminal. Payments to the County for the costs of assuming operations of the Terminal in the event of bankruptcy shall be addressed as administrative cost items in the Propeller bankruptcy proceedings if and to the extent permitted by applicable law. Propeller hereby waives any right to challenge such claims as anything other than administrative claims in such proceedings.

d. Propeller stipulates that this Lease is a non-residential lease of real property subject to 11 U.S.C. 365 and waives the right to argue otherwise in any bankruptcy proceeding.

## ARTICLE VIII - TERMINATION

### 8.01 Termination for Propeller's Default

a. If Propeller is in default under this Lease after the expiration of all applicable notice and cure periods, County may terminate this Lease by giving Propeller notice of termination. Such notice shall be given by certified mail, or by delivery, to Propeller or any agent of Propeller at Propeller's last known address, or by posting such notice at the Property.

b. If Propeller is in default under this Lease after the expiration of all applicable notice and cure periods, County may retake possession of the Property without terminating this Lease. If County so retakes possession and does not

terminate this Lease, Propeller shall remain liable to pay any and all rentals and other charges as specified herein, together with any and all other actual, out-of-pocket damages as may be sustained by the County, excepting therefrom rental proceeds received from re-letting the Property.

#### ARTICLE IX - FEDERAL, STATE AND COUNTY REQUIREMENTS

##### 9.01 Federal Requirements.

a. County, as a recipient of Federal Airport Improvement Program grant funds, is required to include statements (a) and (b) of this section in all lease agreements. Construction of a building or improvements on Airport property requires a special federal approval as set forth (c)

b. Propeller, in its operation at Stohomish County Airport, covenants that it will not on the grounds of race, color, creed or national origin discriminate or permit discrimination against any person or group of persons in any manner prohibited by Parts 15 and 21 of the Federal Aviation Regulations (14 CFR), and in the event of such discrimination, Propeller agrees that the County has the right to take such action as the United States Government may direct to enforce this covenant.

c. With respect to any aeronautical services Propeller specifically agrees:

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

2. To charge fair, reasonable and not unjustly discriminatory prices for each unit of service, PROVIDED, that Propeller may be allowed to make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

d. Propeller shall submit a Form 7460 to the Federal Aviation Administration (FAA) to comply with Part 77 of the Federal Aviation Regulations, (14 CFR). Propeller shall not begin construction on the Property until the FAA has approved Form 7460 and Propeller submits a copy of the approval to County. County shall not begin construction on Property until County has received FAA approval of such Form 7460

##### 9.02 Subordination To Federal Obligations.

a. This Lease shall be subordinate to the provisions of any existing or future agreement between the County and the United States relative to the

operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of Federal funds for the development of the Airport.

b. Should any provision of this Lease be determined by the FAA to conflict with the County's obligations to the federal government (including, without limitation, Grant Assurance obligations), the objectionable provision will be deemed removed and parties will endeavor to reform the affected provision to accord as closely as legally possible to the parties' original intent in light of the specific FAA objections.

### 9.03 Condemnation

a. **Whole Taking.** If the whole of the Property is acquired or condemned by a competent authority for any public use or purpose, this Lease shall terminate as of the date on which title vests in that authority, and the rent reserved hereunder shall be apportioned and paid up to that date. Any compensation paid for the land shall become the property of the County, except as otherwise provided in clause (c) below.

b. **Partial Taking.** If only a portion of the Property is so acquired or condemned, that portion of compensation paid for improvements shall be used to replace, repair, and restore insofar as possible, the Property to its condition of utilization prior to the taking or condemnation. If such repair, replacement, or restoration cannot be so accomplished, this Lease shall be terminated unless the parties agree otherwise. If the Lease continues, rent shall be reduced on the date of surrender of possession of the part taken in proportion to the decrease in use suffered by Propeller. Any compensation paid for the land shall become the property of the County, except as otherwise provided in clause (c) below.

c. **Compensation.** In the case of any taking or condemnation of the whole of the Property, whether or not the term of this Lease shall cease and terminate, Propeller shall:

1. Receive that portion of the award for such taking or condemnation that equals the value to Propeller of its leasehold interest and the unexpired term of this Lease (including extensions), measured by the fair market value of comparable Property and the fair market value of Propeller's business at the Project, the valuation of which shall be determined immediately prior to such taking;

2. Receive that portion of the award for such taking or condemnation that equals the value of Propeller's Improvements and the

appurtenances thereto, including the Non-Aeronautical Facilities, the valuation of which shall be determined immediately prior to such taking; and

3. Have the right to claim and seek recovery from the condemnation authority compensation for any loss of its leasehold interest, the fair market value of Propeller's Improvements, and for loss to which Propeller may be put for Propeller's moving expenses, business interruption and personal property, trade fixtures and equipment.

d. The rights of the parties with regard to any award shall be subject and subordinate to the rights of any leasehold mortgagee of the Property.

#### 9.04 Laws and Regulations

a. Propeller shall comply with all laws, ordinance codes, rules, and regulations applicable to the Project. Propeller shall be responsible for securing and maintaining all necessary permits and paying, when due, all costs, fees, including surface water management fees, taxes, annual inspection fees, and other charges/benefits incidental to lease, construction, and use of the Property as provided in and subject to the terms of Article III.

b. Propeller's attention is directed to Chapter 82.29A RCW, amendments thereto, and any ordinances, laws, or regulations of Snohomish County and/or any other taxing authority with respect to the levy and collection of excise or other taxes on leasehold interests. Propeller agrees that it will comply therewith, and will pay such taxes to the County when due in accord with the applicable rules, statutes and regulations. Propeller specifically authorizes the County to remit to the respective taxing authority any amounts paid by Propeller to County in payment of any such taxes, and agrees that County shall not be held responsible or liable in any manner for reimbursement of any amounts so paid to the taxing authority if said taxes, or any part thereof, are determined to be invalid, improper, or unenforceable.

c. If the applicable taxing authority requires the County to collect the taxes and Propeller does not agree on the amount of taxes to be so paid, Propeller shall pay the amount requested by the County, and Propeller's sole recourse shall be against the applicable taxing authority with respect to the amount, propriety, and validity of such tax. County in no way warrants the validity or propriety or correctness of any such tax, and the sole obligation of the County upon collection of such tax shall be to remit the same to the appropriate taxing authority.

d. Propeller shall provide a certification of its corporate status, business license and other registrations as applicable for review by the County at Lease signing and at any subsequent change of status or amendment.

9.05 Aviation Easement. Propeller's right to use the Property for the purposes as set forth in this Lease shall be secondary to and subordinate to the operation of the Airport. The County specifically reserves for itself, and for the public, a right of flight for the passage of aircraft in the air space above the surface of the described property together with the right to cause in said air space such noise as may be inherent in the operation of aircraft.

9.06 Easement Rights Reserved. The County reserves the right to grant easements and/or licenses over, across, and under the Property so long as the easement or license does not unreasonably interfere with Propeller's use or operation of the Project or affect Propeller's access thereto.

9.07 Security. Propeller recognizes its obligations to comply with federal and Snohomish County Airport security requirements and the Paine Field Airport Security Program. Propeller will reimburse the County in full for any fines or penalties levied against the County for security violations as a result of any actions on the part of Propeller, its agents, contractors, suppliers and, if due to the fault, failure to act or breach of this Lease by Propeller or by Propeller's employees, lessees or agents, for any violation occurring at any field access point under the control of Propeller. Propeller shall be responsible within its defined role within the County's Airport Security Program for all employees and other persons gaining access to the Property which is in a restricted area (Snohomish County Code 15.08.210). Propeller shall be responsible for ensuring that identification required and provided by the Airport is required by all agents, suppliers, customers, employees and invitees needing access to a restricted area, if any.

9.08 Noise Abatement. The County and Propeller recognize the importance and joint responsibility of compatibility between the Airport and the surrounding community. Therefore, Propeller shall actively participate and comply in all material respects with all noise abatement procedures, policies, and programs as set forth by the County to the greatest extent practicable.

9.09 Aircraft and Ground Service Vehicle Identification. Propeller agrees to register all airside ground service vehicles and aircraft and obtain operator permits from the Airport Director. Propeller shall provide the Airport Director on an annual basis a current list of all aircraft stored on the Property including the name and address of each owner and N number of each aircraft.

9.10 Wildlife Hazards and Deterrents. Propeller shall not allow a bird, rodent or other wildlife attractant on the Property. Propeller shall keep trash cans and dumpster lids closed. In the event Propeller activities attract wildlife, Propeller at its cost shall take immediate action to remove the wildlife and use commercially reasonable efforts to prevent further wildlife attraction. Propeller agrees to

participate in prorated area wide costs as necessary to resolve any area wide rodent problem.

9.11 Foreign Object Damage. Propeller shall inspect and keep the Property clean of any object, material or matter that poses a threat of foreign object damage to aircraft.

9.12 County Non-Discrimination Requirement. It is the policy of the County to reject discrimination which denies equal treatment to any individual because of his or her race, creed, color, national origin, families with children, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability as provided in Washington's Law against Discrimination, Chapter 49.60 RCW, and the Snohomish County Human Rights Ordinance, Chapter 2.460 Snohomish County Code. These laws protect against specific forms of discrimination in employment, credit transactions, public accommodation, housing, county facilities and services, and County contracts. Propeller shall comply with Chapter 2.460 Snohomish County Code, which is incorporated herein by this reference. Execution of this Lease constitutes a certification by Propeller of Propeller's compliance with the requirements of Chapter 2.460 Snohomish County Code. If Propeller is found to have violated this provision, or knowingly furnished false or misleading information in an investigation or proceeding conducted pursuant to Chapter 2.460 Snohomish County Code, this Lease may be subject to a declaration of default and termination at the County's discretion after the expiration of all applicable notice and cure periods. This provision shall not affect Propeller's obligations under other federal, state, or local laws against discrimination.

#### ARTICLE X - GENERAL PROVISIONS

10.01 Total Agreement; Applicability to Successors. This Lease constitutes the entire agreement of the parties and cannot be changed or terminated except by a written instrument subsequently executed by the parties. This Lease and the terms and conditions hereof apply to and are binding on the heirs, representatives, successors, and assigns of both parties.

10.02 Relationship Between Parties. It is the intention of this Lease to create the relation of lessor and lessee between the parties and no other relations whatsoever. Nothing herein contained shall be construed to make the parties partners or joint ventures, or to render either party liable for any of the debts or obligations of the other party.

10.03 Relationship to Assignees or Subtenants. In this Lease whenever obligations, liabilities or responsibilities are imposed upon Propeller, those

obligations, liabilities or responsibilities shall apply to any subcontractors, licensees or contractors of Propeller to the extent that Propeller has assigned, delegated or allowed such parties to act on Propeller's behalf with respect to obligations, liabilities or responsibilities under this Lease.

10.04 Nonwaiver. Waiver by either party of strict performance of any provision of this Lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.

10.05 Attorney Fees. If suit or action is instituted in connection with any controversy arising out of this Lease, the prevailing party shall be entitled to recover in addition to costs such sum as the court may adjudge reasonable as attorney fees, including in-house counsel or in the event of appeal as allowed by the appellate court. Costs shall include, without limitation, the fees of appraisers, accountants, engineers and other professionals incurred in connection with such suit or action.

10.06 Time of Essence. It is mutually agreed that time is of the essence in the performance of all covenants and conditions to be kept and performed under the terms of this Lease.

10.07 County Indemnification. Propeller hereby waives all claims for damages that may be caused by County's re-entering and taking possession of the Property or removing and storing the property of Propeller as provided in this Lease after a default by Propeller hereunder and the expiration of all applicable notice and cure periods, and will save County harmless from loss, costs or damages occasioned by Propeller, and no such re-entry shall be considered to be a forcible entry.

10.08 Warranties/Guarantees. County makes no warranty, guarantee, or averment of any nature whatsoever concerning the physical condition of the Property and any subsequent structures, except as otherwise expressly provided in this Lease, and it is agreed that the County will not be responsible for any loss, damage, or costs which may be incurred by Propeller by reason of any such physical condition.

10.09 Headings. The article and section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provisions of this Lease.

10.10 Consent of County. Whenever consent, approval, or direction by the County is required under the terms contained herein, all such consent, approval, or direction shall be received in writing from the Airport Director.



10.11 Notices. All notices may be delivered in person or mailed to the following respective addresses:

To the County:      Airport Director  
                             Snohomish County Airport,  
                             Paine Field  
                             3220 – 100<sup>th</sup> St. SW, Suite A  
                             Everett, Washington 98204

To Propeller:

10.12 Governing Law and Severability. The laws of the state of Washington shall govern the validity, performance, and enforcement of this Lease. The invalidity or unenforceability of any provision hereof shall not affect or impair any other provision.

DATED as of  
the Effective Date \_\_\_\_\_

Dated as of  
the Effective Date \_\_\_\_\_

COUNTY: **SNOHOMISH COUNTY**

PROPELLER: \_\_\_\_\_

Airport Director

Its: \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF SNOHOMISH )

STATE OF: \_\_\_\_\_ )  
 ) ss.  
COUNTY OF: \_\_\_\_\_ )

On this day personally appeared before me

On this day personally appeared  
before me

to me known to be the Airport Director  
of the Snohomish County Airport  
and the person who executed the within and  
foregoing instrument, and acknowledged that  
he signed the same as its free and voluntary  
act and deed, for the uses and purposes  
therein mentioned.

to me known to be the \_\_\_\_\_  
of the \_\_\_\_\_  
and the person who executed the within and  
foregoing instrument, and acknowledged that  
he signed the same as its free and voluntary  
act and deed, for the uses and purposes  
therein mentioned.

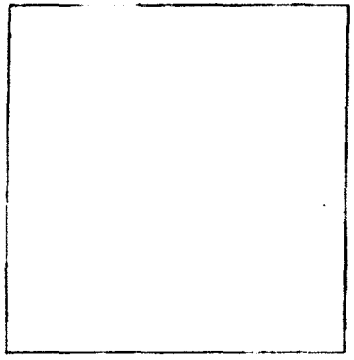
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DATED: \_\_\_\_\_

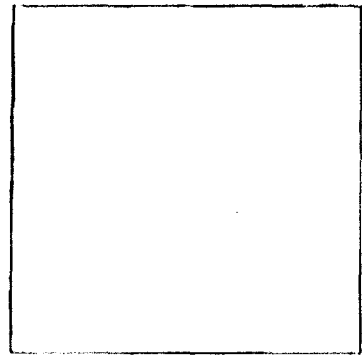
Notary Public in and for the State of \_\_\_\_\_  
Residing at: \_\_\_\_\_  
My appointment expires: \_\_\_\_\_

Notary Public in and for the State of \_\_\_\_\_  
Residing at: \_\_\_\_\_  
My appointment expires: \_\_\_\_\_

Please place Notary stamp in  
box



Please place Notary stamp in  
box



Approved as to form:  
Deputy Prosecuting Attorney

Approved:  
Risk Management

EXHIBITS A-1, A-2, A-3, A-4, A-5, & A-6

LEGAL DESCRIPTION AND DIAGRAMS OF THE PROPERTY

Snohomish County Paine Field  
Survey 4305/RR9306-105  
Sector 2 – Lease Legal  
December 9th, 2014

**EXHIBIT "A" 1**

**Lease Area:** (See Exhibit A1)

That portion of the southeast quarter of Section 15, Township 28 North, Range 4 East, W.M.,  
described as follows:

**Commencing at the southeast corner of said Section 15;**  
Thence N88°42'22"W along the south line of said section, a distance of 1233.88 feet to the **True Point of Beginning (TPOB);**  
Thence N45°00'00"E, a distance of 162.36 feet;  
Thence N0°00'00"E, a distance of 14.83 feet;  
Thence N64°52'01"W, a distance of 232.25 feet;  
Thence S45°00'00"W, a distance of 257.66 feet;  
Thence S0°00'00"E, a distance of 23.28 feet;  
Thence S45°00'00"E, a distance of 217.10 feet;  
Thence N90°00'00"E, a distance of 12.97 feet;  
Thence N45°00'00"E, a distance of 91.57 feet to the TPOB.

Situate in the County of Snohomish, State of Washington.

Containing an area of 66.238 square feet, more or less.



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TerminalBoundary.doc

Page 1 of 2

Snohomish County Paine Field  
Survey 4305/RR0306-105  
Sector 2 -- Lease Logal  
December 9th, 2014

**EXHIBIT "A" 2**

Lease Area: (See Exhibit A2)

That portion of the southeast quarter of Section 15, Township 28 North, Range 4 East, W.M.,  
described as follows:

Commencing at the southeast corner of said Section 15;  
Thence N88°42'22"W along the south line of said section, a distance of 953.33 feet;  
Thence N1°17'38"E, a distance of 507.47 feet to the True Point of Beginning (TPOB);  
Thence N45°00'00"W, a distance of 179.61 feet;  
Thence S46°37'57"W, a distance of 318.91 feet;  
Thence S45°00'00"E, a distance of 124.28 feet;  
Thence N45°00'00"E, a distance of 113.87 feet;  
Thence N90°00'00"E, a distance of 65.67 feet;  
Thence N64°08'19"E, a distance of 54.87 feet;  
Thence N45°00'00"E, a distance of 106.63 feet to the TPOB.

Situate in the County of Snohomish, State of Washington.

Containing an area of 48,989 square feet, more or less.



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TerminalBoundary.doc

Page 1 of 2

Snohomish County Pine Field  
Survey 4305/RR9306-105  
Sector 2 -- Lease Legal  
December 9th, 2014

**EXHIBIT "A" 3**

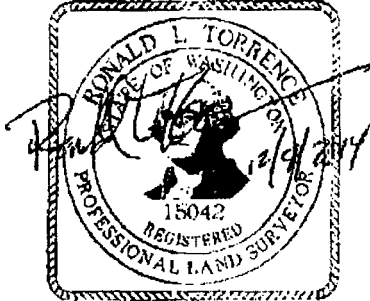
**Lease Area:** (See Exhibit A3)

That portion of the southeast quarter of Section 15, Township 28 North, Range 4 East, W.M., described as follows:

Commencing at the southeast corner of said Section 15;  
Thence N88°42'22"W along the south line of said section, a distance of 1920.29 feet;  
Thence N45°02'38"E, a distance of 85.25 feet to the **True Point of Beginning (TPOB)**;  
Thence N45°00'53"W, a distance of 491.08 feet;  
Thence N45°00'00"E, a distance of 233.51 feet;  
Thence S45°00'00"E, a distance of 176.23 feet;  
Thence N45°00'00"E, a distance of 170.00 feet;  
Thence N45°00'00"W, a distance of 140.00 feet;  
Thence N45°00'00"E, a distance of 39.19 feet;  
Thence N43°03'04"E, a distance of 150.64 feet;  
Thence S45°00'00"E, a distance of 250.00 feet;  
Thence S45°00'00"W, a distance of 9.00 feet;  
Thence S45°00'00"E, a distance of 440.58 feet;  
Thence S45°00'00"W, a distance of 272.35 feet;  
Thence N45°00'00"W, a distance of 121.19 feet;  
Thence S45°00'00"W, a distance of 45.00 feet;  
Thence S84°57'44"W, a distance of 170.19 feet;  
Thence S45°02'38"W, a distance of 136.33 feet to the **TPOB**.

Situate in the County of Snohomish, State of Washington.

Containing an area of 327.846 square feet, more or less.



S:\PW\_Project Data Management\6-PROJECTS\UPI Year 2011\11-0121-13 RESOURCE GROUPS\_WorksInProgress\Survey (3SURY)\Office Data (Hardcopy)\Legals\Sector2\Lease A3 - Terminal Boundary.doc

Snohomish County Public Field  
Survey 4305/RR0506 103  
Sector 2 – Lease Legal  
December 9th, 2014

EXHIBIT "A" 4

Lease Area: (See Exhibit A4)

That portion of the northeast quarter of Section 22, Township 28 North, Range 4 East, W.M.,  
described as follows:

**Commencing at the northeast corner of said Section 22:**

Thence N88°42'22"W along the north line of said section, a distance of 995.09 feet;  
Thence S1°17'38"W, a distance of 502.50 feet to the True Point of Beginning (TPOB);  
Thence S0°00'00"E, a distance of 198.47 feet;  
Thence N88°45'11"W, a distance of 120.67 feet;  
Thence N1°14'29"E, a distance of 193.48 feet;  
Thence N88°48'25"E, a distance of 116.48 feet to the TPOB.

Situate in the County of Snohomish, State of Washington.

Containing an area of 23,230 square feet, more or less



SAPW\_Project\_Data\_Management-6-PROJECTS-CPI Year\_2011-1-0121-1-3 RESOURCE  
GROUPS\_WorkInProgress-Survey (SSRY)-Office Data (Hardcopy\Legal\Sector2\Lease A4 -  
TerminalBoundary.doc

Page 1 of 2

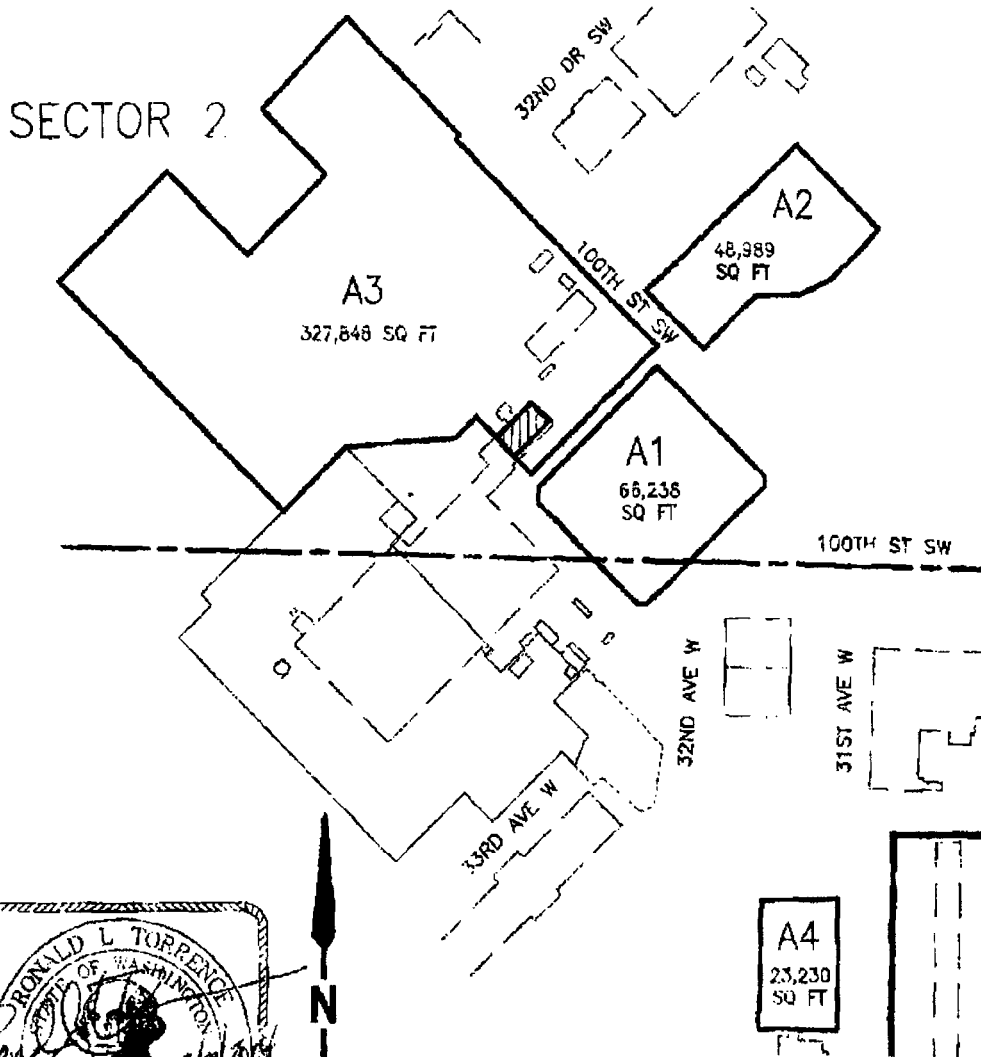
# EXHIBIT OVERALL A 5

PAINE FIELD AIRPORT - SECTOR 2  
RR9306-105

SEC. 22, T. 28 N., R. 04 E., W.M.



PAGE 1 OF 1



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# EXHIBIT OVERALL A 6

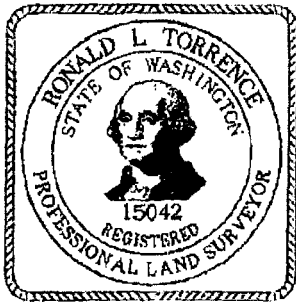
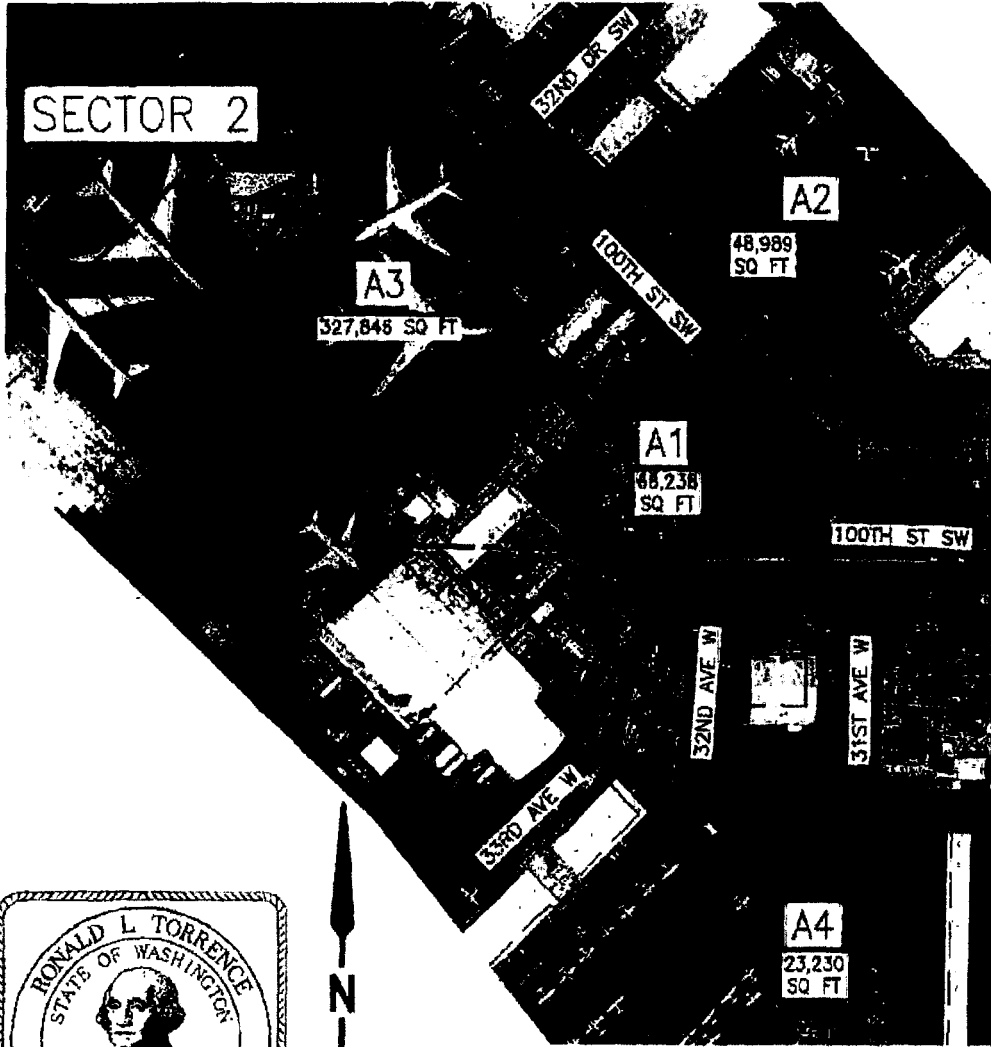
PAINE FIELD AIRPORT - SECTOR 2

RR9306-105

SEC. 22, T. 28 N., R. 04 E., W.M.



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**EXHIBIT B – THE PROJECT**  
**(PROJECT PLANS TO BE PROVIDED DURING OPTION PERIOD)**

**EXHIBIT C OPERATING STANDARDS**

(Attached DRAFT to be refined by the parties during the Option Period)

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## Section 1

### INTRODUCTION

#### 1.1 PURPOSE OF THE OPERATING STANDARDS

The purpose of this document is to provide the minimum requirements which the operator of commercial passenger terminal facilities (Operator) shall meet for the benefit of Snohomish County (County), owner of Paine Field, Snohomish County Airport (Airport) in the operation and maintenance of the commercial passenger terminal and related facilities (Terminal Complex). For purposes of these Operating Standards, the entire leasehold property is referred to as the "Terminal Complex." This document includes requirements concerning operations, safety, security, maintenance, and other matters necessary and appropriate to assure that all aspects of the Terminal Complex are operated at the highest level. Operator shall implement and have in effect procedures that are reasonably designed to achieve compliance with these Operating Standards. These Operating Standards are in addition to, and do not supersede, any lease provisions, Airport minimum standards, rules or regulations, County code, or any applicable federal regulations, Advisory Circulars or other directives on the use of Airport facilities.

#### 1.2 OPERATING STANDARDS OVERVIEW

The Terminal Complex must be operated and maintained such that it meets or exceeds certain minimum operating standards. Operator shall comply with reasonable performance measures that are both quantitative and qualitative in nature, unless and except to the extent that acts or omissions of the County, a governmental authority or a force majeure event impede or prevent Operator from so complying. The Operating Standards shall be construed flexibly in light of their objectives. The quantitative measurements are based on operating statistics and physical inventories, while the qualitative measurements are based on user perceptions and expectations.

- Quantitative measurements will be collected and assessed by tracking a variety of Terminal Complex operating and physical statistics.
- Qualitative measurements will be collected through surveys of Terminal Complex users, visual observations, and by reporting procedures established by the County and Operator.

The performance measures identified in these Operating Standards are separated into various categories intended to capture various aspects of the Terminal Complex's operating performance. Operator is expected to collect all relevant data and to demonstrate compliance with all standards identified in these Operating Standards.

### **1.3 REPORTS**

Operator shall prepare an Annual Report that summarizes year-over-year traffic numbers, safety incidents, and projects or other improvements undertaken or completed throughout the year.

### **1.4 RELATIONSHIP TO OTHER DOCUMENTS AND LAWS**

The interpretation of these Operating Standards and Operator's compliance with these Operating Standards (including any goals contained herein and any provisions where objective performance is described in absolute terms (i.e., "all", "every", "in all instances", "completely", etc.)) shall be subject to the provisions set forth in the Lease.

The provisions of the Operating Standards and of the Operations Plan established hereunder shall comply with the Lease and all applicable present and future laws, rules, regulations, ordinances, orders and directives, including those promulgated by the County or any other governmental entity with authority over the Airport, as such laws, rules, regulations, ordinances, orders and directives may be amended, modified, or revised. For convenience, these are referred to as "Legal Requirements" throughout this document. It is Operator's sole responsibility to be aware of all new and future Legal Requirements.

To the extent that any term or provision of these Operating Standards conflicts or could conflict with any term or provision otherwise specified in the Federal Aviation Regulations (FARs), FAA Orders, directives, Advisory Circulars, and other FAA guidance and the Airport Certification Manual or the Airport Security Program prepared pursuant to 49 CFR Part 1542, then such term or provision of these Operating Standards shall be construed in light of their objectives, and the Airport Certification Manual, the Airport Security Program, FARs, FAA Orders, directives, and mandatory FAA Advisory Circulars as applicable, shall govern and shall supersede any such conflicting term or provision of these Operating Standards.

To the extent that these Operating Standards refer to or implicate any particular law, regulation, ordinance, order, directive, FAA guidance or Advisory Circular, the reference or implication is to the then-current version of the same, as it may have been amended, revised, replaced or succeeded from time to time.

### **1.5 COORDINATION WITH OTHER AGENCIES**

In complying with these Operating Standards and in the preparation and implementation of the Operations Plan, Operator at a minimum must coordinate as appropriate with the following entities:

- Snohomish County
- Federal Aviation Administration (FAA)
- Transportation Security Administration (TSA)

The Facilities Plan must set forth performance standards for operations, including quantitative and qualitative standards for performance and methods for remediation of sub-standard performance.

The Facilities Plan must document:

- The inventory of all major facilities and systems, including identification of the type of facility (e.g. office space, concessions, common space, etc.);
- The staff (or third party) dedicated to the operation of each major facility and system;
- The staff (or third party) dedicated to the maintenance of each major facility and system;
- The routine maintenance program for all major facilities and systems, thereby ensuring the condition of said facilities will permit the continuous operation of the Terminal Complex,
- The schedule for major maintenance.

### **2.3.2 Operation and Maintenance of Facilities**

Operator shall provide descriptions of the procedures required for the operation and maintenance of each Terminal Complex facility and system. At a minimum, the Facilities Plan shall include the following for each facility:

- An exhibit of the location and key functional components of the facility;
- A brief narrative description of the facility and its components;
- The immediate-, near-, and long-term needs of the facility in terms of its capital requirements;
- The minimal and optimal resources required to operate the facility in terms of staffing and equipment;
- The identification of the essential staff that is responsible for the supervision and organization of the facility;
- The routine maintenance plan for the facility in accordance with manufacturers' preventive maintenance requirements, where applicable.

For routine operation and maintenance activities, Operator may, from time to time, temporarily or permanently close halls, doorways, and other areas at the Terminal Complex including within the passenger Terminal Complex buildings; provided that, if time permits, the County shall be advised in advance with regard to such closings in order to minimize the disruption of services being provided.



	Stormwater sewer systems
	Trash removal
	Communications systems
	Parking facility lighting
	Public and employee parking, public and employee on-airport transportation

### 2.3.4 Additional Detail on Critical Systems

The continuous operation of the Terminal Complex requires that certain critical systems must have detailed plans for their operational integrity. Chief among these systems are the life safety systems. Additional detail regarding the life safety systems standards is provided in this section.

With regard to life safety systems, the Facilities Plan must address the following individual components:

- Emergency communications, including the emergency intercom, telephones, radios, and other mobile communication devices;
- Fire protection and suppression, including: sprinkler systems; heat, smoke, and carbon monoxide detectors; and fire alarms;
- First response medical stations, including: first aid supplies and personnel; and automated external defibrillators;
- Security systems; passenger security screening; video surveillance, emergency personnel identification, and random security procedures.

For each of the above, the Facilities Plan shall indicate: the operational procedures and policies that would be routinely executed to ensure that these systems are capable of operating without interruption, tested regularly for functionality and proper performance; and upgraded or improved as necessary.

With regard to the energy distribution systems, the Facilities Plan must address the procedures and policies employed by Operator to ensure that the energy distribution systems remain fully operational at all times.

### 2.3.5 Performance Schedule

From time to time, the Operator shall revise the Facilities Plan to reflect a good faith effort to maintain an accurate assessment of the Terminal Complex facilities.

### **2.3.6 Reporting Requirements**

Operator shall prepare a summary of operational performance on an annual basis for inclusion in the Annual Report.

## **Section 3**

### **SAFETY AND SAFETY MANAGEMENT SYSTEMS PLAN**

#### **3.1 BACKGROUND**

The Safety and Safety Management Systems Plan (Safety Plan) section of the Operations Plan shall provide the County the assurance that Operator will conduct all operations in a safe manner, protecting both employees and the general public. The Safety Plan should be developed and executed by Operator and submitted to the County for its approval as provided in Section 1.6.

#### **3.2 REGULATORY COMPLIANCE**

The Safety Plan shall identify and require compliance with all Legal Requirements, including without limitation, 14 CFR Part 139, the Airport Certification Manual for the Airport and the Airport Safety Management System Handbook (should such a Handbook be required by federal regulations). Operator must ensure that employees and representatives responsible for the operation of Terminal Complex facilities comply with the provisions of the Safety Plan.

#### **3.3 REQUIREMENTS OF THE PLAN**

The Safety Plan shall identify the plan's objectives, essential staffing, stakeholders, scope, performance schedule, and reporting requirements as described below.

##### **3.3.1 Scope of Safety Plan**

At a minimum, the Safety Plan shall provide:

- Guidance as to the necessary safety training that various Terminal Complex employees shall receive, including first aid training;
- A plan for implementation of any Safety Management System (SMS) requirements;
- Best practices for Terminal Complex employees to increase awareness of potential safety issues before they arise;
- Development and implementation of appropriate Letters of Agreement or other means of establishing appropriate safety practices and policies;

- A policy manual for construction within the Terminal Complex, including guidance as to the use of information signage, physical barriers, traffic control infrastructure and other equipment to maintain a safe environment for the general public.

### **3.3.2 Staff Training and Education**

The Safety Plan shall include provisions for training to establish a safety culture and educate employees regarding safety issues. The training shall address the requirements and workplace standards of the OSHA and shall be consistent with any SMS requirements. The Safety Plan shall include the following at a minimum:

- Training that incorporates requirements of the SMS;
- General training that covers OSHA standards and overall safety awareness for all personnel, including executives;
- Training specific to the responsibilities of the employee, including identification of equipment required to execute specific tasks safely, safe driving of vehicles, and safe operation of equipment;
- Provision of safety training for new employees and the provision of recurrent safety training for all employees along with a typical schedule for such training;
- Provision of a lessons learned/case histories component;
- Establishment of procedures aimed at ensuring employees understand the safety policies and adhere to safe work practices.

The training shall also provide background regarding anticipated work activities and hazards, and the protocol that shall be followed should an incident occur.

### **3.3.3 Additional Safety Plan Requirements**

The Safety Plan shall address the following:

- Personal safety procedures for all major tasks for which personnel are responsible, including identification of the protective equipment (e.g. hard hats, reflective vest, hearing protection, respiratory protection, and protective clothing/ footwear);
- Work zone safety procedures, including identification of the minimum requirements for work zones (e.g. barricades to prevent incursion by public Terminal Complex patrons). The procedures shall identify necessary safety equipment that should be available for work zones, such as traffic cones, barricades, and signage;
- Medical treatment information, including identification of the location of medical treatment facilities at the Terminal Complex and procedures to follow in the event

medical treatment is needed. Training in first aid shall also be required of all field Lessee employees.

- Safety incident protocol, including the steps that Lessee employees should follow in the event of an incident. The protocol shall include: (1) emergency contact information for immediate response, (2) forms for documenting incidents to provide a record of safety incidents to measure against and feedback for training purposes, and (3) information as to Operator staff that should be responsible for collecting said documentation;
- Hazardous or toxic materials protocols, including protocol for both spill prevention and spill cleanup. Further, the procedures and equipment necessary for the safe storage and handling of hazardous material should be specified. It shall also provide decontamination procedures for both Lessee employees and their equipment.

### **3.3.4 Performance Schedule**

From time to time the Operator shall revise the Safety Plan to reflect a good faith effort to make improvements in any areas which have been subject to safety incidents throughout the applicable time frame. The revisions shall be made in an attempt to prevent the same type of incident from recurring.

### **3.3.5 Reporting Requirements**

Operator shall prepare a summary of safety performance on an annual basis for inclusion in the Annual Report.

## **Section 4**

### **CUSTOMER SERVICE PLAN**

#### **4.1 BACKGROUND**

The Customer Service Plan (Customer Service Plan) section of the Operations Plan shall provide assurance to the County that Operator is planning and implementing appropriate measures to ensure high levels of customer service. The Customer Service Plan shall be developed and executed by Operator, and submitted to the County for approval as provided in Section 1.6.

#### **4.2 REGULATORY COMPLIANCE**

The Customer Service Plan shall identify and require compliance with all Legal Requirements, including without limitation, 14 CFR Part 139 and the Airport Certification Manual for the Airport. Operator must ensure that employees and representatives responsible for customer service comply with the provisions of the Customer Service Plan.

### 4.3 REQUIREMENTS OF THE PLAN

The Customer Service Plan shall identify the plan's objectives, essential staffing, stakeholders, scope, performance schedule, and reporting requirements as described below.

#### 4.3.1 Scope of Plan

The Customer Service Plan shall address the following topics:

- Staff training and recurrent training;
- Customer concern system;
- Passenger assistance protocols;
- Information services;
- Web site;
- Level of Service Report.

Staff training. The Customer Service Plan shall identify the training program for the employees responsible for customer service. The goal of the training shall be to ensure that all employees that interact with Terminal Complex patrons will provide courteous, efficient, and helpful service. This training will provide a protocol for interactions with customers to guide Terminal Complex customer service representatives to ensure high levels of customer satisfaction.

Customer concern system. The Customer Service Plan shall identify the system used to identify, track, mitigate, and resolve customer concerns. The system shall be capable of identifying the priority of the concerns and the timeframe for their resolution. The system shall also identify the procedure for follow-up communication to the customer in the event a formal complaint or concern arises. If the customer concern resolution involves physical improvements or procedural modifications, these shall be documented in revisions to the Customer Service Plan.

Passenger assistance protocols. The Customer Service Plan shall identify the protocol for provision of passenger assistance. This assistance includes provisions for: (1) the transportation for the elderly and disabled patrons to and from their aircraft, as necessary; (2) provision for an emergency or extreme aircraft delays requiring overnight stay in the passenger Terminal Complex; (3) lost and found; and (4) customer paging.

Information services. The Customer Service Plan shall identify the minimum requirements for the provision of information to Terminal Complex patrons. Information services include: provision of a website (as defined below) and on-site information kiosks. On-site information kiosks would be located in the passenger Terminal Complex

both pre- and post-security. At a minimum, these kiosks shall provide information regarding: (1) regional transportation options; (2) local and regional lodging; (3) maps of the Airport and Terminal Complex facilities and surrounding region; (4) dates for major public events in the area; (5) information on local venues (e.g. convention center, tourist attractions, museums, etc.); (6) current weather information, (7) information regarding airport concessions, and (8) facts about the Terminal Complex and the Airport.

**Website.** The Customer Service Plan shall identify the minimum requirements for the public Terminal Complex website. The website shall follow international standards for websites for commercial service airports and shall include at a minimum: (1) passenger Terminal Complex map; (2) Airport map showing main access roadways; (3) directions to and from the Airport and the Terminal Complex; (4) contact information for the Terminal Complex, Airport, and airlines customer service departments; (5) a customer service page; (6) a site map for web site navigation; and (7) information regarding Terminal Complex security for passenger awareness. The Customer Service Plan shall indicate whether the website will be a separate stand-alone site or will be incorporated into existing County or Airport websites.

**Minimum standards.** For each function of the Terminal Complex, Operator shall define the minimum level of service that must be met for compliance with the Customer Service Plan. For example, Operator shall target a level of service C or better for the departure holdrooms. This level of service C shall be consistent with the appropriate International Air Transport Association (IATA) definitions.

**Level of Service Report.** A Level of Service Report shall be prepared annually as described in Section 4.3.3.

#### **4.3.2 Performance Schedule**

From time to time the Operator shall revise the Customer Service Plan to reflect a good faith effort to make improvements in areas where customer service has not met the standards of Operator, as identified in the annual reporting described in the following section.

#### **4.3.3 Reporting Requirements**

Operator shall prepare a Level of Service Report on an annual basis for inclusion in the Annual Report. This report shall document the findings of an annual survey of passengers regarding: airport access, automobile parking, Terminal Complex curb front, passenger check-in, passenger security screening, Terminal Complex concessions, departure holdrooms, baggage claim, and airport way finding. The Level of Service Report shall indicate whether the function is providing excellent, good, fair, or poor levels of service. The Level of Service Report shall report the percentage of responses for each of the categories. Functions that receive a grade of poor from 20% or more respondents must be addressed. The goal of Operator shall be to receive excellent or good feedback on each facility from at least 80% of respondents.

The County and Operator may agree to modify the Level of Service Report goals of excellent or good feedback on each facility from at least 80% of respondents to take into account periods of Terminal Complex construction and other events that may affect users of the Terminal Complex. It is acknowledged that the Level of Service Report goals are intended to be a target and that, in the event that target is not reached in a given year, it will not provide an independent basis for declaring a breach of the Lease.

For each of the areas surveyed, Operator shall establish a history of customer feedback by reporting the historical results adjacent to the current year's results. The survey must also capture feedback regarding passenger comfort level, convenience, quality of service, and overall traveling experience at the Airport. For those areas with reported poor levels of service, Operator shall develop an action plan to address the concerns, either through a combination of training for staff, physical improvements, procedural changes, or further study.

**EXHIBIT D RENT SCHEDULE**

**SNOHOMISH COUNTY AIRPORT  
TERMINAL RENT ANALYSIS  
Nov-14**

<b>Terminal Area</b>	<b>S.F.</b>	<b>Rate</b>	<b>Monthly Rent</b>	<b>Leasehold Excise Tax</b>	<b>Total Rent w LET</b>
asphalt	285,000	\$ 0.0660	\$ 18,810.00	\$ 2,415.20	\$ 21,225.20
grass	40,000	\$ 0.0433	\$ 1,732.00	\$ 222.39	\$ 1,954.39
building	3,000	\$ 0.6600	\$ 1,980.00	\$ 254.23	\$ 2,234.23
main lot	66,238	\$ 0.0660	\$ 4,371.71	\$ 561.33	\$ 4,933.04
EVCC lot	48,988	\$ 0.0660	\$ 3,233.21	\$ 415.14	\$ 3,648.35
Jet Deck lot	23,230	\$ 0.0660	\$ 1,533.18	\$ 196.86	\$ 1,730.04
	<b>466,456</b>		<b>\$ 31,660.10</b>	<b>\$ 4,065.16</b>	<b>\$ 35,725.26</b>

**Other Charges:**

<b>Storm Water Facility Charges( SWF)</b>					
	SWF Pond Rent		\$ 834.07	\$ 107.09	\$ 941.16
	SWF Pond Maintenance		\$ 160.30	\$ 20.58	\$ 180.88
	SWF Pond SWM		\$ 5.36		\$ 5.36
			<b>\$ 999.73</b>	<b>\$ 127.68</b>	<b>\$ 1,127.41</b>
	<b>One time SWF connection Fee</b>		<b>\$ 374,792.00</b>		

<b>Surface Water Management Charges (SWM)</b>					
<b>Terminal SWM</b>	466,456	\$ 0.00101101	\$ 471.59		\$ 471.59

**Total Fees with other charges: \$ 37,324.26**



## EXHIBIT E

### REVENUE SHARING CALCULATION

Definition: "Gross Revenues" as used in Revenue Sharing Section 3.02 means the total aggregate undiscounted, untaxed revenue, income, and consideration received by Propeller in respect of, in exchange for, on account of, or in consideration for its operations, concessions, licenses, subleases, parking fees and other revenue in any form and from whatever source derived.

Gross Revenue Reports. On or before the fifteenth (15<sup>th</sup>) calendar day of each year during the Term of the Lease, Propeller shall deliver to the County a written report, signed by an authorized representative of Propeller, showing the amount of any revenue, income, and consideration received by Propeller, directly or indirectly, in respect of, in exchange for, in consideration of, or on account of its operations at Paine Field, in any form and from whatever source derived, at any time during the preceding calendar year. The report shall compute the total dollar amount due to the County which shall be the mathematical product of Propeller's Gross Revenues received in the preceding year, multiplied by the percentage share then in effect pursuant to Section 3.02 Revenue Sharing, as applicable. With each such report, Propeller shall remit to the County the total amount of the Revenue Sharing Payment indicated thereby to be due, in accordance with the provisions of this Lease.

Audited Financial Reports. Propeller shall submit to the County complete audited annual financial statements of Propeller's operations prepared by an independent certified public accountant satisfactory to the County, within ninety (90) calendar days after the end of each calendar year, showing the results of operations at Paine Field during said year. Such statements shall include, at a minimum, a balance sheet, profit and loss statement and statement of sources and uses of funds.

**EXHIBIT F**

**BUILDING C-4 LEASE AREA**

**(C-4 Area to be remediated by former Airport tenant after Exercise of  
Option)**

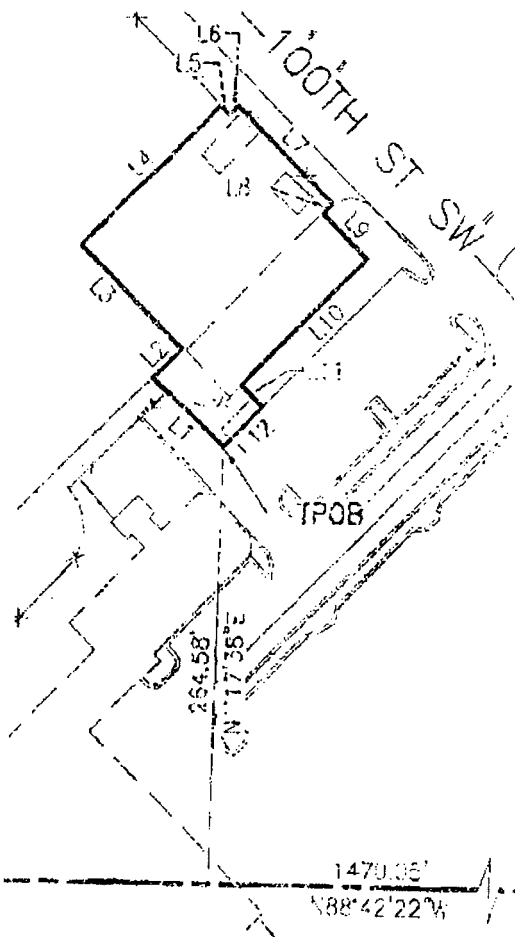
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PAINE FIELD AIRPORT - SECTOR 2  
RR9306-105

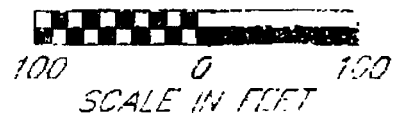
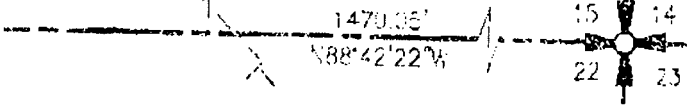
SEC. 15, T. 28 N., R. 04 E., W.M.



PAGE 2 OF 2



LINE TABLE		
Line #	Length	Direction
L1	51.50'	N45°38'38\"W
L2	24.77'	N15°49'08\"E
L3	88.62'	N44°30'34\"W
L4	110.50'	N45°22'32\"E
L5	7.35'	S44°45'47\"E
L6	7.50'	N51°24'39\"E
L7	83.31'	S45°05'31\"E
L8	8.45'	S39°16'03\"W
L9	38.61'	S44°37'27\"E
L10	108.05'	S45°22'15\"W
L11	18.91'	S44°42'59\"E
L12	34.13'	S45°25'00\"W



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Data\2.1 Drawings\Survey\Exhibits\Prop for Lease.dwg

**EXHIBIT G**

**GRANT ASSURANCES**

(Current Edition to inserted at Lease Signing)

Propeller Airports' ANSWER Opposing Discretionary Review

## **APPENDIX A-2**

Date: April 10, 2017

BEFORE THE HEARING EXAMINER  
IN AND FOR THE COUNTY OF SNOHOMISH

In the Matter of an Appeal of the  
Paine Field Passenger Terminal Project -  
MDNS

Sno-King Watershed Council,  
Appellant,

Propeller Airports Paine Field,  
Applicant,

Snohomish County Planning and  
Development Services,  
Respondent.

No. MDNS 16-109244  
No. 16-109244 LDA  
No. HEA-2017-01

STIPULATION AND ORDER  
MODIFYING PERMIT AND  
DISMISSING APPEAL  
[SCC 30.71.110(2)]

COMES NOW Appellant, Sno-King Watershed Council by and through its  
representatives William Linder, PE, CESCL; Applicant Propeller Airports Paine  
Field, by and through its attorney Dennis D. Reynolds; and Respondent Snohomish  
County Department of Planning and Development Services (PDS), by and through  
its attorney Brian J. Dorsey, Deputy Prosecuting Attorney, and hereby stipulate and  
agree as follows:

1. Appellant filed an appeal of the above referenced Mitigated  
Determination of Nonignificance (MDNS) and related Land Disturbing Activity

1 (LDA) permit as issued by Snohomish County Department of Planning and  
2 Development Services under File No. 16-109244 LDA.

3 2. Appellants primary issues on appeal relate to the capacity of the water  
4 detention vault as approved under Permit No. 16-109244 LDA to detain the full  
5 volume of stormwater runoff projected to enter the detention system, and the  
6 corresponding water quality treatment proposed by the Applicant.

7  
8 3. In accordance with SCC 30.61.307 the parties were required to engage in  
9 mandatory settlement conference pursuant to which the Appellant and Applicant  
10 were able to reach agreement upon certain terms and conditions including  
11 modification of the LDA permit as issued to increase the capacity of the detention  
12 vault and to provide for enhanced water quality treatment as more fully set forth in  
13 that Settlement Agreement attached hereto as Exhibit A.

14  
15 4. Subject to such modifications, Appellants stipulate and agree that the  
16 LDA permit as modified adequately complies with the County's stormwater  
17 drainage regulations as set forth in Ch. 30.63A SCC, and that such compliance  
18 constitutes adequate review and mitigation of potential adverse environmental  
19 impacts associated with stormwater runoff from the Project as proposed in  
20 accordance with SEPA (RCW 43.21C.240).

21  
22 5. The parties stipulate and agree that the proposed modifications to the  
23 LDA permit as issued will enhance the detention capacity and water quality  
24 treatment of the proposed drainage system as approved and, thus, that such  
25 modifications will not result in any changes to the proposal that is likely to have a  
26

**STIPULATION AND ORDER OF DISMISSAL - 1**  
C:\Users\6111\Desktop\Lider Engineering\Clients\Permit Filed\Terminal Expense Settlement Meeting  
311625204\16-109244 LDA TopOrder\Dismissal Order April 18, 2017.docx

Snohomish County  
Prosecuting Attorney - Civil Division  
Robert J. Drewal Bldg., 6<sup>th</sup> Floor, M/S 904  
3000 Rockefeller Ave  
Everett, Washington 98201-4060  
(425)388-6330 Fax: (425)388-6333

1 significant adverse environmental impact and, thus, that the MDNS determination as  
2 issued in this matter may stand and does not need to be withdrawn in accordance  
3 with WAC 197-11-340(3).

4  
5 6. In accordance with SCC 30.71.110 the parties stipulate and agree that the  
6 Hearing Examiner shall enter an order approving and modifying the LDA permit as  
7 issued to incorporate those modifications set forth in the Settlement Agreement  
8 attached hereto as Exhibit A; Provided, however, all monetary provisions for  
9 payment of any sums by the Applicant to the Appellant under the terms of the  
10 Settlement Agreement shall be the separate contractual obligation of the Appellant  
11 and not incorporated as a modification or condition of the LDA permit as issued.

12  
13 7. Within fifteen (15) calendar days of the date of entry of this order  
14 Applicant shall submit revised engineering drawings to PDS modifying the  
15 approved drainage system to incorporate the revisions set forth in the Settlement  
16 Agreement attached hereto (hereinafter "Revised Plan Set"). Provided, however, it  
17 is recognized and understood that the Applicant may propose an alternative design  
18 meeting the overall intent of this agreement as provided in Paragraph 5 of the  
19 Settlement Agreement. PDS shall review the Revised Plan Set for compliance with  
20 the modifications set forth herein and may require the Applicant to make further  
21 revisions as necessary to comply with the modifications as set forth herein. Upon  
22 review and approval by PDS of the Revised Plan Set, compliance with and  
23 installation of a drainage system in accordance with the Revised Plan Set shall be  
24 made a condition of Permit No. No. 16-109244 LDA.



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1. Except as modified above, the parties stipulate and agree that the MDNS decision and LDA permit decision which are the subject of this appeal set forth above shall be affirmed and that this appeal shall be dismissed concurrent with the entry of this order.

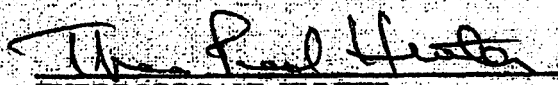
**ORDER**

This matter having come on before the above entitled Hearing Examiner upon the stipulation of the parties, NOW, THEREFORE, IT IS ORDERED AS FOLLOWS:

1. The SEPA threshold determination (MDNS) as issued by PDS in this matter is affirmed based upon the LDA permit as modified below.
2. The LDA permit decision (File No. 16-109244 LDA), is affirmed subject to the following modifications which are imposed pursuant to SCC 30.71.110(2):
  - a. The capacity of the Storm Water Detention Vault shall be increased in accordance with Paragraph 1 of the Settlement Agreement which is attached hereto as Exhibit A and incorporated by reference herein; Provided, however Applicant may propose an alternative design meeting the overall intent of the Settlement Agreement as provided in Paragraph 5 of the settlement Agreement;
  - b. The approved storm water drainage plan shall be revised to add enhanced water quality treatment in accordance with Paragraph 2 of the Settlement Agreement which is attached hereto as Exhibit A and incorporated by reference herein;
  - c. The Applicant shall submit landscape drawings as part of the building permit application in accordance with Paragraph 3 of the Settlement Agreement which is attached hereto as Exhibit A and incorporated by reference herein;


1 3. Subject to the foregoing modifications to the LDA permit, the MDNS  
2 decision and LDA permit decision which are the subject of the above entitled appeal  
3 are affirmed and this appeal is hereby dismissed with prejudice.

4  
5  
6 DATED this 17 day of April, 2017.

7  
8   
9 THEODORE PAUL HUNTER  
10 Hearing Examiner  
11 Sound Law Center

12 Presented by:

13 MARK K. ROE  
14 Snohomish County Prosecuting Attorney

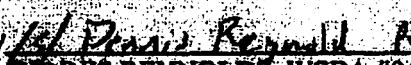
15 By:   
16 BRANT J. DORSEY, WSBA #18639  
17 Deputy Prosecuting Attorney  
18 Attorneys for Respondent Snohomish County  
19 Planning and Development Services

20 Copy Received, Approved as to Form:

21 Sno-King Watershed Council

22 By:   
23 WILLIAM LIDER, PE, CESCL, Board Member

24 Propeller Airports Paine Field

25 By:  *per telephone approval 4/11/17*  
26 DENNIS REYNOLDS, WSBA #04762  
27 Attorneys for Applicant Propeller Airports Paine Field

PROPELLER AIRPORTS PAINE FIELD, LLC

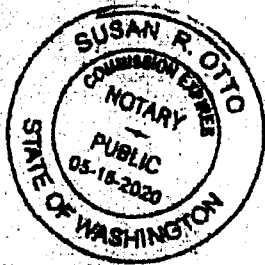
By: *Mark Reichin*  
Mark Reichin  
Chief Operating Officer

Date: 4/10/17

State of Washington }  
  }ss.  
County of Snohomish }

On this 10th day of April, 2017, I, the undersigned, a Notary Public for the State of Washington duly commissioned and sworn, certify that I know or have satisfactory evidence that **MARK REICHIN** is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the **Chief Operating Officer of Propeller Airports Paine Field, LLC**, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

SUBSCRIBED and SWORN to before me this 10th day of April, 2017.



*Susan R. Otto*  
Susan R. Otto [Signature]  
Susan R. Otto [Print Name]

NOTARY PUBLIC in and for the State of Washington  
Residing at Marysville, WA.  
My commission expires 5/15/2020, 2020

Approved as to Form:

SNOHOMISH COUNTY OFFICE OF PROSECUTING ATTORNEY

By: *Brian J. Darsoy*  
Brian J. Darsoy, WSBA #18639  
Attorney for Respondent Snohomish County

Date: 4/10/17