

Shawn Bunney  
District No. 1

Timothy M. Farrell  
District No. 4

Dick Muri, Executive Pro Tempore  
District No. 6



Joyce McDonald  
District No. 2

Barbara Gelman  
District No. 5

Terry Lee, Vice Chair  
District No. 7

Roger Bush, Chair  
District No. 3

## Pierce County Council

# AMENDED MEETING AGENDA

**February 9, 2010**

**3:00 p.m.**

930 Tacoma Avenue South – Room 1045  
Tacoma, WA 98402

Voice: (253) 798-7777 – FAX: (253) 798-7509 – Toll-Free: (800) 992-2456 – TDD: (253) 798-4018  
[www.piercecountywa.org/council](http://www.piercecountywa.org/council)

- I. Call to Order
- II. Roll Call
- III. Pledge of Allegiance to the Flag  
*To be followed by a Moment of Silence in tribute to our men and women in the Military*
- IV. Approval of Agenda

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### PUBLIC PARTICIPATION IN COUNCIL MEETINGS

Anyone may address any ordinance or resolution on the agenda for final consideration. Public comment on any other items on the agenda shall be at the discretion of the Chair. To ensure equal opportunity for the public to comment, the Chair may impose a time limit on each speaker. All comments must be directed to the Chair.

No person shall disrupt the orderly conduct of any Council meeting. Speakers who fail to comply with the Council's rules governing public participation in Council meetings (PCC 1.28.050 C.) shall be subject to forfeiture of his or her opportunity to speak to the Council and/or removal from the Council Chambers or other meeting room at the discretion of the Chair.

Citizens' Forum. The purpose of Section XI., Citizens' Forum, is to afford members of the public an opportunity to address the Council on issues of significance to or affecting Pierce County government and that do not appear otherwise on that particular meeting agenda. There is a three minute time limit, unless changed by the Chair; all comments must be directed to the Chair.

The Council adopts and incorporates herein by reference the provisions of Revised Code of Washington 42.17.130 regarding the use of its facilities for campaigns or ballot propositions.

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Council meetings are audio recorded and cablecast from gavel to gavel.  
Meetings are broadcast live and replayed beginning the next day on channel 22 (Comcast and Click! Network)  
and replayed on channel 78 (Rainier Connect).

Video archives are available at [www.piercecountytv.org](http://www.piercecountytv.org)

Audio equipment is available for the hearing impaired. Please contact the receptionist for assistance.

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V. Consent Agenda

**No final action on any Ordinance or Resolution will be taken under this Section.**

**a. Approval of Minutes**

1. The minutes of the December 8, 2009 District No. 1 Council Meeting
2. The minutes of the January 12, 2010 regular Council Meeting
3. The minutes of the January 19, 2010 regular Council Meeting
4. The minutes of the January 26, 2010 regular Council Meeting

**b. Action on Ordinances (refer, set date of hearing)**

1. Proposal No. 2010-6, An Ordinance of the Pierce County Council Vacating a Portion of 48th Street East Right-of-Way in the Southwest Quarter of Section 14, Township 20 North, Range 3 East, and 30th Avenue East Right-of-Way in the Southeast Quarter of Section 14, Township 20 North, Range 3 East, in the Mid-County Area.

Sponsored by: Councilmember Joyce McDonald

Department contact person: Jerry West, Public Works and Utilities,  
(253) 798-3687

Council contact person: Hugh Taylor, (253) 798-3665

For referral to the Economic and Infrastructure Development Committee

Date of final Council hearing: March 16, 2010

**c. Action on Resolutions (refer, set date of hearing)**

**d. Other Items**

VI. Messages from Executive/Judges/Prosecuting Attorney

VII. Proclamations, Awards, and/or Appointments to Boards and Commissions

1. **Proposal No. R2010-13**, A Resolution of the Pierce County Council Confirming the Appointment of Three New Members (Bill Baarsma, Valerie Zifka and Eileen Kelley) to the Pierce County Conservation Futures Citizens' Advisory Board.

Sponsored by: Councilmember Timothy M. Farrell

Department contact person: Paula Felkins, Parks and Recreation Services,  
(253) 798-4017

Council contact person: Susan Long, (253) 798-6068

**For final consideration**



## VIII. Ordinances

1. **Proposal No. 2009-111**, An Ordinance of the Pierce County Council Approving a Land Lease Agreement for Real Property at the Pierce County Airport, Thun Field with Northwest Hanger, LLC; and Authorizing the County Executive to Execute Said Lease.

Sponsored by: Councilmember Roger Bush

Department contact person: Mark Bona, Public Works and Utilities, (253) 798-4631

Council contact persons: Hugh Taylor, (253) 798-3665 and

Paul Bocchi (253) 798-7304

Committee recommendation: Do Pass at Rules and Operations on January 19, 2010

**For final consideration**

2. **Proposal No. 2010-1s**, An Ordinance of the Pierce County Council Amending Chapter 2.97 of the Pierce County Code, "Conservation Futures Fund Allocation and Selection Criteria," to Amend Sections which Create Barriers to Property Acquisition Opportunities.

Sponsored by: Councilmember Roger Bush

Council contact person: Mike Kruger, (253) 798-6067

Committee recommendation: Do Pass as Substituted at Community Development on February 1, 2010

**For final consideration**

## IX. Resolutions

1. **Proposal No. R2009-121**, A Resolution of the Pierce County Council Approving the Revision of the Corporate Boundary of the City of Sumner, Where It Coincides with Certain Portions of State Route 162 and Valley Avenue, to Fully Remove Certain Portions of State Route 162 and Valley Avenue from the Corporate Limits of the City of Sumner.

Sponsored by: Councilmember Shawn Bunney

Council contact person: Hugh Taylor, (253) 798-3665

Committee recommendation: Do Pass at Rules and Operations on January 25, 2010

**For final consideration**

## X. Other Business/Announcements

## XI. Citizens' Forum (3 minute time limit – see page 1 of this Agenda)

## XII. Adjournment

**Note:** If for any reason this meeting is canceled, all Agenda items shall be continued to the next regular meeting of the Council.

1 Sponsored by: Councilmember Timothy M. Farrell  
2 Requested by: Executive/Parks and Recreation Services  
3  
4  
5

6 RESOLUTION NO. R2010-13  
7  
8

9 **A Resolution of the Pierce County Council Confirming the Appointment of**  
10 **Three New Members (Bill Baarsma, Valerie Zifka and Eileen**  
11 **Kelley) to the Pierce County Conservation Futures Citizens’**  
12 **Advisory Board.**  
13

14 **Whereas** , Chapter 2.96 of the Pierce County Code (PCC) established the  
15 Conservation Futures Program for Pierce County and created the Conservation Futures  
16 Program Citizens’ Advisory Board to make annual recommendations to the Council for  
17 proposals to be funded as a part of the Conservation Futures Program; and  
18

19 **Whereas**, a vacancy exists on the Pierce County Conservation Futures Program  
20 Citizens’ Advisory Board due to the term expiration and passing of Robert Evans,  
21 representing the City of University Place; and  
22

23 **Whereas**, a vacancy exists on the Pierce County Conservation Futures Program  
24 Citizens’ Advisory Board due to the term expiration and resignation of Leota Musgrave,  
25 representing the City of Bonney Lake; and  
26

27 **Whereas**, a vacancy exists on the Pierce County Conservation Futures Program  
28 Citizens’ Advisory Board due to the term expiration of Kris Kauffman, representing the  
29 City of Lakewood; and  
30

31 **Whereas**, Chapter 2.96.040 B. PCC provides that one person is selected by the  
32 legislative body of each City and Town whose population is greater than 10,000, and  
33 the City of Tacoma, City of Bonney Lake and City of Lakewood meet the population  
34 requirement; and  
35

36 **Whereas**, the City of Tacoma recommends that Bill Baarsma represent the City  
37 of Tacoma on the Pierce County Conservation Futures Program Citizens’ Advisory  
38 Board; and  
39



1           **Whereas**, the City of Bonney Lake recommends that Valerie Zifka represent the  
2 City of Bonney Lake on the Pierce County Conservation Futures Program Citizens'  
3 Advisory Board; and  
4

5           **Whereas**, the City of Lakewood recommends that Eileen Kelley represent the  
6 City of Lakewood on the Pierce County Conservation Futures Program Citizens'  
7 Advisory Board; and  
8

9           **Whereas**, Section 3.30 PCC states a term of office for any board or commission  
10 shall not be longer than four years; and  
11

12           **Whereas**, the Executive has appointed Bill Baarsma to represent the City of  
13 University Place; and  
14

15           **Whereas**, the Executive has appointed Valerie Zifka to represent the City of  
16 Bonney Lake; and  
17

18           **Whereas**, the Executive has appointed Eileen Kelley to represent the City of  
19 Lakewood; and  
20

21           **Whereas**, the Pierce County Charter provides that appointments to boards and  
22 commissions shall be made by the Executive, subject to confirmation by a majority of  
23 the Council, and the Council has completed its confirmation review; **Now Therefore**,

24  
25           **BE IT RESOLVED by the Council of Pierce County:**  
26

27       Section          1. The Pierce County Council hereby confirms the appointment of the  
28 following individuals to the Pierce County Conservation Futures Program Citizens'  
29 Advisory Board to complete an unexpired term as stated below:  
30

31	Bill	Baarsma	Representing the City of Tacoma
32		First Term	Term Expires: February 28, 2014
33			
34		Valerie Zifka	Representing the City of Bonney Lake
35		First Term	Term Expires: February 28, 2014
36			
37	Eileen	Kelley	Representing the City of Lakewood
38		First Term	Term Expires: February 28, 2014
39			
40			



1 Section \_\_\_\_\_ 2. The Clerk of the Council shall provide a copy of this Resolution to the  
2 members confirmed or with amended terms, to the Parks and Recreation Services  
3 Department, and to the County Executive.

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14

**ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2010.**

ATTEST:

**PIERCE COUNTY COUNCIL**  
Pierce County, Washington

\_\_\_\_\_  
**Denise D. Johnson**  
Clerk of the Council

\_\_\_\_\_  
**Roger Bush**  
Council Chair

1 Sponsored by: Councilmember Roger Bush  
2 Requested by: County Executive/Pierce County Public Works & Utilities

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10 ORDINANCE NO. 2009-111

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15  
16 **An Ordinance of the Pierce County Council Approving a Land Lease**  
17 **Agreement for Real Property at the Pierce County Airport,**  
18 **Thun Field with Northwest Hangar LLC; and Authorizing the**  
19 **County Executive to Execute Said Lease.**

20  
21 **Whereas**, the Pierce County Airport proposes to lease real property at the Pierce  
22 County Airport Thun Field to Northwest Hangar LLC, for the uses and purposes of  
23 ownership, sale and subleasing of private aircraft hangars. Facilities will not be used for  
24 commercial purposes without the express written permission of the County; and

25  
26 **Whereas**, Pierce County Code Section 2.110.140A requires that leases of Pierce  
27 County real property for a period in excess of 25 years must be approved by Ordinance  
28 of the Pierce County Council; and

29  
30 **Whereas**, the term of this Lease is for 50 years with the option to renew the  
31 ground lease for two consecutive terms of 10 years each; and

32  
33 **Whereas**, the Council finds it to be in the public interest to approve said lease;  
34 **Now Therefore,**

35  
36  
37  
38 **BE IT ORDAINED by the Council of Pierce County:**  
39  
40



1        Section 1. The lease entitled "Aircraft Hangar Ground Lease (Pierce County  
2 Airport – Thun Field)," attached hereto as Exhibit A and incorporated herein by  
3 reference, appears to be in the best interest of Pierce County and the people thereof,  
4 and the Pierce County Executive is authorized to execute an agreement that is the  
5 same or substantially similar to Exhibit A; and said lease is hereby approved.  
6

7            **PASSED this \_\_\_\_\_ day of \_\_\_\_\_, 2010.**

8  
9 ATTEST:

**PIERCE COUNTY COUNCIL**  
Pierce County, Washington

10  
11  
12  
13 \_\_\_\_\_  
14 **Denise D. Johnson**  
15 Clerk of the Council

\_\_\_\_\_

**Roger Bush**  
Council Chair

16  
17  
18 \_\_\_\_\_

**Pat McCarthy**  
Pierce County Executive  
Approved \_\_\_\_\_ Vetoed \_\_\_\_\_, this  
21 \_\_\_\_\_ day of \_\_\_\_\_,  
22 \_\_\_\_\_  
23 2010.

24  
25 Date of Publication of  
26 Notice of Public Hearing: \_\_\_\_\_

27  
28 Effective Date of Ordinance: \_\_\_\_\_



## AIRCRAFT HANGAR GROUND LEASE (PIERCE COUNTY AIRPORT - THUN FIELD)

This Aircraft Hangar Ground Lease ("Lease") is made and entered into as of the Effective Date (defined in Section 42 below) by and between PIERCE COUNTY, a municipal corporation and political subdivision of the state of Washington (hereinafter "Landlord") and NW HANGARS, LLC, a Washington limited liability company (hereinafter "Tenant"). Landlord and Tenant may hereinafter be referred to collectively as "Parties" or individually as a "Party."

### RECITALS

WHEREAS Landlord is sole owner in fee simple of those certain parcels of real property consisting of land, runways, taxiways, buildings and other structures and improvements commonly known as Pierce County Airport - Thun Field, 16715 Meridian Avenue East, Puyallup, Pierce County, Washington 98373, and legally described in attached **Exhibit A** (hereinafter "Airport"); and

WHEREAS Landlord desires to lease to Tenant, and Tenant desires to lease from Landlord, that certain unimproved portion of the Airport legally described in attached **Exhibit B** (hereinafter "Premises") for the purpose of Tenant constructing thereupon multi-unit aircraft hangar facilities and related improvements (hereinafter collectively "Tenant Improvements"). For purposes of this Lease, the Premises shall be deemed to include any existing improvements and any alterations or modifications to existing improvements located upon the Premises as of the Effective Date.

NOW, THEREFORE, for and in consideration of the terms, covenants and conditions set forth below, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows.

### AGREEMENT

**1. Incorporation of Recitals.** The above recitals are true and correct and are incorporated herein by this reference.

**2. Authority to Lease; Applicable Laws; Future Contracts.**

**2.1 Authority to Lease.** This Lease is entered into by the Parties under authority of Chapter 14.08 of the Revised Code of Washington (hereinafter "RCW") and Chapters 2.110 and 2.112 of the Pierce County Code (hereinafter "PCC").

**2.2 Applicable Laws.** This Lease shall be subject and subordinate to all federal, state, county and municipal statutes, laws, codes, rules, regulations, ordinances, resolutions, permits and/or other requirements of any kind, type or nature whatsoever applicable to the construction of improvements upon the Premises, to Tenant's use and occupancy of the Premises, and/or to Tenant's creation of a leasehold condominium upon the Premises (hereinafter collectively "Applicable Laws") including, without limitation: (a) statutes, laws, rules, regulations, permits, grant assurances and other requirements of the Federal Aviation Administration (hereinafter "FAA"); (b) federal, state and local laws against discrimination on the ground of race, color, religion, age, sex, gender identity, sexual orientation, marital status, familial status, handicap or national origin or ancestry; (c) federal, state and local laws relating to persons with disabilities; (d) federal, state and local laws relating to Hazardous Substances (defined in Section 10.2 below); and (e) state and local laws relating to leasehold condominiums (defined



1 in Section 22 below). The Parties shall be bound by and strictly comply with all Applicable Laws in effect  
2 as of the Effective Date and all future amendments thereto.

3  
4 **2.3 Future Contracts.** This Lease shall be subject and subordinate to the provisions  
5 of any existing or future agreements between Landlord and the state of Washington and/or the United  
6 States, or any agency thereof, regarding the use, operation and maintenance of the Airport (hereinafter  
7 "Existing Agreements"). Subject to the provisions of Section 24.2 below, during time of war or state or  
8 national emergency, Landlord shall have the right to lease the Airport, or any part thereof, to the state of  
9 Washington and/or the United States and if any such lease is executed, the provisions of this Lease,  
10 insofar as they are inconsistent with any such lease to the state of  
11 Washington and/or the United States, may be suspended or terminated at the option of Tenant.

12  
13 **3. Council Approval.** Within thirty (30) calendar days after the Effective Date, Landlord  
14 shall submit to its County Council an ordinance approving this Lease as required by PCC §2.110.140  
15 (hereinafter "Approval Ordinance"). Landlord shall, within five (5) business days after passage of the  
16 Approval Ordinance, notify Tenant thereof in writing (hereinafter "Notice of Passage of Approval  
17 Ordinance"). If Landlord's County Council shall for any reason fail to pass the Approval Ordinance within  
18 sixty (60) calendar days after the Effective Date, this Lease shall automatically terminate and neither  
19 Party shall have any further rights or remedies against the other under this Lease, except those that  
20 expressly survive termination hereof.

21  
22 **4. Lease of Premises.**

23  
24 **4.1 Grant of Lease.** Landlord hereby leases to Tenant, and Tenant hereby leases  
25 from Landlord, the Premises, upon the terms, covenants and conditions set forth in this Lease.

26  
27 **4.2 No Additional Rights.** Tenant shall have no right, title or interest in or to the  
28 Airport or the Premises, or the possession, use or occupancy of either, other than as expressly set forth in  
29 this Lease.

30  
31 **5. Identification of Premises.** The Parties acknowledge and agree the Premises have not  
32 been formally subdivided and, therefore, are not legally separate from the real property comprising the  
33 Airport. Accordingly, for purposes of identification only, the Premises shall be deemed by the Parties to  
34 consist of, and shall be referred to hereinafter as, Parcels 1 through 4 as depicted on and legally  
35 described in the survey map of the Premises set forth in attached **Exhibit C** (hereinafter "Premises  
36 Survey Map").

37  
38 **6. Term; Renewal Options.**

39  
40 **6.1 Term.** The term of this Lease (hereinafter "Term") shall be fifty (50) years,  
41 commencing on the date the Approval Ordinance becomes law pursuant to the Pierce County Charter  
42 (hereinafter "Commencement Date") and ending midnight on the day prior to the fiftieth (50th) anniversary  
43 of the Commencement Date (hereinafter "Expiration Date"), unless sooner terminated pursuant to the  
44 terms of this Lease.

45  
46 **6.2 Renewal Options.** Tenant shall have the option to renew this Lease (hereinafter  
47 "Renewal Option") for two (2) consecutive terms of ten (10) years each (hereinafter "Renewal Terms"),  
48 subject to the terms of this Lease including, without limitation, any periodic adjustments to Monthly Rent  
49 provided in Section 9 below. The Renewal Options set forth in this Section 6.2 shall be exercised by  
50 Tenant giving written notice thereof to Landlord not less than one (1) year prior to the expiration of the  
51 then current Term or Renewal Term, as the case may be. Failure by Tenant to exercise the first Renewal  
52 Option shall result in the termination this Lease as of the Expiration Date.

53  
54 **7. Tenant Improvements.**

55  
56 **7.1 Phase I Tenant Improvements.** On or before ninety (90) calendar days after  
57 the Commencement Date, Tenant shall submit to Landlord for Landlord's prior written approval complete



1 plans and specifications for Tenant's proposed improvements to Parcel 1 of the Premises (hereinafter  
2 "Phase I Plans & Specifications"). Within ten (10) business days after receipt of the Phase I Plans &  
3 Specifications, Landlord shall, in its sole and absolute judgment and discretion, grant, withhold or  
4 condition its approval thereof. If Landlord disapproves the Phase I Plans & Specifications, or conditions  
5 its approval thereof and Tenant elects not to comply with said conditions, this Lease shall automatically  
6 terminate and neither Party shall have any further rights or remedies against the other under this Lease,  
7 except those that expressly survive termination hereof. If Landlord approves the Phase I Plans &  
8 Specifications, or conditions its approval thereof and Tenant elects to comply with said conditions: (a) the  
9 Phase I Plans & Specifications shall be attached to and become part of this Lease as **Exhibit D**; and (b)  
10 Tenant shall, as soon as practicable thereafter, submit the same to Landlord's Planning and Land  
11 Services Division for final approval. Tenant shall complete construction of the improvements described  
12 and depicted in the Phase I Plans & Specifications (hereinafter "Phase I Tenant Improvements") and shall  
13 obtain from Landlord a certificate of occupancy therefor on or before twelve (12) months after issuance by  
14 Landlord of the building permits for the Phase I Tenant Improvements. Failure by Tenant to complete  
15 construction of, and obtain a certificate of occupancy for, the Phase I Tenant Improvements within said  
16 twelve (12) month period shall result in Tenant immediately commencing payment of Occupancy Phase  
17 Monthly Rent (defined in Section 9.2.3 below) for Parcel 1 together with applicable Washington  
18 Leasehold Excise tax as provided in Chapter 82.29A RCW.

19  
20 **7.2 Phase II Tenant Improvements.** On or before ninety (90) calendar days after  
21 issuance by Landlord of a certificate of occupancy for the Phase I Tenant Improvements, Tenant shall  
22 submit to Landlord for Landlord's prior written approval complete plans and specifications for Tenant's  
23 proposed improvements to Parcel 2 of the Premises (hereinafter "Phase II Plans & Specifications").  
24 Within ten (10) business days after receipt of the Phase II Plans & Specifications, Landlord shall, in its  
25 sole and absolute judgment and discretion, grant, withhold or condition its approval thereof. If Landlord  
26 disapproves the Phase II Plans & Specifications, or conditions its approval thereof and Tenant elects not  
27 to comply with said conditions, this Lease shall automatically terminate as to Parcel 2 and neither Party  
28 shall have any further rights or remedies against the other under this Lease as to Parcel 2, except those  
29 that expressly survive termination hereof. If Landlord approves the Phase II Plans & Specifications, or  
30 conditions its approval thereof and Tenant elects to comply with said conditions: (a) the Phase II Plans &  
31 Specifications shall be attached to and become part of this Lease as **Exhibit E**; and (b) Tenant shall, as  
32 soon as practicable thereafter, submit the same to Landlord's Planning and Land Services Division for  
33 final approval. If Landlord's Planning and Land Services Division disapproves the Phase II Plans &  
34 Specifications, or conditions its approval thereof and Tenant elects not to comply with said conditions, this  
35 Lease shall automatically terminate as to Parcel 2 and neither Party shall have any further rights or  
36 remedies against the other under this Lease, except those that expressly survive termination hereof.  
37 Tenant shall complete construction of the improvements described and depicted in the Phase II Plans &  
38 Specifications (hereinafter "Phase II Tenant Improvements") and shall obtain from Landlord a certificate of  
39 occupancy therefor on or before twelve (12) months after issuance by Landlord of the building permits for  
40 the Phase II Tenant Improvements. Failure by Tenant to complete construction of, and obtain a  
41 certificate of occupancy for, the Phase II Tenant Improvements within said twelve (12) month period shall  
42 result in Tenant immediately commencing payment of Occupancy Phase Monthly Rent (defined in  
43 Section 9.2.3 below) for Parcel 2 together with applicable LET.

44  
45 **7.3 Phase III Tenant Improvements.** On or before ninety (90) calendar days after  
46 issuance by Landlord of an occupancy certificate for the Phase II Tenant Improvements, Tenant shall  
47 submit to Landlord for Landlord's prior written approval complete plans and specifications for Tenant's  
48 proposed improvements to Parcel 3 of the Premises (hereinafter "Phase III Plans & Specifications").  
49 Within ten (10) business days after receipt of the Phase III Plans & Specifications, Landlord shall, in its  
50 sole and absolute judgment and discretion, grant, withhold or condition its approval thereof. If Landlord  
51 disapproves the Phase III Plans & Specifications, or conditions its approval thereof and Tenant elects not  
52 to comply with said conditions, this Lease shall automatically terminate as to Parcel 3 and neither Party  
53 shall have any further rights or remedies against the other under this Lease as to Parcel 3, except those  
54 that expressly survive termination hereof. If Landlord approves the Phase III Plans & Specifications, or  
55 conditions its approval thereof and Tenant elects to comply with said conditions: (a) the Phase III Plans &  
56 Specifications shall be attached to and become part of this Lease as **Exhibit F**; and (b) Tenant shall, as  
57 soon as practicable thereafter, submit the same to Landlord's Planning and Land Services Division for



1 final approval. If Landlord's Planning and Land Services Division disapproves the Phase III Plans &  
2 Specifications, or conditions its approval thereof and Tenant elects not to comply with said conditions, this  
3 Lease shall automatically terminate as to Parcel 3 and neither Party shall have any further rights or  
4 remedies against the other under this Lease, except those that expressly survive termination hereof.  
5 Tenant shall complete construction of the improvements described and depicted in the Phase III Plans &  
6 Specifications (hereinafter "Phase III Tenant Improvements") and shall obtain from Landlord a certificate  
7 of occupancy therefor on or before twelve (12) months after issuance by Landlord of the building permits  
8 for the Phase III Tenant Improvements. Failure by Tenant to complete construction of, and obtain a  
9 certificate of occupancy for, the Phase III Tenant Improvements within said twelve (12) month period shall  
10 result in Tenant immediately commencing payment of the Occupancy Phase Monthly Rent (defined in  
11 Section 9.2.3 below) for Parcel 3, together with applicable LET.

12  
13 **7.4 Phase IV Tenant Improvements.** On or before ninety (90) calendar days after  
14 issuance by Landlord the certificate of occupancy for the Phase III Tenant Improvements, Tenant shall  
15 submit to Landlord for Landlord's prior written approval complete plans and specifications for Tenant's  
16 proposed improvements to Parcel 4 of the Premises (hereinafter "Phase IV Plans & Specifications").  
17 Within ten (10) business days after receipt of the Phase IV Plans & Specifications, Landlord shall, in its  
18 sole and absolute judgment and discretion, grant, withhold or condition its approval thereof. If Landlord  
19 disapproves the Phase IV Plans & Specifications, or conditions its approval thereof and Tenant elects not  
20 to comply with said conditions, this Lease shall automatically terminate as to Parcel 4 and neither Party  
21 shall have any further rights or remedies against the other under this Lease as to Parcel 4, except those  
22 that expressly survive termination hereof. If Landlord approves the Phase IV Plans & Specifications, or  
23 conditions its approval thereof and Tenant elects to comply with said conditions: (a) the Phase IV Plans  
24 & Specifications shall be attached to and become part of this Lease as **Exhibit G**; and (b) Tenant shall,  
25 as soon as practicable thereafter, submit the same to Landlord's Planning and Land Services Division for  
26 final approval. If Landlord's Planning and Land Services Division disapproves the Phase IV Plans &  
27 Specifications, or conditions its approval thereof and Tenant elects not to comply with said conditions, this  
28 Lease shall automatically terminate as to Parcel 4 and neither Party shall have any further rights or  
29 remedies against the other under this Lease, except those that expressly survive termination hereof.  
30 Tenant shall complete construction of the improvements described and depicted in the Phase IV Plans &  
31 Specifications (hereinafter "Phase IV Tenant Improvements") and shall obtain from Landlord a certificate  
32 of occupancy therefor on or before twelve (12) months after issuance by Landlord of the building permits  
33 for the Phase IV Tenant Improvements. Failure by Tenant to complete construction of, and obtain a  
34 certificate of occupancy for, the Phase IV Tenant Improvements within said twelve (12) month period shall  
35 result in Tenant immediately commencing payment of the Occupancy Phase Monthly Rent (defined in  
36 Section 9.2.3 below) for Parcel 4, together with applicable LET.

37 **7.5 Collective Reference.** The tenant improvements described in Sections 7.1  
38 through 7.4 above shall be referred to hereinafter collectively as "Tenant Improvements."  
39

40 **7.6 Additional Tenant Improvements.** Other than as expressly set forth in  
41 Sections 7.1 through 7.4 above, Tenant shall not construct any additional improvements on, or make any  
42 other changes, additions or alterations to the Premises (hereinafter "Additional Tenant Improvements") of  
43 any kind, type or nature whatsoever without the prior written consent of Landlord, which consent may be  
44 granted, withheld, conditioned or delayed by Landlord in its sole and absolute judgment and discretion.  
45

46 **7.7 Compliance.** All Tenant Improvements and Additional Tenant Improvements  
47 shall be constructed in strict accordance with: (a) this Lease; (b) the plans and specifications set forth in  
48 attached Exhibits D, E, F and G, respectively; (c) all governmental approvals and/or permits issued with  
49 respect to construction of the Tenant Improvements or Additional Tenant Improvements (hereinafter  
50 "Governmental Approvals"); and (d) all Applicable Laws.

51  
52 **7.8 Construction Standards.** All Tenant Improvements and Additional Tenant  
53 Improvements shall be constructed in a workmanlike manner and with materials (when not specifically  
54 described in the plans and specifications set forth in attached Exhibits D, E, F and G) of the quality and  
55 appearance customary in the trade or industry associated with the particular Tenant Improvement or  
56 Additional Tenant Improvement.  
57



1                   **7.9 Security; Limited Access.** At all times during construction of the Tenant  
2 Improvements and Additional Tenant Improvements, Tenant shall, at Tenant's sole cost and expense,  
3 keep the Premises neat, clean, safe, sanitary and secure and shall limit access thereto to authorized  
4 personnel only.

5  
6                   **7.10 Ownership of Tenant Improvements.** All Tenant Improvements and Additional  
7 Tenant Improvements shall, during the Term and any Renewal Term, be the sole and exclusive property  
8 of Tenant; provided, however, upon expiration or earlier termination of this Lease for any reason,  
9 including the default of Lessee, the same shall, without further consideration from Landlord to Tenant,  
10 automatically revert to and become the sole and exclusive property of Landlord.

11  
12                   **8. Utilities.**

13  
14                   **8.1 Connection to Existing Utilities.** In connection with Tenant's construction of  
15 the Tenant Improvements and Additional Tenant Improvements, Landlord shall allow Tenant to connect to  
16 any existing underground natural gas, water, sanitary sewer and electrical utilities located upon the  
17 Airport real property as of the Effective Date (hereinafter "Existing Utilities") and to route them from such  
18 points of connection to the Premises (hereinafter "Tenant Utilities") in a manner least disruptive to the  
19 possession and use of the Airport by Landlord, other tenants of the Airport and the general public.  
20 Tenant shall procure, or cause to be procured, any and all Governmental Approvals required for the  
21 lawful and proper construction, connection, routing, installation and maintenance of Tenant Utilities and  
22 shall comply therewith and with all Applicable Laws.

23  
24                   **8.2 Temporary Easement.** For the purposes set forth in this Section 8 only,  
25 Landlord hereby grants to Tenant, during the Term and any Renewal Term, a temporary easement over,  
26 under, across and upon the Airport from points of connection of Existing Utilities to the Premises  
27 (hereinafter "Utility Easement"). The Utility Easement shall be of sufficient width to allow Tenant to  
28 maintain and repair Tenant Utilities as provided in Section 8.4 below. Unless expressly provided to the  
29 contrary elsewhere in this Lease, Landlord shall be under no obligation to furnish any utilities or services  
30 of any kind, type or nature whatsoever to the Premises.

31  
32                   **8.3 Payment.** Tenant shall establish connection and payment accounts for Tenant  
33 Utilities directly with the providers thereof and shall promptly pay when due all monthly and other charges  
34 therefor, together with all storm drainage and surface water management utility charges and local  
35 improvement and utility local improvement district charges.

36  
37                   **8.4 Repair and Maintenance.** Upon completion of construction of Tenant Utilities,  
38 Tenant shall restore the surface of the Temporary Easement as may be required by any Governmental  
39 Approvals or Applicable Laws or, if not specified in any Governmental Approvals or Applicable Laws, to  
40 the condition it was in as of the Commencement Date. Throughout the Term and any Renewal Term,  
41 Tenant shall keep and maintain Tenant Utilities in good, clean, safe and sanitary working order, condition  
42 and repair in compliance with all Governmental Approvals and Applicable Laws.

43  
44                   **9. Monthly Rent.**

45  
46                   **9.1 Definitions.** For purposes of this Section 9, the following definitions shall apply  
47 with respect to each Parcel comprising the Premises:

48  
49                   **9.1.1 "Pre-Construction Phase"** shall mean the period from and after the  
50 Commencement Date until issuance of all Governmental Approvals necessary to begin construction of  
51 Tenant Improvements upon a Parcel.

52  
53                   **9.1.2 "Construction Phase"** shall mean the period from and after issuance of  
54 all Governmental Approvals necessary to begin construction of Tenant Improvements upon a Parcel until  
55 issuance of the occupancy permit for those improvements.  
56



1                   **9.1.3 "Occupancy Phase"** shall mean the period from and after issuance of  
2 the occupancy permit for Tenant Improvements upon a Parcel until the expiration or sooner termination of  
3 this Lease.

4  
5                   **9.2 Monthly Rent.** Tenant shall pay to Landlord on the first day of each and every  
6 month of the Term or any Renewal Term, in advance, without deduction, offset, notice or demand, rent in  
7 the following amounts (hereinafter "Monthly Rent"):

8  
9                   **9.2.1 Pre-Construction Phase Monthly Rent.** For any Parcel in the Pre-  
10 Construction Phase from and after the Effective Date through December 31, 2010, Tenant shall pay to  
11 Landlord Monthly Rent at a rate of five cents (\$.05) times the total square footage of that Parcel  
12 (hereinafter "Pre-Construction Phase Monthly Rent"), together with applicable monthly LET. For any  
13 Parcel in the Pre-Construction Phase from and after January 1, 2011, the Pre-Construction Phase  
14 Monthly Rent shall increase to ten cents (\$.10) times the total square footage of that Parcel, together with  
15 applicable monthly LET.

16  
17                   **9.2.2 Construction Phase Monthly Rent.** For any Parcel in the Construction  
18 Phase, Tenant shall pay to Landlord Monthly Rent at a rate of nineteen cents (\$.19) times the square  
19 footage of that Parcel (hereinafter "Construction Phase Monthly Rent"), together with applicable monthly  
20 LET.

21  
22                   **9.2.3 Occupancy Phase Monthly Rent.** For any Parcel in the Occupancy  
23 Phase, Tenant shall pay to Landlord Monthly Rent at a rate of twenty-seven cents (\$.27) times the square  
24 footage of that Parcel (hereinafter "Occupancy Phase Monthly Rent"), together with applicable monthly  
25 LET.

26  
27                   **9.3 Five-Year Deadline.** If Monthly Rent for any Parcel has not become Occupancy  
28 Phase Monthly Rent by the beginning of the sixth (6th) year of the Term, Tenant may, in its sole and  
29 absolute judgment and discretion, elect to pay Occupancy Phase Monthly Rent for that Parcel  
30 commencing on the first (1st) day of the sixth (6th) year of the Term and continuing until the expiration or  
31 sooner termination of this Lease. If Tenant elects not to pay Occupancy Phase Monthly Rent for any  
32 such Parcel, Landlord may, in its sole and absolute judgment and discretion, elect to terminate this Lease  
33 as to any such Parcel or Parcels, in which event any and all Tenant Improvements, Additional Tenant  
34 Improvement and/or Tenant Utilities constructed thereupon shall, without payment of further consideration  
35 by Landlord to Tenant, automatically become the sole and exclusive property of Landlord and this Lease  
36 shall be amended, and such amendment recorded, to reflect the description of those Parcels which shall  
37 continue to be the subject of this Lease.

38  
39                   **9.4 Periodic Adjustments to Monthly Rent.** Monthly Rent for the Pre-Construction  
40 Phase, Construction Phase and Occupancy Phase as defined in Sections 9.2.1 through 9.2.3 above,  
41 shall be periodically adjusted as follows:

42  
43                   **9.4.1 Percentage Annual Monthly Rent Adjustments.** Commencing  
44 January 1, 2011, and continuing on January 1 of each calendar year for the next five (5) years of the  
45 Term, Construction Phase Monthly Rent and Occupancy Phase Monthly Rent shall be increased by three  
46 percent (3%) (hereinafter "Percentage Annual Monthly Rent Adjustments"). For example, the first annual  
47 adjustment on January 1, 2011 would increase the Construction Phase Monthly Rent to nineteen and  
48 57/100 cents (\$0.1957) per square foot; and the Occupancy Phase Monthly Rent to twenty seven and  
49 81/100 cents (\$0.2781) per square foot. Commencing January 1, 2012, and continuing on January 1 of  
50 each calendar year for the next four (4) years of the Term, Pre-Construction Phase Monthly Rent shall be  
51 increased by the three percent (3%) Percentage Annual Monthly Rent Adjustment from ten cents (\$.10)  
52 per square foot to ten and 03/100 cents (\$0.103) per square foot.

53  
54                   **9.4.2 Five-Year Market Rate Adjustments.** Effective January 1 of the sixth  
55 (6th) year of the Term after the Effective Date and continuing on January 1 every five (5) years thereafter,  
56 in lieu of the Percentage Annual Monthly Rent Adjustments described in Section 9.4.1 above, the then  
57 Monthly Rent shall be adjusted based upon monthly rent charged for ground-leases at airports having



1 facilities located thereupon substantially similar to the Tenant Improvements and Additional Tenant  
2 Improvements located within a five hundred (500) mile radius of the Airport (hereinafter "Five-Year Market  
3 Rate Adjustments"). Landlord shall commence Five-Year Market Rate Adjustments by proposing in  
4 writing a rental adjustment to Tenant and providing the rationale for that adjustment. Should the Parties  
5 be unable to agree upon the amount of any Five-Year Market Rate Adjustment, each Party shall select an  
6 arbitrator who shall be a duly licensed and certified appraiser in the state of Washington and a current  
7 member of the Appraisal Institute and the two (2) arbitrators selected by the Parties shall select a third  
8 arbitrator of equal qualifications. The Parties shall have the right to present their respective facts, figures  
9 and expert opinions to the three (3) arbitrators. The decision of two (2) of the three (3) arbitrators shall be  
10 binding upon the Parties. Each Party shall pay the fee charged by arbitrator selected by it, one-half (1/2)  
11 of the fee charged by the third arbitrator and one-half (1/2) the documented costs associated with  
12 conducting the arbitration.. No Percentage Annual Monthly Rent Adjustment shall be made for the  
13 calendar year in which any Five-Year Market Rate Adjustment becomes effective. The foregoing  
14 notwithstanding, at no time shall Monthly Rent for any year of the Term or any Renewal Term be less  
15 than Monthly Rent for the prior year.

16  
17 **9.5 Late Charge.** Tenant acknowledges late payment of Monthly Rent or other  
18 sums due hereunder will cause Landlord to incur costs and hardships not contemplated by this Lease, the  
19 exact amount or nature of which would be extremely difficult and impractical to ascertain. Therefore, if  
20 Tenant fails to pay any installment of Monthly Rent, or any other sum due hereunder, within ten (10)  
21 calendar days after that amount is due, Tenant shall pay to Landlord, as liquidated damages and  
22 Additional Rent, a late charge in a sum equal to FIVE PERCENT (5%) of the delinquent amount, together  
23 with interest on the delinquent amount at the rate of TWELVE PERCENT (12%) per annum from the date  
24 the delinquent amount originally became due.

25  
26 **9.6 Remittance of Monthly Rent.** Checks for Monthly Rent and Washington  
27 Leasehold Excise Tax shall be made payable to "Pierce County Budget and Finance Department" and  
28 shall be mailed to Landlord at 615 South 9th Street, Suite 100, Tacoma, WA 98405-4673, or such other  
29 place as Landlord may from time to time designate in writing.

30 **10. Use of Premises.**

31  
32 **10.1 Permitted Uses.** Tenant shall use the Premises for the sole and exclusive  
33 purpose of constructing the Tenant Improvements, Additional Tenant Improvements and Tenant Utilities  
34 and for no other purposes whatsoever without the prior written consent of Landlord, which consent may  
35 be granted, withheld, conditioned or delayed by Landlord in its sole and absolute judgment and discretion.

36  
37 **10.2 Prohibited Uses.** Tenant shall not do or permit to be done in, on, under or about  
38 the Airport or the Premises, nor bring into, keep, or permit anything to be brought into or kept therein,  
39 which will in any way, directly or indirectly, result in a violation of this Lease, any Governmental  
40 Approvals, any Applicable Laws or any Existing Agreement, nor shall Tenant conduct or permit any  
41 activity in, on, under or about the Airport or the Premises which, directly or indirectly, could result in the  
42 violation of any Environmental Laws (defined hereinbelow) or the contamination of the Airport or  
43 Premises, or any part of either, or any other real or personal property, with any Hazardous Substance  
44 (defined hereinbelow). For purposes of this Lease, the term "Hazardous Substance" shall mean any  
45 substance, waste or material defined or designated as dangerous, hazardous, toxic or radioactive, or  
46 other similar term, by any applicable federal, state or local statute, regulation or ordinance now or  
47 hereafter in effect, including, without limitation, the Federal Comprehensive Environmental Response,  
48 Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq.; Superfund  
49 Amendments and Reauthorization Act, 42 U.S.C. Section 9601 et seq.; Hazardous Materials  
50 Transportation Act, 49 U.S.C. Section 1802; and Resource Conservation and Recovery Act, 42 U.S.C.  
51 Section 9601 et seq.; and the regulations promulgated thereunder (hereinafter collectively "Environmental  
52 Laws"). Tenant shall indemnify, defend and hold Landlord harmless from all claims, damages, costs and  
53 expenses (including attorney fees and court costs) of any kind, type or nature whatsoever arising directly  
54 or indirectly out of or relating in any way to any conduct or activity by Tenant or its officers, directors,  
55 shareholders, members, employees, customers, agents, servants, contractors, licensees and/or invitees  
56 during Tenant's occupancy, use, possession or control of the Premises that may result directly or  
57 indirectly in the Airport or Premises, any part of either, or any other real or personal property, becoming



1 contaminated with a Hazardous Substance, including, without limitation, the cleanup of Hazardous  
2 Substances from the Airport, the Premises, or any part of either, or any other real or personal property.  
3 Tenant's agreement to indemnify Landlord as set forth in this Section 10.2 shall survive the termination of  
4 this Lease for any reason, whether by expiration of the Term or any Renewal Term, or otherwise, or any  
5 full or partial assignment hereof. Tenant shall at all times possess, use, occupy and maintain the  
6 Premises in a careful, safe and proper manner. Tenant and its officers, directors, shareholders,  
7 members, employees, customers, agents, servants, contractors, licensees and/or invitees shall not  
8 cause, use, maintain or permit any nuisance in, on or about the Premises and shall not commit or suffer  
9 to be committed any waste in or thereupon.

10  
11 **10.3 Av igation Easement.** Tenant hereby grants and conveys to Landlord, for the  
12 use and benefit of Landlord and the general public, a perpetual right-of-way over the Premises for the  
13 unobstructed passage of all aircraft ("aircraft" being defined for purposes of this Lease as any contrivance  
14 now known or hereafter invented, used, or designed for navigation of or flight in the air), by whomsoever  
15 owned and/or operated, in all air space above the surface of the Premises to an infinite height (hereinafter  
16 "Avigation Easement"). The Avigation Easement shall include the right to cause, in all airspace above the  
17 Premises, such noise, vibrations, fumes, dust, fuel particles and all other effects of any kind, type or  
18 nature whatsoever that may be caused by or result from the current or future operation of aircraft in, on,  
19 over or about the Airport. Tenant hereby fully waives and releases any right or cause of action of any  
20 kind, type or nature whatsoever which it may now have or which it may have in the future against  
21 Landlord and/or its successors or assigns due to such noise, vibration, fumes, dust, fuel particles and  
22 other effects that may be caused by or result from the operation of such aircraft. In addition, the Avigation  
23 Easement shall include the continuing right of Landlord to prevent the erection of or growth upon the  
24 Premises of any building, structure, tower, tree or other object extending into the airspace above the  
25 Premises that would constitute an obstruction to said airspace as provided in Federal Aviation Regulation  
26 Part 77, or any successor law, rule or regulation.

27  
28 **11. Common Areas.** "Common Areas" shall mean all areas and facilities located within the  
29 boundaries of the Airport that are provided and designated from time to time by Landlord for use by the  
30 general public including, without limitation, all roadways, driveways, walkways, parking areas, restrooms,  
31 pedestrian sidewalks and landscaped areas, together with such airport facilities and improvements of a  
32 public nature that are now, or may hereafter be, connected with or appurtenant to, aircraft landing, taxiing,  
33 parking and other common-use aviation areas and facilities. Tenant and its officers, directors,  
34 shareholders, members, employees, customers, agents, servants, contractors, licensees and/or invitees  
35 shall have the non-exclusive right to use the Common Areas in common with Landlord and with members  
36 of the general public. Tenant shall comply with all reasonable rules and regulations concerning use of the  
37 Common Areas adopted by Landlord from time to time and shall use its best efforts to cause its officers,  
38 directors, shareholders, members, employees, customers, agents, servants, contractors, licensees and/or  
39 invitees to comply with those rules and regulations and to not interfere with the use of the Common Areas  
40 by others. Upon reasonable advance written notice to Tenant and without any cost or liability to Tenant,  
41 Landlord may change the size, use or nature of any common areas, erect improvements in the Common  
42 Areas or convert any portion of the Common Areas existing as of the Effective Date to the exclusive use  
43 of Tenant or selected other tenants, so long as Tenant is not thereby deprived of the existing use or  
44 benefit of the Premises as presently configured. Landlord shall maintain the Common Areas in a safe,  
45 good, clean and sanitary order, condition and repair except such damage as may be caused by the sole  
46 conduct of Tenant or its officers, directors, shareholders, members, employees, customers, agents,  
47 servants, contractors, licensees and/or invitees.

48  
49 **12. Maintenance and Repairs.** Except for damage caused by the negligent or intentional  
50 acts of Landlord or Landlord's elected or appointed officials, customers, agents, servants, employees,  
51 contractors, invitees or licensees, Tenant shall throughout the Term and any Renewal Term keep the  
52 Premises, the Tenant Improvements, Additional Tenant Improvements and Tenant Utilities in a safe,  
53 good, neat, clean and sanitary order, condition and repair in accordance with industry standards for  
54 comparable structures and facilities in Pierce County, Washington, including, without limitation: (a) all  
55 interior and exterior structural and nonstructural components of the Tenant Improvements and Additional  
56 Tenant Improvements (e.g., foundations, walls, slabs, columns, load-bearing structures, stairways, doors,  
57 windows, fixtures, roofing and roof structures and components); (b) all exterior painted and unpainted



1 surfaces; (c) all building systems and equipment including, but not limited to, smoke detection systems,  
2 fire suppression systems, security and alarm systems, emergency and standard lighting systems and  
3 HVAC, plumbing, mechanical and electrical systems; (d) all facilities, structures and components  
4 comprising Tenant Utilities; (e) all exterior parking surfaces; and (f) all lawns, trees, shrubs, flowers and  
5 other landscape components.

6  
7 **13. Representations and Warranties.**

8  
9 **13.1 By Landlord.** In addition to any other representations and/or warranties made  
10 by Landlord elsewhere in this Lease, Landlord represents and warrants to Tenant that, as of the Effective  
11 Date, the following statements are true and correct:

12  
13 **13.1.1 Authority.** Subject to Section 3 above, Landlord has full power and  
14 authority to execute and deliver this Lease and the individuals who on Landlord's behalf execute and  
15 deliver this Lease are duly authorized to do so;

16  
17 **13.1.2 Litigation.** There are no actions, suits or proceedings pending or  
18 threatened against Landlord before any court or administrative agency which might result in Landlord  
19 being unable to consummate the transaction contemplated by this Lease;

20  
21 **13.1.3 No Other Representations or Warranties.** Other than as expressly set  
22 forth in this Section 13.1, Landlord makes no representations or warranties of any kind, type or nature  
23 whatsoever with respect to the subject matter of this Lease.

24  
25 **13.2 By Tenant.** In addition to any other representations and/or warranties made by  
26 Tenant elsewhere in this Lease, Tenant represents and warrants to Landlord that, as of the Effective  
27 Date, the following statements are true and correct:

28  
29 **13.2.1 Authority.** Tenant has full power and authority to execute and perform  
30 this Lease, and the individuals who on Tenant's behalf execute and deliver this Lease to Landlord are  
31 duly authorized to do so;

32  
33 **13.2.2 Litigation.** There are no actions, suits or proceedings pending or  
34 threatened against Tenant before any court or administrative agency which might result in Tenant being  
35 unable to consummate the transaction contemplated by this Lease;

36  
37 **13.2.3 Due Diligence Review.** Tenant has been given sufficient right of access  
38 to the Airport and the Premises by Landlord prior to the execution and delivery of this Lease to conduct a  
39 due diligence review thereof and that by executing and delivering this Lease to Landlord, Tenant  
40 represents and warrants to Landlord that by virtue of its due diligence review of the Premises it has  
41 determined: (a) it is satisfied with all aspects of the Premises including, without limitation, the  
42 environmental, geotechnical, and physical condition of the Premises, the suitability thereof for Tenant's  
43 permitted uses under Section 10.1 above, and any zoning and/or other land use issues that may affect  
44 Tenant's possession, use or occupancy of the Premises; (b) the Premises are in good, safe and  
45 tenantable condition and can be used for Tenant's permitted uses as described in Section 10.1 above;  
46 and (c) except as may be otherwise expressly provided to the contrary elsewhere in this Lease, neither  
47 Landlord, nor any individual or entity on Landlord's behalf, has made any statement, representation,  
48 warranty or agreement, express or implied, as to any matter concerning the Premises, or the suitability  
49 thereof for Tenant's permitted uses under Section 10.1 above and that Tenant accepts the Premises in  
50 "AS IS" condition, with all faults and defects, if any. The foregoing notwithstanding, the Parties  
51 acknowledge and agree Parcel 4 is currently occupied by a tenant of Landlord and, as a result, Tenant  
52 has not had an opportunity to conduct a due diligence review of Parcel 4. Since the current lease of  
53 Parcel 4 expires on August 31, 2012, Tenant shall have a period of sixty (60) calendar days thereafter  
54 within which to conduct a due diligence review of Parcel 4. If Tenant notifies Landlord in writing within  
55 said sixty (60) day period that it is satisfied with its due diligence review of Parcel 4, then all of the  
56 representations and warranties of Tenant as set forth in this Section 13.2.3 shall thereupon become  
57 applicable to said Parcel 4. If Tenant fails to notify Landlord within said sixty (60) calendar day period



1 then, as to Parcel 4, this Lease shall automatically terminate as to Parcel 4 and neither Party shall have  
2 any further rights or remedies against the other under this Lease as to Parcel 4, except those that  
3 expressly survive termination hereof.

4  
5 **13.2.4 No Other Representations or Warranties.** Other than as expressly set  
6 forth in this Section 13.2, Tenant makes no representations or warranties of any kind, type or nature  
7 whatsoever with respect to the subject matter of this Lease.

8  
9 **14. Removal of Personal Property; Abandoned Property.** Upon the expiration or sooner  
10 termination of this Lease, Tenant shall: (a) remove from the Premises all of Tenant's personal property;  
11 and (b) remove from the Premises any personal property belonging to any third party other than Landlord  
12 or Tenant's subtenants. If Tenant fails to remove any personal property from the Premises as provided in  
13 this Section 14, Tenant shall, upon written demand, reimburse Landlord for the documented cost of any  
14 such removal and the disposal thereof. Any personal property left on the Premises after the expiration or  
15 sooner termination of this Lease, or after Tenant's vacation or abandonment of the Premises (hereinafter  
16 "Abandoned Property"), shall be deemed to have been abandoned and to have become the property of  
17 Landlord to dispose of in Landlord's sole and absolute judgment and discretion. Tenant shall reimburse  
18 Landlord for any of Landlord's documented court costs, attorney fees, storage and disposal charges  
19 related to Abandoned Property. Landlord may, at its option, sell Abandoned Property at private sale  
20 without notice or legal process, for such price as Landlord may obtain, and apply the proceeds of such  
21 sale to any amounts due under this Lease from Tenant, including expenses incident to the removal,  
22 disposal and/or sale of Abandoned Property, or Landlord may otherwise dispose of Abandoned Property.

23  
24 **15. Personal Property Taxes, Rent Taxes and Other Taxes.** Tenant shall promptly pay all  
25 taxes, charges and other governmental impositions, if any, assessed against or levied upon the Tenant  
26 Improvements or Additional Tenant Improvements or upon any of Tenant's personal property located in,  
27 on, under or about the Premises prior to delinquency. In addition, Tenant shall promptly pay any and all  
28 taxes currently applicable or that become applicable in the future to Tenant's possession, use or  
29 occupancy of the Premises or to any activity carried on therein including, but limited to, the LET.

30  
31 **16. Pledge as Security/Liens.** Except as expressly provided in Section 23.1 below, Tenant  
32 shall not pledge the Premises, or any part thereof, as security for any loan or for any other reason  
33 whatsoever without the prior written consent of Landlord, which consent may be granted, withheld,  
34 conditioned or delayed by Landlord in its sole and absolute judgment and discretion. Tenant shall keep  
35 the Premises free from all liens arising out of or in any way relating to Tenant's conduct in, upon or about  
36 the Premises, or the conduct of its officers, directors, shareholders, members, employees, customers,  
37 agents, servants, contractors, licensees and/or invitees including, but not limited to, the construction, use  
38 or maintenance of the Tenant Improvements, Additional Tenant Improvement and/or Tenant Utilities or  
39 any other work performed, materials furnished, or obligations incurred by Tenant. Tenant shall have the  
40 right to contest any such lien as provided in Chapter 60.04 RCW. Nonetheless, if any such liens are filed,  
41 Landlord may, without waiving its rights and remedies for breach of this Lease, and without releasing  
42 Tenant from any of its obligations hereunder, require Tenant to post security in a form and amount  
43 reasonably satisfactory to Landlord or cause such liens to be released by any means Landlord deems  
44 proper, including payment in satisfaction of the claim giving rise to the lien. Tenant shall pay to Landlord  
45 upon written demand any sum paid by Landlord to remove the liens, together with interest from the date  
46 of payment by Landlord, at the lesser of one and one-half percent (1-1/2%) per month or the maximum  
47 rate allowed by law.

48  
49 **17. Tenant's Insurance Obligations.**

50  
51 **17.1 Insurance Coverage.** Tenant covenants and agrees to provide at its sole cost  
52 and expense upon execution of this Lease, and to keep in force during the Term and any Renewal Term,  
53 the following insurance coverages naming Landlord and Tenant as insured parties: (a) a commercial  
54 liability insurance policy ("Liability Policy"), including, without limitation, blanket contractual liability  
55 coverage, broad form property damage, independent contractor's coverage and personal injury coverage  
56 of not less than TWO MILLION AND NO/100 DOLLARS (\$2,000,000.00) combined single limit per  
57 occurrence for bodily or personal injury (including death) and property damage, protecting Landlord, its



1 elected and appointed officials, servants, agents and employees, and Tenant against liability occasioned  
2 by occurrences on or about the Premises and/or the Tenant Improvements or any appurtenances thereto;  
3 and (b) a fire and other casualty policy ("Fire Policy") insuring the full replacement value of the Tenant  
4 Improvements, Additional Tenant Improvements and Tenant Utilities and any fixtures, furnishings,  
5 machinery, equipment and/or other personal property of Tenant located in, on, under or about the  
6 Premises with a deductible of not more than FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00)  
7 against loss or damage by fire, theft and such other risks or hazards as are insurable under present and  
8 future forms of "All Risk" insurance policies. All policies are to be written by good and solvent insurance  
9 companies licensed to do business in the state of Washington and are satisfactory to Landlord, and must  
10 contain endorsements requiring written notice to Landlord thirty (30) calendar days prior to any  
11 cancellation or reduction in amount of coverage. Tenant shall, within ten (10) business days after a  
12 written request from Landlord therefor, furnish Landlord with such additional information as Landlord may  
13 reasonably request from time to time as to the value of the Tenant Improvements, Additional Tenant  
14 Improvements and Tenant Utilities and any fixtures, furnishings, machinery, equipment and/or other  
15 personal property of Tenant located in, on, under or about the Premises.

16  
17 **17.2 Waiver of Subrogation.** Tenant shall, at its sole cost and expense, include in its  
18 insurance policies appropriate clauses pursuant to which the insurance companies waive all right of  
19 subrogation against Landlord with respect to losses payable under such policies and agree that such  
20 policies shall not be invalidated if, prior to a loss, the insured waives, in writing, any or all right of recovery  
21 against any party for losses covered by such policies. Tenant shall furnish to Landlord, upon written  
22 demand, evidence satisfactorily establishing the inclusion of the above clause in its insurance policies.

23  
24 **17.3 Waiver of Claims.** Provided that Tenant's right of full recovery under its fire  
25 insurance policy is not adversely affected or prejudiced thereby, Tenant hereby waives any and all right of  
26 recovery which it might otherwise have against Landlord or its elected or appointed officials, servants,  
27 agents or employees for loss or damage to the Tenant Improvements, Additional Tenant Improvements,  
28 Tenant Utilities or any fixtures, furnishings, machinery, equipment and/or other personal property of  
29 Tenant located in, on, under or about the Premises to the extent the same is covered by Tenant's  
30 insurance, notwithstanding that such loss or damage may result from the negligence or fault of Landlord,  
31 its elected or appointed officials, servants, agents or employees.

32  
33 **18. Indemnification.**

34  
35 **18.1 By Tenant.** Tenant shall indemnify, defend, and hold Landlord harmless from all  
36 claims, liabilities, costs, attorney fees and expenses of any kind, type or nature whatsoever arising out of  
37 or relating in any way to: (a) Tenant's use or occupancy of the Premises or the Airport; (b) any activity,  
38 work or thing done, permitted or suffered by Tenant in, on, under or about the Premises or the Airport; (c)  
39 any breach or default in the performance of any obligation to be performed by Tenant under the terms of  
40 this Lease; or (d) any act or omission of Tenant or of its officers, directors, shareholders, members,  
41 employees, customers, agents, servants, contractors, licensees and/or invitees caused by negligence or  
42 willful misconduct and then only to the extent of its or their proportionate share of liability. Tenant's  
43 obligation to indemnify Landlord under this Section 18.1 includes an obligation to indemnify for losses  
44 resulting from death or injury to Tenant's officers, directors, shareholders, members, employees,  
45 customers, agents, servants, contractors, licensees and/or invitees, and Tenant accordingly hereby  
46 waives any and all immunities it now has or hereafter may have under Title 51 RCW (Industrial  
47 Insurance), or other worker's compensation, disability benefit or other similar act that would otherwise be  
48 applicable in the case of such a claim and further acknowledges that such waiver was mutually  
49 negotiated by the parties as required by RCW 4.24.115. Tenant, as a material part of the consideration to  
50 Landlord, hereby assumes all risk of and waives any claims Tenant might have against Landlord in  
51 respect to damage to property or injury to persons in, upon or about the Premises or the Airport from any  
52 cause whatsoever, unless caused by or resulting from the negligence or willful misconduct of Landlord or  
53 of its elected or appointed officials, servants, agents or employees and then only to the extent of its or  
54 their proportionate share of liability.

55  
56 **18.2 B y Landlord.** Landlord shall indemnify, defend, and hold Tenant harmless from  
57 all claims, liabilities, costs, attorney fees and expenses of any kind, type or nature whatsoever arising out



1 of or relating in any way to: (a) Landlord's use or occupancy of the Premises or the Airport; (b) any  
2 activity, work or thing done, permitted or suffered by Landlord in, on, under or about the Premises or the  
3 Airport; (c) any breach or default in the performance of any obligation to be performed by Landlord under  
4 the terms of this Lease; or (d) any act or omission of Landlord or of its elected or appointed officials,  
5 servants, agents or employees caused by negligence or willful misconduct and then only to the extent of  
6 its or their proportionate share of liability. Landlord's obligation to indemnify Tenant under this Section  
7 18.2 includes an obligation to indemnify for losses resulting from death or injury to Landlord's elected or  
8 appointed officials, servants, agents or employees, and Landlord accordingly hereby waives any and all  
9 immunities it now has or hereafter may have under Title 51 RCW (Industrial Insurance), or other worker's  
10 compensation, disability benefit or other similar act that would otherwise be applicable in the case of such  
11 a claim and further acknowledges that such waiver was mutually negotiated by the parties as required by  
12 RCW 4.24.115. Landlord, as a material part of the consideration to Tenant, hereby assumes all risk of  
13 and waives any claims Landlord might have against Tenant in respect to damage to property or injury to  
14 persons in, upon or about the Premises or the Airport from any cause whatsoever, unless caused by or  
15 resulting from the negligence or willful misconduct of Tenant or of its officers, directors, shareholders,  
16 agents, contractors, employees, licensees and/or invitees and then only to the extent of its or their  
17 proportionate share of liability.

18  
19 **19. Damage to Premises.** Tenant assumes all risk of damage to the Premises by  
20 earthquake or other casualty and Landlord shall be under no obligation to restore the Premises in whole  
21 or in part as the result of any such casualty nor shall Monthly Rent be abated as a result thereof.

22  
23 **20. Condemnation.** If all or any part of the Premises are taken under the power of eminent  
24 domain, or is sold to a condemning authority in lieu thereof, this Lease shall terminate as to the part so  
25 taken as of the date the condemning authority takes possession. In the case of a taking of a part of the  
26 Premises that is not required for Tenant's reasonable use thereof, this Lease shall continue in full force  
27 and effect and Monthly Rent shall be reduced based on the proportion by which the rentable square feet  
28 of the Premises is reduced. Any reduction in Monthly Rent shall be effective as of the date possession of  
29 the portion of the Premises is delivered to the condemning authority. Any award for the taking of all or  
30 part of the Premises under the power of eminent domain, including payments received for a sale to the  
31 condemning authority in lieu thereof, shall be the sole property of Landlord, whether made as  
32 compensation for diminution in value of the leasehold, for the taking of the fee, or for severance  
33 damages. Tenant may make a separate claim for loss of or damage to the Tenant Improvements,  
34 Additional Tenant Improvements, Tenant Utilities or to Tenant's business so long as Tenant's claim does  
35 not result in any reduction to the amount of the award otherwise payable to Landlord.

36  
37 **21. Assignment and Subletting.** Except as expressly set forth in Section 22 below, Tenant  
38 shall not assign this Lease, or any part hereof, nor sublet all or any portion of the Premises, nor  
39 mortgage, transfer or encumber any interest herein (hereinafter collectively "Transfer") without the prior  
40 written consent of Landlord, which consent may be granted, withheld, conditioned or delayed by Landlord  
41 in its sole and absolute judgment and discretion. If Tenant is a corporation, partnership, limited liability  
42 company, or any other legal entity, any transfer of a controlling ownership or voting interest in such entity  
43 or any transfer or attempted transfer of this Lease by merger, consolidation or liquidation shall be deemed  
44 a Transfer requiring Landlord's written consent. Transfers shall include, without limitation, one or more  
45 sales or transfers, by operation of law or otherwise, or creation of new stock, by which an aggregate of  
46 more than fifty percent (50%) of Tenant's stock, or partnership or limited liability company membership  
47 interests, as the case may be, shall be vested in a party or parties who are stockholders or non-partners  
48 on non-members, as the case may be, as of the Effective Date; provided, however, the foregoing shall  
49 not apply if Tenant's stock is listed on a recognized national stock exchange or is traded over-the-counter.  
50 Transfers shall also include, without limitation, the assignment, sale, or transfer of any development rights  
51 or special declarant rights by Tenant as declarant under any condominium declaration relating to the  
52 Premises, except that in the event Tenant proposes to grant a security interest in development rights or  
53 special declarant rights to facilitate construction financing of future phases of construction, Landlord's  
54 consent shall not be unreasonably withheld, conditioned or delayed. Consent by Landlord to any  
55 Transfer shall not operate as a waiver of the necessity for consent to any subsequent Transfer. In  
56 connection with each require for const to a Transfer, Tenant shall pay the reasonable cost of processing  
57 the same, including reasonable attorney fees, upon demand of Landlord. If Landlord consents to any



1 proposed Transfer, Tenant may enter into the same, but only upon the specific terms and condition set  
2 forth in Tenant's request for such consent; and such Transfer shall be subject to, and in full compliance  
3 with, all of the terms, covenants and conditions of this Lease and the consent by Landlord to any Transfer  
4 shall not relieve Tenant of any obligation under this Lease. Landlord may require Tenant and the  
5 Transferee to execute a Landlord consent form and no Transfer shall be binding on Landlord unless  
6 Tenant and the Transferee shall deliver to Landlord a fully-executed counterpart of the document  
7 effecting the Transfer. Condominium Unit Owners, if any, may provide short term use of their hangar  
8 units on condition that the term is less than thirty-six (36) months and a written rental agreement is  
9 executed and expressly acknowledges subordination thereof to this Lease and that a recorded copy of  
10 this Lease is attached thereto as an exhibit. Tenant shall keep and maintain copies of all current rental  
11 agreements for review if requested by Landlord, together with a "notice of occupancy." Such notice shall  
12 be provided to the Airport Manager on or before the commencement of the rental term and must include  
13 the unit number, the owner's name, address and phone number, together with the renter's name,  
14 address, day pone number and emergency phone number, type of aircraft and aircraft registration  
15 number. If the renter is a corporation, the notice shall include the names and addresses of the president,  
16 secretary and treasurer thereof.

17  
18 **22. Lease hold Condominium.**

19  
20 **22.1 Right to Create Leasehold Condominium.** Tenant shall have the right to  
21 create upon any or all of the Parcels a "leasehold condominium" (as defined in RCW 64.34.020(21))  
22 consisting of individual hangar units as "condominiums" (as defined in RCW 64.34.020(9)).

23  
24 **22.2 Prior Written Approval.** Tenant shall submit to Landlord for Landlord's prior  
25 written approval true and correct copies of the condominium declaration (defined in RCW 64.34.020(15))  
26 (hereinafter "Declaration") and the survey map and plans that it intends to record for the purpose of  
27 creating any such leasehold condominium, not less than thirty (30) calendar days prior to the date upon  
28 which the Tenant desires to record such declaration. Upon receiving Landlord's prior written approval of  
29 the declaration, survey map and plans, which approval shall not be unreasonably withheld, and upon  
30 Tenant's written request, Landlord shall, pursuant to RCW 64.34.220, join with Tenant in signing the  
31 declaration.

32  
33 **22.3 Con tents of Declaration.** The declaration, survey map and plans shall comply  
34 in all respects with all Applicable Laws including, without limitation, Chapter 64.34 RCW, and shall  
35 provide for the creation of an association of condominium unit owners (as defined in RCW 64.34.020(4))  
36 (hereinafter "Unit Owners' Association") which shall be solely responsible for dealing with Landlord. In  
37 addition, the Declaration shall contain language substantively identical to the following:

38  
39 **Ground Lease**

40  
41 **1. Description of Ground Lease.** This condominium is created from  
42 improvements constructed by Declarant upon the real property legally described in Exhibit A  
43 attached hereto and by this reference incorporated herein (hereinafter "Condominium Land").  
44 The Condominium Land is solely owned in fee by Pierce County, a municipal corporation and  
45 political subdivision of the state of Washington, and is being leased to Declarant pursuant to a  
46 long-term lease entitled "Aircraft Hangar Ground Lease - Pierce County Airport - Thun Field"  
47 (hereinafter "Ground Lease"). This Condominium Declaration is subject to and subordinate in all  
48 respects to the Ground Lease. Upon termination of the Ground Lease, this Condominium shall  
49 also terminate and title to the Units and Common Elements shall automatically revert to and  
50 become the sole property of the Landlord under the Ground Lease without payment of any  
51 additional consideration.

52  
53 **2. Inspection of Ground Lease.** The Ground Lease is recorded with the Auditor of  
54 Pierce County, Washington, under Auditor's Recording No.\_\_\_\_\_. A copy of the  
55 Ground Lease may be inspected at the Offices of the Airport Manager.  
56



1           **3. Expiration of Ground Lease.** The initial term of the Ground Lease is fifty (50)  
2 years and is scheduled to terminate on \_\_\_\_\_, \_\_\_\_\_. The Unit Owners' Association of  
3 this Condominium has the option to renew the Ground Lease for two (2) consecutive terms of ten  
4 (10) years each, which may be exercised by giving written notice not later than one (1)  
5 year prior to expiration of the Lease Term or any Renewal Term, as the case may be.

6  
7           **4. No Right to Redeem Reversion.** Under the Ground Lease, neither the Unit  
8 Owners' Association nor any Unit Owner has the right to redeem the reversionary interest of  
9 Landlord.

10  
11           **5. No Right to Remove Improvements.** Under the Ground Lease, neither the Unit  
12 Owners' Association nor any Unit Owner has the right to remove any improvements upon  
13 expiration or earlier termination of the Ground Lease.

14  
15           **6. Consent of Landlord.** Under the Ground Lease and elsewhere in this  
16 Declaration, consent of the Landlord to certain activities and conduct of the Unit Owners'  
17 Association and Unit Owners is required and, depending upon the activity or conduct, may be  
18 granted, withheld, conditioned or delayed by Landlord in its sole and absolute judgment and  
19 discretion.

20  
21           **7. Unit Owners' Association.** A Unit Owners' Association shall be created as part  
22 of this Condominium. At such time as the Declarant amends the Declaration surrendering control  
23 of the Unit Owners' Association to the Unit Owners, which shall occur not later than the date  
24 Declarant has sold seventy-five percent of the Units to Unit Owners, the Unit Owners' Association  
25 shall be the sole representative of the Unit Owners in all dealings with the Landlord under the  
26 Ground Lease. The Unit Owners' Association shall collect from the Unit Owners proportionate  
27 rent due and owing to the Landlord under the Ground Lease. Failure of the Unit Owners to pay  
28 monthly rent due under the Ground Lease when due and/or any other failure to perform any other  
29 term, covenant or condition under the Ground Lease will result in a forfeiture of the entire lease.

30  
31           **22.4 Assignme nt of Lease.** The provisions of Section 21 above notwithstanding, if  
32 Tenant creates a Leasehold Condominium upon any or all of the Parcels as provided in this Section 22,  
33 this Lease shall automatically be assigned to the Unit Owners' Association for that Parcel upon recording  
34 of the deed transferring Tenant's interest in seventy-five percent (75%) of the Units to a Unit Owner other  
35 than Tenant or at such earlier date as Tenant amends the Declaration to transfer control and voting rights  
36 to the members of the Unit Owners' Association. Upon assignment of this Lease to a Unit Owners'  
37 Association, a novation shall occur such that the Unit Owners' Association shall become absolutely and  
38 for all purposes substituted as a Tenant under this Lease and the original Tenant shall have no further  
39 liability hereunder other than as a Unit Owner. If, for any reason, either the Condominium or Unit Owners'  
40 Association is terminated or dissolved, each and every Unit Owner with an interest in the Premises arising  
41 under this Lease at the time of such termination or dissolution shall remain jointly and severally liable as a  
42 Tenant hereunder and, upon any such termination or dissolution, any and all Transfers, including the  
43 Transfer of any interest in the former condominium units, shall be subject to the provisions of Section 21  
44 above, including Landlord's prior written consent, which consent may be granted, withheld, conditioned or  
45 delayed by Landlord in its sole and absolute judgment and discretion.

46  
47           **23. Leasehold Mortgages.**

48  
49           **23.1 Grant of Leasehold Mortgages.** Tenant shall be entitled to grant a first position  
50 mortgage or deed of trust to an institutional lender secured by its leasehold interest in the Premises  
51 (hereinafter "Leasehold Mortgage"); provided, Tenant shall first give Landlord written notice of such  
52 proposed first position mortgage or deed of trust at least thirty (30) calendar days prior to the recording  
53 thereof; and provided further, any such Leasehold Mortgage shall for all purposes be subject and  
54 subordinate to the terms of this Lease. Upon the establishment of a Leasehold Condominium upon the  
55 Premises, or any part thereof, and for so long as such Leasehold Condominium and the Unit Owners'  
56 Association are in existence, individual Unit Owners may grant first position mortgages or deeds of trust



1 to institutional lenders secured by individual units, without providing Landlord with any notice of the  
2 proposed transaction.

3  
4 **23.2 Rights of Leasehold Mortgagees; Notice; Bankruptcy.**

5  
6 **23.2.1 Termination of Lease.** Landlord shall not terminate this Lease as a  
7 result of any default or breach by Tenant unless: (a) Landlord first gives written notice to the holder of  
8 any first position mortgage or deed of trust secured by Tenant's leasehold interest in the Premises  
9 (hereinafter "Tenant's Leasehold Mortgagee"), at the address specified for Tenant in Section 28 below, of  
10 Landlord's intention to terminate this Lease and specifying the nature of Tenant's default or breach; and  
11 (b) Tenant's Leasehold Mortgagee fails within thirty (30) calendar days of receipt of such written notice to  
12 cure the default or breach if the same can be cured by the payment or expenditure of money to be paid  
13 under this Lease or, if such default or breach is not so curable, Tenant's Leasehold Mortgagee fails within  
14 such thirty (30) calendar day period to cure such default or breach by commencing and thereafter  
15 diligently pursuing to completion judicial or non-judicial foreclosure proceedings and, upon completion  
16 thereof, or at such earlier time as Tenant's Leasehold Mortgagee is entitled to enter upon and take  
17 possession of the Premises, cures all non-monetary defaults and/or breaches of Tenant. Nothing herein  
18 shall be construed as requiring Tenant's Leasehold Mortgagee to cure or commence to cure any default  
19 of breach of Tenant.

20  
21 **23.2.2 Bankruptcy.** If the judicial or non-judicial foreclosure proceedings  
22 described in Section 23.2.1 above are delayed, suspended or stayed by the order of a court of competent  
23 jurisdiction, Tenant's Leasehold Mortgagee shall nonetheless be deemed to be diligently pursuing such  
24 foreclosure proceedings during the period of any such delay, suspension or stay and Landlord shall not  
25 be entitled to terminate this Lease until a reasonable time after Tenant's Leasehold Mortgagee is no  
26 longer delayed, suspended or stayed from pursuing such foreclosure proceedings; provided, however,  
27 that Tenant's Leasehold Mortgagee performs or causes to be performed all provisions of this Lease  
28 requiring any payment of money to Landlord.

29  
30 **23.2.3 Continuation of Lease.** Upon full compliance with the provisions of this  
31 Section 23 and acquisition of Tenant's interest in this Lease by Tenant's Leasehold Mortgagee or by a  
32 purchaser at any foreclosure or sheriff's sale or otherwise, this Lease shall continue in full force and effect  
33 as if Tenant had not defaulted under or breached this Lease.

34  
35 **23.2.4 New Lease.** If this Lease shall terminate for any reason, including  
36 rejection hereof in a bankruptcy proceeding, Landlord agrees to enter into a new lease with Tenant's  
37 Leasehold Mortgagee for the then remaining Term or Renewal Term, at the Monthly Rent provided in  
38 Section 9 above and upon the other terms, covenants and conditions set forth in this Lease; provided,  
39 that Tenant's Leasehold Mortgagee delivers to Landlord a written request for such new lease within thirty  
40 (30) days after the notice of termination for this Lease has been delivered to Tenant's Leasehold  
41 Mortgagee; and provided further, that Tenant's Leasehold Mortgagee agrees in writing to perform all  
42 terms, covenants and conditions set forth in such new lease.

43  
44 **23.3 No Liability Until Foreclosure.** In no event shall Tenant's Leasehold  
45 Mortgagee be liable for any condition of the Premises existing prior to the date of its acquisition of  
46 Tenant's leasehold interest in this Lease, or for any damage caused by such preexisting condition, or for  
47 the correction thereof.

48  
49 **23.4 Transfers Following Foreclosure.** Provided there is no default or breach under  
50 this Lease, Tenant's Leasehold Mortgagee may sell any Tenant Improvements and Additional Tenant  
51 Improvements constructed upon the Premises and may assign this Lease to the purchaser thereof, in  
52 which event Tenant's Leasehold Mortgagee shall thereafter be relieved of its obligations under this Lease;  
53 provided, however, that any such transferee shall have agreed in writing to be bound by all of the terms,  
54 covenants and conditions of this Lease.

55  
56 **24. Termination.**



1 **24.1 Termination for Default; Remedies.** The occurrence of any one or more of the  
2 following events shall constitute a default under this Lease by Tenant: (a) vacation or abandonment of  
3 the Premises prior to the Expiration Date of the Term or any Renewal Term or any earlier termination of  
4 this Lease; (b) failure by Tenant to make any payment of Monthly Rent when due, or failure to make any  
5 other payment required hereunder when due when that failure continues for a period of ten (10) business  
6 days after written notice from Landlord; (c) failure by Tenant to observe or perform any of the covenants,  
7 conditions or provisions of this Lease, other than the making of any payment, where that failure continues  
8 for a period of fifteen (15) business days after written notice from Landlord; provided, that if the nature of  
9 Landlord's obligation is such that more than fifteen (15) business days are reasonably required for cure,  
10 Tenant shall not be in default if Tenant commences to cure within fifteen (15) business days of Landlord's  
11 written notice and thereafter diligently pursues completion and completes performance within a  
12 reasonable time; or (d) Tenant's failure to comply with the same Lease term or covenant on three  
13 separate occasions during the Term, even if such breach is cured within the applicable cure period. In  
14 the event of any default by Tenant, Landlord may at any time, without waiving or limiting any other right or  
15 remedy, terminate this Lease, re-enter and take possession of the Premises, accelerate all Monthly Rent  
16 payments due hereunder, which payments will then become immediately due and payable, or pursue any  
17 other remedy allowed by law. Tenant shall pay Landlord the documented costs of recovering possession  
18 of the Premises including, without limitation, court costs and reasonable attorney fees, the expenses of  
19 reletting, and any other costs or damages arising out of or relating in any way to Tenant's default.

20  
21 **24.2 Termination for Other Reasons; Compensation.**

22  
23 **24.2.1 War or National Emergency.** During any time of war or national  
24 emergency, Landlord shall have the right to lease the landing area of the Airport or any part thereof to the  
25 state of Washington or the United States and, if such lease is executed, the provisions of this Lease  
26 insofar as they are inconsistent with the provisions of any such lease to the state of Washington or the  
27 United States shall be suspended. If any such lease to the state of Washington or the United States  
28 prevents the use of the Airport by Tenant for normal takeoffs and landings for a period of more than  
29 twenty-four (24) consecutive months this Lease may be terminated by Tenant in its sole and absolute  
30 judgment and discretion, in which event Landlord shall pay to Tenant compensation as provided in  
31 Section 24.2.3 below.

32  
33 **24.2.2 Termination by Landlord.** Landlord shall have the right to terminate  
34 this Lease at any time prior to the Expiration Date, for any reason or no reason, in its sole and absolute  
35 judgment and discretion. If any such termination shall occur, and provided Tenant is not in breach of any  
36 material term or condition of this Lease, Landlord shall pay to Tenant just compensation as provided in  
37 Section 24.2.3 below.

38  
39 **24.2.3 Just Compensation; Dispute Resolution.** If this Lease is terminated  
40 pursuant to Sections 24.2.1 or 24.2.2 above, Landlord shall pay to Tenant just compensation for the  
41 Tenant Improvements, Additional Tenant Improvements, Tenant Utilities and Tenant's business, taking  
42 into consideration the remaining Term and any Renewal Terms of this Lease. If the Parties cannot agree  
43 on just compensation, then each Party shall appoint an appraiser who is licensed and/or certified as an  
44 appraiser in the state of Washington and who holds a current membership in the Appraisal Institute. If the  
45 two appraisers agree on just compensation, their decision shall be binding upon the Parties and may be  
46 enforced as an arbitration award under the laws of the state of Washington. If the two appraisers cannot  
47 agree on just compensation, then they shall appoint a third appraiser with their same qualifications and  
48 the three (3) appraisers shall thereupon hold a hearing at a time and place mutually convenient to the  
49 Parties to determine just compensation. Each Party shall have the right to present at such hearing any  
50 relevant evidence, argument and written briefs as they may desire. The decision of any two (2) of the  
51 appraisers as to just compensation shall be binding upon the Parties and may be enforced as an  
52 arbitration award as provided under the laws of the state of Washington. Each Party shall pay the cost of  
53 its own appraiser and shall share equally the cost of the third appraiser.

54  
55 **25. Waiver.** Under no circumstances shall any failure by Landlord to promptly enforce any of  
56 its rights under this Lease, whether resulting from a default by Tenant or otherwise, operate or be



1 construed as a waiver of such rights unless Landlord gives Tenant express written notice that an waiver  
2 has occurred.

3  
4 **26. Landlord's Right of Entry.** Landlord reserves and shall at any and all reasonable times  
5 have the right to enter the Premises and/or the Tenant Improvements or Additional Tenant Improvements  
6 for the purpose of inspecting the same to determine full compliance with this Lease; provided, however,  
7 that the quiet use and enjoyment of the Premises by Tenant shall not be unreasonably disturbed. The  
8 foregoing notwithstanding, Landlord shall have the right to use any and all means Landlord may deem  
9 necessary or appropriate to gain access to the Premises, the Tenant Improvements and/or the Additional  
10 Tenant Improvements without liability to Tenant, except for any failure to exercise due care for Tenant's  
11 property, for the purpose of responding to a bona fide emergency thereupon. Any such entry by Landlord  
12 by any of said means or otherwise shall not, under any circumstances, be construed or deemed to be  
13 forceable or unlawful entry into, or a detainer of, the Premises, or an eviction of Tenant from the  
14 Premises, or any portion thereof, provided said entry relates to emergency purposes as aforesaid.

15  
16 **27. Landlord Mortgages and Deeds of Trust; Priority and Attornment.** Landlord may  
17 mortgage the Premises or grant deeds of trust or other encumbrances with respect thereto. Tenant  
18 agrees to execute such reasonable estoppel certificates as may be required by any mortgagee or deed of  
19 trust beneficiary stating that the Lease is in full force and effect and certifying the dates to which Monthly  
20 Rent and other charges have been paid. This Lease shall be subject and subordinate to any mortgage or  
21 deed of trust which is now a lien upon the Premises and to any or all amounts owing or advances to be  
22 made thereunder, and all renewals, replacements or consolidations and extensions thereof. This Lease  
23 is also subject and subordinate to any mortgages or deeds of trust that may hereafter be placed upon the  
24 Premises by Landlord and to any or all advances to be made or amounts owing thereunder and all  
25 renewals, replacements, consolidations and extensions thereof, provided that the mortgagee named in  
26 the mortgage or the beneficiary named in the deed of trust agrees to recognize this Lease in the event of  
27 foreclosure if Tenant is not in default. Tenant shall execute and deliver, within ten (10) business days  
28 after demand therefore, whatever instruments may be required from time to time by any mortgagee or  
29 deed of trust beneficiary for any of the foregoing purposes.

30  
31 **28. Notices.** Wherever in this Lease notices are desired or required to be given, such notice  
32 shall be in writing, addressed to the person entitled thereto, and shall be sent by either: (a) United States  
33 certified mail, return receipt requested; (b) recognized overnight express or legal messenger service  
34 which customarily maintains a contemporaneous permanent delivery record; or (c) facsimile to the  
35 address of such person as set forth in this Lease, or such address or addresses designated in writing  
36 from time to time. Notices shall be deemed delivered on the earlier of: (a) the date of receipt as shown  
37 by the return receipt; (b) the delivery date as shown in the regular business records of the overnight  
38 courier or legal messenger service; or (c) the date of automatic confirmed receipt by the recipient's fax, as  
39 the case may be. Notices shall be sent to Landlord and/or Tenant at the address or facsimile for that  
40 Party as designated below:

41  
42 Landlord: Pierce County Public Works & Utilities  
43 Attn: Michael D. Esher, Airports & Ferry Administrator  
44 9850 64th Street West  
45 University Place, WA 98467  
46 Teleph one: 253-798-7109  
47 Facsimile: 253-798-8685

48 Copy to: Pierce County Prosecutor - Civil Division  
49 955 Tacoma Avenue South, Suite 301  
50 ma, WA 98402-2160  
51 Teleph one: 253-798-4168  
52 Facsimile: 253-798-6713



1 Tenant: Hangars NW LLC  
2 Attn: Dave Ward/John Vodry  
3 1775 "E" Street NE, Suite #1  
4 Auburn, WA 98002

5 Teleph one: 253-854-8678  
6 Facsimile: 253-939-8685  
7

8 Copy to: Law Office of Bruce A. Keithly, Inc., P.S.  
9 Attn: Bruce Keithly  
10 21 Avenue A  
11 Snohomi sh, WA 98290  
12 Teleph one: 360-568-1090  
13 Facsimile: 360-563-0248  
14

15 Any Party, by written notice to the other in the manner herein provided, may designate an  
16 address different from that set forth above. Any notices sent by a Party's attorney on behalf of  
17 such Party shall be deemed delivered by such Party.

18 **29. Negotiation and Construction.** This Lease was negotiated by the Parties with the  
19 assistance of their own legal counsel and shall be construed according to its fair meaning and not strictly  
20 for or against either Party.

21 **30. Time.** Time is of the essence of this Lease and of every term and provision hereof. If the  
22 date for any performance under this Lease falls on a weekend or holiday, the time shall be extended to  
23 the next business day.  
24

25 **31. Prior Agreements.** This Lease contains all of the agreements of the Parties with respect  
26 to any matter covered or mentioned herein and no prior agreement, letter of intent, negotiation or  
27 understanding pertaining to any such matter shall be effective for any purpose. No provision of this  
28 Lease may be amended or added to, except by an agreement in writing signed by the Parties or their  
29 respective successors in interest.  
30

31 **32. Attorney Fees and Costs.** In the event either Party requires the services of an attorney  
32 in connection with enforcing the terms of this Lease, whether or not suit is filed, or in the event suit is filed  
33 for the recovery of any sums due under this Lease or for the breach of any covenant or condition of this  
34 Lease, or for the restitution of the Premises to Landlord or eviction of Tenant during the Term or any  
35 Renewal Term or after the expiration thereof, the substantially prevailing party shall be entitled to  
36 reasonable attorney fees and all costs incurred in connection therewith, including, without limitation, the  
37 fees of accountants, appraisers and other professionals, whether at trial, on appeal or without resort to  
38 suit.  
39

40 **33. Vacation of Premises; Holding Over.** Upon written notice from Landlord given at any  
41 time prior to the expiration of the Term or any Renewal Term, Tenant shall promptly vacate the Premises  
42 on or before the last day thereof, leaving the Premises in the condition as described in Section 34 below.  
43 If Tenant holds over the expiration or earlier termination of the Term or any Renewal Term without the  
44 prior written consent of Landlord, which consent may be granted, withheld, conditioned or delayed by  
45 Landlord in its sole and absolute judgment and discretion, Tenant shall become a tenant-at-sufferance  
46 only and otherwise subject to the terms, covenants and conditions herein specified insofar as applicable.  
47 Acceptance by Landlord of Monthly Rent or any other benefit accruing to Landlord under this Lease after  
48 the expiration of the Term or any Renewal Term, or earlier termination thereof, shall not result in a  
49 renewal of this Lease. The foregoing provisions of this Section 33 are in addition to and do not affect  
50 Landlord's right of re-entry or any other rights of Landlord hereunder or as otherwise provided by law.  
51 Tenant hereby indemnifies and agrees to hold Landlord harmless from all losses, injuries or liabilities of  
52 any kind, type or nature whatsoever arising out of or in any way relating to Tenant's failure to surrender  
53 the Premises upon the expiration or earlier termination of this Lease.  
54



1           **34. Surrender of Premises.** The voluntary or other surrender of this Lease by Tenant, or a  
2 mutual cancellation hereof, shall not work as a merger, and shall, at the option of Landlord, operate as an  
3 assignment to it of any or all subleases or subtenancies. Upon the expiration or earlier termination of this  
4 Lease, Lessee shall: (a) peaceably surrender to Landlord the Premises, the Tenant Improvements, the  
5 Additional Tenant Improvements and the Tenant Utilities and all of the alternations and additions thereto;  
6 and (b) leave the Premises, the Tenant Improvements, the Additional Tenant Improvements and the  
7 Tenant Utilities in good order, repair and condition, reasonable wear and tear excepted. The delivery of  
8 keys to any employee of Landlord or to Landlord's agent or any employee thereof shall not be sufficient to  
9 constitute a termination of this Lease or a surrender of the Premises.

10  
11           **35. Successors and Assigns.** Except as otherwise provided in this Lease, all of the  
12 covenants, conditions and provisions of this Lease are binding upon and shall inure to the benefit of the  
13 Parties and their respective heirs, personal representatives, successors and assigns. If Landlord sells or  
14 otherwise conveys its title to the Premises, then after the effective date of such sale or conveyance  
15 Landlord shall have absolutely no further liability to Tenant under this Lease except as to matters of  
16 liability that have accrued and remain unsatisfied as of the date of sale or conveyance, and Tenant must  
17 seek performance solely from Landlord's purchaser or successor-in-interest. Landlord's purchaser or  
18 successor-in-interest shall have all rights of Landlord hereunder.

19  
20           **36. Cost of Performance by Tenant.** Except as otherwise expressly provided to the  
21 contrary elsewhere in this Lease, all covenants and agreements to be performed by Tenant under this  
22 Lease shall be performed by Tenant at its sole cost and expense and without any abatement of Monthly  
23 Rent or any other amount due from Tenant under this Lease. If Tenant fails to pay any sum of money  
24 owed to any party other than Landlord for which Tenant is liable hereunder, or if Tenant fails to perform  
25 any other act on its part to be performed hereunder, and such failure continues for ten (10) business days  
26 after written notice thereof by Landlord, Landlord may, without waiving or releasing Tenant from its  
27 obligations, make any such payment or perform any such other act to be made or performed by Tenant.  
28 Tenant shall pay to Landlord, on demand, all sums so paid by Landlord and all necessary incidental  
29 costs, together with interest thereon at the lesser of one and one-half percent (1-1/2%) per month or the  
30 maximum rate permissible by law, from the date of such payment by Landlord.

31  
32           **37. Americans with Disabilities Act.** Within ten (10) business days after receipt, Tenant  
33 shall advise Landlord in writing, and provide Landlord with copies of (as applicable): (a) any notices  
34 alleging violation of the Americans with Disabilities Act of 1990, as amended ("ADA") relating to any  
35 portion of the Premises, the Tenant Improvements or the Additional Tenant Improvements; (b) any claims  
36 made or threatened in writing regarding noncompliance with the ADA and relating to any portion of the  
37 Premises, the Tenant Improvements or the Additional Tenant Improvements; or (c) any governmental or  
38 regulatory actions or investigations instituted or threatened regarding noncompliance with the ADA and  
39 relating to any portion of the Premises, the Tenant Improvements of the Additional Tenant Improvements.  
40 Any cost or expense associated with bringing the Premises, the Tenant Improvements or the Additional  
41 Tenant Improvements into compliance with the ADA shall be the sole responsibility of Tenant.

42  
43           **38. Execution Required.** Submission of this Lease for examination or signature by Tenant  
44 does not constitute a reservation of or option for Lease, and is not effective as a Lease or otherwise, until  
45 execution by and delivery to both Landlord and Tenant.

46  
47           **39. Severability.** Any provision of this Lease which proves to be invalid, void or illegal shall  
48 in no way affect, impair or invalidate any other provision hereof, and such other provisions shall remain in  
49 full force and effect.

50  
51           **40. Governing Law; Venue.** This Lease shall be governed by and construed in accordance  
52 with the laws of the state of Washington. The venue of any action between the Parties arising out of or  
53 relating in any way to this Lease shall be in the superior court of Pierce County, Washington.

54  
55           **41. Exhibits.** The following exhibits are attached to and by this reference incorporated  
56 herein as if fully set forth:  
57



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- Exhibit A** - Legal Description of Airport
- Exhibit B** - Legal Description of Premises
- Exhibit C** - Premises Survey Map
- Exhibit D** - Plans & Specifications - Phase I Tenant Improvements
- Exhibit E** - Plans & Specifications - Phase II Tenant Improvements
- Exhibit F** - Plans & Specifications - Phase III Tenant Improvements
- Exhibit G** - Plans & Specifications - Phase IV Tenant Improvements

**42. Effective Date of Lease.** The Effective Date of this Lease shall be the date upon which the Pierce County Executive shall have signed this Lease as indicated opposite her name below.

***[SIGNATURES APPEAR ON FOLLOWING PAGES]***



**LANDLORD SIGNATURE PAGE**

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Approved as to Legal Form Only:

\_\_\_\_\_  
Deputy Prosecuting Attorney                      Date

Recommended:

\_\_\_\_\_  
Department Director                                      Date

\_\_\_\_\_  
Budget & Finance    Date

Final Action:

\_\_\_\_\_  
Pierce County Executive                                      Date

STATE OF WASHINGTON    )  
  ) ss.  
COUNTY OF PIERCE                                      )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, a notary public in and for the state of Washington, duly commissioned and sworn, personally appeared PAT MCCARTHY, known to me to be the Executive of Pierce County, Washington, a municipal corporation and political subdivision of the state of Washington, who executed the within and foregoing instrument and acknowledged the said instrument to be the free and voluntary act of said municipal corporation for the uses and purposes therein mentioned, and on oath stated that he authorized to execute the said instrument.  
In witness whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

\_\_\_\_\_  
NOTARY SIGNATURE

PRINTED NAME \_\_\_\_\_  
NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON,  
RESIDING AT \_\_\_\_\_  
MY COMMISSION EXPIRES \_\_\_\_\_

**TENANT SIGNATURE PAGE**

NW HANGARS LLC, a Washington limited liability company:

By: \_\_\_\_\_  
Its: \_\_\_\_\_ Date

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF PIERCE )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, a notary public in and for the state of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_, known to me to be the \_\_\_\_\_ of NW Hangars LLC, a Washington limited liability company, who executed the within and foregoing instrument and acknowledged the said instrument to be the free and voluntary act of said limited liability company for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute the said instrument.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

\_\_\_\_\_  
NOTARY SIGNATURE

PRINTED NAME \_\_\_\_\_  
NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON,  
RESIDING AT \_\_\_\_\_  
MY COMMISSION EXPIRES \_\_\_\_\_

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**EXHIBIT A**  
**Legal Description of Airport**



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**EXHIBIT B**  
**Legal Description of Premises**



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# EXHIBIT C

## Premises Survey Map



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**EXHIBIT D**  
**Phase I Plans & Specifications**



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# EXHIBIT E

## Phase II Plans & Specifications



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**EXHIBIT F**  
**Phase III Plans & Specifications**



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**EXHIBIT G**  
**Phase IV Plans & Specifications**



1 Sponsored by: Councilmember Roger Bush  
2 Requested by: County Council  
3  
4  
5

6 ORDINANCE NO. 2010-1s  
7  
8

9 **An Ordinance of the Pierce County Council Amending Chapter 2.97 of the**  
10 **Pierce County Code, "Conservation Futures Fund Allocation**  
11 **and Selection Criteria," to Amend Sections which Create**  
12 **Barriers to Property Acquisition Opportunities.**  
13

14 **Whereas** , Pierce County adopted a Conservation Futures Program in 1999,  
15 codified in Chapters 2.96 and 2.97 of the Pierce County Code (PCC), to allow the  
16 County to acquire or otherwise conserve, selected open space land, farm and  
17 agricultural land, and timber land as such are defined in Revised Code of Washington  
18 Chapter 84.34 for public use or enjoyment; and  
19

20 **Whereas**, PCC 2.96.080, the Review of Selection Criteria states that at least  
21 every five years after the effective date of this Chapter, the Board, Committee, and  
22 Council shall review and, if deemed in the public interest, amend this Chapter and the  
23 selection criteria in Chapter 2.97; and  
24

25 **Whereas**, PCC 2.97.050, Annual Nomination, Application and Acquisition  
26 Requirements establish a process for the County's negotiation of a purchase and sales  
27 agreement for the properties selected for acquisition by the Pierce County Council; and  
28

29 **Whereas**, Conservation Futures acquisition requirements mandate that  
30 properties that remain listed on the Council's Resolution for acquisition become null and  
31 void if a purchase and sales agreement is not placed into an Escrow Account by June 1  
32 of the next proceeding year and shall no longer be pursued for acquisition by the County  
33 Executive; and  
34

35 **Whereas**, prohibiting the County Executive from pursuing Conservation Futures  
36 properties though the Conservation Futures program after June 1 of the next  
37 proceeding year following the Council's acquisition Resolution creates a gap of over  
38 fourteen months between conservation futures acquisition opportunities and may result  
39 in missed acquisition opportunities; and  
40

41 **Whereas**, the length of time necessary to execute a purchase and sale  
42 agreement for certain properties listed on the Council's acquisition Resolution can often  
43 extend beyond the deadline established for the County Executive to enter into a  
44 purchase and sales agreement because of complex negotiations and other delays; and  
45  
46





1  
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4 *Only those portions of Chapter 2.97 that are proposed to be amended are shown. Remainder*  
5 *of text and tables are unchanged.*  
6  
7

8 **2.97.050 Annual Nomination, Application and Acquisition Requirements**  
9

10 B. The following process is hereby established for the County's negotiation of a  
11 purchase and sales agreement for those properties selected by the Pierce  
12 County Council in Section 2.97.040.

13 ~~4. All properties that remain listed on the Council's Resolution and for which an~~  
14 ~~executed Purchase and Sales Agreement has not been placed into Escrow~~  
15 ~~shall by June 1 of the next proceeding year automatically become null and~~  
16 ~~void and shall no longer be pursued by the Executive.~~

17 4. Any conservation futures property listed for acquisition in a Resolution  
18 adopted by the Council pursuant to this chapter on or after January 1, 2007  
19 shall remain eligible for purchase by the Executive until removed from the list  
20 by subsequent Council Resolution.  
21  
22



1 Sponsored by: Councilmember Shawn Bunney  
2 Requested by: Pierce County Council/City of Sumner

3  
4  
5  
6 RESOLUTION NO. R2009-121  
7  
8

9 **A Resolution of the Pierce County Council Approving the Revision of the**  
10 **Corporate Boundary of the City of Sumner, Where It**  
11 **Coincides with Certain Portions of State Route 162 and**  
12 **Valley Avenue, to Fully Remove Certain Portions of State**  
13 **Route 162 and Valley Avenue from the Corporate Limits of**  
14 **the City of Sumner.**  
15

16 **Whereas**, Revised Code of Washington (RCW) 35.21.790 provides that the  
17 governing bodies of the county and the city may, by agreement, revise any part of the  
18 corporate boundary of the city which coincides with the centerline of a public street or  
19 highway by substituting therefore the right-of-way line of the same public street or  
20 highway so as to fully include or fully exclude that segment of the public street or  
21 highway from the corporate limits of the city; and  
22

23 **Whereas**, the revision of a corporate boundary as authorized by RCW 35.21.790  
24 is not subject to review by the Boundary Review Board; and  
25

26 **Whereas**, the right-of-way centerline of State Route 162 and east line of Section  
27 25, Township 20 North, Range 05 East, Willamette Meridian is the corporate boundary  
28 of the City of Sumner, with the west half of the right-of-way of State Route 162 being  
29 located in Sumner and the east half of the right-of-way being located in unincorporated  
30 Pierce County; and  
31

32 **Whereas**, Sumner and Pierce County wish to revise the Sumner boundary in the  
33 location described above so as to terminate the corporate boundaries of the City of  
34 Sumner at the west boundary of the right-of-way of State Route 162 so that the right-of-  
35 way for State Route 162 at the described location is located entirely within  
36 unincorporated Pierce County; and  
37

38 **Whereas**, Pierce County and the City of Sumner have mutually determined that  
39 a revision of certain boundaries of the city which coincide with the centerline of public  
40 streets or highways is beneficial as well as the proposed changes are to a State  
41 highway (SR 162); and  
42

43 **Whereas**, the City Council of the City of Sumner has determined that it would be  
44 in the best interests of the City of Sumner to revise the corporate boundaries as  
45 proposed to provide for clarification of jurisdiction relative to enforcement issues; and  
46



1                   **Whereas**, this clarification and consolidation would modify the Sumner  
2 City limit boundaries; **Now Therefore**,

3  
4                   **BE IT RESOLVED by the Council of Pierce County:**

5  
6                   Section 1. The revision of the corporate boundary of the City of Sumner where it  
7 coincides with certain portions of the right-of-way for State Route 162 and Valley  
8 Avenue is approved to fully remove said area legally described below from the  
9 corporate limits of the City of Sumner:

10                   A PORTION OF SECTION 25, TOWNSHIP 20 NORTH, RANGE 4 EAST OF THE  
11 WILLAMETTE MERIDIAN AS FOLLOWS:

12                   BEGINNING AT THE INTERSECTION OF THE WEST RIGHT-OF-WAY LINE OF  
13 STATE ROUTE 162 (ORTING HIGHWAY) AND THE NORTH BANK OF THE  
14 PUYALLUP RIVER, THENCE NORTHERLY ALONG THE SAID WEST RIGHT-OF-WAY  
15 LINE TO NORTH RIGHT-OF-WAY LINE OF STATE ROUTE 410 (PRIMARY STATE  
16 HIGHWAY NO. 5); THENCE EASTERLY ALONG SAID NORTH RIGHT-OF-WAY LINE  
17 TO THE EAST LINE OF SECTION 25, THENCE SOUTHERLY ALONG SAID EAST  
18 LINE TO THE NORTH BANK OF THE PUYALLUP RIVER, THENCE WESTERLY  
19 ALONG SAID NORTH BANK TO THE POINT OF BEGINNING.

20                   Section 2. The Clerk of the Pierce County Council shall mail a copy of this  
21 Resolution to the City of Sumner.

22  
23                   Section 3. The revision of the corporate boundary authorized by this Resolution  
24 shall become effective when approved by Ordinance of the City of Sumner.

25  
26                   **ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2010.**

27  
28 ATTEST:

29                   **PIERCE COUNTY COUNCIL**  
30 Pierce County, Washington

31  
32 \_\_\_\_\_  
33 **Denise D. Johnson**  
34 Clerk of the Council

31  
32 \_\_\_\_\_  
33 **Roger Bush**  
34 Council Chair

