



RESOLUTION 2013 - 40

**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF SUNNYSIDE, WASHINGTON, APPROVING
CONSENT TO ASSIGNMENT OF LESSEE'S INTEREST
IN AIRPORT LEASE
(Twin States Flying Service, Inc., Assignor to
Ag Air Flying Service, Inc., Assignee)**

WHEREAS, the City of Sunnyside has previously entered into a lease for certain airport property described as "Lot 9", pursuant to Lease dated July 19, 2010, by and between the City of Sunnyside and Twin States Flying Service, Inc.; and,

WHEREAS, the term of said Lease commenced March 1, 2010, and will terminate at midnight on March 1, 2036; and,

WHEREAS, said Lease agreement provides that the Lessee may assign said Lease by first securing written consent of the City of Sunnyside; and,

WHEREAS, the Lessee, Twin States Flying Service, Inc., proposes to assign its right, title and obligations as Lessee under said Lease to Ag Air Flying Service, Inc. (hereinafter referred to as "Assignee"); and

WHEREAS, the City Council finds and determines that approval of a "Consent to Assignment" of said Lessee's interest in the airport Lease and authorizing the Interim City Manager to execute such document is in the best interested of the residents of the City and will promote the general health, safety and welfare.

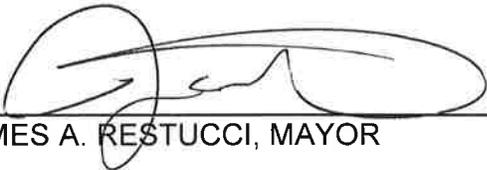
NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUNNYSIDE, WASHINGTON, as follows:

SECTION 1. That the "Consent to Assignment", of Lessee's interest in the airport Lease (Twin States Flying Service, Inc. to Ag Air Flying Service, Inc.), is approved; and the Interim City Manager is hereby authorized to prepare, execute and administer such document, attached hereto as Exhibit "A" and incorporated herein by this reference.

SECTION 2. That the Assignee thereunder, Ag Air Flying Service, Inc., upon execution of an agreement of assignment of Lessee's interest in said airport Lease, shall assume all rights and obligations of Lessee under said airport Lease according to the terms and conditions of said Lease, as and from the effective date of such assignment, which airport Lease agreement is attached hereto as Exhibit "B" and incorporated herein by this reference.

SECTION 3. This Resolution shall be effective upon passage, approval and signatures hereon in accordance with law.

PASSED this 13th day of May, 2013.



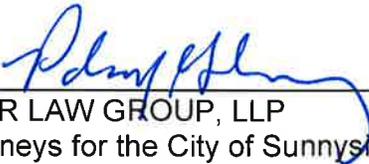
JAMES A. RESTUCCI, MAYOR

ATTEST:



DELILAH SAENZ, CMC, CITY CLERK

APPROVED AS TO FORM:



KERR LAW GROUP, LLP
Attorneys for the City of Sunnyside

EXHIBIT "A"

**CONSENT TO ASSIGNMENT
LESSEE'S INTEREST IN AIRPORT LEASE
(Twin States Flying Service to Ag Air Flying Service Inc.)**

This Assignment of Lease is entered into by and between Twin States Flying Service, a business with an address of PO Box 349, Hermiston, OR 97838 ("Assignor"), and Ag Air Flying Service, Inc., a business with an address of 101 Van Avenue, Toppenish, WA 98948 ("Assignee").

Background

By a certain lease dated July 19, 2010 (the "Lease"), the City of Sunnyside ("Landlord") leased to Assignor as tenant the premises described as follows: Premises situated in the City of Sunnyside, County of Yakima, State of Washington, being a part of the Sunnyside Municipal Airport, according to the map thereof filed with the City's Clerk, said airport being situated in the Southeast Quarter of the Northwest Quarter of Section 29, Township 10 North, Range 23 East, W.M., Yakima County, Washington – see legal description and map attached hereto as Exhibit "A" which is incorporated herein by reference (the "Premises"); and

Assignor desires to assign to Assignee, and Assignee desires to assume, all of Assignor's rights and obligations as tenant under the Lease, with the consent of Landlord.

Therefore, in consideration of the mutual covenants contained herein and other valuable consideration received, and with the intent to be legally bound, the parties agree as follows:

1. Assignor hereby assigns the Lease and all of its right, title and interest thereunder to Assignee. Assignee hereby accepts such assignment. Assignee shall have all of the rights of Assignor under the Lease including, without limitation, any option to renew or extend the Lease and option to purchase the Premises and right to the security deposit now held by Landlord, should any of the foregoing exist.
2. Assignee hereby assumes and agrees to be bound by all of Assignor's obligations under the Lease. Assignee shall perform all the terms, covenants and conditions of the Lease, including the payment of rent and any other required amounts to Landlord, after the date hereof.
3. Assignee shall indemnify and hold Assignor harmless from any and all claims, damages, expenses and liabilities of whatever nature, including attorney's fees, arising under the Lease or relating to the Premises after the date hereof.
4. Assignee shall not assign the Lease any further or sublet all or any portion of the Premises without the prior written consent of Landlord.

EXHIBIT "A"

5. Except as specifically modified herein, the Lease will continue in full force and effect.

6. This Assignment shall be binding upon and shall inure to the benefit of the parties and their respective heirs, legal representatives, successors and assigns.

CONSENT OF LANDLORD

Landlord hereby consents to the above Assignment and releases Assignor from all obligations and liabilities arising under the Lease after the date hereof.

IN WITNESS WHEREOF, this Assignment of Lease is executed under

seal on the _____ day of _____, 20_____.

LANDLORD:
CITY OF SUNNYSIDE

ASSIGNOR:
TWIN STATES FLYING SERVICE, INC.

John C. Darrington, Interim City Manager

Dave Gossler, President

ATTEST:

ASSIGNEE:
AG AIR FLYING SERVICE, INC.

Delilah Saenz, CMC, City Clerk

Pat Beierle, _____

APPROVED AS TO FORM:

Kerr Law Group, LLP
Attorneys for the City of Sunnyside

EXHIBIT "B"

Approved by RES 2010-24
June 14, 2010

LEASE

<Lot 9 >

ORIGINAL
1 of 2

The parties hereto are the **CITY OF SUNNYSIDE**, a municipal corporation of the State of Washington, (hereinafter "Sunnyside"), and Twin States Flying Service Inc., (hereinafter "Lessee").

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

1. LEASE AND DESCRIPTION. Upon the terms and conditions hereinafter set forth, Sunnyside does hereby lease to Lessee and the Lessee does hereby lease from City those certain Premises situated in the City of Sunnyside, County of Yakima, State of Washington, being a part of the Sunnyside Municipal Airport, according to the map thereof filed with the City's Clerk, said airport being situated in the Southeast Quarter of the Northwest Quarter of Section 29, Township 10 North, Range 23 East, W.M., Yakima County, Washington., and being described as follows:

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

Hereinafter called "Premises."

2. BUSINESS PURPOSE. The Premises are to be used for such purposes as may be allowed under the zoning restrictions for the Premises; provided that no use may be made of the Premises which can or does interfere with use of the airport by aircraft by reasons of electrical, electronic, or smoke emanations, lighting conditions, height of any structure or appurtenance, or any use which may attract birds.

2. TERM. The term of this lease shall be for twenty-six (26) years, commencing March 1, 2010 and end at midnight on March 1, 2036, unless otherwise terminated or canceled as provided in this document.

3. RENTAL. The annual rental for the period from, March 1, 2010 through March 1, 2036 shall be paid in advance on the first day of each rental period, commencing March 1, 2010, and shall be mailed or hand delivered to 818 E. Edison Avenue, Sunnyside, Washington 98944, and shall be in the following amounts:

The first rental period shall run for one year, from March 1, 2010 to February 28, 2011, and the rental rate shall be **one thousand nine hundred dollars (\$1,900.00)**. Thereafter, the annual rental rate shall be readjusted at the commencement of each five year period, with new rental rates commencing 2011,

EXHIBIT "B"

2016, 2021, 2026, and 2031, provided written request for readjustment is given by either party to the other at least thirty days before the commencement of the five year period for which the readjustment is requested.

(a) READJUSTMENT AND ARBITRATION. If the parties cannot agree upon the rental rate for the five year period, they shall submit to have the disputed rental rate for the period adjusted by arbitration, in accordance with RCW 14.08.120, as now enacted or subsequently amended. Within fifteen (15) days after Lessee's written objection to the proposed adjusted rent, Lessee and City will each select an arbitrator. The two selected arbitrators will select a third arbitrator. If the two arbitrators have not selected a third arbitrator within thirty (30) days after the last selection of the two, either Lessee or City will apply to the presiding judge of the Superior Court of Yakima County for the appointment of a third arbitrator. Each arbitrator will hold the MAI designation, or equivalent, with at least five (5) years experience and will be a Washington State certified appraiser. The three arbitrators will determine the rental rate after a review of all the pertinent facts and shall increase, decrease or continue the previous rate based upon such factors. The decision of a majority of the arbitrators will bind both Lessee and City. At the conclusion of the arbitration, the arbitrators will submit a written report to Lessee and City containing their decision. The costs of arbitration shall be divided equally between Lessee and City. Each party shall otherwise be responsible for their own legal, consulting, and other costs.

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

(b) LEASEHOLD EXCISE TAX/PERSONAL PROPERTY TAX. In addition to the rent, the Lessee shall pay to City at the same time the rent is paid such leasehold excise tax or other taxes as shall have been or may be lawfully levied by the State of Washington or Yakima County, which leasehold excise tax or other tax may rise or fall as rentals increase or decrease, or as applicable law may change.

(c) LEASEHOLD EXCISE TAX PROVISIONS. For the purpose of compliance with the State of Washington leasehold excise tax law, the Lessee shall within five days after demand of City furnish to City all information as to the actual cost of any improvements placed on the premises by the Lessee (and at least annually during the term of the Lease to furnish all information as to the actual cost of any improvements placed on the premises following construction), and if demanded, such information shall be in the form of a sworn affidavit. It is understood that said information may be furnished to the Washington State Department of Revenue for the purpose of auditing and regulating the payment or

EXHIBIT "B"

collection of such tax, and the tax may be based upon the information furnished. If City shall in the future determine that it must adopt some other or different method of securing information to enable it to comply with said law, the Lessee agrees to cooperate fully and promptly in such manner and to furnish all information demanded of it; including but not limited to depreciation schedules used for federal income tax purposes.

(d) LATE CHARGES. There shall be assessed and the Lessee shall pay upon any installment of rent or portion thereof not paid within ten (10) days after such rent installment is due and payable, a late charge penalty for each month or fraction thereof the rent or portion thereof is not paid equal to five percent (5%) of the amount of such rent or portion thereof (plus accrued late charge penalties, if any) due and payable. The amount of such late charge penalty shall be added to the amount due each month, and the total thereof shall be subject to a late charge for each succeeding month or fraction thereof in the amount of five percent (5%) of the total.

4. OPTION TO EXTEND. Lessee shall have the right to extend this lease for five additional terms of five (5) years, beginning on the day following the last day of the lease term, provided that Lessee notifies City in writing of its intent to extend the lease for said additional term prior to one year before the expiration of the existing lease term, PROVIDED that the right to extend is conditioned upon the Lessee not being in default under any of the terms, covenants or conditions of this Lease Agreement. In the event of the extension of the lease agreement, the rental rate readjustment provisions set forth in paragraph 4 of this Lease Agreement shall apply and the rental rate shall be readjusted for each five (5) year period by which the Lease is extended.

5. GENERAL TERMS AND CONDITION/INCORPORATION BY REFERENCE. Attached hereto as Exhibit "B" and incorporated herein by this reference is that document entitled "Sunnyside Municipal Airport General Lease Terms and Conditions" (hereinafter "the General Terms and Conditions"). Compliance with said document is a material element of Lessee's performance under and obligations under this Lease.

6. ENVIRONMENTAL STATUS. Lessee accepts the property in its present condition. For purposes of determining the Lessee's compliance with environmental laws as set forth in Section 11 of the General Terms and Conditions, Lessee warrants that: (a) it has had the opportunity to inspect the Premises and conduct at its expense any and all studies, environmental audits, or other examinations of the property; and (b) that no contamination of the soil or other violations of environmental law exists on the site at the commencement of this Lease.

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

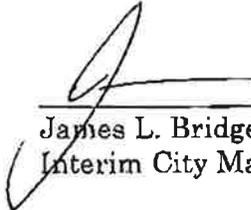
8. **SEVERABILITY.** If any term or provision of this Lease or the application of any term or provision to any person or circumstance is declared invalid or unenforceable, the remainder of this Lease, or the application of the term or provision to persons or circumstances other than those as to whom it is held invalid or unenforceable, shall not be affected and will continue in full force and effect.

IN WITNESS WHEREOF the parties hereto have executed this Lease on the 19 day of ~~June~~, 2010.

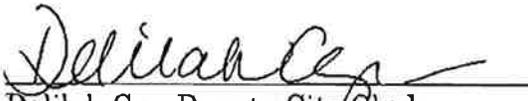
July

CITY OF SUNNYSIDE

By

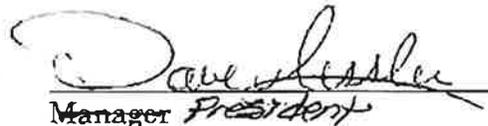

James L. Bridges, P.E.
Interim City Manager

ATTEST:


Delilah Cyr, Deputy City Clerk

TWIN STATES FLYING SERVICE, *Inc.*

By


Manager *President*

Twin States Flying Service, Inc.
P. O. Box 349
Hermiston, OR 97838

EXHIBIT "B"

STATE OF WASHINGTON)
 : ss.
County of Yakima)

I certify that I know or have satisfactory evidence that JAMES L. BRIDGES is the person who appeared before me, and said person acknowledged that he signed this instrument in his capacity as CITY MANAGER of the CITY OF SUNNYSIDE and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in this instrument.

Del Stahl
Notary Public in and for the State of Washington
Residing at Grandview, Washington

Del Stahl
NAME OF NOTARY PUBLIC (TYPE OR PRINT)
My Appointment Expires: 9.15.2010

Oregon
STATE OF WASHINGTON)
 : ss.
County of ~~Yakima~~ Umatilla)

Dave Gossler, President
Turn States Flying Service
INC.

I certify that I know or have satisfactory evidence that *** is the person who appeared before me, and said person acknowledged that s/he signed this instrument and acknowledged it to be his/her free and voluntary act for the uses and purposes mentioned in this instrument.



Jeanette Jacques
Notary Public in and for the State of Washington OREGON
Residing at: Hermiston, Washington OREGON
Jeanette Jacques
NAME OF NOTARY PUBLIC (TYPE OR PRINT)
My Appointment Expires: 12/15/11

SUNNYSIDE MUNICIPAL AIRPORT

General Lease Terms and Conditions

1. BUILDING CONSTRUCTION ON PREMISES.

1.1. Any building construction proposed on the premises shall be approved by the Municipal Airport Advisory Board. Any buildings so constructed shall be done strictly in accordance with full plans and specifications, (including drawings and elevations showing the appearance and color of the finished building) to be filed with the Airport Office prior to commencing construction. Prior to construction said plans and specifications shall be approved by and permits issued by Sunnyside's Building Official. The building shall be placed upon the lot at the location shown on the plot plan submitted to Sunnyside's Building Official, which must be first approved by Sunnyside's Airport Manager. Any timber, gravel, or excess soil from this construction shall remain the property of the Lessor and shall be removed from the site by Lessee to a location determined by the Airport Manager or his designee. A copy of all "as built" for the site to include Building, Utility, Drainage and Paving plans shall be furnished to Sunnyside Municipal Airport in electronic format in AutoCAD no later than release version 14 upon completion of construction. All buildings shall be used for the business purpose(s) set forth in Paragraph 2 of this Lease.

1.2. If the purpose of the Lease was for the construction of a building, then unless construction of the building is commenced within two hundred seventy (270) days of the date this Lease is executed and the initial building completed within one hundred eighty (180) days after commencement of construction, Sunnyside shall have the right, upon giving sixty (60) days written notice to Lessee, to terminate this Lease. The time for construction may be extended for the period of any delay caused to Lessee by any strike, unavailability of materials or work forces, weather, or similar conditions beyond the control of Lessee.

1.3. It shall be the responsibility of Lessee to secure at Lessee's sole expense all permits and approvals required for the use of the premises and construction of any building thereon. As part of the approval process, it shall be the responsibility of the Lessee to submit a completed 7460 Form to the FAA for their review. Lessee must provide proof of FAA approval to Sunnyside prior to issuance of the Building Permit. The height and configuration of any and all buildings shall be subject to any restrictions caused by existing or future landing, runway, or taxiway requirements of the airport. Work and/or materials not in accord with the foregoing shall be corrected, removed, replaced, and/or repaired by Lessee at its expense upon written notice by the Airport Manager or his or her designee. If such work and/or material is not so corrected, removed, replaced or repaired by Lessee within a

EXHIBIT "B"

reasonable time of such notice, Sunnyside may correct, remove, replace and/or repair such work or material at Lessee's expense, including the costs of utility installation, relocation, or removal required by the construction and its use and occupancy of the premises.

1.4. All work by Lessee shall be performed in a safe manner both on the leased premises and with respect to other city property at the airport which might be utilized or affected by any activity of Lessee. Work shall be performed so as not to interfere with the use of other airport property by Sunnyside, its other tenants, or other users of airport property. During any construction, Lessee shall keep the leased premises and any other airport property free of waste materials and rubbish caused by the work. Material and/or equipment shall not be placed or stored upon airport property other than the leased premises without the prior consent of the Airport Manager or his or her designee.

1.5. In the event of termination as provided for herein, Sunnyside may retain all rents therefor received by it, and all rights of Lessee shall absolutely terminate. In the event at the effective date of termination pursuant to notice given hereunder any rent is owing by Lessee, Lessee shall pay said rent (together with leasehold or other tax thereon) within ten (10) days of said effective date.

1.6. During the lifetime of this Lease, all buildings and improvements to the property shall be the property of Lessee. At the expiration of this Lease, Sunnyside shall have the option in its sole discretion to take one (1) of the following three (3) alternative courses of action with respect to the disposition of Lessee's buildings and improvements located on the Premises:

a. Sunnyside shall have right of first refusal to purchase the building and improvements by paying Lessee the full fair market value; fair market value shall be established by mutual agreement or by arbitration; or

b. Require that all buildings and improvements, including foundations, be removed within ninety (90) days following the expiration or termination of this agreement. During this ninety (90) days period, Lessee shall pay rent monthly in the same amount as terminated lease. Failure to remove improvements within that period will result in forfeiture of these improvements to Sunnyside. Sunnyside may then decide to have improvements removed and bill Lessee for charges incurred. Lessee shall leave said premises in the same condition as received at the commencement of this agreement if the improvements are removed; or

EXHIBIT "B"

c. Upon approval of City Council, Sunnyside shall negotiate new lease agreement at current terms with the current owners of the building and improvements.

2. **CLEARING AND GRADING PREMISES.** Lessee shall perform at Lessee's own expense any clearing or grading of the premises required. Grading and clearing shall be done to such standards and on such grades as Sunnyside may require. Lessee shall secure any grading permit that may be required prior to commencement of any grading.

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

4. **UTILITIES.** Lessee hereby covenants and agrees to pay all connection fees and charges for heat, light, gas, telephone, water and sewer, and for all other public utilities which shall be used in or charged against the leased premises during the full term of this Lease. Lessee shall at its cost construct and keep in repair a suitable lawful sewage system, in accordance with Yakima County health and sanitary regulations. Any permits therefor which may be required shall be secured by Lessee at Lessee's expense prior to installation.

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

EXHIBIT "B"

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

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

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

9. **LAWS AND REGULATIONS.**

9.1. Lessee shall conduct and carry on in said premises only the business for which said premises are leased, and shall not use the premises for illegal purposes. Lessee shall comply with all applicable laws, ordinances, codes and airport rules and regulations, and minimum standards both those in existence at the commencement of this Lease as well as those in existence in the future. Lessee shall be responsible for securing and maintaining all permits and paying, when due, all

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costs, fees, taxes, and other charges or benefits incidental to the lease, construction, and use of the leased premises.

9.2. Under the requirements imposed upon Sunnyside as recipient of Federal Aid Airport Program Grant Funds, the parties agree as follows:

a. Lessee covenants that it will not, in its operation at the Sunnyside Airport, on the basis of race, color, creed, or national origin, discriminate or permit discrimination against any person or group of persons in any manner prohibited by Parts 15 and 21 of the Federal Aviation Regulations (49 CFR), and in the event of such discrimination, Lessee agrees that Sunnyside has the right to take such action as the United States Government may direct to enforce this covenant.

b. With respect to any aeronautical services, Lessee agrees:

- (1) To furnish said aeronautical service on a fair, equal, and not unjustly discriminatory basis to all users thereof, and
- (2) To charge fair, reasonable and not unjustly discriminatory prices for each unit of service, provided, that Lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

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

11. **ENVIRONMENTAL ISSUES AND HAZARDOUS SUBSTANCES.**

11.1. **Hazardous Substances.** The term "Hazardous Substances", as used in this Lease, shall include, without limitation, flammables, explosives, radioactive materials, asbestos, polychlorinated biphenyls (PCBs), chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, petroleum or petroleum products, and substances

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declared to be hazardous or toxic under any law or regulation now or hereafter enacted or promulgated by any governmental authority, and as otherwise defined in Paragraph 11.7.

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

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

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

11.3. Environmental Clean-up.

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

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

c. Should any Authority or any third party demand that a cleanup plan be prepared and that a cleanup be undertaken because of any deposit, spill, discharge, or other release of Hazardous substances that occurs during the Term of this Lease, at or from the Premises or on the Airport, or which arises at any time from Lessee's use or occupancy of the Premises or the Airport, then Lessee shall, at Lessee's own expense, prepare and submit the required plans and all related bonds and other financial assurances; and Lessee shall carry out all such cleanup plans.

d. Lessee shall promptly provide all information regarding the use, generation, storage, transportation, or disposal of Hazardous Substances that is requested by Sunnyside. If Lessee fails to fulfill any duty imposed under this Paragraph 11.3 within a reasonable time, Sunnyside may do so; and in such case, Lessee shall cooperate with Sunnyside in order to prepare all documents Sunnyside deems necessary or appropriate to determine the applicability of the Laws to the Premises and Lessee's use thereof, and for compliance therewith, and Lessee shall execute all documents promptly upon Sunnyside's request. No such

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action by Sunnyside and no attempt made by Sunnyside to mitigate damages under any Law shall constitute a waiver of any of Lessee's obligations under this Paragraph 11.3.

e. Lessee's obligations and liabilities under this Paragraph 11.3 shall survive the expiration of this Lease.

11.4. Lessee's Indemnity.

a. Lessee shall indemnify, defend, and hold harmless Sunnyside, its elected officials, agents, and employees from all fines, suits, procedures, claims, and actions of every kind, and all costs associated therewith (including attorneys' and consultants' fees) arising out of or in any way connected with any deposit, spill, discharge, or other release of Hazardous Substances that occurs during the term of this Lease, at or from the Premises, anywhere on the Airport as a result of the Lessee's activities and/or involving Lessee's equipment and/or employees or which arises at any time from Lessee's use or occupancy of the Premises, or from Lessee's failure to provide all information, make all submissions, and take all steps required by all Authorities under the laws and all other environmental laws.

b. Lessee's obligations and liabilities under this Paragraph 11.4. shall survive the expiration of this Lease.

11.5. Compliance With Future Laws.

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

If, during the lease Lessee is required to alter, convert, replace the HVAC system serving the Premises in order to comply with any of the Laws concerning indoor air pollution or quality, or in order to meet any applicable limitation on, standard for, or guideline relating to indoor air quality or the emission of any indoor air pollutant, including, without limitation, those adopted by the Occupational Safety and Health Administration, the American Society of Heating, Refrigeration, and Air Conditioning Engineers, or the Environmental Protection Agency, Lessee shall be responsible for paying all costs or any such conversion or replacement, including

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without limitation, the purchase and installation of new equipment, and the alteration of existing HVAC equipment in the Premises to accommodate any new equipment.

11.6. Reporting Requirements.

Each party agrees to comply with all local, state and federal laws, rules, regulations or statutes requiring the submission, reporting, or filing of information about the storage, use, or discharge of chemical or other substances at the Premises or in the Building, and provide to the other a full copy of any such filing or report as submitted within 15 days of such submission. Sunnyside also agrees to provide Lessee with a copy of any such filing or report made by any other Lessee in the Building within 30 days of the date Sunnyside files or receives a copy of such submission.

11.7. Limited Use of Hazardous Substances by Lessee.

"Hazardous Substance" means any pollutant, contaminant, toxic or hazardous waste, dangerous substance, potentially dangerous substance, noxious substance, toxic substance, flammable, explosive, radioactive material, urea formaldehyde foam insulation, asbestos, PCBs, or any other substances the removal of which is required, or the manufacture, preparation, production, generation, use, maintenance, treatment, storage, transfer, handling or Ownership of which is restricted, prohibited, regulated or penalized by any and all federal, state, county, or municipal statutes or laws now or at any time hereafter in effect, including but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. secs. 9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. secs. 1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. secs. 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C., secs. 1251 et seq.), the Clean Air Act (42 U.S.C. secs. 7401 et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. secs. 2601 et seq.), the Occupational Safety and Health Act (29 U.S.C. secs. 651 et seq.), Sunnyside Airport's Spill Prevention Control & Countermeasure (SPCC) Plan, and the Airport Fuel Regulations, as these laws, plans, and regulations have been amended or supplemented.

The Lessee shall not use in any way, or permit or suffer the use of the Leased Premises or any part thereof or the Airport in general, to either directly or indirectly prepare, produce, generate, manufacture, refine, treat, transport, store, maintain, handle, dispose of, transfer, or process any Hazardous Substance as defined herein, unless it has received the prior written consent of Sunnyside, which may not be unreasonably withheld.

Any substance which Sunnyside permits the Lessee to treat, store, transfer, or dispose of must be done in strict compliance with any and all federal, state, county, or municipal statutes or laws now or at any time hereafter in effect, including but not limited to the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. secs. 9601 et seq.), the Hazardous

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Materials Transportation Act (49 U.S.C. secs. 1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. secs. 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C., secs. 1251 et seq.), the Clean Air Act (42 U.S.C. secs. 7401 et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. secs. 2601 et seq.), the Occupational Safety and Health Act (29 U.S.C. secs. 651 et seq.), Sunnyside Airport's Spill Prevention Control & Countermeasure (SPCC) Plan, and the Airport Fuel Regulations, as these laws, plans, and regulations have been amended or supplemented.

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

11.8. Right to Confirm Lessee's Environmental Compliance.

Lessee shall fully cooperate in allowing, from time to time, such examinations, tests, inspections, and reviews of the premises as Sunnyside, in its sole and absolute discretion, shall determine to be advisable in order to evaluate any potential environmental problems. Sunnyside expressly reserves the right to conduct examinations, tests, (including but not limited to a geohydrologic survey of soil and subsurface conditions), inspections, and reviews of the premises as Sunnyside in its sole and absolute discretion may determine to be necessary.

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

12. **WASTE WATER.** This Lease is subject to all statutes and regulations of the state of Washington with respect to waste water disposal. If Lessee's use of the premises results in the discharge or the potential for discharge of any waste waters other than domestic waste waters from the premises, Lessee shall immediately apply to the Washington State Department of Ecology for a State Waste Water Discharge Permit. Lessee shall advise Sunnyside which storm drains or other waste water facilities Lessee will utilize in disposing of waste waters. Sunnyside may designate storm sewers or other facilities which Lessee may use to dispose of waste waters. Sanitary sewers shall not be used for storm drainage or the discharge of any effluent

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deemed by the Airport Manager to be harmful to the sanitary sewer system. No hazardous or toxic materials shall be discharged into the sanitary or storm sewer systems. Lessee shall complete the Industrial/Commercial Waste Discharge Permit application.

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

14. **ASSIGNMENT AND SUBLETTING.**

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

14.2. Lessee may sublet the whole or any portion of any buildings on the premises, but not the real property (other than that part of the real property which is beneath the buildings), to a subtenant or subtenants; provided: (1) that the use to be made of the buildings is consistent with the zoning restrictions for the premises, (2) Sunnyside has in writing given its consent prior to the sublease being effective, (3) Sunnyside has received a true copy of the proposed sublease, and said sublease includes a section stating that the sublease is bound to the conditions of the master lease, (4) the subtenant shall meet the insurance requirements of the primary lease, which shall be evidenced by the Lessee providing proof of insurance for all subtenants to Sunnyside and shall comply with all hold harmless and indemnification provisions of this Lease. Sunnyside may not refuse to consent to such a sublease where the sublease meets the above requirements.

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

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

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

- a. Indemnification for such claims whether or not they arise from the sole negligence of Lessee or the concurrent negligence of both parties, except to the extent of Sunnyside's negligence or the negligence of one or more third parties;
- b. The duty to promptly accept tender of defense and provide defense to Sunnyside at Lessee's own expense;
- c. Indemnification of claims made by Lessee's own employees or agents; and,
- d. Waiver of Lessee's immunity under the industrial insurance provisions of Title 51 R.C.W. but only to the extent necessary to indemnify Sunnyside, which waiver has been mutually negotiated by the parties.

In the event it is necessary for Sunnyside to incur attorney's fees, legal expenses or other costs to enforce the provisions of this section, all such fees, expenses and costs shall be recoverable from Lessee.

In the event it is determined that R.C.W. 4.24.115 applies to this Lease Agreement, Lessee agrees to defend, hold harmless, and indemnify Sunnyside to the maximum extent permitted thereunder, and specifically for its negligence concurrent with that of

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Sunnyside to the full extent of Lessee's negligence. Lessee agrees to defend, indemnify, and hold harmless Sunnyside for claims by Lessee's employees and agrees to waiver of its immunity under Title 51 R.C.W., which waiver has been mutually negotiated by the parties.

17. FIRE INSURANCE.

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

17.2. In the event of the total or partial destruction by fire (or otherwise) of the building, structures, or facilities currently on the Premises or subsequently constructed by Lessee, Lessee shall have the obligation to reconstruct such facilities to their original condition within six (6) months after their destruction.

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

18. LIABILITY INSURANCE REQUIREMENTS. Lessee shall at all times carry and maintain liability insurance in a company or companies rated in the current edition of Best's General Ratings as at least A (Excellent), and Financial Size Category of not less than Class X, or in such other company or companies not so rated which may be acceptable to Sunnyside, insuring Lessee against all claims for damages for bodily injury, including death, and against all claims for damage and destruction of property, which may arise by the acts or negligence of the Lessee, its agents, employees or servants, or by any means of transportation whatsoever including owned, non-owned and hired automobiles, to the extent of at least One Million Dollars (\$1,000,000.00) combined single limit, or to the extent of at least the minimum required insurance limit as stated in the Airport's most current policy, whichever is greater. If fueling operations are contemplated as part of Lessee's operations, then pollution liability insurance is required in amounts established by City ordinance or policy as well.

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Sunnyside shall be named in all such policies as an additional insured for whom primary coverage is provided, and a duplicate true certified copy of the original of such insurance policy or policies shall be furnished to Sunnyside prior to the subsequent renewals of those insurance policies at each policy anniversary. Each such policy shall provide that the policy may not be canceled without the company first giving Sunnyside at least thirty (30) days written notice. Each such policy must provide for the severability of all insureds on the Lessee's policy, and shall include a cross-liability clause if severability is not otherwise provided for in the policy language.

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

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

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

22. SIGNS. All signs and symbols placed in the windows or doors or elsewhere about the premises, or upon the exterior part of the building, shall be subject to the approval of Sunnyside or Sunnyside's agents. In the event Lessee shall place signs or symbols on the exterior of said building or in the windows or doors or elsewhere where they are visible from the street that are not satisfactory to Sunnyside or Sunnyside's agents, Sunnyside or Sunnyside's agents may immediately demand the removal of such signs or symbols, and the refusal of Lessee to comply with such demand within a period of twenty-four (24) hours will constitute a breach of this Lease, and entitle Sunnyside to immediately recover possession of said premises in the manner provided by law. Any signs so placed on the premises shall be so placed upon the understanding and agreement that Lessee will remove same at the termination of the tenancy herein created and repair any damage or injury to the premises caused thereby, and if not so removed by Lessee, then Sunnyside may have the same removed at Lessee's expense. Lessee shall in respect to signs conform to all requests of the City of Sunnyside Sign Code and Building Code, and pay applicable fees.

23. ALTERATIONS. Lessee shall not make any alterations, additions or improvements to any building, not owned by Lessee and placed on said premises without consent of Sunnyside in writing first hand obtained, and all alterations, additions and improvements which shall be made, shall be at the sole cost and expense

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

24. DEFAULT AND RE-ENTRY. If any rents above reserved, or any part thereof, shall be and remain unpaid when the same shall become due, or if Lessee shall violate or default in any of the covenants and agreements therein contained, then Sunnyside may cancel this Lease upon giving twenty (20) days notice of intent to do, and may re-enter said premises. Notwithstanding such re-entry by Sunnyside, the liability of Lessee for the rent provided for herein shall not be extinguished for the balance of the term of this Lease, and Lessee covenants and agrees to make good to Sunnyside any deficiency arising from a re-entry and re-letting of the premises at a lesser rental than herein agreed to. Lessee shall pay such deficiency each month as the amount thereof is ascertained by Sunnyside, together with leasehold tax.

25. COSTS AND ATTORNEY'S FEES. If by reason of any default on the part of either party, litigation is commenced to enforce any provision of this Lease or to recover for breach of any provision of this Lease, the prevailing party shall be entitled to recover from the other party's reasonable attorney's fees in such amount as is fixed by the court, and all costs and expenses incurred by reason of the breach or default by the other under this Lease.

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

27. REMOVAL OF PROPERTY. In the event of any entry in, or taking possession of, the leased premises as aforesaid, Sunnyside shall have the right, but not

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the obligation, to remove from the leased premises all personal property located therein or thereon, and may store the same in any place selected by Sunnyside, including but not limited to a public warehouse, at the expense and risk of the owners thereof, with the right to sell such stored property without notice to Lessee, after it has been stored for a period of at least sixty (60) days, the proceeds of such sale to be applied first to the cost of such sale, second to the payment of the charges for storage, if any, and third to the payment of any other sums of money which may then be due from Lessee to Sunnyside under any of the terms hereof, and the balance, if any, to be paid to Lessee.

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

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

30. NONDISCRIMINATION.

30.1. Lessee, for himself, his heirs, personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained or otherwise operated on the said property described in this Lease for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended.

30.2. Lessee, for himself, his personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (1) no person on the grounds of race, color or national origin shall be excluded from the participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, or (2) that in the construction of any improvements in, over or under such land and the furnishing of services thereon, no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (3) that Lessee shall use the premises in compliance with all other

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requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended.

30.3. That in the event of breach of any of the above nondiscrimination covenants, Sunnyside shall have the right to terminate this Lease and to re-enter and repossess said land and facilities thereon, and hold the same as if said lease had never been made or issued.

31. LANDSCAPING. Lessee covenants to landscape the grounds pursuant to the provisions of the Sunnyside Municipal Code, in order to make the entire premises attractive both for the beneficial effect it will have upon commercial property at the airport and as an example to and in order to encourage other tenants to do the same. The landscape and drainage plan shall be submitted to Sunnyside at the same time as the building and plot plans herein before mentioned. Failure of Lessee to fully carry out this agreement shall be a breach of covenant of this Lease.

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

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

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

35. AIRCRAFT PARKING. Lessee shall at no time park or allow to be parked any aircraft on common or operational surfaces. All aircraft parked on the Premises shall not extend beyond the property line in such a manner as may impede aircraft movement. Lessee will provide Sunnyside upon written notice and within ten (10) days a list of the N-numbers of all aircraft being located on the leased premises.

36. FENCING AND GATES. Lessee shall install approved fencing and gates between buildings constructed on the site in order to restrict vehicular and pedestrian access to the aircraft movement area, pursuant to plans approved by the

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Airport Office. Lessee shall be responsible for maintaining any fencing installed on the premises and for keeping gates secured.

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

38. VENUE. The venue of any suit which may be brought by either party under the terms of this Lease or growing out of the tenancy under this Lease shall at the option of Sunnyside be in court or courts in Snohomish County, Washington.

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

- a. Location of all structures and sizes and heights thereof, together with size, height, and location of any future structures which Lessee anticipates may be placed on the premises.
- b. Location of all roads, driveways, entrances, and exits.
- c. Location of all parking areas and description of method of delineating such areas by curbs or other methods.
- d. Location of all utilities, including but not limited to those hereinafter mentioned in this paragraph, and in case of underground utilities, mention thereof.
- e. Landscaping. (See other paragraph(s) of this Lease for further details.)
- f. Open storage areas, and methods of screening such areas if such screening is to be done. (See Paragraph 35 hereof.)
- g. Interior and exterior drainage.
- h. Location and type of all fencing and gates.
- i. Site and exterior building lighting.
- j. Location of runways, taxiways, taxilanes and ramps and their distances from all proposed structures.

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

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PERSONAL GUARANTY

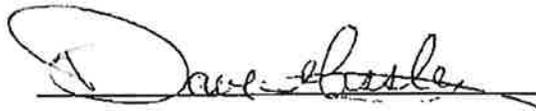
For and in consideration of financial accommodations given to Twin States Flying Service, Inc. a <corporation/limited liability company>, by the Landlord, and in consideration of the Landlord agreeing to deal with the corporate entity, the undersigned hereby jointly and severally guarantee payment to the Landlord of all liabilities and indebtedness which the <corporation/limited liability company> has incurred under the above-referenced lease agreements.

Landlord shall not be bound to exhaust its resources or to take any action against the <corporation/limited liability company> or other parties before being entitled to payment by the undersigned of all amounts hereby guaranteed, but may make such demand and take such actions as it deems advisable.

Notice of default on the part of the <corporation/limited liability company> is hereby waived; and the undersigned jointly and severally agree to remain bound, notwithstanding any extension or renewals of any indebtedness or any liabilities hereby guaranteed or any part thereof; and consent is hereby given to _____ to make such renewals and extensions as the <corporation/limited liability company>, at its option, may choose to grant or accept.

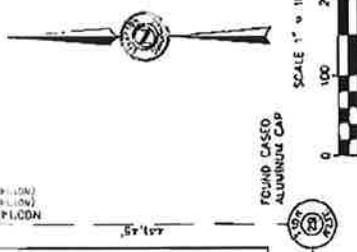
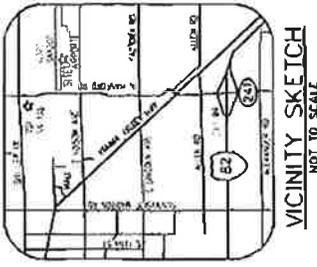
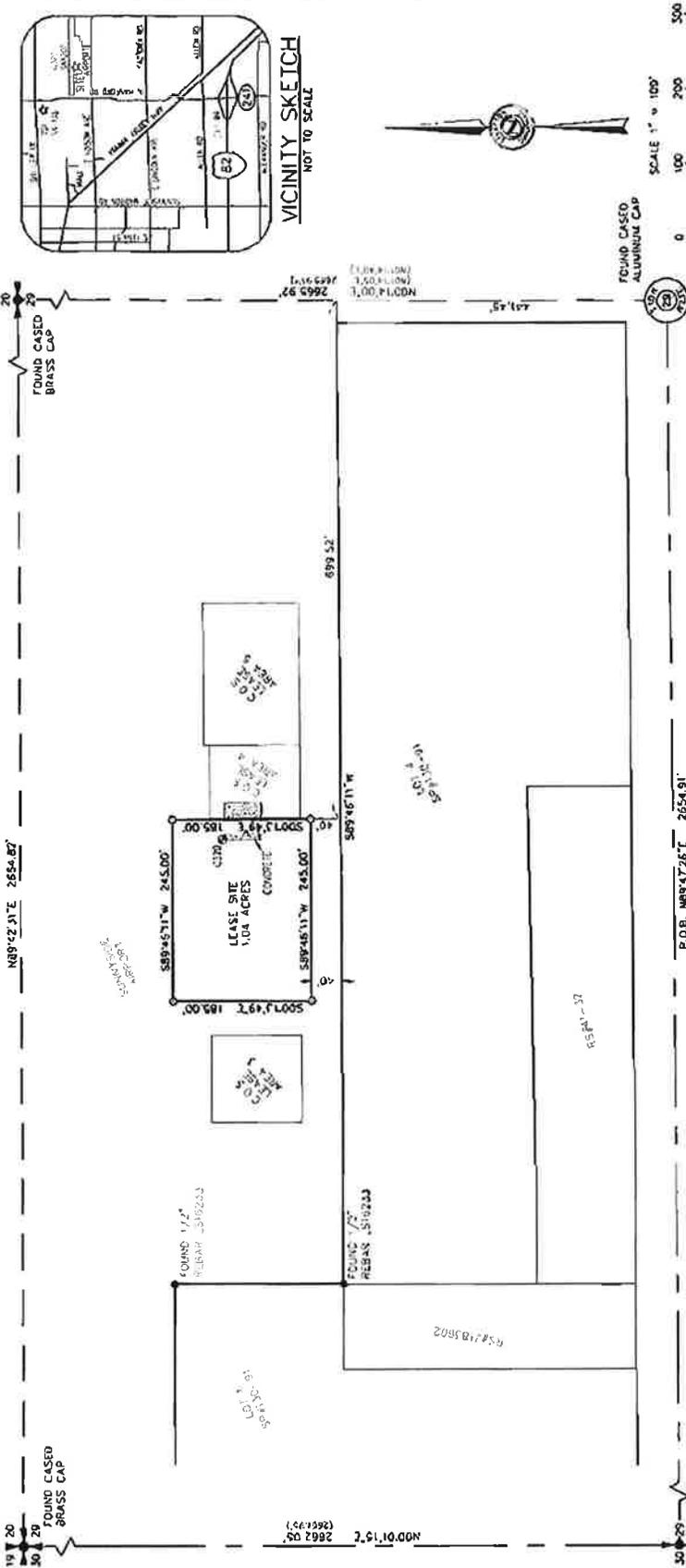
The undersigned guarantee and represent that they are members or directors and are financially interested in the above-named <corporation/limited liability company>.

DATED: 7-20-2010



RECORD SURVEY NO.

N.W. 1/4 OF SEC. 29, T.10N., R.23E., W.M.
CITY OF SUNNYSIDE,
YAKIMA COUNTY, WASHINGTON



- LEGEND**
- ⊙ SET 5/8\" REBAR W/ ORANGE PLASTIC CAP
 - ⊙ MARKED STATION AAD 35021
 - ⊙ FOUND AS INDICATED
 - ⊙ BASIS OF BEARING
 - ⊙ FOUND USGS BENCHMARK C 320
 - ⊙ DIMENSION PER SP410-91
 - ⊙ DIMENSION PER RS411-32
 - ⊙ CITY OF SUNNYSIDE LEASE, NO.1 RECORDED

DESCRIPTION-LEASE
THAT PORTION OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 29, TOWNSHIP 10 NORTH, RANGE 23 EAST, W.M., YAKIMA COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:
COMMENCING AT THE CENTER OF SECTION QUARTER CORNER SAID CORNER BEARS NORTH 89°47'28\" EAST 2854.91 FEET FROM THE WEST QUARTER QUARTER OF SAID SEC. 29; THENCE NORTH 0°14'00\" EAST ALONG THE EASTERLY LINE OF SAID NORTHWEST QUARTER 441.68 FEET; THENCE SOUTH 89°45'11\" WEST ALONG THE NORTHERLY LINE OF LOT 4 PROJECTED ON SHORT PLAT NO. 130-91 RECORDS OF S.W.D. YAKIMA COUNTY 699.52 FEET, THENCE NORTH 0°13'49\" WEST 4800 FEET TO THE TRUE POINT OF BEGINNING.
THENCE CONTINUING NORTH 0°13'49\" WEST 185.00 FEET.
THENCE SOUTH 89°45'11\" WEST 245.00 FEET.
THENCE SOUTH 89°45'11\" WEST 245.00 FEET.
THENCE SOUTH 89°45'11\" WEST PARALLEL WITH AND 40.00 FEET NORTHERLY OF THE NORTHERLY LINE OF SAID LOT 4 A DISTANCE OF 245.00 FEET TO THE SAID TRUE POINT OF BEGINNING.
CONTAINS 1.04 ACRES

SURVEYOR'S NOTE
THIS SURVEY IS FOR THE CITY OF SUNNYSIDE (YAKIMA COUNTY) AND IS SUBJECT TO EASEMENTS, RESERVATIONS, COVENANTS AND RESTRICTIONS OF RECORD AND IN VIEW THEREOF.

SURVEYOR'S CERTIFICATE
THIS MAP CORRECTLY REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE SURVEY RECORDING ACT AT THE REQUEST OF JAY HESTER IN MARCH OF 2010

AUDITOR'S CERTIFICATE
FILED FOR RECORD THIS _____ DAY OF _____ 2010 AT _____
JAY HESTER, COUNTY AUDITOR
AGROSA A. BUCK, P.L.S. DEPUTY

INDEX

K	X	SEC	T	R
		28	10N	23E

SURVEY FOR
CITY OF Sunnyside WASHINGTON

STATION SURVEYING & MAPPING, PC
702 S. WASHINGTON ST. SUITE 100
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WWW.STATIONSURVEYING.COM

4387851.DWG 3/2010
DATE: 03/09/10 SHEET 1 OF 1
DRAWN BY: DCJ JOB # 4367