

EQUIPMENT STORAGE AREA USE AGREEMENT

This **EQUIPMENT STORAGE AREA USE AGREEMENT** ("Agreement"), dated this _____ day of _____, 20__ is made by and between the **PORT OF SEATTLE** ("Port"), a municipal corporation of the State of Washington and _____ ("User").

- 1) **Pre-Condition.** As a pre-condition to execution of this Agreement, User must have a valid License to Operate at Seattle Tacoma International Airport. User's License is No. _____ [or dated _____]
- 2) **Duration.** This Agreement shall be for a period of one (1) month commencing _____ through _____. Thereafter, this Agreement shall continue on a month to month basis unless cancelled, revoked or terminated under a provision contained herein.
- 3) **Location.** This Agreement pertains to the Port's common use ground service equipment storage area at Seattle-Tacoma International Airport ("the Premises"). A legal description of the Premises is attached as Exhibit A. A drawing reflecting the exact location of the Premises is attached as Exhibit B. The Port reserves the right to change the location of the Premises on three (3) days advance written notice to User.
- 4) **Fees.** For the use of the Premises, User shall pay the Port _____ Dollars (\$_____) per month. The Port reserves the right to increase such fees on thirty (30) days advance written notice to User. All payments shall be sent to the Port at:

Port of Seattle
P.O. Box 34249-1249
Seattle, WA 98124-1249
- 5) **Permitted Use.** User's only use of the Premises shall be on a non-exclusive basis and solely for the purpose of parking/storing User's ground service equipment.
- 6) **Reservations on Use.**
 - a) The Port reserves the right to give 24 hours notice of unavailability of the Premises for any reason which in the discretion of the Port, requires a temporary closure of the facility. The Port agrees to use its best efforts to provide alternative facilities in the event of any such closure.
 - b) User further understands and agrees that its use of the Premises is non-exclusive; that the Port has similar agreements with other users; and that User is not entitled to exclusive use of any one specific area of the Premises.
 - c) The Port reserves the right to post certain rules governing the conduct of User and/or its employees, while in the Premises, which rules may be amended by the Port, at its discretion, from time to time.
- 7) **Acceptance of Premises.** User has examined the Premises and accepts them in their present condition.
- 8) **Liability.**

- a) The Port, its Commission, employees, and agents shall not be liable for any injury (including death) to any persons or for damage to any property regardless of how such injury or damage be caused, sustained, or alleged to have been sustained by User or by others, including but not limited to all persons directly or indirectly employed by User, or any agents, contractors, subcontractors, licensees or invitees of User, as a result of any condition (including existing or future defects in the Premises) or occurrence (including failure or interruption of utility service) whatsoever related in any way to the Premises and the areas adjacent thereto, or related in any way to the use or occupancy of the Premises and of areas adjacent thereto by User.
- b) User shall defend (with counsel approved by the Port), fully indemnify, and hold entirely free and harmless the Port from any and all loss, damages, expenses, attorneys' fees, consultants' fees, court costs and other costs for or from: (i) anything and everything whatsoever arising from the condition of the Premises during the use or occupancy of the Premises by User; and ii) any accident, injury, death or damage to any party however caused in or about the Premises during the use or occupancy of the Premises by User, whether or not caused by the negligence of User or any third party; and (iii) any fault or negligence by User; and (iv) any failure by User to comply with any of the covenants, terms and conditions contained in this Agreement; **PROVIDED**, however that this paragraph shall not be construed so as to require User to defend, indemnify or hold harmless the Port from such claims, damages, losses, or expenses caused by or resulting from the sole negligence of the Port. The obligation of this paragraph shall not be construed to negate, abridge, or otherwise reduce any other right or obligation which would otherwise exist as to any person or entity described in this paragraph.
- c) In any and all claims against the Port by an employee of User, the indemnification obligation of subparagraph b of this paragraph shall not be limited in any way by any limitation on the amount or type of damages or compensation benefits payable by or for the User under applicable workers' or workmen's compensation, benefit, or disability laws (including, but not limited to, the Industrial Insurance laws, Title 51 of the Revised Code of Washington). **USER EXPRESSLY WAIVES ANY IMMUNITY USER MIGHT HAVE UNDER SUCH LAWS, AND, BY AGREEING TO ENTER INTO THIS AGREEMENT, ACKNOWLEDGES THAT THE FOREGOING WAIVER HAS BEEN MUTUALLY NEGOTIATED BY THE PARTIES.**
- d) For the purpose of this paragraph only, the term "Port" shall mean and include the Port and its Commissioners, other officers, employees, and agents, and the term "User" (unless otherwise specified) shall mean and include User, its agents and any person directly or indirectly employed by any of them, all persons directly or indirectly employed by User, or any agents, contractors, subcontractors, licensees or invitees of User, or anyone for whose acts any of them may be liable.

9) **Insurance.** User agrees to provide the following insurance:

Commercial General Liability insurance on ISO Form CG 00 01 10 01 (or equivalent) for third party property damage, bodily injury, personal and advertising injury, and medical payments in an amount which is not less than \$1,000,000 (or greater where required by the Port) per occurrence and \$1,000,000 annual aggregate. The insurance shall cover liability arising from premises, operations, independent contractors, products completed operations, personal and advertising injury, and liability assumed under an insured contract. The policy shall carry a minimum of \$500,000 of legal liability coverage with respect to damage to leased or rented premises. The User's insurance shall be primary and non-contributory with respect to any insurance the Port carries and apply separately to each

insured. Port shall be named as an additional insured using ISO Form CG 20 26 11 85 or an equivalent endorsement approved by the Port.

10) Equipment.

- a) All equipment brought by User onto the Premises pursuant to this Agreement shall remain the sole responsibility of User.
- b) The Port accepts no liability for User's equipment. When not in use, User's equipment shall remain on the Premises or in an area to which User has otherwise received permission to enter. Equipment left in unauthorized areas is subject to towing, impoundment and storage charges. User shall store/park its equipment in a neat and orderly fashion and shall not interfere with any other user's access to, or use of, the equipment parking/storage area.
- c) Upon termination or revocation of this Agreement, User shall immediately remove all of its equipment from the Premises at no cost to the Port. User shall repair all damages to the Premises resulting from the use of its equipment.

11) **Compliance with Local Laws and Airport Regulations.** User shall comply with all applicable federal, state and local laws and regulations, and the Schedule of Rules and Regulations for Seattle-Tacoma International Airport ("Airport Regulations"), as amended.

12) **Default or Termination of User's License to Operate.** The occurrence of a default under User's License to Operate (defined in paragraph 1 above) constitutes a default of this Agreement by User, with or without notice from the Port, and subject to the cancellation/revocation provisions of paragraph 13 below.

13) **Cancellation/Revocation.** User acknowledges and agrees that by entering into this Agreement the Port grants User a license to use the Premises, as such, the Port may, without liability and without notice, cancel or revoke this Agreement in the event User fails to comply with any of the provisions contained herein, including failure to pay the required fees. The Port may immediately stop User's use of the Premises if such use becomes a nuisance or annoyance to the Port or any of its tenants, or if User fails to comply with any federal, state or local law, including the Airport Regulations.

14) **Termination.** The Port or User may, at any time at its convenience or when deemed in the best interest of the Port or User, respectively, elect to terminate this Agreement prior to the end of the term set forth in Paragraph 1. Termination shall be effective thirty (30) days after the Port's or User's mailing of a written notice thereof to the other party.

15) **Maintenance.** User shall be responsible for returning the Premises in the same condition in which received, normal wear and tear excepted. In the event of any damage to the Premises by User or any licensee or invitee of User, User shall promptly repair such damage or reimburse the Port for its costs in doing so.

16) **Utilities.** The Port shall provide all utilities necessary for User's use of the Premises during the term of this Agreement.

- 17) **Inspection and Right of Port Use.** The Port reserves the right to inspect the Premises at any and all reasonable times throughout the term of this Agreement; The right of inspection reserved to the Port hereunder shall impose no obligation on the Port to make inspections to ascertain the condition of the Premises, and shall impose no liability upon the Port for failure to make such inspections. The Port shall have the right to use and enjoy the Premises for whatever purpose it may desire so long as it does not unreasonably interfere with User's use of the Premises as authorized under this Agreement.
- 18) **Signs.** No signs or other advertising matter, symbols, canopies or awning's shall be attached to or painted on or within the Premises, without the prior written approval of the Port. At the expiration or sooner termination of this Agreement, all such signs, advertising matter, symbols, canopies or awnings attached to or painted by User shall be removed by User at its own expense, and User shall repair any damage or injury to the Premises and correct any unsightly condition caused by the maintenance and removal of said signs, etc.
- 19) **Assignment.** This Agreement may not be assigned by User. Any such prohibited assignment shall result in immediate cancellation of this Agreement.
- 20) **Not a Leasehold.** No legal title or leasehold interest in the Premises shall be deemed or construed to have been created or vested in User by anything contained herein.
- 21) **Liens and Encumbrances.** User shall keep the Premises free and clear of any liens and encumbrances arising out of the use of the Premises by User. At the Port's request, User shall furnish the Port with written proof of payment of any item which would or might constitute the basis for such a lien on the Premises if not paid.
- 22) **Notices.** All notices hereunder may be delivered or mailed. If mailed, they shall be sent to the following respective addresses:

To Port:

PORT OF SEATTLE
Attention Aviation Properties
P.O. Box 68727
Seattle, WA 98168

To User:

or to such other respective addresses as either party hereto may hereafter from time to time designate in writing.

- 23) **Environmental Standards.**

- a) "Law or Regulation" as used herein shall mean environmentally related local, state or federal law, regulation, ordinance or order (including without limitation any final order of any court of competent jurisdiction), now or hereafter in effect. "Hazardous Substances" as used herein shall mean any substance or material defined or designated as a hazardous waste, toxic substance, or other pollutant or contaminant, by any Law or Regulation.
- b) User shall not allow the presence in or about the Premises of any Hazardous Substance in any manner that could be a detriment to the Premises or in violation of any Law or Regulation. User shall not allow any Hazardous Substances to migrate off the Premises, or the release of any Hazardous Substances into adjacent surface waters, soils, underground waters or air. User shall provide the Port with User's USEPA Waste Generator Number, and with copies of all Material Safety Data Sheets (MSDS), Generator Annual Dangerous Waste Reports, environmentally related regulatory permits or approvals (including revisions or renewals) and any correspondence User receives from, or provides to, any governmental unit or agency in connection with User's handling of Hazardous Substances or the presence, or possible presence, or any Hazardous Substance on the Premises.
- c) If User, or the Premises, is in violation of any Law or Regulation concerning the presence or use of Hazardous Substances or the handling or storing of hazardous wastes, User shall promptly take such action as is necessary to mitigate and correct the violation. If User does not act in a prudent and prompt manner, the Port reserves the right, but not the obligation, to come onto the Premises, to act in place of the User (User hereby appoints the Port as its agent for such purposes) and to take such action as the Port deems necessary to ensure compliance or to mitigate the violation. If the Port has a reasonable belief that User is in violation of any Law or Regulation, or that User's actions or inaction's present a threat of violation or a threat of damage to the Premises, the Port reserves the right to enter onto the Premises and take such corrective or mitigating action as the Port deems necessary. All costs and expenses incurred by the Port in connection with any such actions shall become immediately due and payable by User upon presentation of an invoice therefor.
- d) The Port shall have access to the Premises to conduct environmental inspections. In addition, User shall permit the Port access to the Premises at any time upon reasonable notice for the purpose of conducting environmental testing at the Port's expense. User shall not conduct or permit others to conduct environmental testing on the Premises without first obtaining the Port's written consent. User shall promptly inform the Port of the existence of any environmental study, evaluation, investigation or results of any environmental testing conducted on the Premises whenever the same becomes known to User, and User shall provide copies to the Port.
- e) Prior to vacation of the Premises, in addition to all other requirements under this Agreement, User shall remove any Hazardous Substances placed on the Premises during the term of this Agreement or User's use of the Premises and shall demonstrate such removal to the Port's satisfaction.
- f) No remedy provided herein shall be deemed exclusive. In addition to any remedy provided above, the Port shall be entitled to full reimbursement from User whenever the Port incurs any costs resulting from User's use or management of Hazardous Substances on the Premises, including but not limited to, costs of clean-up or other remedial activities, fines or penalties assessed directly against the Port, injuries to third persons or other properties, and loss of

revenues resulting from an inability to use or market the property due to its environmental condition (even if such loss of revenue occurs after the expiration or earlier termination of this Agreement).

- g) In addition to all other indemnities provided in this Agreement, User agrees to defend, indemnify and hold the Port free and harmless from any and all claims, causes of action, regulatory demands, liabilities, fines, penalties, losses, and expenses, including without limitation cleanup or other remedial costs (and including attorneys' fees, costs and all other reasonable litigation expenses when incurred and whether incurred in defense of actual litigation or in reasonable anticipation of litigation), arising from the existence or discovery of any Hazardous Substance on the Premises, or the migration of any Hazardous Substance from the Premises to other properties or into the surrounding environment, whether

- (i) made, commenced or incurred during the term of this Agreement, or
 - (ii) made, commenced or incurred after the expiration or termination of this Agreement if arising out of events occurring during the term of this Agreement.

- 24) **Captions.** The captions in this Agreement are for convenience only and do not in any way limit or amplify the provision of this Agreement.

- 25) **Invalidity of Particular Provisions.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to person or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.

- 26) **Nondiscrimination - Services.**

- a) User agrees that it will not discriminate by segregation or otherwise against any person or persons because of race, sex, age, creed, color or national origin in furnishing, or by refusing to furnish, to such person, or persons, the use of the facility herein provided, including any and all services, privileges, accommodations, and activities provided thereby;
 - b) It is agreed that User's noncompliance with the provisions of this clause shall constitute a material breach of this Agreement. In the event of such noncompliance, the Port may take appropriate action to enforce compliance, may terminate this Agreement, or may pursue such other remedies as may be provided by law.

- 27) **Nondiscrimination - Employment.** User covenants and agrees that in all matters pertaining to this Agreement, the User shall at all times conduct its business in a manner which assures fair, equal and nondiscriminatory treatment of all persons without respect to race, sex, age, color creed or national origin, and in particular:

- a) User will maintain open hiring and employment practices and will welcome applications for employment in all positions from qualified individuals who are members of racial or other minorities, and
 - b) User will comply strictly with all requirements of applicable federal, state and local laws or regulations issued pursuant thereto relating to the establishment of nondiscriminatory requirements

in hiring and employment practices and assuring the service of all patrons or customers without discrimination as to any person's race, sex, age, creed, color or national origin.

28) **Governing Law.** This Agreement shall be governed by the laws of the State of Washington. Venue for any action between the Port and User arising out of or in connection with this Agreement shall be in King County, Washington.

29) **Entire Agreement/Amendment.** This Agreement, together with any attachments or exhibits incorporated by reference, constitutes the entire agreement between the parties regarding the subject matter it sets forth and shall supersede all prior agreements, representations, correspondence or communications relating to said subject matter. No modification or amendment of this Agreement shall be valid and effective unless evidenced by written agreement of the parties.

USER:

PORT OF SEATTLE

By: _____

By: _____

It's: _____

It's: _____

STATE OF _____)
_____) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the _____ of the _____, a corporation of the State of _____, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

SUBSCRIBED AND SWORN to before me this _____ day of _____, 20__.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public in and for the State of _____,
residing at _____.
My Commission Expires: _____.

STATE OF WASHINGTON)
_____) ss.
COUNTY OF KING _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the _____ of the PORT OF SEATTLE, a municipal corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

SUBSCRIBED AND SWORN to before me this _____ day of _____, 20__.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public in and for the State of Washington, residing at _____.
My Commission Expires: _____.

EXHIBIT A

Legal Description of Airfield Areas

EXHIBIT B

Map of Premises