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Skagit County Auditor

2/26/2010 Page

1 of 42 2:08PM

Document Title: Lease Agreement

Reference Number:

Grantor(s):

☐ additional grantor names on page ____.

1. Port of Anacortes

2.

Grantee(s):

☐ additional grantee names on page ____.

1. 480 North Anacortes LLC

2.

Abbreviated legal description:

☐ full legal on page(s) ____.

The portions of the NE quarter of Section 27, Township 35 North
Range 1 East, W.M. parcel #1 hangar #1, parcel #2 hangar pad #7

Assessor Parcel / Tax ID Number:

☐ additional tax parcel number(s) on page ____.

P106729

P32356

**PORT OF ANACORTES
AERONAUTICAL LEASE AGREEMENT**

THIS LEASE AGREEMENT (the "Lease"), is made as of this 4th day of December, 2007 by and between the PORT OF ANACORTES, a Washington municipal corporation ("Lessor") and 48° NORTH AVIATION, LLC, a Washington limited liability company ("Lessee").

WHEREAS, Lessor is the owner of real property known as the Anacortes Airport (the "Anacortes Airport"), in the City of Anacortes, Skagit County, Washington, as legally described in Exhibit "A" attached hereto (the "Property").

WHEREAS, Lessee desires to lease a portion of the Property located in the eastern portion of Phase 1 and 2 of the Development Agreement dated March 29, 2005 with the City of Anacortes subject to the terms and conditions therein and as depicted on Exhibit "B" (collectively the "Premises") on which to construct hangars to support general aviation at the Anacortes Airport.

WHEREAS, Lessor is agreeable to entering into a lease with Lessee for the Premises.

NOW THEREFORE, in consideration of the mutual covenants set forth herein, the parties hereby agree as follows.

**ARTICLE I
Premises, Term, Renewals**

1.1 **PREMISES**. Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the Premises. The Premises will include both an area for Lessee to construct building(s) (the "Building Footprint") and an apron area (the "Apron Area"). The Premises, which is depicted on Exhibit "B", is further described as follows:

	<u>Dimensions</u>	<u>Area</u>
Building Footprint No. 1	50' x 350'	17,500 s.f.
Apron Area No. 1	20' x 350'	17,600 s.f.
Building Footprint No. 2	70' x 420'	29,400 s.f.
Apron Area No. 2	20' x 420'	21,200 s.f.
		85,700 s.f.

1.1.1 *Adjustment to Premises Size*. As provided in Article V below, the Lessee shall submit building plans for Lessor's approval (the "Lessee's Building Plans"). Upon Lessor's final approval of Lessee's Building Plans, the square footage of the Premises shall be finalized to identify the respective square footage of the Building Footprint and the Apron Area. This may result in a reduction or an increase in the size of the Premises.

1.1.2 *Access*. Lessee shall have access to the Premises over those portions of the Anacortes Airport that are from time to time used for roads, runways, taxi lanes, taxi ways and ramps. This right of use shall be non-exclusive and subject to all normal Anacortes Airport operations and maintenance.



1.1.3 **Survey.** Lessee shall, at its own expense, obtain a survey from a licensed land surveyor, for the purposes of fully establishing and marking the exact location and bounds of the Premises within the Property with the good-faith cooperation of Lessor. Prior to the commencement of any construction on the Premises by Lessee, the said survey shall be submitted to Lessor for review and approval, and shall thereafter be incorporated into this agreement as Exhibit "C".

1.1.4 **Easements of Record.** The Premises referenced above is subject to restrictions, easements, and reservations of record. Lessor reserves for itself and its agents a non-exclusive easement over and across the Premises to make inspections, repairs, alterations, and/or modifications to the structural components and utility services; provided the rights reserved to Lessor hereunder shall impose no obligation on Lessor to make such inspections, repairs, alterations, and/or modifications. Lessor shall take into consideration the effects of any such repairs, alterations, and/or modifications on the conduct of Lessee's business, but Lessor shall not be responsible for any reduced efficiency, loss of business, injury, or damage of any kind, to any person or property, occasioned by Lessor's exercise of said easement rights, including without limitation, any reduced efficiency or loss of business.

1.2 **TERM.** The term of this Lease ("Term") shall be for thirty (30) years beginning on the mutual execution hereof ("Commencement Date").

1.3 **RENEWAL.** Subject to the terms and conditions herein, Lessee shall have the right to renew this Lease for two (2) ten (10) year periods (the "Extension Period(s)") by giving written notice of such intention to Lessor at least one hundred twenty (120) days prior to the expiration of the term of this Lease. Lessee shall not be entitled to renew this Lease unless the Lease is in good standing at the time of renewal and the Lessee is not in default under the terms of this Lease or any other lease or agreement with the Lessor. The terms and conditions of the Extension Period shall be the same as set forth in this Lease except that the rental amount shall be recalculated as provided herein.

ARTICLE II

Compensation, Rental Adjustments,

Abated Rent, and Lease Security

2.1 **RENT.** The term "Rent," as used herein, includes base rent, applicable Washington State leasehold excise tax, and other fees and charges assessed herein. Except as expressly provided elsewhere herein, Rent shall be paid without the requirement that Lessor provide prior notice or demand, and shall not be subject to any counterclaim, setoff, deduction, defense or abatement.

2.1.1 **Rent Due.** Rent shall be paid monthly in advance on or before the first (1st) day of each month beginning upon (i) the first (1st) day of the month following the month in which the Lessor approves Lessee's Building Plans pursuant to Article V below or (ii) June 1, 2008, whichever occurs first.

2.1.2 **Calculation of Annual Rental Rate per Square Foot.** The annual rental rate for each square foot of the Premises that is designated as Building Footprint shall be calculated by taking the Fair Market Value (the "FMV") per square foot of the Premises that is identified as Building Footprint multiplied by an annual Rate of Return of ten percent (10%). Likewise, the

annual rental rate for each square foot of the Premises that is designated as Apron Area shall be calculated by taking the FMV per square foot of the Premises that is identified as Apron Area multiplied by an annual Rate of Return of ten percent (10%). For purposes of calculating the initial annual rental rates under this Lease, the FMV of Building Footprint shall be \$4.50/s.f. and the FMV of Apron Area shall be \$2.25. This means that after application of the ten percent (10%) annual Rate of Return, the initial annual rental rate for Building Footprint is \$0.45/year and the initial annual rental rate for Apron Area is \$0.225/year.

2.1.3 *Initial Rental Amount.* The initial monthly rent shall be calculated as follows:

$((\text{Total s.f. Building Footprint}) \times \$0.45/\text{year} + (\text{Total s.f. Apron Area}) \times \$0.225/\text{year}) / 12$
months = initial monthly rent

2.1.4 *Default to Building Footprint Rate.* If upon June 1, 2008, Lessor has not approved Lessee's Building Plans, for any reason, then each square foot of the Premises shall be designated as Building Footprint for purposes of the above calculation until Lessee's Building Plans are approved by Lessor at which time the rent amount shall be recalculated.

2.2 **ADDITIONAL RENT.** The Rent may be further adjusted by the addition of other sums and charges specified elsewhere in this Lease including, but not limited to, those amounts incurred for utilities, taxes and assessments, all of which shall constitute additional rent. Lessor shall have all of the same rights and remedies with respect to any additional rent or charges in the event of nonpayment or late payment as are available to it in the event of nonpayment or late payment of the rental.

2.3 **RENTAL ADJUSTMENTS.**

2.3.1 *Annual Adjustments.* Except as otherwise provided herein, the rental shall be adjusted at each anniversary of the Commencement Date during the term of this Lease, including any extension period, to compensate for the effect of inflation on the rental, with the exception that on the fifth (5th) anniversary of the Commencement Date of this Lease and every fifth (5th) anniversary thereafter, the rent shall be adjusted based on the subsection contained herein entitled "Periodic Adjustments" in order to compensate for changes in market conditions. The date of any such annual adjustment in rental is called the "Change Date". In order to calculate the inflation rate, the rental rate being adjusted shall be multiplied by a multiplier equal to the change in the Price Index computed as follows: (rental being adjusted) X (Price Index for the most recent month available prior to the Change Date divided by the Price Index for the month used for the most recent Reference Date). The most recent Price Index available at the commencement of this Lease is 208.936 (October 2007). In applying this formula the following definitions apply:

2.3.1.1 "Bureau" means the U.S. Department of Labor Bureau of Labor Statistics or any successor agency that shall issue the indices or data referenced in the succeeding subsection entitled "Formula."

2.3.1.2 "Reference Date" herein shall initially be the Commencement Date of this Lease, and after the end of the first lease year shall mean the anniversary of the Commencement Date immediately preceding the anniversary upon which the rental adjustment will become effective.



2.3.1.3 "Price Index" means the U.S. City Average Consumer Price Index for all Urban Consumers issued from time to time by the Bureau, or any other measure hereafter employed by the Bureau in lieu of the price index that measures the cost of living nationally, or if said Bureau should cease to issue such indices and any other agency of the United States should perform substantially the same function, then the indices issued by such other agency.

2.3.2 *Periodic Adjustments.* On the fifth (5th) year anniversary of the Commencement Date of this Lease (the "Periodic Adjustment Date") and every fifth (5th) year thereafter, including any extension period, the rental shall be adjusted by Lessor to compensate for changes in market value of the Premises; provided that in no case shall the adjusted rental be less than the rental being adjusted. The rent shall be based on ten percent (10%) return on the fair market value of the Premises. If the value cannot be agreed upon between Lessor and Lessee, the value shall be determined in the following manner:

2.3.2.1 Each party shall appoint a disinterested MAI certified appraiser, such appraiser having at least ten (10) years professional experience as an appraiser of properties in Skagit County. The two appraisers so appointed shall appoint a third appraiser having those qualifications. The three appraisers shall proceed without delay to make an appraisal of the Premises in the manner hereinafter provided and notify the parties in writing of their valuation, which shall be final and binding upon the parties. If all three appraisers cannot agree, the valuation agreed to by any two, or if no two appraisers can agree, the average of the two valuations most nearly equal to each other, shall be binding on the parties. Each appraiser shall determine the Fair Market Value (FMV) of the Premises which is the highest price estimated in terms of money which a property will bring if exposed for sale in the open market allowing reasonable time to find a purchaser who buys with the knowledge of all the uses to which it is adapted and for which it is capable of being used, also frequently referred to as the price at which a willing seller would sell and a willing buyer buy, neither being under abnormal pressure. FMV will fluctuate based on the economic conditions of the area. The rent shall then be based on ten percent (10%) return on the FMV of the Premises as determined by the appraisers, as set forth above, which shall be retroactive to the Periodic Adjustment Date. The expense of each appraisal conducted in accordance herewith shall be borne equally by both parties.

2.4 **ABATED RENT.** If this Lease provides for a postponement of any monthly rental payments, a period of free rent or other rent concession (including but not limited to the rent abated from the Commencement Date to the first rent payment), such postponed rent or free rent is called the "Abated Rental." Lessee shall be credited with having paid all of the Abated Rental on the expiration of the term of this Lease only if Lessee has fully, faithfully, and punctually performed all of Lessee's obligations hereunder, including the payment of all rent (other than the Abated Rental) and all other monetary obligations, including but not limited to any applicable Washington State leasehold excise tax, and the surrender of the Premises in the physical condition required by this Lease. Lessee acknowledges that its right to receive credit for the Abated Rental is absolutely conditioned upon Lessee's full, faithful and punctual performance of its obligations under this Lease. If Lessee defaults and does not cure within any applicable grace period, the Abated Rental shall immediately become due and payable in full and this Lease shall be enforced as if there were no such rent abatement or other rent

concession. In such case, Abated Rental shall be calculated based on the full initial rent payable under this Lease, plus interest thereon at the rate of twelve percent (12%) per annum from date each monthly rental payment was postponed.

2.5 LEASE SECURITY. In compliance with the requirements of state law, on or before the first (1st) day of the month following the month in which the Lessor approves Lessee's Building Plans pursuant to Article V below or June 1, 2008, whichever occurs first, Lessee agrees that it will secure the performance of the rental portion of this Lease by procuring and maintaining, during the term of this Lease, a corporate surety bond, or by providing other financial security satisfactory to Lessor (herein referred to as the "Bond") in an amount not less than one hundred percent (100%) of the sum of annual Rent, plus state leasehold tax. The Bond shall be in a form and issued by a surety company acceptable to Lessor and shall comply with the requirements of Washington law. Failure to comply with this requirement shall be grounds for termination of this Lease upon ten (10) days notice by Lessor. Such Bond shall be kept always in effect during the term of this Lease; failure to comply with this requirement shall render Lessee in default. The Bond shall be increased annually to reflect any adjustments in annual Rent.

2.5.1 Collection of Bond. Upon any default by Lessee in its obligations under this Lease, Lessor may collect on the Bond to offset the liability of Lessee to Lessor. Collection on the Bond shall not relieve Lessee of liability, shall not limit any of Lessor's other remedies, and shall not reinstate or cure the default or prevent termination of the Lease because of the default.

ARTICLE III

Condition of Property, Delivery of Possession, Quiet Enjoyment, Condition of Property

3.1 CONDITION OF PROPERTY. Lessee accepts the Premises, including any existing improvements thereon, "as is" without further liability for maintenance or repair on the part of the Lessor, and is not relying on any representations of Lessor as to the condition, suitability, zoning restrictions, or usability, except as specifically noted herein. Lessee further agrees to keep the Premises and all improvements thereon continually in good condition throughout the term of the Lease. Lessee shall make any changes in the Premises necessary to conform to federal, state and local law applicable to Lessee's use of the Premises. Lessee has the right to terminate this Lease if, within thirty (30) days following the Commencement Date of this Lease, Lessee provides written notice to Lessor that the soil and geotechnical conditions of the property are not satisfactory for Lessee's intended use as solely determined by Lessee.

3.2 DELIVERY OF POSSESSION AT COMMENCEMENT. Lessor shall deliver possession of the Premises at the Commencement Date. If Lessor shall, for any reason, be unable to deliver possession of the Premises at the Commencement Date to Lessee, Lessor shall not be liable for any damage caused thereby to Lessee, nor shall the term specified herein be in any way extended, but in such event Lessee shall not be liable for any rent (unless hereinafter provided for to the contrary) until such time as Lessor can deliver possession. If Lessee shall, take possession of any portion of the Premises, Lessee shall pay as rent (unless hereinafter provided for to the contrary) the full rent specified herein reduced pro rata for the portion of the Premises not available for possession by Lessee. If Lessor shall be unable to deliver possession of the Premises at the Commencement Date, Lessee shall have the option to terminate this Lease by at least thirty (30) days' written notice unless Lessor shall deliver possession of the Premises prior to the effective date of termination specified in such notice. If



Lessor is unable to deliver possession of the Premises within ninety (90) days of the Commencement Date then Lessor may terminate this Lease upon thirty (30) days' written notice unless Lessor shall deliver possession of the Premises prior to the effective date of termination specified in such notice.

3.3 **QUIET ENJOYMENT.** Lessor acknowledges that it has ownership of the Premises and that it has the legal authority to lease said Premises to Lessee. Lessor covenants and agrees that Lessee, upon performance of all of Lessee's obligations under this Lease, shall lawfully and quietly hold, occupy, and enjoy the Premises during the term of this Lease without disturbance by Lessor or by any person having title paramount to Lessor's title, or by any person claiming under Lessor, subject to the terms and provisions of this Lease and subject to all mortgages, underlying leases, and other underlying matters of record to which this Lease is or may become subject to and subordinate so long as the terms and conditions hereof are complied with by Lessee and subject Lessor's right to enter premises as provided in this Lease.

3.4 **LESSOR MAY ENTER PREMISES.** The duly authorized officers or agents of Lessor may enter to view said Premises at any time, and if the business or normal function of Lessor should at any time require that it enter upon the Premises to perform any work or make any improvements, it may do so, but not in such manner as to materially injure Lessee with its normal and usual operation.

3.4.1 *Right to Grant Easements.* Lessor reserves the right to grant easements and other land uses on the Premises to others when the easement or other land uses applied for will not unduly interfere with the use to which the Lessee is putting the Premises, or interfere unduly with the approved plan of development of the Premises.

3.4.2 *Environmental Work.* Lessor may enter onto and inspect the Premises, conduct any testing, sampling, borings and analysis it deems necessary to assure compliance with environmental or other laws and regulations; and in the event of an emergency, to comply with lawful orders or to reduce or mitigate environmental loss or damages, to take such reasonable actions on the Premises as may be necessary to bring the Premises or operations on the Premises in compliance with environmental or other laws and regulations. Lessee agrees to cooperate with Lessor and all appropriate authorities to assure that operations on the Premises and the uses of the Premises, shall at all times be in full compliance with all applicable laws and regulations, including but not limited to those established for purpose of protecting the environment and public health.

3.4.3 *Safety or Preservation of Premises.* At any time, Lessor may enter the Premises to do any other act or thing necessary for the safety or preservation of the Premises or surrounding property.

ARTICLE IV
Use of Premises, Signs, Equal Employment
Laws and Regulations

4.1 **BUSINESS PURPOSE AND TYPE OF ACTIVITY.**

4.1.1 *Use of Premises.* Lessee may use the Premises for the purpose of conducting aeronautical activities. "Aeronautical Activities" include any activity which involves, makes possible, or is required for the operation of aircraft, or which contributes to or is required for the

safety of such operations this includes, but is not limited to, the rental/subleasing of general aviation hangars used solely or primarily for storage of aircraft by the Lessee or a tenant of Lessee. Without limiting the foregoing, Aeronautical Activities shall also include Commercial Aeronautical Uses. Commercial Aeronautical Uses are those uses that provide an aviation product or service to the general aviation community or the traveling public. Commercial Aeronautical Uses specifically include the following, and such other uses as may be approved by the Lessor in its sole discretion:

- Services provided to the general, corporate or commercial aviation community
- Air taxi services
- Air charter services
- Scheduled and nonscheduled air carrier operations
- Pilot training
- Aircraft rental
- Aircraft sales
- Aircraft maintenance and repair services
- Aerial sightseeing
- Aerial surveying
- Sales of aviation petroleum products
- Sales of aircraft parts
- Manufacture of aircraft parts
- Specialized aviation services operations

4.1.2 Commercial Use Subject to Anacortes Airport Minimum Standards for Commercial Activities. All commercial use of the Premises or any portion thereof shall be subject to the provisions of the Anacortes Airport Minimum Standards for Commercial Activities now or hereafter adopted or amended by Lessor (the "Standards") including, but not limited to, those provisions of the Standards requiring prior approval by Lessor of Lessee's intended use, business plan, and/or other criteria that are identified in the Standards. A copy of the current Standards is attached hereto as Exhibit "D." In addition, prior to the commencement of any commercial use of the Premises or any portion thereof by Lessee, the Lessee shall provide Lessor with the opportunity to review any documents including, without limitation, any agreements, contracts, leases, subleases, licenses or permits relating to said use (collectively "Use Related Documents") in order to confirm that the use conforms to the requirements of this Lease.

4.1.2.1 All commercial use of the Premises or any portion thereof by a lessee, tenant, sublessee, assignee of the Lessee or any other third party, including, but not limited to, any owner of a unit in a leasehold condominium on the Premises (collectively "Third Party") as approved by Lessor as provided herein, shall be subject to the provisions of the Standards now or hereafter adopted by Lessor including, but not limited to, those provisions of the Standards requiring prior approval by Lessor of a Third Party's intended use and/or other criteria that are identified in the Standards. In addition, prior to the commencement of any commercial use of the Premises or any portion thereof by a Third Party, the Third Party shall provide Lessor with the opportunity to review any Use Related Documents in order to confirm that the use conforms to the requirements of this Lease.

4.1.3 Incidental Use of Premises. Lessee shall be entitled to use the Premises for storage of vehicles, equipment, machinery, inventory, parts, office fixtures and furnishings within

the constructed hangar building, which uses are incidental to Lessee's primary Aeronautical Activities on the Premises. All such incidental use shall be subject to the reasonable rules and regulations of Lessor and in compliance with all applicable rules and restrictions regarding zoning, health, safety, environmental and licensing regulations.

4.1.3.1 Where the incidental use is a commercial use, such use shall be subject to the Standards including, but not limited to, those provisions of the Standards requiring prior approval by Lessor of Lessee's intended use and/or other criteria that are identified in the Standards. Prior to the commencement of any commercial incidental use of the Premises by Lessee, the Lessee shall provide Lessor with the opportunity to review any Use Related Documents relating to said incidental use in order to confirm that the incidental use conforms with the requirements of this Lease. Any commercial incidental use of the Premises by any Third Party shall also be subject to the requirements of this subsection.

4.1.4 *All Uses are Subject to the Current Airport Layout Plan.* All uses of the Premises and/or the Anacortes Airport by the Lessee or a Third Party are subject to the current Airport Layout Plan ("ALP"), a copy of which is attached hereto as Exhibit "E". Lessee understands that this includes the requirement that the taxi lane object free area serving the Premises have a maximum width of 79 feet. Lessee has conducted its own due diligence and investigation as to the feasibility of its intended uses of the Premises under the limitations and requirements contained in the current ALP. Lessee is not relying on any representation or warranty of Lessor or any representative of Lessor that the Lessee's intended use(s) of the Premises will be feasible under the current ALP. Lessor is under no obligation whatsoever to amend or revise the current or any future version of the ALP to accommodate any use or proposed use of the Premises by Lessee or a Third Party; and Lessee is not relying on any representation or warranty of Lessor or any representative of Lessor that the ALP will be amended or modified in any fashion or for any reason in the future.

4.1.4.1 Lessee understands and agrees that it is within the sole discretion of the Lessor (subject to approval by the Federal Aviation Administration) to alter or amend the ALP. If during the term of this Lease, Lessor, in its sole discretion, revises the ALP to allow for a taxi lane object free area greater than 79 feet or makes some other modification to the ALP, then Lessee may adjust its use of the Premises in accordance with the revised ALP so long as the use remains an Aeronautical Activity and otherwise complies with requirements of this Lease. In no event will the Lessor amend or revise the ALP to create a taxi lane less than 79 feet.

4.1.5 *Offices and Crew Quarters.* Lessee shall be entitled to use the Premises for offices and related crew quarters as an occasional, temporary and incidental use, subject to Lessor's prior written approval of the use of the Premises for crew quarters and only in connection with its primary aeronautical activities on the Premises. It is expressly agreed between the parties that overnight use of the crew quarters shall be subject to Lessee's prior and ongoing compliance with any and all applicable zoning, housing, and fire codes and regulations.

4.1.6 *Parking.* Lessee and its employees, agents, contractors, and invitees shall park in designated parking areas only which are located on the Premises. Lessee agrees not to use any public streets, rights of way or other properties not included in this Lease for parking of vehicles. Lessee shall provide adequate parking, as reasonably determined by Lessor for the use of the Premises set forth herein.

4.1.7 **No Use in Violation of FAA Regulations.** It is understood that the above activities are the only type of activities to be conducted on the Premises. Failure to perform the above type of activity except for reasons beyond Lessee's reasonable control, or the carrying on of other type(s) of unauthorized activities, without first obtaining a lease modification with Lessor's written approval of such other type(s) or cessation of activities for a continuous period of thirty (30) days or more, shall constitute a material default by Lessee of this Lease. Lessee specifically agrees that this section shall be strictly construed to assure that the operations and activities conducted on the Premises are in full compliance with all applicable environmental or other laws and regulations. Lessee shall at all times operate on the Premises in a manner which will assure the safe, lawful and healthful use of the Premises. Lessee agrees that it will not disturb Lessor or any other tenant of Lessor by making or permitting any disturbance or any unusual noise, vibration or other condition on the Premises.

4.1.8 **FAA Form 7460: Notice of Proposed Construction or Alteration.** Lessee shall submit an FAA Form 7460: Notice of Proposed Construction or Alteration ("Form 7460") to Lessor for its approval. Upon written notice of Lessor's approval of the Form 7460, Lessee shall submit said form to the Seattle ADO, Airport District Office, for FAA approval. Lessee shall not commence construction without receiving prior written approval of the Form 7460 from the FAA.

4.2 **SIGNS.** No signs shall be installed without the prior written permission of Lessor.

4.3 **EQUAL OPPORTUNITY.** Lessee agrees that in the conduct of activities on the Premises, it will be an equal opportunity employer in accordance with Title VII of the Civil Rights Act of 1964, 42 USC §2000 et seq. and shall comply with all requirements of the Americans with Disabilities Act.

4.4. **LAWS AND REGULATIONS.** Lessee, at its sole cost and expense, shall conform to, comply with and abide by all lawful rules, codes, ordinances, requirements, orders, directions, laws and regulations of the United States, the State of Washington, and any municipality or agency of any of said entities, including rules and regulations of Lessor, including, but not limited to, the Anacortes Airport Minimum Standards for Commercial Activities now or hereafter adopted by Lessor, and Lessor's Noise Abatement Procedures, as amended from time to time, all as now in existence or hereafter promulgated, applicable to Lessee's use and operation of the Premises, including the construction of any improvements thereon, and not to permit the Premises to be used in violation of any of said rules, codes, laws or regulations. Any fees for inspection of the Premises during or for the term of this Lease by any federal, state or municipal officer shall be paid by Lessee. Lessee shall pay all costs, expenses, liabilities, losses, damages, fines, penalties, claims, and demands, including reasonable counsel fees, that may in any manner arise out of or be imposed because of the failure of Lessee to comply with the covenants of this section. Lessee's noncompliance with the provisions of this clause shall constitute a material breach of this Lease.

ARTICLE V
Permits, Construction of Improvements, Storm Water Facilities,
Disposition of Improvements

5.1 **LESSEE WILL OBTAIN PERMITS.** Lessee shall be solely responsible for obtaining and complying with all permits, approvals or licenses required for the operation and conduct of Lessee's business activities and the construction, installation, erection and/or operation of any



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structures, facilities or equipment, including but not limited to, items constituting alterations or defined as trade fixtures on the Premises. If Lessee fails to obtain and comply with such permits, then Lessee accepts full responsibility for any and all costs incurred by Lessor, including actual attorney's fees, occasioned by Lessor pursuing Lessee's default for its failure to obtain and/or comply with such permits. Lessee agrees to hold Lessor harmless from any liability and to fully reimburse expenses of Lessor for Lessee's failure to obtain and/or fully comply with any necessary permit.

5.2 **CONSTRUCTION OF IMPROVEMENTS.**

5.2.1 *Submittal of Plans for Lessor Approval.* Prior to applying for any building permit or approval from the City of Anacortes and within sixty (60) days after the Commencement Date, Lessee shall submit a plot plan and specification sheet to Lessor showing the location, dimensions and general specifications of all planned improvements (the "Lessee's Building Plans"). Said plans will also identify the amount of square footage of Premises to be allocated to Building Footprint and the Apron Area respectfully for purposes of calculating the Rent as provided above. Lessee's improvements shall be subject to Lessor's review and written approval of such plans for conformity with Lessor's Airport Layout Plan ("ALP") and existing published policies and standards for similar improvements. Lessor shall have thirty (30) days to review said plans prior to issuing a decision. Without limiting the scope of Lessor's review, Lessor will not approve Lessee's Building Plans unless Lessee provides for adequate parking for the Lessee's improvements within the plans.

5.2.2 *Submittal to City for Permits.* Upon approval of the Lessee's Building Plans by Lessor, Lessee shall submit the plans to the City of Anacortes (the "City") for necessary building permits and approvals at Lessee's sole expense. If additional development requirements are imposed by the City beyond those known and presently contained in City Code and if these requirements make the project economically unreasonable as determined by Lessee, then Lessee may terminate this Lease within thirty (30) days of expiration of the governmental appeal period for such requirements.

5.2.3 *SEPA Review.* Lessee shall be responsible for preparation of any SEPA checklists or Environmental Impact Statement and supporting reports or analyses which may be required as a part of Lessee's applications for permits. Lessor shall exercise lead agency authority for review of Lessee's submittals. Lessee shall assume the cost of appropriate mitigations for any adverse environmental impacts identified in the SEPA documents, which may be reasonably required as a result of Lessee's improvements on the Premises. If additional requirements are imposed as a result of the SEPA review and if these requirements make the project economically unreasonable as determined by Lessee, then Lessee may terminate this Lease within thirty (30) days of expiration of the governmental appeal period for such requirements.

5.2.4 *Commencement of Construction.* Construction of the approved improvements shall only commence following issuance of the requisite permits by the City; provided that the FAA has approved the Form 7460 as set forth above. When Lessee intends to construct improvements, alterations, or place removable or temporary structures, Lessee shall notify Lessor in writing in advance of the date upon which Lessee shall commence construction or placement on the Premises and Lessor shall have the right to post notices of non-responsibility with respect to liens arising out of such construction or placement. If Lessee shall fail to so notify Lessor, Lessee shall reimburse Lessor for all costs and loss whatsoever suffered by



Lessor because of Lessee's failure to notify Lessor as required herein. The construction of all improvements, alterations and/or installation of fixtures shall be carried out by Lessee in a first-class manner at its sole cost and expense, and in full compliance with all Laws, regulations, etc., applicable to Lessee's use and operation of the premises. Until the expiration or sooner termination of this Lease, title to any improvements situated and constructed by Lessee on the Premises and any alteration, change, or addition thereto, as well as title to fixtures and articles of personal property attached to or used in connection with the Premises by Lessee shall remain solely in Lessee.

5.2.5 Construction Security. Upon Lessor's approval of the issued building permit and Lessee's site and utility plan, Lessee shall deliver to Lessor, a cash deposit, irrevocable letter of credit, good and sufficient corporate surety company bond or other security acceptable to Lessor, in its sole discretion, in an amount equal to one hundred fifty percent (150%) of the estimated construction cost or a payment and performance bond for one hundred percent (100%) of the estimated construction cost for completion of the approved improvements on the Premises, as estimated by Lessee and approved by Lessor (the "Construction Security"). Lessee shall maintain the Construction Security until Lessee obtains a certificate of occupancy from the City. If Lessee fails to obtain a certificate of occupancy from the City within two (2) years of the Commencement Date, then anytime thereafter Lessor may, in Lessor's sole discretion, access the Construction Security and use those funds as it deems appropriate to cause the completion of the construction of the approved improvements and to secure an occupancy permit from the City.

5.2.6 Reimbursement of Existing FAA Funded Improvements. To the extent that any provision of this Lease results in an obligation of Lessor to reimburse the FAA for existing FAA funded improvements, Lessee shall pay Lessor the amount of any such required reimbursements prior to the commencement of any construction by Lessee.

5.2.7 No Representation or Warranties. Lessor makes no representation or warranty with respect to (1) the zoning of the Premises and whether it is appropriate for Lessee's intended use; or (2) Lessee's ability to obtain the necessary permits from the City.

5.2.8 Offsite Taxilanes. The parties acknowledge that the Premises may need to be served by taxilanes not located on the Premises. Lessee agrees to design and construct such taxilanes, at its expense, and subject to the approval of Lessor, pursuant to a separate Construction Agreement to be entered into by Lessor and Lessee. That agreement will provide that upon the completion of construction such improvements will be turned over to the Lessor and will not be part of the Premises. Lessee shall pay any leasehold excise tax that may arise from its use of the taxilanes constructed pursuant to the separate Construction Agreement.

5.3 STORM WATER FACILITIES. The parties understand that the City may require the construction of some storm water detention/treatment facilities as a condition of granting Lessee a building permit. Lessee agrees to use its best efforts to design its facilities in such fashion that such facilities will be located on the Premises. If, however, the only feasible location of such facilities is on property of the Lessor other than the Premises, Lessee shall give written notice of that circumstance to Lessor (the "Additional Property Notice"), and Lessor agrees to negotiate in good faith with Lessee to lease such property to Lessee for such purpose. If the parties are unable to agree on the terms of such lease of additional property, Lessee may, by written notice given to Lessor not later than ninety (90) days after the date of the Additional Property Notice, terminate this Lease.

5.4 **DISPOSITION OF IMPROVEMENTS AT END OF LEASE.** At the expiration or sooner termination of this Lease, Lessee shall return the Premises to Lessor in the same condition in which received. However, with Lessor's consent, any improvements made to the Premises by Lessee may remain on the Premises at the termination of the Lease and under such circumstances title those improvements shall immediately be vested in Lessor upon such expiration or termination, reasonable wear and tear excepted. If within thirty (30) days after the termination or expiration of the Lease, Lessor notifies Lessee that it does not consent to Lessee's improvements remaining on the Premises then Lessee shall remove said improvements at Lessee's sole expense. If within thirty (30) days of receiving such notification Lessee fails to remove said improvements, then Lessor may cause their removal and charge Lessee for costs arising there from.

ARTICLE VI
Utilities, Taxes and Assessments,
Maintenance of Facilities, Waste and Refuse

6.1. **UTILITIES.** Lessee shall be liable, and shall pay throughout the term of this Lease, for all utility services furnished to the Premises, and Lessee agrees to hold Lessor harmless from payment of all such charges for utility services. If any utility services are furnished on a consolidated or joint basis, Lessee agrees to pay to Lessor Lessee's prorata share of the cost of such utility services. Lessee's prorata share of such services shall be computed by Lessor on any reasonable basis, and separate metering or other exact segregation of cost shall not be required. Lessor shall provide documentation supporting Lessor's computation of Lessee's share of such services upon request. Lessor makes no warranty that any utility service will not be interrupted and any interruption not the sole fault of Lessor, shall not excuse Lessee's performance (including the payment of rent and other fees, taxes and charges) or render Lessor liable in any manner; provided, that if an interruption of utility service is caused solely by the negligence of Lessor and prevents Lessee from operating its business at the Premises for a period in excess of forty-eight (48) hours, then Lessee, as its sole remedy, shall be entitled to an abatement of rent during the period of interruption in the same proportion as the affected portion of the Premises bears to the whole.

6.2 **TAXES AND ASSESSMENTS.** Lessee agrees to pay all taxes assessed against the personal property of Lessee and the leasehold interest held by Lessee, including but not limited to Washington State leasehold excise tax, and a pro rata share of any assessments made against the Premises for installation of public utility systems, based upon a reasonable overall sharing program among all properties within the assessment area.

6.3 **MAINTENANCE OF FACILITIES.** Lessee shall not allow any portion of the Premises to remain in a damaged, unworkable or other condition which compromises the condition of any portion of the Premises. Maintenance and repair of the Premises and all improvements thereon is the sole responsibility of Lessee including, but not limited to, maintenance and repair of any damage to the Premises from unforeseen or unexpected events or Acts of God. Without limiting the generality of the foregoing, Lessee shall keep and maintain any improvements on the Premises in as good of condition as they existed on the commencement of this Lease or as of the date of their respective construction by Lessee, reasonable wear and tear excepted.



6.4 **WASTE AND REFUSE.** Lessee agrees not to allow conditions of waste and refuse to exist on the Premises and to keep the Premises in a neat, clean, and orderly condition and to be responsible for all damages caused to the Premises by Lessee, its agents or any third party on the Premises.

ARTICLE VII

Casualty Loss of Lessee, Insurance

7.1 **LIABILITY INSURANCE.** Lessee shall procure and maintain a comprehensive general liability policy covering all claims for personal injury (including death) and/or property damage (including all real and personal property located on the Premises) arising on the Premises or arising out of Lessee's operations. The limits of liability shall be not less than Two Million Dollars (\$2,000,000) for each occurrence and in the aggregate unless the Lessor requests a lesser liability limit. Lessor may impose changes in the limits of liability (i) at the same time as revaluation of the annual Rent; (ii) as a condition of approval of assignment or sublease of this Lease; (iii) upon any breach of the Environmental Liability provision herein; (iv) upon a material change in the condition of any improvements; or, (v) upon a change in the Authorized Use. If the liability limits are changed, Lessee shall obtain new or modified insurance coverage within thirty (30) days after changes in the limits of liability are required by Lessor. The liability policies shall contain a cross-liability provision such that the policy will be construed as if separate policies were issued to Lessee and to Lessor.

7.1.1 *Lessor Additional Insured.* The foregoing insurance policy shall name Lessor as an additional insured. Lessee shall provide certificates of insurance and, if requested, copies of any policy to Lessor. Receipt of such certificate or policy by Lessor does not constitute approval by Lessor of the terms of such policy. Furthermore, the policy of insurance required herein shall (i) be written as a primary policy; (ii) expressly provide that such insurance may not be materially changed, amended or canceled with respect to Lessor except upon forty-five (45) days' prior written notice from the insurance company to Lessor; (iii) contain an express waiver of any right of subrogation by the insurance company against Lessor and Lessor's elected officials, employees, or agents, provided, that this requirement shall be inapplicable if it would have the effect, but only to the extent that it would have the effect, of invalidating any insurance coverage of Lessor or Lessee; (iv) expressly provide that the insurance proceeds of any loss will be payable notwithstanding any act or negligence of Lessee which might otherwise result in a forfeiture of said insurance; (v) in regard to physical property damage coverage, expressly provide that all proceeds shall be paid jointly to Lessor and Lessee; (vi) provide coverage for the indemnitor undertakings made by Lessee in this Lease.

7.2 **BUILDER'S RISK INSURANCE.** Lessee shall maintain, at its sole expense, at any time when improvements are being constructed, altered or placed on the Premises, builder's risk insurance (in completed value non-reporting form) in an amount not less than the actual replacement value of all improvements on the Premises.

7.3 **ADDITIONAL INSURANCE.** Lessee shall, on demand of Lessor, procure and maintain such other forms types, and amounts of insurance as may be appropriate, customary, and generally required and at a commercially reasonable cost for the Premises and types of improvements made to the Premises by responsible and reasonable owners of property used for similar purposes. The rights herein granted Lessor are intended to protect Lessor from changes in law and insurance policies apt to occur during the term of this Lease.

7.4 **LESSEE'S CONDUCT.** Lessee shall not use the Premises in such a manner as to increase the existing rates of insurance carried by Lessor. If it nevertheless does so, then, at the option of Lessor, the full amount of any resulting increase in premiums paid by Lessor and to the extent allocable to the term of this Lease, may be added to the amount of the rent hereinabove specified and shall be paid by Lessee to Lessor upon the monthly rental day next thereafter occurring.

7.5 **NATURE OF INSURANCE OBLIGATIONS.** The Lessee believes and states that the insurance obligation herein does not exceed that which the Lessee would otherwise normally place upon itself and obtain in order to operate its business in a prudent manner. If Lessee fails to procure and maintain the insurance described above, Lessor shall have the right, but not the obligation, to procure and maintain substitute insurance and to pay the premiums. Lessee shall pay to Lessor, upon demand, the full amount paid by Lessor.

ARTICLE VIII

Environmental Liability

8.1 **ENVIRONMENTAL INDEMNIFICATION.** Lessee shall defend (with legal counsel suitable to Lessor), indemnify, and hold Lessor harmless from any and all claims, demands, judgments, orders or damages resulting from Hazardous Substances on the Premises caused in whole or in part by the activity of the Lessee, its agents, subtenants, or any other person or entity on the Premises during any period of time that Lessee has occupied all or a portion of the Premises during the term of this Lease or any previous lease or agreement. It is the intent of the parties that Lessee shall be responsible and shall defend and hold Lessor harmless from any Hazardous Substances that have or may occur on the Premises since Lessee first occupied the Premises through this Lease or any previous lease or agreement with Lessor. The term "Hazardous Substances," as used herein, shall mean any substance heretofore or hereafter designated as hazardous under the Resource Conservation and Recovery Act, 42 USC Sec. 6901 *et seq.*; the Federal Water Pollution Control Act, 33 USC Sec. 1257 *et seq.*; the Clean Air Act, 42 USC Sec. 2001 *et seq.*; the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 USC Sec. 9601 *et seq.*; or the Hazardous Waste Cleanup-Model Toxics Control Act, RCW 70.105D, all as amended and subject to all regulations promulgated thereunder.

8.1.1 *Obligations Unconditional.* Lessee's defense and indemnity obligations under this article are unconditional, shall not be discharged or satisfied by Lessor's re-entry of the Premises or exercise of any other remedy for Lessee's default under this Lease, shall continue in effect after any assignment or sublease of this Lease, and shall continue in effect after the expiration or earlier termination of this Lease.

8.1.2 *Previously Existing Hazardous Substances.* Lessee shall not be liable for any Hazardous Substances that existed on the Premises prior to the inception of this Lease.

8.2 **CURRENT CONDITIONS AND DUTY OF LESSEE.** Lessor makes no representation about the condition of the Premises. Hazardous Substances may exist in, on, under, or above the Premises. Lessee should, but is not required to, conduct environmental assessments or investigations of the Premises prior to or during this Lease to determine the existence, scope, and location of any Hazardous Substances. If there are any Hazardous Substances in, on, under or above the Premises as of the Commencement Date, Lessee shall exercise the utmost



care with respect to the Hazardous Substances, the foreseeable acts or omissions of third parties affecting the Hazardous Substances, and the foreseeable consequences of those acts or omissions.

8.2.1 *Prior Notice.* Prior to conducting any environmental investigation of the subsurface of the Premises, the Lessee shall provide prior written notice to the Lessor. Lessee shall provide the Lessor with the results of all such investigations.

8.2.2 *Unsatisfactory Environmental Assessment.* Within one hundred twenty (120) days of the issuance of a building permit, Lessee may terminate this Lease on basis of that an environmental assessment or investigation conducted by Lessee of the Premises produced findings or results that in Lessee's sole discretion are unsatisfactory. Termination of the Lease shall be sole remedy available to Lessee under such circumstances.

8.3 **NOTIFICATION AND REPORTING.** Lessee shall immediately notify Lessor if Lessee becomes aware of any of the following:

- (i) A release or threatened release of Hazardous Substances in, on, under or above the Premises, any adjoining property, or any other property subject to use by Lessee in conjunction with its use of the Premises;
- (ii) Any problem or liability related to or derived from the presence of any Hazardous Substance in, on, under or above the Premises, any adjoining property or any other property subject to use by Lessee in conjunction with its use of the Premises;
- (iii) Any actual or alleged violation of any federal, state, or local statute, ordinance, rule, regulation, or other law pertaining to Hazardous Substances with respect to the Premises, any adjoining property or any other property subject to use by Lessee in conjunction with its use of the Premises; or
- (iv) Any lien or action with respect to any of the foregoing.

8.3.1 *Provision of Reports, Studies and Audits.* Lessee shall, at Lessor's request, provide Lessor with copies of any and all reports, studies or audits which pertain to environmental issues concerning the Premises, and which are or were prepared by or for Lessee and submitted to any federal, state or local authorities pursuant to any federal, state or local permit, license or law. These permits include, but are not limited to, any National Pollution Discharge and Elimination System permit, any Army Corps of Engineers permit, any State Hydraulics permit, any State Water Quality certification, or any Substantial Development permit.

ARTICLE IX **Hold Harmless**

9.1 **HOLD HARMLESS.** Lessee shall protect, indemnify, defend and hold and save harmless Lessor, its elected officials, agents and employees, their successors and assigns, heirs, executors, and administrators from and against all liabilities, obligations, fines, claims, claims for mechanic's liens, damages, penalties, law suits, governmental proceedings, judgments, costs and expenses (including without limitation attorney's fees, costs and expenses




of litigation), and any and all claims by or on behalf of any person or persons, firm or corporation, in connection with any such items of actual or alleged injury (including without limitation, death) or damage, (including without limitation, loss of business income) arising from (i) acts or omissions of Lessee, its officers, servants, invitees, contractors, subcontractors, guests and direct and/or indirect employees on or about the Premises, the Property or any other property of Lessor; (ii) the use by Lessee or its employees, contractors, agents, or invitees of the Premises, the Property or other property of Lessor or any part thereof, including but not limited to ramps, taxiways, approaches, buildings, sidewalks, curbs, parking lots, streets or ways; or (iii) any failure on the part of Lessee to perform or comply with any rule, ordinance, or law to be kept and performed.

BOTH LESSEE AND LESSOR HEREBY WAIVE (GIVES UP) THEIR RIGHT OF IMMUNITY UNDER THE INDUSTRIAL INSURANCE ACT RCW TITLE 51 AND/OR THE LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT (UNITED STATES CODE) TO THE EXTENT AND ONLY TO THE EXTENT NECESSARY TO FULFILL A PARTY'S OBLIGATION OF INDEMNITY TOWARD THE OTHER PARTY UNDER THE HOLD HARMLESS PROVISIONS OF THIS LEASE AGREEMENT.

LESSEE HEREBY AGREES TO INDEMNIFY LESSOR FOR THE CONCURRENT NEGLIGENCE OF LESSOR AND LESSEE.


Lessee's Initials


Lessee's Initials


Lessor's Initials

This indemnity agreement does not apply when such damage or injury be caused solely by negligent or intentional acts of Lessor, its elected officials, agents and/or employees.

ARTICLE X
Default and Re-entry, Termination

10.1 DEFAULT AND RE-ENTRY. Time and exact performance are of the essence of this agreement. The occurrence of anyone or more of the following events makes Lessee immediately in material default of this Lease with or without notice from Lessor:

- (i) any rent or other payment due from Lessee hereunder remains unpaid for more than ten (10) days after the date it is due;
- (ii) Lessee files a voluntary petition in bankruptcy or for reorganization, or makes a general assignment to the benefit of, or a general arrangement with creditors;
- (iii) there is an involuntary bankruptcy filed against Lessee;
- (iv) Lessee becomes insolvent;
- (v) a receiver, trustee, or liquidating officer is appointed for Lessee's business;
- (vi) any proceeding is commenced to foreclose any mortgage or any other lien on Lessee's interest in the Premises or any improvements of Lessee therein, and such proceeding is not dismissed or adequately bonded or secured within sixty (60) days of the commencement thereof;

(vii) Lessor discovers that any financial or background statement provided to Lessor by Lessee, its successor, grantee or assign was materially false; or

(viii) Lessee violates or breaches any of the other terms, conditions, covenants or provisions of this Lease.

If Lessee is in default according to (i) and/or (vii) above, then this Lease shall at Lessor's option terminate. If Lessee is in default according to (ii), (iv), (v), and/or (vi) above, then this Lease shall automatically terminate. If Lessee is in default according to (iii) above, Lessee has thirty (30) days from the filing of such involuntary bankruptcy to cure the default by having the involuntary bankruptcy dismissed. If Lessee is in default according to (iii) above, and fails to cure the default within the cure period, then this Lease shall automatically terminate. If Lessee is in default as to (viii) above, Lessee has thirty (30) days after Lessor sends Lessee written notice of such violations or breach in which to cure the default. If Lessee is in default according to (viii) above, and fails to cure the default within the cure period, then this Lease shall automatically terminate.

10.1.1 Effect of Termination. Upon termination of this Lease, the full rent for the balance of the term of this Lease shall become immediately due and payable. Lessor, may at its option, delay efforts to immediately collect the full rent for the balance of the term of this Lease and re-enter and attempt to relet the Premises or any part thereof for such term or terms (which may be for a term extending beyond the term of this Lease) and at such rental or rentals and upon such other terms and conditions as Lessor in its sole discretion deems advisable, provided Lessee performs as hereinafter set forth. Upon each such reletting, all rentals received by Lessor from such reletting shall be applied; first, to the payment of any amounts other than rent due hereunder from Lessee to Lessor; second, to the payment of any costs and expenses of such reletting and renovation, including brokerage fees and attorneys' fees; third, to the payment of rent due and unpaid hereunder; and the residue, if any, shall be held by Lessor and applied to payment of future rent as the same would have become due and payable hereunder. If rental received from such reletting during any month is less than that which would have been paid during that month by Lessee hereunder, Lessee shall pay any such deficiency to Lessor each month as the amount thereof is ascertained by Lessor, and Lessee covenants and agrees to pay Lessor for all other expenses resulting from its default, including but not limited to, brokerage commissions, attorneys fees and costs and reasonable cost of converting the Premises for the benefit of the next lessee.

10.1.2 Default, Interest on Delinquent Rent, Entry into Premises. Delinquent rental and other payments shall bear interest at the rate of one percent (1%) per month commencing thirty (30) days after the date each sum is due and payable. In the event of any default hereunder and Lessor enters upon or takes possession of the Premises, Lessor shall have the right, but not the obligation, to remove from the Premises all personal property located therein, and may store the same in any place selected by Lessor, 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 thirty (30) days or more, with the proceeds of such sale to be applied to the cost of such sale, to the payment of charges for storage, and to the payment of any other sums of money which may then be due from Lessee to Lessor under any of the terms hereof. Payment by Lessee to Lessor of interest on rents and/or on any other charges due and owing under this Lease shall not cure or excuse Lessee's default



in connection with such rents and/or other charges. Interest, default and all other remedies of Lessor hereunder are in addition to any other remedies available at law or in equity and are cumulative and not alternative.

10.1.3 Termination for Nonperformance. Lessor, in its sole discretion, has the right to terminate this Lease by giving thirty (30) days written notice to Lessee in either of the following situations (i) within one (1) year of the Commencement Date of this Lease, Lessee has not submitted to the City a complete application for a building permit; or (ii) within two (2) years following the Commencement Date of this Lease, the proposed improvements to be built by Lessee are not completed and an occupancy permit for said improvements have not been issued by the City (or other governing authority). Except that, so long as Lessee is working diligently to obtain the required permits or complete the improvements, the computation of time shall be tolled during periods of delay beyond the control or authority of Lessee.

10.1.4 Termination for Inability to Obtain Building Permits. In the event that Lessee is unable to obtain required City permits for the Lessee's improvements within two (2) years following the Commencement Date of this Lease, Lessee has the right to terminate this Lease by giving written notice of such termination to Lessor within thirty (30) days after the expiration of such two (2) year period.

10.1.5 Termination for Government Use. In the event that any federal, state or local government or agency or instrumentality thereof shall, by condemnation or otherwise, take title, possession or the right to possession of the Premises or any part thereof, Lessor may, at its option, terminate this Lease as of the date of such taking, and, if Lessee is not in default under any of the provisions of this Lease on said date, any rent prepaid by Lessee shall to the extent allocable to any period subsequent to the effective date of termination, be promptly refunded to Lessee.

10.1.6 Termination Because of Court Decree. In the event that any court having jurisdiction in the matter shall render a decision which has become final and which will prevent the performance by Lessor of any of its obligations under this Lease, then either party hereto may terminate this Lease by written notice, and all rights and obligations hereunder (with the exception of any undischarged rights and obligations that accrued prior to the effective date of termination) shall thereupon terminate. If Lessee is not in default under any of the provisions of this Lease on the effective date of such termination, any rent prepaid by Lessee shall, to the extent allocable to any period subsequent to the effective date of the termination, be promptly refunded to Lessee.

ARTICLE XI

Assignment and Sublease

11.1 ASSIGNMENT OF LEASE. Lessee shall not assign, mortgage, pledge, hypothecate, encumber or transfer this Lease, or any portion thereof, or any interest therein, nor sublet the whole or any part of the Premises, nor convey any right or privilege appurtenant thereto, nor allow any other person (the employees, agents, servants and invitees of Lessee excepted) to occupy or use the Premises, or any portion thereof, nor shall this Lease or any interest thereunder be assigned, mortgaged, pledged, hypothecated, encumbered or be transferable by operation of law or by any process or proceeding of any court, or otherwise, without the written consent of Lessor first had and obtained. That which is herein above restricted is hereinafter

collectively referred to as "assignment and sublease". The form and content of any writing to evidence an assignment or sublease requires Lessor's written consent. If Lessee is a partnership or corporation, then any change in the ownership of the partnership, or any transfer of this Lease by merger, consolidation or liquidation shall be deemed an assignment of this Lease. Lessee further agrees that if at any time during the term of this Lease more than one-half (1/2) of the outstanding shares of any class of stock of Lessee corporation shall belong to any stockholders other than those who own more than one-half (1/2) of the outstanding shares of that class of stock at the time of the execution of this Lease or to members of their immediate families, such change in the ownership of the stock of Lessee shall be deemed an assignment of this Lease within the meaning of this section. Failure to obtain written approval of any assignment or sublease of this Lease shall make Lessee in material default of this Lease.

11.1.1 *Declaratory Action.* If Lessor refuses to consent to an assignment, Lessee's sole remedy shall be the right to bring a declaratory action to determine whether Lessor was entitled to refuse such assignment under the terms of this Lease.

11.1.2 *Nonwaiver.* No consent by Lessor to any assignment or sublease shall be a waiver of the requirement to obtain such consent with respect to any other or later assignment or sublease. Acceptance of Rent or other performance by Lessor following an assignment or sublease, whether or not Lessor has knowledge of such assignment or sublease, shall not constitute consent to the same nor a waiver of the requirement to obtain consent to the same.

11.1.3 *Lessor's Consent.* Lessor shall not unreasonably withhold consent to a reasonable request for assignment or sublease, however, it may reasonably withhold consent to any proposed assignment or sublease pending receipt of verification and reasonable determination by Lessor that:

- (i) The proposed assignee has the financial ability and/or experience to assume Lessee's obligations herein set forth;
- (ii) The proposed assignee's intended use of the Premises is consistent with applicable zoning and development/land use requirements of Lessor and the requirements of this Lease; or
- (ii) The proposed sublessee's intended use of the Premises sought to be sublet is consistent with applicable zoning and development/land use requirements of Lessor and the requirements of this Lease.

11.1.4 *Assumption of Lessee's Obligations.* Any assignee or sublessee of any portion of the Premises shall expressly assume, and by reason of such assignment or sublease shall be considered as having assumed, and become bound to all of Lessee's obligations hereunder. In the event of an assignment or sublease, Lessee shall not be relieved from liability under this Lease.

11.1.5 *Reasonable Fee.* In the event that Lessor shall consent to a sublease or assignment hereunder, Lessee shall pay Lessor a reasonable fee for each such assignment or sublease to offset Lessor's expenses incurred in connection with the processing of documents necessary to giving of such consent. The reasonable fees for each such assignment or sublease are as follows:



Current Monthly Rent of this Lease:

Reasonable Fee:

up to \$450.99

\$100.00

\$451.00 to \$1200.99

\$200.00

\$1201.00 and over

\$300.00

The amount of the reasonable fees above stated shall be increased as rental is adjusted as provided in this Lease.

11.1.6 *Leasehold Condominium*. Lessee shall not create a leasehold condominium without the prior written consent of Lessor, which consent shall require Lessor's review and written approval of all condominium documents, including but not limited to the declaration of condominium, the articles of incorporation and the bylaws of the condominium association. Without limiting Lessor's discretion to consent or not consent any leasehold condominium documents, Lessor may refuse to consent to Lessee's proposed condominium documents on the basis that (i) the documents do not provide that the condominium association will collect the proportionate rents paid for this Lease from the unit owners and that the association is the representative of the unit owners on all matters relating to this Lease in accordance with RCW 64.34.220(3) & (4); and/or (ii) the documents do not provide that, in the event that Lessor fails to receive the rent required herein or there is some other material default under this Lease, Lessor may terminate each and every unit owner's interest in this Lease, the leasehold condominium, and their respective units, regardless of whether any individual unit owner paid their share of the rent or otherwise complied with the terms of this Lease.

11.1.6.1 *Commercial Use*. Any commercial use of the Premises or any portion thereof by any unit owner in a leasehold condominium located on the Property or any tenant, subtenant, lessee, sublessee, employee, assignee, or other third party (collectively "Unit Owner") shall be subject to the Standards including, but not limited to, those provisions of the Standards requiring prior approval by Lessor of a Unit Owner's intended use, business plan, and/or other criteria that are identified in the Standards. In addition, prior to the commencement of any commercial use of the Premises or any portion thereof by a Unit Owner, the Unit Owner shall provide Lessor with the opportunity to review any Use Related Documents in order to confirm that the use conforms to the requirements of this Lease.

11.1.6.2 In addition to the reasonable fee for assignment or sublease identified above, Lessee shall reimburse Lessor for Lessor's reasonable attorneys fees incurred in Lessor's review and approval of Lessee's proposed leasehold condominium documents that exceed the applicable reasonable fee amount. Lessor shall have thirty (30) days to review and approve the leasehold condominium documents.

ARTICLE XII

Miscellaneous

12.1 **LIENS**. Lessee agrees to keep the Premises described herein free and clear of all liens and charges whatsoever. Lessee shall not allow any mechanics' and materialmen's or other liens to be placed upon the leased Premises. If such a lien is placed or recorded, Lessee shall cause it to be discharged of record or bonded, at its own expense, within sixty (60) days of Lessor's demand. Failure to comply with Lessor's demand within sixty (60) days shall be a default under the terms of this Lease. Lessee shall indemnify and save harmless Lessor against and from all costs, liabilities, suits, penalties, claims, and demands, including



reasonable counsel fees, resulting therefrom.

12.2 HOLDING OVER. If Lessee shall, with the consent of Lessor, hold over after the expiration or sooner termination of the term of this Lease, the resulting tenancy shall, unless otherwise mutually agreed, be for an indefinite period of time on a month-to-month basis. During such month-to-month tenancy, Lessee shall pay to Lessor one hundred fifty percent (150%) of the monthly rental as set forth herein and shall be bound by all of the additional provisions of this Lease in so far as they may be pertinent.

12.3 LESSOR'S RIGHT TO CURE DEFAULTS. If Lessee shall default in the performance of any provision under this Lease, other than the payment of rental, Lessor, at its option, may perform the same for the account and at the expense of Lessee. Upon notification to Lessee of the cost thereof to Lessor, Lessee shall promptly reimburse Lessor the amount of that cost, plus interest at a rate of one percent per month accrued from the date of expenditure by Lessor to the day of repayment. In the event of such default by Lessee, Lessor may enter upon the Premises for the purpose of causing such provisions to be fulfilled. Such entry shall not be deemed an eviction of Lessee. Lessor's action hereunder shall not be deemed a waiver of Lessee's default. Lessor, at its option, without relinquishing any remedy or right, may separately commence proceedings against Lessee for reimbursement of Lessor and for any other remedies for breach of this Lease.

12.4 NONWAIVER. Failure of Lessor to complain of any act or omission on the part of Lessee, no matter how long the same may continue, or the receipt of rent by Lessor with knowledge of any breach or default of this Lease by Lessee, shall not be deemed to be a waiver by Lessor of any of its rights herein. No waiver by Lessor at any time, express or implied, of any breach of any provision of this Lease shall be deemed a waiver of any subsequent breach of the same or any other provision. Failure of Lessor to insist upon strict performance or to exercise any option herein conferred in anyone or more instances in the event of default shall not be construed to be a waiver or relinquishment of any such or any other right herein extended to Lessor.

12.5 SURRENDER OF PREMISES. At either the expiration of the stated term of this Lease or any extension thereof, or sooner termination of this Lease as herein provided, Lessee shall promptly surrender to Lessor possession of the Premises peacefully and quietly, and in the condition required under this Lease and shall deliver to Lessor all keys that it may have to any and all parts of the Premises.

12.6 ESTOPPEL CERTIFICATES. At Lessee's request, Lessor agrees to execute and deliver to Lessee or its lender(s), a customary estoppel certificate in a form acceptable to the Lessor which sets forth the following information (i) the terms and conditions of this Lease; (ii) the status of the Rent payments under the Lease; and (iii) Lessor's knowledge of any breaches or anticipated breaches of the Lease. Lessor shall have no obligation to execute an estoppel certificate which requests any information other than as set forth above. Lessee agrees to reimburse the Lessor for all attorneys' fees paid by Lessor for the review and opinion of such attorney acting on the request for such estoppel certificate and in negotiating acceptable language in the estoppel certificate. A failure to reimburse Lessor within sixty (60) days of the mailing of notice of such charges shall constitute a default under the terms of this Lease.

12.7 ATTORNMEN. In the event the Premises are sold, Lessee shall attorn to the purchaser upon the sale provided that the purchaser expressly agrees in writing that, so long as



Lessee is not in default under the Lease, Lessee's possession and occupancy of the Premises will not be disturbed and that such purchaser will perform all obligations of Lessor under the Lease.

12.8 ATTORNEY'S FEES. In the event either party hereto brings an action to enforce any of the terms, conditions, covenants or provisions of this Lease, then the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in the trial court and in the appellate courts.

12.9 NOTICES. All notices and payments hereunder may be delivered or mailed. If delivered by messenger, courier (including overnight air courier) or facsimile transmittal, they shall be deemed delivered when received at the street addresses or facsimile numbers listed below. All notices and payments mailed, whether sent by regular post or by certified or registered mail, shall be deemed to have been given on the second business day following the date of mailing, if properly mailed to the mailing addresses provided below, and shall be conclusive evidence of the date of mailing. The parties may designate new or additional addresses for mail or delivery by providing notice to the other party as provided in this section.

To Lessor:

Street Address:
Port of Anacortes
1st Street and Commercial Avenue
Anacortes, WA 98221
Phone No. (360) 293-3134
Fax No. (360) 293-9608

Mailing Address:
Port of Anacortes
PO Box 297
Anacortes, WA 98221

To Lessee:

Primary Address:

48° North Aviation, LLC
Attn: Adam Jones
17605 51st Avenue NE #C-D
Arlington, WA 98223-7874
Phone No. (360) 403-7779
Fax No. (360) 403-7776

Duplicate Copy Mailing Address:

48° North Aviation, LLC
Attn: Michael K. Freeman
4010 Airport Rd, Hangar #1
Anacortes, WA 98221
Phone No. (360) 293-7025
Fax No. (360) 293-7405

12.10 TIME. It is mutually agreed and understood that time is of the essence of this Lease and that a waiver of any default of Lessee shall not be construed as a waiver of any other default.

12.11 INTERPRETATION. This Lease has been submitted to the scrutiny of the parties hereto and their counsel, if desired. In any dispute between the parties, the language of this Lease shall, in all cases, be construed as a whole according to its fair meaning and not for or against either the Lessor or the Lessee. If any provision is found to be ambiguous, the language shall not be construed against either the Lessor or Lessee solely on the basis of which party drafted the provision. If any word, clause, sentence, or combination thereof for any reason is declared by a court of law or equity to be invalid or unenforceable against one party or the other, then such finding shall in no way affect the remaining provisions of this Lease. The captions of this



Lease are for convenience and reference only and in no way define, limit, or describe the scope or intent of this Lease.

12.12 SURVIVAL. All obligations of the Lessee, as provided for in the Lease, shall not cease upon the termination of this Lease and shall continue as obligations until fully performed. All clauses of this Lease, which require performance beyond the termination date, shall survive the termination date of this Lease.

12.13 GOVERNING LAW. This Lease, and the right of the parties hereto, shall be governed by and construed in accordance with the laws of the State of Washington, and the parties agree that in any such action jurisdiction and venue shall lie exclusively in Skagit County, Washington.

12.14 ENTIRE AGREEMENT. This Lease contains all of the understandings between the parties. Each party represents that no promises, representations or commitments have been made by the other as a basis for this Lease which have not been reduced to writing herein. No oral promises or representations shall be binding upon either party, whether made in the past or to be made in the future, unless such promises or representations are reduced to writing in the form of a modification to this Lease executed with all necessary legal formalities by the Commission of the Port of Anacortes.

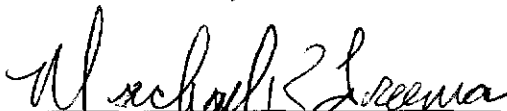
12.15 VALIDATION. IN WITNESS WHEREOF, Lessor has caused this instrument to be signed by its President and Secretary by authority of the Commission of the Port of Anacortes, and this instrument has been signed and executed by Lessee, the day and year first above written.

IN WITNESS WHEREOF, the parties hereto have signed this Lease as of the day and year first above written.

SIGNATURES FOR LESSEE:

48° NORTH AVIATION, LLC

By:


Michael K. Freeman, its Member

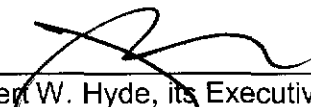
By:


Adam Jones, its Member

SIGNATURE FOR LESSOR:

PORT OF ANACORTES

By:


Robert W. Hyde, its Executive Director

PORT ANACORTES/Airport/LLC/48° North Aviation/Lease Issues/48° DEGREE NORTH LEASE/48° NORTH EAST AREA LEASE YELLOW HILITE (RSN) 112107.doc



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Skagit County Auditor

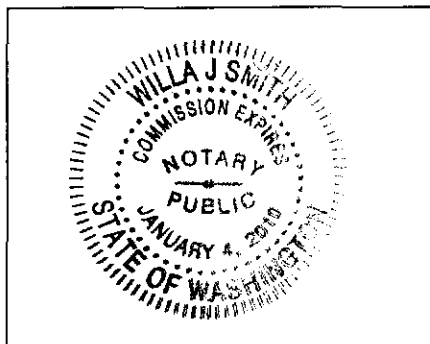
(ACKNOWLEDGEMENT FOR CORPORATE LESSEE)

STATE OF WASHINGTON)
COUNTY OF Skagit) ss.

On this 4th day of December, 2007, before me, the undersigned Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared **Michael K. Freeman** to me known to a Member of **48° North Aviation, LLC**, the corporation that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is duly authorized to execute the same.

WITNESS my hand and official seal thereto the day and year in this certificate first above written.

Dated: 12-04-07



(Use this space for notarial stamp/seal)

Willa J. Smith
Notary Public
Print Name Willa J. Smith
My commission expires 1-4-2010



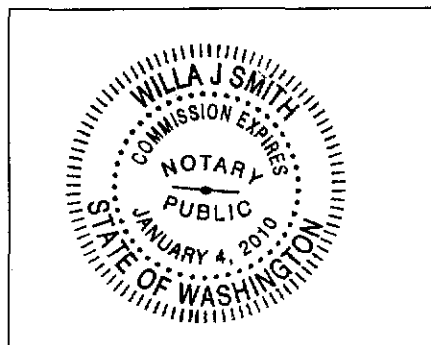
(ACKNOWLEDGEMENT FOR CORPORATE LESSEE)

STATE OF WASHINGTON)
COUNTY OF Skagit) ss.

On this 4th day of December, 2007, before me, the undersigned Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared **Adam Jones** to me known to be a Member of **48° North Aviation, LLC**, the corporation that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is duly authorized to execute the same.

WITNESS my hand and official seal thereto the day and year in this certificate first above written.

Dated: 12-04-07



(Use this space for notarial stamp/seal)

Willa J. Smith
Notary Public
Print Name Willa J. Smith
My commission expires 1-4-2010



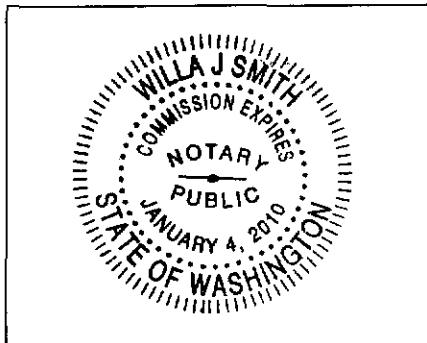
(ACKNOWLEDGEMENT FOR LESSOR)

STATE OF WASHINGTON)
) ss.
COUNTY OF SKAGIT)

On this 4th day of December, 2007, before me, the undersigned Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared **Robert W. Hyde** to me known to be the Executive Director of the **Port of Anacortes**, a municipal corporation, the corporation that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is duly authorized to execute the same.

WITNESS my hand and official seal thereto the day and year in this certificate first above written.

Dated: 12-4-07



(Use this space for notarial stamp/seal)

Willa J. Smith
Notary Public
Print Name Willa J. Smith
My commission expires 1-4-2010



201002260162

Skagit County Auditor

EXHIBIT "A"
LEGAL DESCRIPTION OF PROPERTY

That portion of the NE ¼ of the NE ¼ of Section 27; Township 35 North; Range 1 East; W.M. and more particularly shown on the drawing in Exhibit "B", consisting of approximately 85,700 square feet. The property above referenced is subject to restrictions, easement, and reservations of record.

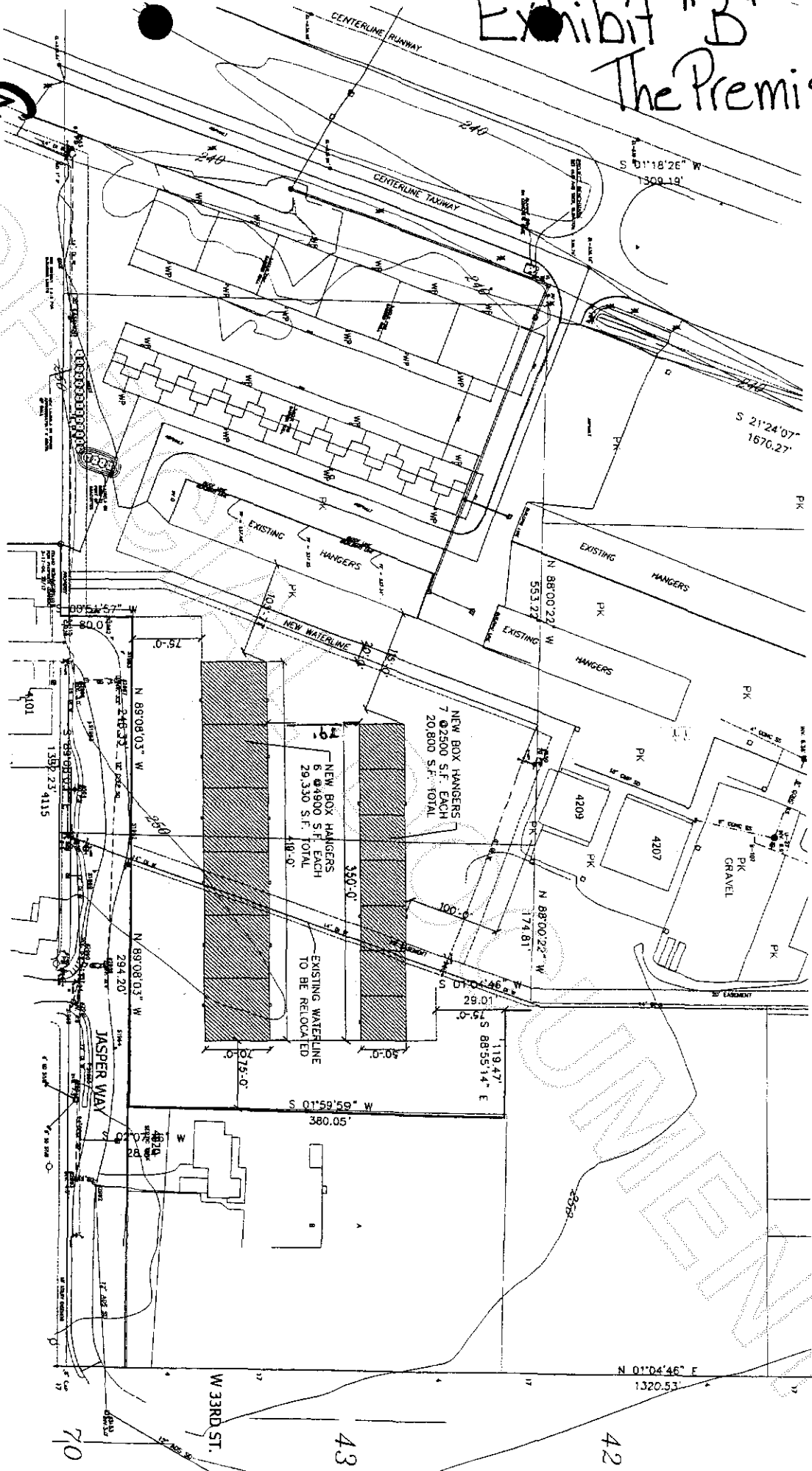
At the time the survey under 1.1.3 of this lease is completed, the Legal Description of Property (this Exhibit "A") shall be replaced with the finalized legal description of property.



Exhibit "B"

The Premises

CARLETTI ARCHITECTS P.S.
 architecture & planning
 1404 E. College Way
 Suite 103
 Mount Vernon, WA 98273
 Phone: (360) 424-0394
 Fax: (360) 424-5726



SITE
 11-13-06

SCALE 1" = 100'-0"



201002260162

Skagit County Auditor

Exhibit "D"

Current Version of Anacortes Airport Minimum
Standards for Commercial Activities

ANACORTES AIRPORT

Minimum Standards for Commercial Activities

Adopted
February 24, 2000



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Skagit County Auditor

1. Содержание

**ANACORTES AIRPORT
MINIMUM STANDARDS FOR COMMERCIAL ACTIVITIES**

1. DEFINITIONS

- 1.1. **Aviation Activity** means any activity commonly conducted at airports which involves, makes possible or is required for the operation of aircraft, or which contributes to or is required for the safety of such operations. These activities include, but are not limited to air taxi and charter operations, air cargo, pilot training, aircraft renting, sightseeing, aerial photography, crop dusting, aerial advertising, aerial surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products, repair and maintenance of aircraft, or sales of aircraft parts, and aircraft storage.
- 1.2. **Aviation – related Service** means any service which involves, makes possible or is required for the operation of aircraft, or which contributes to or is required for the safety of aircraft operations commonly conducted on the airport by a person who has a lease or permit from the airport owner to provide such service.
- 1.3. **Non-Aviation-related Service** means any service commonly conducted at an airport that provides service or products that are not associated with aviation. These activities include restaurants, mobile catering and food service, espresso/sandwich service, taxi service, car rental, and mobile service vans.
- 1.4. **Airport** means the Anacortes Airport, and all of the property, buildings, facilities, and improvements within the property boundaries of such airport as it now exists on the Airport Layout Plan or as it may hereinafter be extended, enlarged, or modified.
- 1.5. **Airside** means the runways, taxiways, ramps, aprons, buildings, and facilities used by aircraft.
- 1.6. **Aircraft Maintenance and Repair** means providing one or more of the following:
- Airframe overhaul and repair.
 - Engine overhaul, repair, and installation.
 - Instrument repair and installation.
 - Radio and electrical repair and installation.
 - Aircraft interior work.
 - Refinishing and painting.
 - Other specialties.
- 1.7. **Board** means the Board of Commissioners of the Port of Anacortes.
- 1.8. **Charter Operations** means air service, including but not limited to, passenger or air taxi, freight, or delivery.



**ANACORTES AIRPORT
MINIMUM STANDARDS FOR COMMERCIAL ACTIVITIES**

- 1.9. **Commercial Activity** means any trade, commerce, or business involving the exchange of goods, property, or services of any kind.
- 1.10. **Commercial Operator** means any individuals who are owners, partners, or managers of a commercial service or activity permitted at the Anacortes Airport.
- 1.11. **FAA** means the Federal Aviation Administration.
- 1.12. **FAR** means Federal Aviation Regulations.
- 1.13. **FBO** means a Fixed Base Operator duly authorized by written agreement with the airport owner to provide aeronautical services at the airport under compliance with such agreement and pursuant to these standards. By definition an FBO has a "fixed base" of operations, i.e. an office, hangar, or shop on the airport, approved for commercial operations.
- 1.14. **Fuel** means aviation gasoline, automotive fuel, diesel, or jet fuel.
- 1.15. **Landside** means all buildings and surfaces on the airport used by surface vehicular and pedestrian traffic.
- 1.16. **Line Services** means provision of one or more of the following services for aircraft:
- Supplying fuel, oil, and other fluids.
 - Interior and exterior cleaning.
 - Towing and ground support.
- 1.17. **Minimum Standards** means the standards which are established by the airport owner as the minimum requirements to be met as a condition for the right to conduct an aeronautical activity or provide a commercial service on the airport.
- 1.18. **Person** means an individual, firm, partnership, corporation, company, association, joint-stock association or body politic, and includes any trustee, receiver, assignee or other similar representative thereof.
- 1.19. **Self-fueling Operator** means a person who dispenses aviation fuel to aircraft owned by such person, or leased from others and operated by such person.
- 1.20. **UNICOM** means the communication systems radio used by an FBO to provide weather and air traffic information to arriving and departing aircraft.



ANACORTES AIRPORT MINIMUM STANDARDS FOR COMMERCIAL ACTIVITIES

2. BUSINESS ACTIVITIES

Subject to applicable orders, certificates or permits of the Federal Aviation Administration (F.A.A.), or their successor, no person shall use the Airport, or any portion thereof, or any of its improvements or facilities for revenue producing commercial, business, or aviation related activities who has not first obtained consent for such activities from the Port of Anacortes. In addition, such person shall enter into the required written lease and other agreement as prescribed by the Board, or agreed upon by the Board and such person.

3. OVERVIEW

3.1. Purpose

The Port of Anacortes is providing Minimum Standards for Commercial Activities at the Anacortes Airport to provide the threshold entry requirements to be met as a condition for the right to conduct a commercial activity on the airport. The entry requirements may include qualifications, minimum services that must be provided, levels of service, facilities, staffing, insurance, and environmental compliance.

The establishment of these standards is in the public interest. The minimum standards are promulgated to:

- Ensure that a minimum level of service is provided to the aviation community.
- Ensure that a variety of aviation-related services be available at the airport.

If an individual or firm desires to conduct commercial activities at the Airport, they will be provided with a copy of the Minimum Standards, which include definitions, the application process for a prospective business, and the Port of Anacortes criteria for approving the application.

3.2. Combination of Activities

A basic need at the airport is the provision of essential line services. Essential line services at the Anacortes Airport have been determined to include the sale of aviation fuel and oil, management of Port owned tiedowns (the Port may or may not require this of new entrants), provision of ground support services, and operating the UNICOM service (the Port may or may not require this of new entrants). Also determined essential is the provision of conveniently located clean, heated lounges and American Disability Act (ADA) compliant restrooms for passengers and air crews that include a comfortable waiting area, telephone and an area for flight planning. In addition, desirable services at the Anacortes Airport have been determined to include aircraft



ANACORTES AIRPORT MINIMUM STANDARDS FOR COMMERCIAL ACTIVITIES

maintenance and repair, flight training, air taxi, charter, or rental service, and aircraft parts, accessories, and pilot supply sales. It is considered reasonable and appropriate that for the right to engage in the sale of fuel, the provision of all essential line services, and at least one desirable service be provided. The rationale behind this policy is to ensure that the business given authorization to sell fuel also provide significant services to the airport and its aviation users contributing to the overall airport infrastructure.

3.3. No Exclusive Rights and Minimum Standards

Pursuant to FAA regulations, where federal funds have been expended on an airport, there may be no exclusive right for the use of the airport by any person providing, or intending to provide, aviation related services to the public. The Port of Anacortes has assumed the obligation to make the airport's facilities and services available on fair and reasonable terms without unjust discrimination. Also pursuant to FAA regulations, the owner of a public airport can restrict the commercial use of the airport, or solicitation of business thereon, based on nondiscriminatory standards. The FAA strongly encourages, but does not require, an airport sponsor to develop and implement a Minimum Standards program. It is not the intent of the Port of Anacortes to adopt standards that could serve to create or preserve a monopoly but rather it is intended that these standards safeguard the public interest.

3.4. Consent or Approval

With respect to any matter which requires the consent or approval of the Port, such consent or approval, if requested, shall be in writing and may be withheld or conditioned in the Port's sole and absolute discretion.

3.5. Aircraft Fueling

Pursuant to FAA regulations, the Port of Anacortes may not preclude an aircraft owner from self-fueling the owner's aircraft. However, the Port of Anacortes will require that all fuelers, including self-fuelers, at Anacortes Airport have a fuel storage tank(s) located at the airport which meet all applicable federal, state, and local regulations and codes. Fueling of aircraft using fuel not first put into an approved fuel storage tank, and/or the sale of fuel by self-fuelers, will not be permitted. Notwithstanding the foregoing, those aircraft owners that self-fuel automobile gasoline will be permitted to self-fuel from containers brought onto the airport.

4. REQUIREMENTS

4.1. Commercial Activities Requiring Approval



ANACORTES AIRPORT MINIMUM STANDARDS FOR COMMERCIAL ACTIVITIES

Listed below are the types of commercial activities covered in these standards. No person shall use the airport for any of the following activities until such person has applied for and received approval from the Port of Anacortes for said activity or activities. Any person interested in conducting a commercial activity at the airport not shown below shall also be subject to the review process and shall submit an application as described in these Minimum Standards. The Port of Anacortes will review the plan to determine if the proposed activity is in the best interest of the public and will approve/disapprove the activity at its discretion:

- Fuel Services
- Aircraft Sales
- Aircraft Parts and Accessories Sales
- Charter Service
- Aircraft Rental
- Flight Instruction
- Aircraft Maintenance and Repair
- Air Taxi Service
- Specialized Aeronautical Services
- Car Rental
- Food and Beverage Service

4.2. General Rules

It shall be in the sole discretion of the Port of Anacortes to determine whether an applicant meets the minimum qualifications contained herein. The following general rules shall apply to all prospective commercial operators at the Airport:

a) No person shall use the airport for any commercial activity until such person has applied for and received approval from the Port of Anacortes for said activity or activities. An applicant shall carry on or conduct only those services for which he qualifies and which the Port of Anacortes approves.

b) All service providers are considered commercial businesses and must meet all applicable FAA, federal, state, and local requirements for the services they provide. Personnel must hold appropriate FAA and other applicable licenses for the functions they perform, and businesses must comply with all applicable, agency mandated drug-testing programs. Every commercial activity shall possess valid state and federal tax ID numbers, collect appropriate sales tax, file tax reports, and make all appropriate tax payments required by law.

c) All commercial operators must have a minimum of two years experience or have staff with experience in the service proposed. Said experience may be demonstrated



**ANACORTES AIRPORT
MINIMUM STANDARDS FOR COMMERCIAL ACTIVITIES**

by a partnership, joint venture, employment agreement or other suitable relationship with a person, firm or entity possessing such experience. After completing a review of the application, the Port of Anacortes, in its sole discretion, may waive the requirement for the applicant (commercial operator) to have a minimum of two years experience in the service proposed.

d) The applicant shall agree to a lease for a term to be mutually agreed upon between the parties with due consideration for the applicant's financial investment and the need to amortize improvements to the leasehold. The lease will identify mutually agreed upon financial obligations, minimum insurance levels, and include appropriate office, hangar, or shop space for the proposed services. The lease may be with the airport or with a tenant on the airport. The applicant must obtain approval from the Port of Anacortes prior to beginning commercial operations, regardless of whether the lease is with the airport or with a tenant of the airport.

e) All commercial operators shall acquire minimum insurance coverage as required by the Port of Anacortes but should make their own analysis to determine if more insurance is needed. Higher coverage limits may be appropriate for some operations. The Port of Anacortes, which may require different coverage based on review of the proposed business and the background of the applicants or commercial operators, may also periodically review insurance coverage. Liability coverage is required by the operator if the service involves towing, taxiing, or if the operator flies non-owned aircraft.

f) All commercial operators must have a phone/message system.

5. Minimum Standards

5.1. Fuel Services

A fuel services business shall provide and maintain all necessary pumps, tanks, trucks, refueler, fueling islands, and other fueling facilities that may be necessary (by lease or other agreement as approved by the Port of Anacortes). The business shall not place or maintain any fueling facility on the Airport, mobile or fixed, which is not previously approved by the Port of Anacortes. The business shall operate only in the area leased by them and such other areas that the Port of Anacortes may designate. The business must have an area sufficient in size (and as required and approved by the Port) to accommodate the line service and flow of traffic in and out of the line services, parking of serviced aircraft, and aircraft to be serviced.

The business shall provide a conveniently located, clean, heated lounge and ADA compliant restroom for passengers and air crews, to include a comfortable waiting area,



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MINIMUM STANDARDS FOR COMMERCIAL ACTIVITIES

telephone and an area and facilities for flight planning. Space should also be adequate for administrative offices.

Businesses shall comply with all the current laws and regulations, including but not limited to, uniform fire codes, Department of Ecology tank requirements, and current FAA fueling rules and regulations, including the record keeping of equipment and fuel inspection logs as described in FAA AC 150/5230-4, "Aircraft Fuel Storage, Handling and Dispensing on Airports," and businesses shall provide copies of these inspection logs to the Port of Anacortes.

The business shall not deliver fuel into any aircraft unless the fuel has been placed in a suitable approved filtration tank. There shall be no fueling direct from a common carrier transport truck into refueler without filtration.

Businesses shall provide safety training for their employees including hazardous materials and spill response as required by federal and state regulations.

The businesses shall maintain enough attendants on duty to service customers without unreasonable delay during posted hours of operation, and to perform other duties specified below including UNICOM service (Note: There can only be one UNICOM located at the airport).

Hours of operation shall be as follows:

- Fuel available 7 days/week, 12 hours/day - summer; 10 hours/day - winter.

The business shall maintain an adequate supply of aircraft fuel, oils, and fluids normally required on this airport.

In addition to the minimum standards defined above, any business providing fuel service must also provide the following additional duties and services:

- a) Ground Support (adequate personnel and equipment for normal servicing of customers' aircraft, including tow bars, starting assistance, battery charging, tire inflation, and aircraft cleaning).
- b) Tie-down Management.
- c) General housekeeping of fuel area and related public spaces.

And at least one of the following services:

- a) Aircraft Maintenance and Repair.



**ANACORTES AIRPORT
MINIMUM STANDARDS FOR COMMERCIAL ACTIVITIES**

- b) Flight Training.
- c) Air Taxi, Charter or Rental.
- d) Aircraft Parts, Accessories, and Pilot Supply Sales.

5.2. Aircraft Sales

An aircraft sales business shall provide adequate office space and an area on the airport of sufficient size to permit the storage and/or display of all aircraft for sale or used in the aircraft sales business.

5.3. Aircraft Parts, Accessories and Pilot Supply Sales

A parts accessories or pilot supply sales business shall provide an adequate inventory, sales room, storage facilities, and administrative office space for such operations.

5.4. Charter Service

A charter operations business shall provide an adequate waiting room with a telephone available to the public and clean ADA compliant restroom facilities. Space should also be adequate for administrative offices. The business shall provide adequate space on the airport for storage, loading, and unloading of aircraft that will be used in such charter operations. At least one aircraft based on the Anacortes Airport must be suitable for such operations. Charter businesses will provide the Port of Anacortes with a monthly report on the number of passengers enplaned at Anacortes Airport.

5.5. Aircraft Rental

An aircraft rental business shall provide a room or other suitable space for flight planning. It shall be equipped with a bulletin board, facilities for flight planning, telephone, clean ADA compliant restrooms, administrative office space, and shall provide adequate aircraft storage and operating area. At least one aircraft based on the Anacortes Airport must be suitable for such operations.

5.6. Flight Instruction

A flight instruction business shall provide the same facilities as for aircraft rental. If ground school is to be offered, a classroom shall be provided. Such business shall operate and have based on the airport one or more aircraft suitable for flight instruction.



**ANACORTES AIRPORT
MINIMUM STANDARDS FOR COMMERCIAL ACTIVITIES**

5.7. Aircraft Maintenance and Repair

A maintenance services business shall provide a shop building of sufficient size to accommodate at least one aircraft together with all tools and equipment. In addition, the business shall equip the shop with such tools, machinery, equipment, parts, and supplies normally necessary to conduct a full-time business operation for the maintenance service being offered. Such a shop shall be staffed by mechanics and personnel who possess all current, necessary FAA Certifications. This also will require each shop that is not an approved FAA Repair Station, to have at least one full-time mechanic with FAA inspection authorization.

5.8. Air Taxi

An air taxi business will fly published scheduled operations at published rates. The business will establish, staff, and operate a facility at the airport that has an adequate ticket counter, passenger waiting room, clean ADA compliant restrooms, public telephone, and administrative offices. The business will also provide reservation service, handled in such a way as to prevent overbooking, and will handle baggage and passenger interchange with other airlines as appropriate. The business shall provide adequate space on the airport for storage, loading, and unloading of aircraft that will be used in such operations. A monthly report of operations at the airport will be provided to the Port of Anacortes including the number of landings, type aircraft, number of passengers enplaned, and pounds of freight.

5.9. Specialized Aviation Services

Any specialized services not covered in the above categories such as photo work, agricultural spraying, banner towing, etc., shall meet such requirements as may be prescribed by the Port of Anacortes for the conduct of safe and business-like operation at the Anacortes Airport and shall provide liability insurance as may be required by the Port of Anacortes.

5.10. Car Rental

A car rental business shall have adequate facilities for such services.

5.11. Food and Beverage Service

A food and beverage service provider shall have adequate facilities and meet all state, local, and other applicable laws pertaining to such facilities.



**ANACORTES AIRPORT
MINIMUM STANDARDS FOR COMMERCIAL ACTIVITIES**

6. APPLICATION

Demonstration of intent to conduct a business operation at the airport shall be by application to the Port of Anacortes. Current commercial operators intending to add services shall also be subject to the application process. Contents of the written application shall contain, at the minimum, the items defined below.

All prospective commercial operators are urged to contact the Port of Anacortes prior to and during the application process in an effort to facilitate open communication and initiation of business activity.

The proposed nature of the business including a business plan which includes, at a minimum, the following:

- a) Name of the business.
- b) Names, addresses, and phone numbers of all individuals who would be owners, partners, or managers of the business.
- c) Summary of intended use of airport facilities.
- d) Financial plan forecasting business development and demonstrating finances necessary to conduct the proposed operation.
- e) Cite applicable FAA regulations for the proposed service.
- f) Declaration that the Minimum Standards for Commercial Activities at the Anacortes Airport have been met.
- g) A current financial statement for the business and/or owners. Certification by a Certified Public Accountant may be required.
- h) Provide necessary information to allow the Port of Anacortes to obtain a credit report.
- i) A list of employers or work history providing information covering the last five years.
- j) Preliminary plans, specifications, and dates for any improvements which the applicant intends to make on the airport for the proposed business. Applicant must comply with the applicable building code, fire code, and permit requirements. Building permit applications will require the approval of the Port of Anacortes prior to submission to the City of Anacortes.



**ANACORTES AIRPORT
MINIMUM STANDARDS FOR COMMERCIAL ACTIVITIES**

- k) Copies of current FAA licenses and certificates which would be required for the proposed business. Preliminary approval may be granted pending receipt of FAA licenses and certificates.
- l) Evidence of ability to acquire necessary insurance coverage. Such policies shall not be for less than the amounts determined necessary by the Port of Anacortes.
- m) Signatures of all parties whose names are being submitted as owning an interest in the business or will appear on leases or other documents as being a partner, director or corporate officer.
- n) Such other information as the Port of Anacortes may reasonably require.

6.1. Action On Application

All applications will be reviewed and acted upon by the Port of Anacortes upon receipt of the complete written application on a timely basis.

The Port of Anacortes may deny the application in the Port's sole and reasonable discretion for any reason.

SKAGIT COUNTY WASHINGTON
Real Estate Excise Tax

FEB 23 2010

Amount: \$0.00
By: Skagit County Treasurer: Deputy:
Lp

