

Return Address:

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

Document Title(s) or transactions contained therein:

**Land Lease
BOMARC Lot 1 (45-70 Building)
Lease 21-013**

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

Snohomish County

Additional names on page ____ of document.

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

Bosa Bomarc, LLC

Additional names on page ____ of document.

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

Portion of SW 1/4 of the NW 1/4 of section 14 township 28 N, Range 4 E.W.M. known as Lot 1 of Sector 1, Bomarc Business Park at Paine Field

Additional legal is on **Exhibit A** of document

Reference Number(s) of Documents assigned or released:

90010304063, 92081000730, 9506150202, 200108075005

Additional numbers on page ____ of document.

Assessor's Property Tax Parcel/Account Number

28041400300800

Property Tax Parcel ID is not yet assigned

Additional parcel numbers on page ____ of document

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

SNOHOMISH COUNTY AIRPORT
LAND LEASE

TABLE OF CONTENTS

	PAGE
COVER PAGE	1
TABLE OF CONTENTS	2
ARTICLE I PREMISES	
Section 1.01 - Description of Leased Land	5
Section 1.02 - Use of Premises	5
Section 1.03 - Inspection	7
Section 1.04 - Omitted	8
Section 1.05 - Tenant Improvement Forms	8
Section 1.06 - Tenant Action Request Forms	8
ARTICLE II TERM	
Section 2.01 - Term	8
Section 2.02 - Omitted	8
Section 2.03 - Right of First Refusal	8
Section 2.04 - County Exercise of Right of First Refusal	8
Section 2.05 - Relationship Between Parties	9
ARTICLE III RENT	
Section 3.01 - Rent	9
Section 3.02 - Time and Place of Payment	9
Section 3.03 - Increased Rent	9
Section 3.04 - Late Payment of Rent	10
Section 3.05 - Security Deposit	10
Section 3.06 - Adjustments of Leased Space Rent	10
Section 3.07 - Common Area Maintenance Fee	10
Section 3.08 - Surface Water Management Fees	10
Section 3.09 - Storm Water Facility Policy	10
ARTICLE IV LESSEE'S OBLIGATIONS	
Section 4.01 - Condition of Premises	11
Section 4.02 - Maintenance and Repairs	11
Section 4.03 - Surrender of Leasehold Improvements	12
Section 4.04 - Utilities and Other Charges	12
Section 4.05 - Liens	13
Section 4.06 - Personal Property	13
Section 4.07 - Equipment	13
Section 4.08 - Prevailing Wages	14
Section 4.09 - Waste Water	14
Section 4.10 - Sewage System	14
Section 4.11 - Assigning and Subleasing	14
Section 4.12 - Hazardous Waste, Substances, and Pollutants and Contaminants	15
Section 4.13 - Hold Over by Lessee	17
Section 4.14 - LEED	17
Section 4.15 - Salmon Safe Compliance	17

ARTICLE V	INDEMNITY AND INSURANCE	
	Section 5.01 - Indemnification and Hold Harmless	17
	Section 5.02 - Insurance	18
	Section 5.03 - All Risk Insurance	20
	Section 5.04 - Mutual Subrogation	20
	Section 5.05 - Destruction and Restoration	20
	Section 5.06 - Increased Limits	20
	Section 5.07 - Insurance Review	21
ARTICLE VI	DEFAULT	
	Section 6.01 - Lessee's Default	21
	Section 6.02 - Remedies	21
	Section 6.03 - Abandonment/Removal of Property	22
ARTICLE VII	TERMINATION	
	Section 7.01 - Termination	22
	Section 7.02 - Termination for Lessee's Default	22
	Section 7.03 - Termination for Airport Use	22
	Section 7.04 - Right of Entry	22
ARTICLE VIII	FEDERAL, STATE AND COUNTY REQUIREMENTS	
	Section 8.01 - Federal Requirements	22
	Section 8.02 - Subordination to Airport Operations	24
	Section 8.03 - Condemnation	24
	Section 8.04 - Laws and Regulations	25
	Section 8.05 - Aviation Easement	25
	Section 8.06 - Easement Rights Reserved	25
	Section 8.07 - Security	26
	Section 8.08 - Noise Abatement	26
	Section 8.09 - Aircraft and Ground Service Vehicle Identification	26
	Section 8.10 - Wildlife Hazards and Deterrents	26
	Section 8.11 - Foreign Object Damage	27
	Section 8.12 - County Non-Discrimination Requirement	27
ARTICLE IX	GENERAL PROVISIONS	
	Section 9.01 - Total Agreement, Applicability to Successors	27
	Section 9.02 - Nonwaiver	27
	Section 9.03- Relationship to Assignees or Subtenants	27
	Section 9.04 - Attorney Fees	27
	Section 9.05 - Time of Essence	27
	Section 9.06- Leasehold Financing	27
	Section 9.07 - County Indemnification	27
	Section 9.08 - Warranties / Guarantees	28
	Section 9.09 - Headings	28
	Section 9.10 - Consent of County	28
	Section 9.11 - Notices	28
	Section 9.12 - Governing Law Venue & Severability	28

EXHIBIT ATTACHED

Exhibit A
Exhibit B
Exhibit C
Exhibit D
Exhibit E
Exhibit F

Legal Description
Diagram of Premises
Rate Schedule
Title VI List of Pertinent Nondiscrimination Acts and Authorities
Agreed Order No. DE
Lease Guaranty

LAND LEASE
SNOHOMISH COUNTY AIRPORT

Lessee: Bosa Bomarc, LLC.
Lease No. : 21-013
Effective Date: June 1, 2021

THIS LEASE between SNOHOMISH COUNTY, a political subdivision of the State of Washington, herein called County (or Lessor), and Bosa Bomarc, LLC, herein called Lessee.

WITNESSETH: That County and Lessee desire to enter into a lease on a month-to-month basis for the following land and building(s) on the Snohomish County Airport, Snohomish County, Washington:

Lot 1, Bomarc Business Park at Paine Field. Alteration of Binding Site Plan for Snohomish County Airport, Recorded under Snohomish County Auditor's File No. 200108075005 on August 7, 2001.

upon the following terms and conditions:

ARTICLE I – PREMISES

1.01 Description of Leased Land. The County hereby leases to Lessee and Lessee hereby leases from County Lot 1, Bomarc Business Park at Paine Field (formerly known as Parcel E) containing 1,310,964.57 square feet of land at the Snohomish County Airport (the "Airport") situated in Snohomish County, State of Washington, as legally described in **Exhibit A** and shown on the diagram attached hereto as **Exhibit B** hereinafter called the "premises." The County and Lessee acknowledge that the premises were formerly leased by the County to The Boeing Company pursuant to the lease commonly known as Boeing Phase I and Phase II recorded under Snohomish County Auditor's recording numbers 9001030463 ("First Partial Assignment") and 9208100730 (*Second Boeing Assignment') as to the premises described as Parcel E in Amendment No. 3 to that certain land lease dated July 19, 1989 and surrendered to Snohomish County by Eugene Horbach d/b/a E&H Properties on May 31, 1995 under the Snohomish County Auditor's No. 95061500202. Said lease to The Boeing Company has been terminated through the mutual agreement of the parties to said lease.

1.02 Use of the Premises Lessee:

- a. Shall use the premises only for the following uses: Light Industrial and for no other purpose without the written consent of the County. No delay or failure of the County to object to any improper or illegal use or other use contrary to terms of this lease shall constitute a waiver of the County's right to claim a breach for such use.

- b. Shall place no sign or mailbox upon the premises or any other Airport property or alter, remodel, or in any way modify or change the present condition or appearance of the premises without the express written permission of the Airport Director. Signs shall comply with all codes and ordinances as adopted by the County. Lessee shall obtain the written approval of the Airport Director for any exterior painting, including choice of color.
- c. Shall make no changes or improvements to the premises that breach or otherwise result in any penetration of or destruction to the building floor and/or floor slab without the prior written consent of the County and except as permitted under the forthcoming environmental covenant referenced in Section 4.01, below.
- d. Shall screen outside storage from adjoining properties and right of ways. Lessee agrees that parking, outside storage and other uses incidental to its operation shall be upon the premises only with the written consent of the Airport Director. Lessee shall not use or permit employees, patrons, invitees, or guests to use parking space or other areas of the Airport outside of the premises, as it now exists or may hereafter be amended, in a manner contrary to the posted rules and regulations of the Airport.
- e. Shall keep, maintain, and surrender the premises in a neat, clean, and safe condition and in as good condition as the same now is, reasonable wear and tear excepted, at its sole cost and expense.
- f. Shall keep the visible area of the premises and access, loading and parking areas free of debris and in a neat, safe, and attractive condition. Lessee shall not use such areas for storage or for other than loading and parking activities and shall not obstruct the access, parking, or loading areas of other tenants or users of the Airport. Lessee shall not store any boat, recreational vehicle, trailer, car or other vehicle on the premises.
- g. Shall not create any fire, safety, or health hazard on any Airport property, shall not use or permit any use of the premises so as to produce noxious or dangerous fumes, odors, smoke, or waste, unlawful noise, and shall not make or permit any other use of the premises which constitute a nuisance, waste or an unlawful use, interferes with the use and occupancy of other Airport property, or cause cancellation of any insurance policy on the premises.
- h. Condition at termination. At the end of the term or earlier termination or retaking of possession, Lessee covenants and agrees that it will yield and deliver the Leased Premises in a neat, clean and safe condition, with all systems and doors servicing the Leased Premises in good working order and in like condition as when taken, reasonable use and wear as determined by Lessor, and will deliver all keys and security cards for the Leased Premises to Lessor at the place then fixed for the payment of Rent.

Lessee shall arrange to meet with Lessor at least thirty (30) days prior to vacating the premises for a joint inspection of the premises. In the event the Leased Premises are not returned to Lessor in the condition required in this Paragraph and elsewhere in this Lease, Lessor may enter the Leased Premises and restore and repair the Leased Premises to the original condition and configuration required by this Lease at Lessee's sole cost and without prior notice to the Lessee. Lessee shall pay all costs associated with restoring and/or repairing the Leased premises immediately upon demand from Lessor, and said costs shall be withheld from any security deposit held. Said cost shall include a fifteen percent (15%) administrative fee. Lessor shall not be required to give prior written notice or have said costs to repair, restore or reconfigure the Leased Premises approved by Lessee prior to performing said work. If the repair work is extensive in nature, Lessee shall be deemed to be a holdover Lessee until such time the Leased Premises has been repaired and/or restored to the condition required by this Lease. At Lessor's option, Lessor may, within ten (10) days of retaking possession, give the Lessee a written list of Lessee's failure, if any, to clean up or repair the premises, to which Lessee must repair, restore premises at Lessee's cost within thirty (30) days of such notice. During such time, Lessee shall be deemed to be a holdover Lessee until such time the Leased Premises has been repaired and/or restored to the condition required by this Lease. If the Lessee has not done so thirty (30) days after delivery of the written list, the County may clean up or repair the defects noted in the list, with its own personnel or independent subcontractors, charging the cost of the same to the Lessee. Any cost charged, including lost rent, shall be immediately due and payable by the Lessee. Said cost shall include a fifteen percent (15%) administrative fee. Further, during this time, Lessee shall be deemed to be a holdover Lessee until such further time the Leased Premises has been repaired and/or restored to the condition required by this Lease.

- i. Shall comply with the *Declaration of Covenants, Conditions, and Restrictions (CCR) Applicable to Bomarc Business Park at Paine Field* recorded under Snohomish County Auditors' File No. 9710280515.

1.03 Inspection. County reserves the right to inspect the premises and improvements thereon at any and all reasonable times throughout the terms of this lease provided that it shall not interfere unduly with the Lessee's operation, including but not limited to, in order to confirm compliance with this Lease, the federal grant assurance obligations (of which Lessor has been notified or is otherwise aware) and other applicable local, state and federal laws and regulations. The right of inspection reserved to the County hereunder shall impose no obligation on the County to make inspections to ascertain the condition of the premises and shall impose no liability upon the County for failure to make such inspections. Lessee shall allow access for an annual certificate of occupancy fire and safety inspection by the County Fire Marshal, Snohomish County Airport Fire Chief, or their designee. Lessee shall pay the cost of the annual certificate of occupancy fire and safety inspection and any re-inspection in the event of a violation requiring correction. Lessee shall allow access for other fire, safety and insurance

inspections by the County, provided that such inspections shall be without charge to the Lessee. Lessee shall allow the County to install a Knox box on the premises, if deemed necessary by the County, at a cost to be reimbursed by the Lessee. In the event Lessee desires to install an alarm system, Lessee shall provide a supervised alarm system with local monitoring by a U. L. approved station acceptable to the Airport Director. Lessee shall leave the Knox box, alarm system and wiring in place upon termination of the lease, unless requested otherwise in writing by the County.

1.04 Omitted.

1.05 Tenant Improvement Forms. Prior to making any changes or improvements to the premises, Lessee shall submit a Tenant Improvement Form to the County for approval by the Airport Director. Tenant Improvements Forms may be obtained at the Snohomish County Airport Office. Lessee shall maintain all improvements made pursuant to this paragraph.

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

ARTICLE II -TERM

2.01 Term. The term of this lease shall be for a period of **Fifty (50) years** commencing on the effective date of this lease, **June 1, 2021** and ending on **May 31, 2071.**

2.02 Omitted.

2.03 Right of First Refusal. The Lessee hereby grants County, during the term of this lease, the right of first refusal to any transfer or assignment of all right, title and interest of the Lessee in the lease premises, including, but not limited to, any buildings and improvements developed thereon, and any sub-tenancy. The Lessee will not transfer, assign or sell its interest in the premises to any third party without first offering the same to the County on the same terms and conditions that the Lessee is willing to transfer, assign or sell its interest in the premises to any third party.

2.04 County Exercise of Right of First Refusal. If the Lessee proposes to make such a third party transfer, the Lessee shall first offer, in writing, to transfer all right, title and interest in the lease premises to County under the same terms and conditions. County may accept the offer by delivering written notice of acceptance to Lessee within sixty (60) days of County's receipt of the written notice from Lessee.

2.05 Relationship Between Parties. It is the intention of this lease to create the relation of lessor and lessee between the parties and no other relations whatsoever. Nothing herein contained shall be construed to make the parties partners or joint ventures,

or to render either party liable for any of the debts or obligations of the other party.

ARTICLE III – RENTAL

3.01 Rent. Lessee shall pay the County rent in the amount of **Sixty-Four Thousand Five Hundred Sixty-Five and 01/100 Dollars (\$64,565.01)** per month, plus leasehold excise tax as set forth in Section 8.04 (b) and any other charges as fixed in this lease as shown on **Exhibit C** (Rate Schedule) attached hereto and by reference incorporated herein. Rent shall be paid in advance on the first day of each month. **Exhibit F**, Lease Guaranty is incorporated by reference.

3.02 Time and Place of Payment. Rental shall be payable to the Snohomish County Airport at the Airport Finance & Business Development Office, Paine Field, 10108 32nd Ave W, Suite J, Everett, WA 98204, commencing **June 1, 2021** the Rent Commencement Date. Payment of rental shall not relieve the Lessee of payment of any other fees generally charged by the County. The first payment shall be prorated according to the number of days remaining in the month after mutual execution of this lease.

3.03 Increased Rent. The first rent adjustment shall occur on **June 1, 2022** which aligns with the previous terminated (Boeing) lease rent adjustment schedule. Thereafter, the parties agree to additional adjustment of rent every three (3) years beginning thirty-six (36) full calendar months. The County shall give Lessee written notice of the adjusted rent to take effect 30 days after the date of said notice unless Lessee, within 30 days following receipt of notice from the County, gives written notice of rejection of the adjusted rent. The adjusted rent shall be the then existing fair market value rent for the premises, and "fair market value" rent shall have the same meaning as such term is defined in existing Snohomish County Code Section 4.46.010(8) (the "Fair Market Value Rent"). If the adjusted rent is disputed, the parties shall submit the readjustment to arbitration within 10 days of disputing the rent, Lessee shall select and pay the fees for one arbitrator and County shall select and pay the fees for one arbitrator. Within 10 days of the their selection, these two arbitrators shall select a third arbitrator. Each arbitrator shall be a commercial real estate M.A.I. appraiser conducting business in Snohomish County, Washington and have not less than five (5) years active experience as a commercial real estate appraiser in the leasing market in Snohomish County, Washington. The Board of Arbitrators shall together determine Fair Market Value Rent of the premises. The Board of Arbitrators, after a review of all pertinent facts, may increase or decrease such rents, or continue the previous rate thereof. Any rental during the period for which readjustment is being done by the Board of Arbitrators shall be paid at the rate fixed by the Board of Arbitrators and shall be retroactive to the commencement of the three (3) year period. All fees, costs and expenses of that arbitrator commonly appointed by the parties hereto shall be shared equally. This paragraph shall not in any manner be construed to limit the right to readjustment as required by statutes of the State of Washington.

3.04 Late Payment of Rent. Rent shall be delinquent if not paid by the fifteenth day of each month. If payment is received after the 15th day of any month, there will be a .0333% per day interest charge on the unpaid balance for each day past the due date. A late payment charge of .01665% per day will also be charged on rent not paid by the

15th of each month for each day past the due date. In addition, a charge in the amount provided by current County ordinance will be made on any payment by check which is returned unpaid to the Airport because of insufficient funds, closed account, forgery, or any other reason.

3.05 Security Deposit. N/A

3.06 Adjustments of Leased Space and Rent.

- a. The parties may mutually agree to reduce or increase the total amount of leased space. If the County desires to reasonably increase or decrease the leased space, County will present a detailed letter and exhibits to the Lessee and Lessee will review and provide written acceptance or denial. If the Lessee desires to reasonably increase or decrease the leased space, Lessee will present a detailed letter and exhibits to the County and County will review and provide written acceptance or denial. The rent for the adjusted space will begin on an agreed date by both parties and be subject to the date of increased rent as stated in Section 3.03.
- b. Rent adjustments as agreed to in this section and/or as provided in Section 3.03 will be authorized by an amendment to the lease with only affected paragraphs changed.

3.07 Common Area Maintenance Fee. Lessee shall pay County a CCR Common Area Maintenance (CAM) fee for common area road maintenance equal to **\$2.01** per automobile stall per month. There are currently **581** parking stalls on the premises and the Lessee shall pay County the sum of **\$1,164.91** per month, plus leasehold excise tax in CCR CAM charges as shown on **Exhibit C** attached hereto. The CCR CAM fee shall be increased in the same proportion as the land rent increases every three (3) years as outlined in Section 3.03 above. The CCR CAM fee shall be paid in advance on the first of every month.

3.08 Surface Water Management Fees. Lessee shall pay County surface water management fees based upon impervious surface calculations by the Airport for charges assessed by Snohomish County Public Works Surface Water Management.

3.09 Storm Water Facility Policy. Lessee shall comply with the Snohomish County Airport Storm Water Facility Policy.

- a. Connection to Storm Water Detention Pond: Not applicable.
- b. SWF Fee: SWF Maintenance Charge: Lessee shall pay a monthly SWF fee of **\$2,515.44**, plus leasehold excise tax adjusted pursuant to Section 3.03. Lessee shall also pay a monthly SWF maintenance charge of **\$529.76**, plus leasehold excise tax shall be adjusted on the same cycle by the combined Consumer Price Index for All Urban Consumers for the Seattle-Tacoma-Bellevue area. These fees are for the pro-rated share of the SWF(s) supporting the premises.

ARTICLE IV - LESSEE'S OBLIGATIONS

4.01 Condition of Premises. Lessee has examined the premises, including any structure, grounds, and access thereto. Lessee represents and warrants that it has made its own independent assessment of the condition of the premises (including the environmental condition of the premises), that it has sufficient experience such that it is reasonable for Lessee to rely on its own independent assessment, and that it accepts the same in the condition in which they exist as of the Effective Date of the lease. It is agreed that the County shall not be bound by any warranty, representation, or condition regarding the premises except as stated herein. Lessee further understands and acknowledges that the premises will be subject to an agreed order currently being negotiated between the Washington State Department of Ecology and The Boeing Company (current Agreed Order No. DE 96HS-N274 dated January 29, 1997), the most current draft copy of which is attached hereto as **Exhibit E**, that an environmental (restrictive) covenant, the terms of which have not yet been finalized, is likely to be recorded against the premises pursuant to that agreed order, and that Lessee's use of the premises will be subject to the forthcoming environmental (restrictive) covenant.

4.02 Maintenance and Repairs.

- a. Except as provided in Section 4.02(b), Lessee, at its sole expense, shall keep and maintain the premises as now or hereafter constituted with all improvements made thereon, and the adjoining sidewalks, curbs, parking areas, and landscaping, clean and in good condition. Lessee shall make all repairs necessary to maintain the premises in good condition.
- b. Lessee shall not perform any maintenance or repair activities that breach or result in any penetration of or destruction to the building floor and/or floor slab without the prior written consent of the County and except as permitted under the forthcoming environmental covenant referenced in Section 4.01, above.
- c. Lessee, its employees, officers, and agents may request the County to make any repair required to be made by the Lessee herein and the County will perform the work according to the Snohomish County Airport published rates and charges for maintenance work. Any invoice from the County for maintenance work done under this section shall be due and payable 30 days after receipt by the Lessee.
- d. In the event the Lessee does not make a required repair within 10 days after receiving a Notice of Remedial Action from the County, the County may make the repair at the expense of the Lessee. The County may use its own personnel or contract for the repair. Any invoice from the County for maintenance work done under this section shall be due and payable immediately upon receipt by the Lessee.

4.03 Surrender of Leasehold Improvements.

- a. During the term of the lease, the Lessee shall have title to any and all buildings, fixtures and improvements constructed or installed by the Lessee. At the expiration of the term hereunder, the County shall have title to any and all buildings, fixtures and improvements constructed or installed by the Lessee, except movable office furniture, equipment, vehicles, and other personal property; PROVIDED however, the County shall have the option to request the Lessee to remove any and all buildings, fixtures and improvements constructed or installed by the Lessee at the sole cost and expense of the Lessee and restore the premises.
- b. At the expiration of the term hereunder, the Lessee shall provide County a manufacturer's roof system warranty for the 45-70 Building with a minimum of twenty (20) years remaining under such warranty and a certification from a qualified HVAC consultant stating that the HVAC system is in good working order and meets current code requirements under all applicable codes.
- c. Lessee shall peaceably and quietly leave, surrender and deliver to County the premises, together with any buildings and improvements, and any and all subsequent alterations, additions, and replacements which may have been made upon the premises to which the County has assumed title, in good repair, ordinary wear and tear excepted.
- d. Upon the earlier of vacating or Lease expiration/termination, Lessee shall be responsible for removing all of its personal property, trash, movable furniture, equipment, fixtures and personal effects from the Leased Premises at Lessee's own expense. Furthermore, Lessee shall be responsible to remove any and all satellite dishes, computer cabling, antennas and associated wires, which Lessee or Lessee's agents installed, unless requested in writing by County. Any personal property and movable furniture, equipment, fixtures and personal effects of Lessee not removed from the Premises at the expiration or termination of the Lease term shall conclusively be deemed to have been abandoned and may be removed, sold or otherwise disposed of by Lessor in accordance with this Lease.

4.04 Utilities and Other Charges. Lessee shall pay charges for sewer, water, gas, electricity, telephone, surface water management fees, joint mailbox systems, security and fire equipment maintenance and monitoring, annual certificate of occupancy fire inspection fee and re-inspection fee in the event of a violation requiring correction, and all other charges which may be furnished, or made available to the premises at Lessee's order or consent within a reasonable time.

4.05 Liens. Lessee agrees to pay, when due, all sums of money that may become due for, or purporting to be for, any labor, services, materials, supplies, utilities, furnishings, machinery, or equipment, which have been furnished or ordered with Lessee's consent, to be furnished to or for the Lessee in, upon, or about the premises herein leased, which may be secured by any mechanics', materialmen's, or other lien against the premises herein leased or County's interest therein, and will cause such lien to be fully

discharged and released at the time the performance of any obligation secured by any such lien matures or becomes due, provided that the Lessee may in good faith contest any mechanics' or other liens filed or established, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest.

Lessee shall not cause or permit the any encumbrance, lien of any mortgage, purchase money obligation, other security interest or other lien to be placed against the Premises. If such an encumbrance is nevertheless so recorded, the Lessee shall cause such encumbrance, at its sole cost, to be removed promptly and shall provide evidence reasonably satisfactory to the County of such prompt removal.

4.06 Personal Property. Lessee shall keep all personal property, equipment, trade fixtures, furniture and inventory on the premises and the value thereof insured against loss by fire or other casualty to their full insurable value and provide insurance policies and certificates of renewal to the County upon request.

4.07 Equipment. Any equipment, machinery, tools, appliances, movable furniture, movable fixtures and/or other personal property of any kind and nature placed on the premises by the Lessee shall remain the property of the Lessee; provided that:

- a. The Lessee shall remove such equipment, machinery, etc., prior to the expiration or termination of this lease and restore the building to its original condition, reasonable wear and tear excepted;
- b. Any such equipment, machinery, etc., which is not removed by the Lessee before the expiration, retaking of possession, or termination of this lease shall conclusively be deemed to have been abandoned and to have become the property of County and to dispose of as Lessor deems expedient in accordance with this Lease.
- c. If such equipment, machinery, etc., is not removed by the Lessee as provided above, the County has the right to remove and dispose of the property at the expense of the Lessee, or has the right to remove and store any or all of such property, at the expense of the Lessee as provided under this Lease. The County shall have a lien on such property for reasonable storage, and removal charges, and any other charges, including disposal, the County may have against the Lessee and shall have the right to sell any or all of such property and dispose of the proceeds as provided in RCW 60.60.030 and 60.60.040. At all times the Lessee shall bear all risk of loss or damage to any equipment, machinery, etc., or personal property placed in or on the premises or any other Airport premises by the Lessee.

4.08 Prevailing Wages. Pursuant to SCC 4.46.335, Lessee agrees that all contracts for improvements to the premises shall require the contractor or developer to comply with the prevailing wage provisions of RCW 39.12.010 through 39.12.030. Failure to comply with the prevailing wage provisions shall constitute a default of the lease resulting in termination unless said default is cured within thirty (30) days after notice thereof.

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

4.10 Sewage System.

- a. It is understood that the Airport is presently under contract with Olympus Terrace Sewer District, Mukilteo Water & Wastewater District, or other applicable sewer district for sewage disposal. In its use of the sewage system, Lessee shall comply with all applicable rules and regulations of the Airport and the applicable sewer district. Such system shall not be used for storm drainage or the discharge of any effluent deemed by the Airport Director or applicable sewer district to be harmful to the system.
- b. In the event sewer services are provided by Olympus Terrace Sewer District, Lessee shall pay the County such reasonable charges for sewer service as are fixed by the Airport Director.

4.11 Assigning and Subleasing. Lessee shall not assign, encumber, or sublet the premises or any part thereof without the prior written consent of the Airport Director. If Lessee is a corporation, any transfer of this lease by merger, consolidation or liquidation, or any change in ownership, or power to vote the majority of the outstanding stock of Lessee, or name change, constitutes an assignment for the purposes of this section. If Lessee is a partnership or proprietorship, a transfer of the controlling interest in such partnership or proprietorship constitutes an assignment for the purposes of this section. Lessee shall advise prospective assignees or subtenants that Snohomish County Code, Section 15.08.400 requires Airport Director approval of commercial operations. Prior to any consent, Lessee shall deliver to the Airport Director a written statement of intent to assign, sublease, or encumber. Any assignment, subletting or encumbrance without the written consent of the Airport Director is null and void. If this lease is assigned or sublet, or if the premises or any part thereof is occupied or used by anyone other than Lessee, County may, upon default by the Lessee, collect rent and any other charges under this lease from the assignee, subtenant or occupant and apply the net amount collected to the Lessee's rent and other charges herein reserved. No such assignment, subletting, occupancy or collection, shall be deemed a waiver of this covenant, the acceptance of the assignee, subtenant or occupancy as a tenant, or a release of Lessee from further performance by Lessee of the covenants including the payment of rent and other charges in this lease; and Lessee shall remain liable for all of its obligations, except for rentals paid, under this lease. Any consent by the Airport Director shall not be construed to relieve Lessee from obtaining the consent of the Airport Director to any further assignment, subletting, or occupancy. Lessee shall not charge or assess an assignee, subtenant or occupant rental or other fees in excess of ten percent (10%) over the rental or fees owing

from Lessee under the terms of this lease; PROVIDED, that this restriction shall not include assessments for utilities, taxes, insurance and other reasonable attendant expenses other than the payments to Lessee for use or occupancy of the premises. For the avoidance of doubt, the provisions of this Section 4.11 apply to the assigning, encumbering, or subletting of the premises or a portion of the premises, i.e., the lot that comprises the premises or a portion of that lot, and do not apply to the encumbering or subletting of any improvements to the premises owned by Lessee.

4.12 Hazardous Waste, Substances, and Pollutants and Contaminants.

- a. Lessee represents and warrants that it has inspected the premises (including the environmental condition of the premises), that it has sufficient experience such that it is reasonable for Lessee to rely on its own inspection of the premises, and that it has entered into this lease accepting the condition of the premises as of the Effective Date of this lease and subject to the forthcoming environmental (restrictive) covenant referenced in Section 4.01, above.
- b. Lessee agrees that it will not cause or permit in any manner, including accidental or non-negligent acts or omissions, release of any Hazardous Substance, waste, or pollutant or contaminant into, upon or from the premises or any Airport property contrary to any local, state or federal law, or regulation. Lessee shall notify the Airport Director, the State Department of Ecology, and any other applicable agency in writing of any such release. Lessee shall be completely liable for any and all consequences of such a release, including all liability under any federal, state, or common law. Lessee shall indemnify and hold the County harmless, as provided in Section 5, from any and all liability resulting from such a release and shall have full responsibility for completely cleaning up any and all contamination from a release as may be required by any governmental agency. After clean-up of such a release, Lessee shall provide County a copy of a "No Further Action" letter from the State Department of Ecology containing no restrictions on the property. If the Lessee fails to address or respond to any release of a Hazardous Substance by the Lessee within ten (10) days of notification of the release, the County may give immediate notice of termination of this lease and enter the premises and take whatever steps it deems appropriate to cure the consequences of such release, all at the expense of the Lessee. Lessee represents and warrants that it has inspected the premises and that there is no Hazardous Substance, waste, pollutant or contaminant located thereon, other than those referenced in **Exhibit E**. Any Hazardous Substance, waste, pollutant or contaminant placed upon the premises during the term of this lease shall be removed by the Lessee not later than the cancellation or termination of this lease.
- c. As used in this lease, the term "Hazardous Substances" means any chemical, substance, material, waste or similar matter defined, classified, listed or designated as harmful, hazardous, extremely hazardous, dangerous, toxic or radioactive or as a contaminant or pollutant, or other

similar term, by, and/or which are subject to regulation under, any federal, state or local environmental statute, regulation or ordinance presently in effect or that may be promulgated in the future, and as they may be amended from time to time.

- d. Lessee shall disclose and deliver to County copies of any environmental reports, tests, studies or other documentation relating to any investigation of the premises for hazardous substances. Lessee shall remediate hazardous substances currently on the premises and provide County a copy of a 'No Further Action' letter from the State Department of Ecology containing no restrictions on the premises.

- e. Lessee shall perform a Phase I environmental inspection of the premises thirty (30) days prior to the expiration of the lease. The Phase I inspection shall meet ASTM International (ASTM) Practice E 1527-13, Standard Practice for Environmental Assessments. Lessee shall provide County a copy of the Phase I environmental report thirty (30) days prior to expiration of termination of the lease. In the event Lessee fails to comply with a timely and compliant report within the stated time frame, the County shall have the right, but not the obligation, to conduct the Phase I Inspection at the expense of the Lessee and Lessee shall be liable for all associated costs and expenses. In the event the Phase 1 Environmental Site Assessment recommends a Phase II Environmental Site Assessment, Lessee shall immediately authorize the Phase II work to be done and shall be responsible for all costs and expenses associated with the investigation. Lessee shall immediately provide County one electronic and one hard copy of the Phase II environmental report. In the event Lessee fails to comply with a timely and compliant Phase II report within the stated time frame, the County shall have the right, but not the obligation, to conduct the Phase II Inspection at the expense of the Lessee and Lessee shall be liable for all associated costs and expenses. Further, Lessee shall be liable to Lessor for all costs and expenses, including all contamination clean up, as applicable, and all loss of revenue to Lessor, until all contamination discovered in the Reports has been remediated and the Department of Ecology has issued a "No Further Action" letter for the site.

4.13 Hold Over by Lessee. Should Lessee hold over and remain in possession of any part of the Premises without the Lessor's express written consent after the expiration or other termination of this Agreement, or to vacate or to return the premises to the County in clean and good condition and repair, including failure to clean-up contamination as required by section 4.12, Lessee shall be a tenant at sufferance and, without limiting Lessor's rights or remedies on account of such breach, and in addition to any other damages available to Lessor, Lessee shall be liable to Lessor for Rent during such holding over at the lesser of (i) 150% of the rate in effect at the time of such expiration or other termination, or (ii) the maximum rate Lessor may charge in accordance with applicable law, plus all other amounts that would become payable under the terms of the Agreement but for such expiration or other termination, and Lessee shall abide by and is otherwise subject to all the other terms, covenants and conditions specified in Lease, so

far as applicable. Under no circumstances shall Lessor's acceptance of Rent after expiration or other termination of the Agreement be deemed to extend or renew this Agreement or construed as Lessor's consent for tenant to hold over. The foregoing provisions are in addition to and do not affect the County's right of re-entry or any other rights of the County provided herein or as otherwise provided by law. Lessee hereby indemnifies and agrees to hold County harmless from all loss, injury and liability arising from Lessee's failure to surrender the premises in clean and good condition and repair upon the expiration or termination of this lease.

4.14 Leadership in Energy and Environmental Design (LEED) Gold Required. Lessee shall comply with Snohomish County Code Section 3.06 Snohomish County Green and High Performance Building.

4.15 Salmon Safe Compliance. Lessee shall comply with the Airport's Salmon-Safe Certification Requirement Condition 8: Ensure use of Paine Field's Integrated Pest Management Plan (IPM) dated October 2019 or a Salmon-Safe approved equivalent.

ARTICLE V - INDEMNITY AND INSURANCE

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

In addition to injuries to persons and damage to property, the term "claims," for purposes of this provision, shall include, but not be limited to, assertions that the use or transfer of any software, book, document, report, film, tape, or sound reproduction or material of any kind, delivered hereunder, constitutes an infringement of any copyright, patent, trademark, trade name, and/or otherwise results in an unfair trade practice.

In the event the County incurs attorney fees and/or costs in the defense of claims under this provision such attorney fees and costs shall be recoverable from the Lessee. In

addition Snohomish County shall be entitled to recover from the Lessee its attorney fees, and costs incurred to enforce the provisions of this section.

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

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

5.02 Insurance. At execution of this Lease, the Lessee, at its' own cost, shall have procured and will maintain for the duration of this Lease, insurance as specified in the Minimum Scope and Limits of Insurance. The Lessee shall furnish the County with certificates of insurance and endorsements required by this Lease. The County reserves the right to require complete, certified copies of all required insurance policies at any time.

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

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

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

a. Minimum Scope and Limits of Insurance. Coverage shall be at least as broad as and with limits not less than the following:

1. General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage, and for those policies with aggregate limits, a \$2,000,000 aggregate limit. CG 00 01 current edition.
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage. CA 0001 current edition, Symbol 1, unless otherwise approved by Risk Management.
3. Workers' Compensation: Statutory requirements of the State of residency.
4. Environmental Impairment: County reserves the right to require Environmental Impairment insurance specified herein based on Lessee's use of the premises as applicable, in the amount of \$ 10,000,000, combined single limit per occurrence for pollution liability,

and for those policies with aggregate limits, a \$10,000,000 aggregate limit. Pollution coverage to include all hazardous waste, substances, pollutants and contaminants and including all clean-up and remediation costs and expenses arising out of Lessee's use of leased Premises.

- b. Other Insurance Provisions and Requirements. The insurance coverage(s) required in this Lessee are to contain, or be endorsed to contain the following provisions:

General and Automobile Liability:

1. The County, its officers, officials, employees and agents are to be covered as additional insureds as respects liability arising out of or in connection with this Lease. Such coverage shall be primary and non-contributory insurance as respects the County, its officers, officials, employees and agents. The Additional Insured Endorsement shall be included with the certificate of insurance, CG 20 11 or its equivalent is required.
2. The Lessee's insurance coverage shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.
3. Any deductibles or self-insured retentions must be declared to, and approved by, the County. The deductible and/or self-insured retention of the policies shall not limit or apply to the Lessee's liability to the County and shall be the sole responsibility of the Lessee.
4. Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, until after thirty (30) calendar days' prior written notice to the County.
5. Insurance coverage is to be placed with insurers with a Bests' rating of no less than A: VIII, or, if not rated with Bests', with minimum surpluses the equivalent of Bests' surplus size VIII.
If at any time any of the foregoing policies fail to meet minimum requirements, the Lessee shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit the same to the County, with the appropriate certificates and endorsements, for approval.

5.03 All Risk Insurance. Lessee shall obtain and maintain continuously All Risk Property Insurance including Earthquake and Flood, any and all buildings and improvements constructed by the Lessee upon the premises against all loss or damage for the benefit of both County and Lessee and named Insureds. Full insurable value shall mean actual replacement value. Lessee shall maintain, restore and keep in good

condition and repair all such buildings and improvements. Lessee shall provide duplicate insurance policies and certificates of renewal to the County.

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

5.05 Destruction and Restoration. If any building, structure or facility which was constructed or located on the premises by Lessee is destroyed or damaged by fire, the elements, or any other cause, the Lessee shall, subject to the forthcoming environmental (restrictive) covenant referenced in Section 4.01, above, repair the same to its condition at the time of loss. The Lessee, at its option, shall have the right, at its own expense, either to promptly repair and rebuild such building, structure or facility, or to delay the commencement of such repair or rebuilding until the proceeds of all insurance policies covering such casualty are available. After commencement of repair or rebuilding the Lessee shall continue the work with reasonable diligence until completion. Except as otherwise provided in this lease, the lease shall not terminate or be affected in any manner by reason of the damage or destruction by fire, the elements, or any other cause, and the fixed rent reserved in this lease, as well as all other charges payable hereunder, shall be paid by the Lessee without abatement or reduction on account of such damage or destruction. All risk of loss to any building, structure or facility placed in the premises by Lessee shall be on Lessee.

5.06 Increased Limits. If during the term of the lease, higher limits of insurance than those mentioned shall be required by the then current version of Snohomish County Airport Rules and Regulations and Minimum Standards, then upon written request from the County, Lessee shall procure such insurance with higher limits.

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

ARTICLE VI - DEFAULT

- 6.01 Lessee's Default. Lessee shall be in default of this lease if Lessee:
- a. Fails to pay when due any sum payable by Lessee hereunder and fails to make full payment thereof within fifteen (15) days of Lessee's receipt of the County's written demand for payment, or
 - b. Breaches any non-monetary, material term, covenant or condition of this lease and the Lessee fails either to begin to cure the breach within thirty (30) days of Lessee's receipt of the County's written notice of such breach or to complete the cure of the breach within a reasonable time thereafter. If Lessee timely commences to cure such breach within such thirty (30) day period, Lessee shall not be in default if Lessee continues in timely good faith its efforts to cure following such thirty (30) day period, or
 - c. Either makes any general assignment or general arrangement for the benefit of creditors; files a petition in bankruptcy, including reorganization or arrangement, except in the case of a petition filed against Lessee when the same is dismissed within 30 days after filing; suffers the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the premises or of Lessee's interest in the lease, or
 - d. Suffers a cancellation of a guaranty of Lessee's obligations by a guarantor, if any, or
 - e. Fails to comply with the same lease term or covenant on two occasions even if such breach is cured within the applicable cure period, or
 - f. Fails to comply with the Airport Rules and Regulations, unless such failure is cured within 5 days after notice.

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

6.03 Abandonment/Removal of Property.

- a. Lessee shall not vacate or abandon the Premises at any time during the term of the Lease.
- b. In the event Lessee shall abandon, vacate or surrender said premises, or be dispossessed by process of law, County 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 County, including but not limited to a public warehouse, at the expenses and risk of the

owners thereof, with the right to sell such property and dispose of the proceeds as provided in RCW 60.60.030 and .040.

ARTICLE VII - TERMINATION

7.01 Termination for Lessee's Default.

- a. If Lessee is in default, County may terminate this lease by giving Lessee five (5) days written notice of termination. Such notice shall be deemed given when deposited into the U.S. Mail by certified mail, or by personal service, to Lessee or any agent of Lessee at Lessee's last known address, or by posting such notice at the premises.
- b. If Lessee is in default, County may retake possession of the premises without terminating this lease. If County so retakes possession and does not terminate this lease, Lessee shall remain liable to pay any and all rentals and other charges as specified herein, together with any and all other damages as may be sustained by the County, excepting therefrom rental proceeds received from reletting the premises.

7.02 Termination for Airport Use. Notwithstanding any of the other provisions contained in this lease, County may determine at some time during the term of this lease that the premises are necessary for the use of the Airport and/or County for the development of the Airport or for the construction, development or improvement of necessary facilities for general or specific long-range plans of the Airport. If such determination is made at the sole discretion of the County, this lease may be terminated by the County's giving notice to the Lessee of such intent to terminate and retake possession of the premises; and this lease shall terminate one year after the giving of any such notice of intent to so terminate. Compensation shall be paid to the Lessee for termination for airport use as set forth in paragraph 8.03(c).

7.03 Right of Entry. During the period that is six (6) months prior to the end of the Term or otherwise cancellation or termination of the Lease, the County shall have the right to access and enter the premises at any reasonable time during business hours, or outside of business hours if agreed to by Lessee, upon three (3) days' written notice, for the purpose of showing the premises to prospective tenants, or other purpose as reasonably necessary. Lessor's showing shall not unduly interfere with the Lessee's operation.

ARTICLE VIII - FEDERAL, STATE AND COUNTY REQUIREMENTS

8.01 Federal Requirements. County, as a recipient of Federal Aid Airport Program Grant Funds, Airport Improvement Program, is required to include the following statements in all lease agreements and the parties specifically agree as follows. Construction of a building or improvements on airport property requires a specific federal approval as set forth in 8.01(f).

- a. Lessee, in its operation at Snohomish County Airport, agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. Lessee further covenants that it will not on the grounds of race, creed, color, national origin, sex, age, or disability, discriminate or permit discrimination against any person or group of persons in any manner prohibited by Parts 15 and 21 of the Federal Aviation Regulations (49 CFR), and in the event of such discrimination, Lessee agrees that the County has the right to take such action as the United States Government may direct to enforce this covenant.
- b. Lessee, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land that: In the event facilities are constructed, maintained, or otherwise operated on the property described in this lease for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the lessee will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities, attached as **Exhibit D** (as may be amended) such that no person on the grounds of race, color, or national origin, sex, age, or disability will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- c. In the event of breach of any of the above nondiscrimination covenants, County will have the right to terminate the lease and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the lease had never been made or issued.
- d. With respect to any aeronautical services Lessee specifically agrees:
 - (1) To furnish said aeronautical service on a fair, equal and not unjustly discriminatory basis to all users thereof, and
 - (2) To charge fair, reasonable and not unjustly discriminatory prices for each unit of service, PROVIDED, that the Lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar types of price reductions to volume purchasers.
- e. Should any provision of this Lease be determined by the FAA to conflict with the County's obligations to the federal government (including, without limitation, Grant Assurance obligations), the objectionable provision will be deemed removed and parties will endeavor to reform the affected provision to accord as closely as legally possible to the parties' original intent in light of the specific FAA objections.

- f. Lessee shall submit a Form 7460 to the Federal Aviation Administration (FAA) to comply with Part 77 of the Code of Federal Regulations, Title 14 Aeronautics and Space. Lessee shall not begin construction on the premises until the FAA has approved Form 7460 and Lessee submits a copy of the approval to County. County shall not begin construction on premises until County has received FAA approval of such Form 7460.

8.02 Subordination To Airport Operation. This lease shall be subordinate to the provisions of any existing or future agreement between the County and the United States relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of Federal funds for the development of the airport.

8.03 Condemnation.

- a. Whole Taking. If the whole of the premises is acquired or condemned by a competent authority for any public use or purpose, this lease shall terminate as of the date on which title vests in that authority, and the rent reserved hereunder shall be apportioned and paid up to that date. Any compensation paid for the land and buildings shall become the property of the County.
- b. Partial Taking. If only a portion of the premises is so acquired or condemned, that portion of compensation paid for improvements shall be used to replace, repair, and restore insofar as possible, the premises to their condition of utilization prior to the taking or condemnation. If such repair, replacement, or restoration cannot be so accomplished, this lease shall be terminated unless the parties agree otherwise. If the lease continues, rent shall be reduced on the date of surrender of possession of the part taken in proportion to the decrease in use suffered by the Lessee. Any compensation paid for the land and buildings shall become the property of the County.
- c. Compensation. In the case of any taking or condemnation of the whole of the premises, whether or not the term of this Lease shall cease and terminate, Lessee shall:
 - (1) Receive that portion of the award for such taking or condemnation that equals the value to Lessee of the unexpired term of this Lease (including extensions), measured by the difference between the fair market rental value of comparable premises and the actual rent being paid by Lessee under this Lease; and
 - (2) Have the right to claim and seek recovery from the condemnation authority compensation for any loss of its leasehold interest, the fair market value of improvements made and owned by Lessee or made by a predecessor in interest to Lessee and owned by Lessee, and for loss

to which Lessee may be put for Lessee's moving expenses and business interruption.

8.04 Laws and Regulations.

- a. Lessee shall comply with all applicable laws, ordinances, codes, rules, and regulations. Lessee shall be responsible for securing and maintaining all permits and paying, when due, all costs, fees, taxes, including surface water management fees and annual inspection fees, and other charges/benefits incidental to lease, construction and use of the premises.
- b. Lessee's attention is directed to Chapter 82.29A RCW, amendments thereto, and any ordinances, laws, or regulations of Snohomish County and/or any other taxing authority with respect to the levy and collection of excise or other taxes on leasehold interests. Lessee agrees that it will comply therewith, and will pay such taxes to the County when due in accord with the applicable rules, statutes and regulations. Lessee specifically authorizes the County to remit to the respective taxing authority any amounts paid by Lessee to County in payment of any such taxes, and agrees that County shall not be held responsible or liable in any manner for reimbursement of any amounts so paid if said taxes, or any part thereof, are determined to be invalid, improper, or unenforceable.
- c. If the applicable taxing authority requires the County to collect the taxes and Lessee does not agree on the amount of taxes to be so paid, the Lessee shall pay the amount requested by the County, and Lessee's sole recourse shall be against the applicable taxing authority with respect to the amount, propriety, and validity of such tax. County in no way warrants the validity or propriety or correctness of any such tax, and the sole obligation of the County upon collection of such tax shall be to remit the same to the appropriate taxing authority.
- d. Lessee shall provide a certification of its corporate status business license and other registrations as applicable for review by the County at lease signing and at any subsequent change of status or amendment.

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

8.06 Easement Rights Reserved. The County reserves the right to grant easements and or licenses over, across, and under the premises so long as the easement or license does not unreasonably interfere with the Lessee's use.

8.07 Security. Lessee recognizes its obligations to comply, adhere to and enforce all security measures, requirements and obligations in compliance with applicable state, local and federal regulatory requirements including Federal Airport and Snohomish County Airport Security Requirements and Regulations, and the Airport Security Plan. Lessee will reimburse the County in full for any fines or penalties levied against the County for security violations as a result of any actions on the part of the Lessee, its agents, suppliers, guests, customers, invitees, or employees for any violation occurring at any field access point under the control of the Lessee. Lessee shall be responsible for all employees and other persons gaining access to the premises which is in a restricted area (SCC 15.08.210). Lessee shall be responsible for ensuring that identification provided by the Airport is required by all employees and invitees needing access to a secured area, if any.

8.08 Noise Abatement. The County and Lessee recognize the importance and joint responsibility of compatibility between the airport and the surrounding community. Therefore, Lessee shall actively participate and comply with all noise abatement procedures, policies, and programs as set forth by the County.

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

8.10 Wildlife Hazards and Deterrents. Lessee shall not allow a bird, rodent or other wildlife attractant on the premises. Lessee shall keep trash cans and dumpster lids closed. In the event Lessee activities attract wildlife, Lessee at its cost shall take immediate action to remove the wildlife and prevent further wildlife attraction. Lessee agrees to participate in prorated area wide costs as necessary to resolve any area wide rodent problem.

8.11 Foreign Object Damage. Lessee shall inspect and keep the premises clean of any object, material or matter that poses a threat of Foreign Object Damage (FOD) to aircraft.

8.12 County Non-Discrimination Requirement. It is the policy of the County to reject discrimination which denies equal treatment to any individual because of his or her race, creed, color, national origin, families with children, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability as provided in Washington's Law against Discrimination, Chapter 49.60 RCW, and the Snohomish County Human Rights Ordinance, Chapter 2.460 SCC. These laws protect against specific forms of discrimination in employment, credit transactions, public accommodation, housing, county facilities and services, and county contracts. The Lessee shall comply with Chapter 2.460 SCC, which is incorporated herein by this reference. Execution of this contract constitutes a certification by the Lessee of the Lessee's compliance with the requirements of Chapter 2.460 SCC. If the Lessee is found to have violated this provision, or furnished false or misleading information in an

investigation or proceeding conducted pursuant to Chapter 2.460 SCC, this lease may be subject to a declaration of default and termination at the County's discretion. This provision shall not affect the Lessee's obligations under other federal, state, or local laws against discrimination.

ARTICLE IX - GENERAL PROVISIONS

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

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

9.03 Relationship to Assignees or Subtenants. In this Lease whenever obligations, liabilities or responsibilities are imposed upon Lessee, those obligations, liabilities or responsibilities shall apply to any subtenants, licensees or contractors of Lessee, provided that Lessee has obtained advance written consent of Lessor in the event of subtenants or assignments, to the extent that Lessee has assigned, delegated or allowed such parties to act on Lessee's behalf with respect to obligations, liabilities or responsibilities under this Lease.

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

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

9.06 Leasehold Financing. Lessee shall have the right with the County's written consent, which consent shall not be unreasonably withheld, conditioned, or delayed, to encumber Lessee's leasehold estate with a leasehold mortgage or mortgages given in connection with financing secured by Lessee from a lender. The County agrees to negotiate in good faith with Lessee regarding the inclusion in such consent of commercially reasonable terms that the lender may reasonably request in connection with and to facilitate such financing. Any leasehold mortgage shall be subordinate to the County's fee title to the real property or premises and the County's interest under this lease.

9.07 County Indemnification. Lessee hereby waives all claims for damages that may be caused by County's re-entering and taking possession of Premises or removing

and storing the property of Lessee as provided in this Lease, and will save County harmless from loss, costs or damages occasioned by Lessee, and no such re-entry shall be considered to be a forcible entry.

9.08 Warranties/Guarantees. County makes no warranty, guarantee, or averment of any nature whatsoever concerning the physical condition of the premises and any subsequent structures, and it is agreed that the County will not be responsible for any loss, damage, or costs which may be incurred by Lessee by reason of any such physical condition.

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

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

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

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

To the Lessee: Bosa Bomarc, LLC
 1300-2025 Willingdon Avenue
 Burnaby BC V5C OJ3
 Canada

9.12 Governing Law, Venue and Severability. The laws of the state of Washington shall govern the validity, performance, and enforcement of this lease. The venue of any action arising out of this lease shall be in the Superior Court of the State of Washington, in and for Snohomish County. The invalidity or unenforceability of any provision hereof shall not affect or impair any other provision.

EXHIBIT "A"

LEGAL DESCRIPTION

Snohomish County Paine Field
Bomarc Lot 1 Lease
June 2, 2021

Lease Area:

Legal Description:

Lot 1, Bomarc Business Park at Paine Field Alteration to Binding Stie Plan for the Snohomish County Airport recorded with the Snohomish County Auditor on August 7, 2001 under Snohomish County Auditor's recording number 200108075005.

Being a portion of the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 14, Township 28N., Range 4 E, W.M.

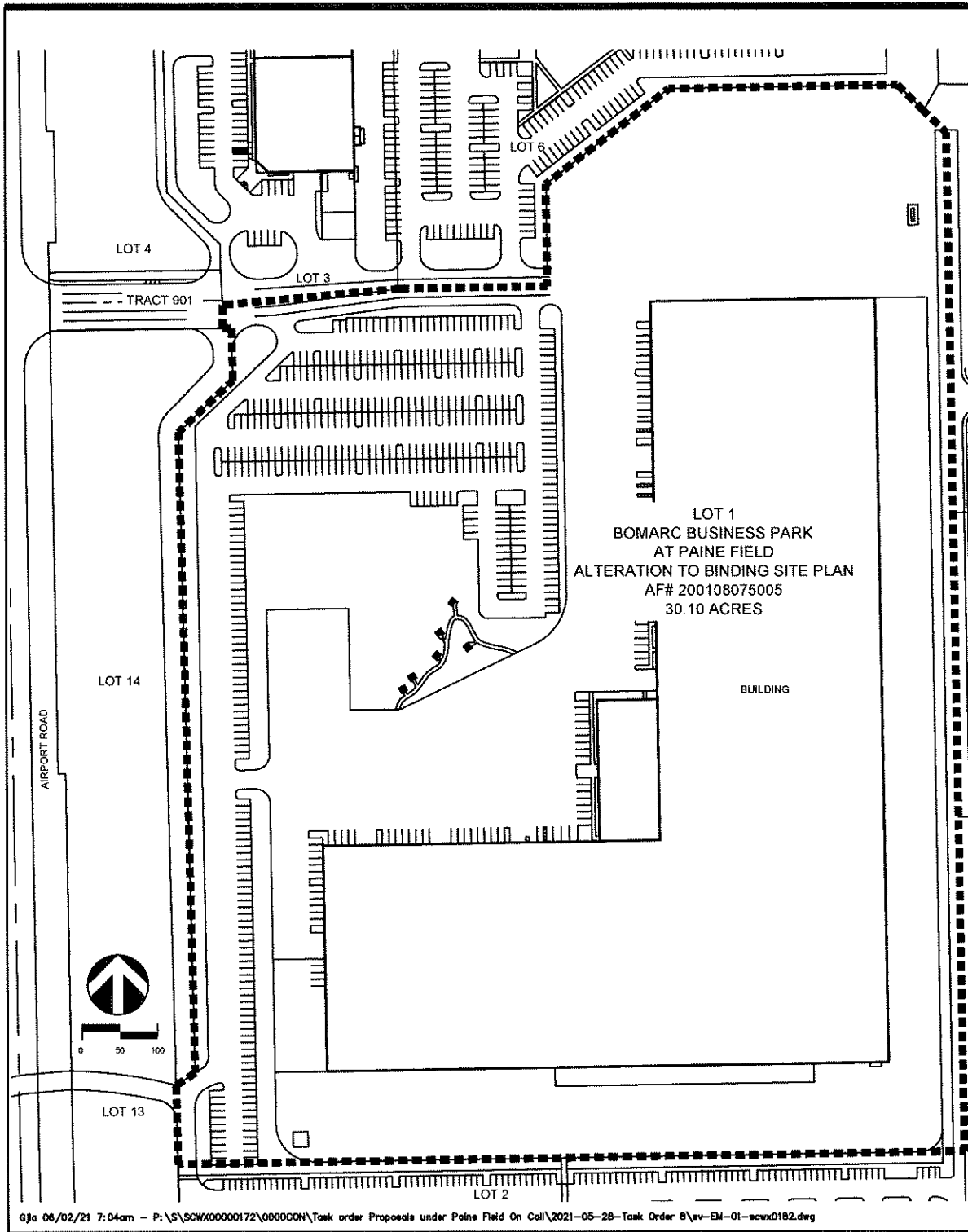
Containing 1,310,964 sq. ft. or 30.10 acres, more or less.

Situate in Snohomish County, Washington.

See Attached Exhibit A-1.

Exhibit B

Diagram of Premises



G:\a 06/02/21 7:04am - P:\S\SCWX00000172\0000CON\Task order Proposals under Paine Field On Call\2021-05-28-Task Order 8\sv-EM-01-scwx0182.dwg

EXHIBIT B

DATE: 6-02-2021	DESIGN: GJLA
FILE: SCWX0182 /	SV-EM-01-SCWX0182
	DRAWN: GJLA


**DAVID EVANS
AND ASSOCIATES INC.**
 1620 W. Marine View Drive, Suite 200
 Everett Washington 98201
 Phone: 425.259.4099

LOT 1
 BOMARC BUSINESS PARK
 PAINE FIELD B.S.P.

**EXHIBIT C
RATE SCHEDULE**

Bosa Development California II, Inc.

BOMARC Lot 1

Lease: 21-013

Lease Term: June 1, 2021 - May 31, 2049

Rate Term: June 2021 - May 31, 2022¹

CCR CAM Rate Term: June 1, 2021 - December 31, 2023²

§3.01 Premises: BOMARC Lot 1	S.F.	Rate/S.F.	Annual Fee	Monthly Rent	Leasehold Excise Tax	Monthly Rent w/LET
Land Lease	1,310,965	0.591	\$ 774,780.12	\$ 64,565.01	\$ 8,290.15	\$ 72,855.16
§3.07 CCR CAM						
	Stalls	Rate/S.F.	Annual Fee	Monthly Rent	Leasehold Excise Tax	Monthly Rent w/LET
<i>June 1, 2021 - December 31, 2023</i>						
CAM	581	2.01	\$ 13,978.92	\$ 1,164.91	\$ 149.57	\$ 1,314.48
§3.08 Storm Water Facility (SWF)³						
Alpha Pond, Category 09	S.F.	Rate/S.F.	Annual Fee	Monthly Fee	Leasehold Excise Tax	Monthly Fee w/LET
SWF Fee	1,310,965	0.001918771	\$ 30,185.28	\$ 2,515.44	\$ 322.98	\$ 2,838.42
SWF Pond Maintenance	1,310,965	0.000404100	\$ 6,357.13	\$ 529.76	\$ 68.02	\$ 597.78
			\$ 36,542.41	\$ 3,045.20	\$ 391.00	\$ 3,436.20
§3.09 Surface Water Management (SWM)⁴						
Category 09	S.F.	Rate/S.F.	Annual Fee	Monthly Fee	Leasehold Excise Tax	Monthly Fee w/LET
SWM (with detention)	1,310,965	0.00216247	\$ 34,019.04	\$ 2,834.92	\$ -	\$ 2,834.92
SWF SWM	1,310,965	0.000007508	\$ 118.08	\$ 9.84	\$ -	\$ 9.84
			\$ 34,137.12	\$ 2,844.76	\$ -	\$ 2,844.76
Total Monthly						\$ 80,450.60
§5.00 Agreement to Amend Bomarc Leases⁵						
	Months	Per Month	Pre-Tax Total Fee	Leasehold Excise Tax	Total Escrow Fee	
\$2,500 per month after January 1, 2014						
Escrow Fee (As of July 1, 2021)	90	\$ 2,500.00	\$ 225,000.00	\$ 28,890.00	\$ 253,890.00	

NOTES:

¹Rent term is aligned with old Boeing Bldg. 45-70 lease and will adjust to market rate adjustment on the same continued schedule.

²CCR-CAM fees adjust January 1, as a three (3) year cycle according to the same percentage increase as the rental rate adjustment, per section 4.9(a) of the Bomarc CCRs.

³SWF pond maintenance fee increases by CPI percent (%) annually

⁴SWM fees are adjusted periodically based on changes to the leased parcel of fees assessed by the Snohomish County Surface Water Management.

⁵One time fee paid per Boeing Agreement to Amend Bomarc Leases dated September 26, 2013 at \$2,500 per month after January 1, 2014. This fee is to be paid by Boeing per the agreement.

Tenant pays all utilities which includes electric/gas.

EXHIBIT D

TITLE VI LIST OF PERTINENT NONDISCRIMINATION ACTS AND AUTHORITIES

During the performance of this contract, Lessee, for itself, its assignees, and successors in interest (hereinafter referred to as the "Lessee") agrees to comply with the following non-discrimination statutes and authorities, as they may be amended from time to time and which are incorporated herein by reference, including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

EXHIBIT E

STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

In the Matter of Remedial Action by:

The Boeing Company
Boeing Commercial Airplane Group – Everett
Plant – BOMARC Property
2600 94th Street Southwest
Everett, Washington

AGREED ORDER

No. DE _____

TO: The Potentially Liable Person (PLP)
The Boeing Company
c/o Mr. Steven Shestag
Environment, Health & Safety
PO Box 3707, M/C 9U4-08
Seattle, WA 98124-2207

TABLE OF CONTENTS

I.	INTRODUCTION.....	3
II.	JURISDICTION.....	3
III.	PARTIES BOUND.....	3
IV.	DEFINITIONS.....	3
V.	FINDINGS OF FACT.....	6
VI.	ECOLOGY DETERMINATIONS.....	8
VII.	WORK TO BE PERFORMED.....	9
VIII.	TERMS AND CONDITIONS.....	12
	A. Remedial Action Costs.....	12
	B. Designated Project Coordinators.....	12
	C. Performance.....	13
	D. Access.....	14
	E. Sampling, Data Submittal, and Availability.....	15
	F. Public Participation.....	15
	G. Retention of Records.....	17
	H. Resolution of Disputes.....	17
	I. Extension of Schedule.....	19
	J. Amendment of Order.....	20
	K. Endangerment.....	21
	L. Reservation of Rights.....	22
	M. Transfer of Interest in Property.....	22
	P. Land Use Restrictions.....	25
	Q. Financial Assurance.....	26
	R. Periodic Review.....	26
	S. Indemnification.....	26
IX.	SATISFACTION OF ORDER.....	27
X.	ENFORCEMENT.....	27

EXHIBIT A: BOMARC Property Diagram
EXHIBIT B: Cleanup Action Plan (CAP)

I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and The Boeing Company (Boeing) under this Agreed Order (Order) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires Boeing to implement a cleanup action plan at a portion of that Facility, the BOMARC Property, where there has been a release or threatened release of hazardous substances. Ecology believes the actions required by this Order are in the public interest.

II. JURISDICTION

This Agreed Order is issued pursuant to the authority of the Model Toxics Control Act (MTCA), RCW 70A.305.050(1). This Order also satisfies the requirements of WAC 173-303-646 through -64630.

III. PARTIES BOUND

This Order shall apply to and be binding upon the Parties to this Order, their successors and assigns. The undersigned representative of each Party hereby certifies that he or she is fully authorized to enter into this Order and to execute and legally bind such Party to comply with the Order. Boeing agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter Boeing's responsibility under this Order. Boeing shall provide a copy of this Order to all agents, contractors, and subcontractors retained to perform work required by this Order, and shall ensure that all work undertaken by such agents, contractors, and subcontractors complies with this Order.

IV. DEFINITIONS

Unless otherwise specified herein, the definitions set forth in RCW 70A.305 and WAC 173-340 shall control the meanings of the terms used in this Order.

A. Agreed Order or Order: Refers to this Order and each of the exhibits to this Order. All exhibits are integral and enforceable parts of this Order. The terms "Agreed Order" or "Order" shall include all exhibits to this Order.

B. Area of Concern (AOC): Refers to any area of the Facility where a release of dangerous constituents (including dangerous waste and hazardous substances) has occurred, is occurring, is suspected to have occurred, or threatens to occur.

C. Cleanup Action Plan (CAP): Refers to the document issued by Ecology under WAC 173-340-380 which selects Facility-specific corrective measures and specifies cleanup standards (cleanup levels, points of compliance, and other requirements for the corrective measures).

D. Corrective Action: Refers to any activities including investigations, studies, characterizations, and corrective measures, including actions taken pursuant to RCW 70.105D and WAC 173-340, undertaken in whole or in part to fulfill the requirements of WAC 173-303-64620.

E. Dangerous Constituent or Dangerous Waste Constituent: Refers to any constituent identified in WAC 173-303-9905 or 40 C.F.R. part 264, appendix IX; any constituent that caused a waste to be listed or designated as dangerous under the provisions of WAC 173-303; and any constituent defined as a hazardous substance under RCW 70A.305.020(13).

F. Dangerous Waste: Refers to any solid waste designated in WAC 173-303-070 through -100 as dangerous or extremely hazardous or mixed waste. Dangerous wastes are considered hazardous substances under RCW 70A.305.020(13).

G. Facility or Site: Refers to the Boeing Commercial Airplane Group – Everett facility (Exhibit A), controlled by Boeing located at 3003 West Casino Road Everett, Washington; all property contiguous to the Facility also controlled by Boeing; and all property, regardless of control, affected by release(s) or threatened release(s) of hazardous substances, including dangerous wastes and dangerous constituents, at and from these areas. “Facility” also includes the definition found in RCW 70A.305.020(8).

H. BOMARC Property: Refers to the property located at 2600 94th Street Southwest in Everett, Washington that is located within the Facility and is the subject of this Agreed Order. The BOMARC Property is depicted in Exhibit B to this Agreed Order.

I. Feasibility Study (FS): Refers to the investigation and evaluation of potential corrective action performed in accordance with the FS requirements of WAC 173-340-350 , which includes the substantive requirements for a Resource Conservation and Recovery Act Corrective Measures Study, and which is undertaken in whole or in part to fulfill the corrective action requirements of WAC 173-303-64620.

J. Parties: Refers to the State of Washington, Department of Ecology and Boeing.

K. Potentially Liable Person (PLP): Refers to Boeing.

L. RCRA: Refers to the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901–6992k.

M. RCRA Facility Assessment (RFA): Refers to the EPA conducted investigation of release(s) and potential release(s) at the Dangerous Waste Management Facility and the information contained in the report entitled *RCRA Facility Assessment, Final RCRA Facility Assessment Report for Boeing Everett, Everett, Washington, December 2, 1993*. (RFA Report). The RFA Report is incorporated into this Order by this reference as if fully set forth herein.

N. Remedial Investigation (RI): Refers to a facility-wide investigation and characterization performed in accordance with the requirements of WAC 173-340 , which includes the substantive requirements for a RCRA facility investigation, undertaken in whole or in part to fulfill the corrective action requirements of WAC 173-303-64620.

O. Solid Waste Management Unit (SWMU): Refers to any discernible location at the Dangerous Waste Management Facility where solid wastes have been placed at any time, irrespective of whether the location was intended for the management of solid or dangerous waste. Such locations include any area at the Dangerous Waste Management Facility at which solid wastes, including spills, have been routinely and systematically released, and include regulated units as defined by WAC 173-303.

V. FINDINGS OF FACT

Ecology makes the following Findings of Fact, without any express or implied admissions of such facts by Boeing.

1. Boeing is, and has been, the owner and operator of the BCAG - Everett Plant since at least November 17, 1980, when Boeing filed its original RCRA Part A permit application for the storage of dangerous wastes in a container storage area and in dangerous waste tanks (RCRA 3005).

2. Ecology and Boeing entered into Agreed Order DE 96HS-N274 (1997 AO) in January 1997. The 1997 AO required Boeing to complete a remedial investigation of the uplands portion of the Facility including BOMARC, complete an Remedial Investigation Report (RI Report) and Feasibility Study (FS) and Interim Actions for the Facility, or portions of the Facility, and to submit a draft cleanup action plan (dCAP) for the Facility, or portions of the Facility.

3. The 1997 AO has been amended seven times since January 1997, with the last amendment finalized on April 30, 2014. Each amendment includes additional facts and discussion of the scopes of those amendments.

4. Since the parties finalized the 1997 AO, Boeing has submitted a revised remedial investigation (RI) report, dated December 17, 2010, and a public review draft final RI report, dated November 4, 2011. Ecology contingently approved the public review draft final RI report by its letter dated, November 21, 2011. Boeing submitted its BOMARC Building 45-70 Property FS report, dated March 31, 2014. Boeing submitted its upland FS report, dated November 16, 2015. Boeing submitted a supplemental feasibility study (SFS) report dated November 29, 2018. Ecology selected the final upland site cleanup actions, based on its letters dated August 18, 2016 and July 20, 2017, as modified by Ecology letters dated May 2, 2019 and September 5, 2019.

5. Ecology established contingent approval of the public review draft final BOMARC Building 45-70 Property FS on October 3, 2014.

6. The RI Report and FS for the Facility demonstrate that the following hazardous substance has been released to soils at the BOMARC Property: carcinogenic polycyclic hydrocarbons (cPAH).

7. The BOMARC Property was undeveloped until the late 1940s/early 1950s. During approximately the late 1950s/early 1960s, the BOMARC Property was owned by Snohomish County and used by the U.S. Air Force (USAF). In approximately 1990, the property was developed by Snohomish County (property owner) and Boeing (lessee) into its current configuration. From 1990 to 1999, Boeing occupied the BOMARC Property through a lease agreement with Snohomish County.

8. Boeing operations at the BOMARC Property (1990 to approximately 1999) included sub-assembly of commercial aircraft interiors. At the BOMARC Property, Boeing used glosses, putties, enamels, adhesives, solvents, methyl ethyl ketone, primers, epoxies, acrylics, inks, grease, lube oil, paints, and lacquers. These materials were stored in containers ranging in size from 2 ounces to 55 gallons. Drawings of the BOMARC Property during Boeing's operation show one exterior covered and contained chemical storage area, five interior chemical storage rooms, and six paint or glue rooms. The interior areas of the building had paint spray booth rooms and chemical storage rooms for the manufacturing process of aircraft interiors of Boeing aircraft. The exterior areas included the underground storage tanks (USTs) used for capturing any potential spilled chemical waste, a hazardous chemical storage area, and the facility's oil/water separators. From 1999 through 2003, the BOMARC Property's primary use was for storage.

9. Since 2003, Boeing has leased the building it owns (Building 45-70) located on the BOMARC Property to several tenants, while continuing to lease the underlying property from Snohomish County. The three tenants at the BOMARC Property have been Fibres,

Giddens, and XPO Logistics (formerly New Breed). Fibres was a recycling facility, which operated at the BOMARC Property from approximately 2003 through 2020. Their on-site operations included recycling of paper, cardboard, plastic, aluminum cans, and other scrap metals. These materials were brought to the BOMARC Property “loose” and were compacted and bundled on-site by a large bailing machine (bailer) located in the central portion of the facility. Once compacted and bundled, the material was transported off-site. Giddens is an aerospace components and assemblies manufacturer, which has operated at the BOMARC Property since late 2004. Their on-site operations include the use of presses, laser cutters, and a heat treatment machine. An overhead coolant distribution/recycling system provides coolant to certain machinery. XPO Logistics (formerly New Breed) has operated at the BOMARC Property since approximately October 2006. Their on-site operations include warehousing and distribution of Boeing 787 parts.

VI. ECOLOGY DETERMINATIONS

A. Boeing is the owner and operator of a Dangerous Waste Management Facility that has operated, is operating, or should have been operating under interim status or a final facility permit, subject to RCRA, 42 U.S.C. §§ 6924 and 6925, and regulations promulgated thereunder, including authorized state regulations in WAC 173-303. Boeing is also an “owner or operator” as defined by RCW 70A.305.020(22) of a “facility” as defined by RCW 70A.305.020(8).

B. Boeing is the current lessee of the BOMARC Property, which is a portion of the Facility, and Boeing currently owns the building on the property. If the buildings are sold, Boeing will end the associated lease with Snohomish County and the new building owner would enter into a new lease with Snohomish County (or owner of the property). In any sale, Boeing will retain access rights to carry out the provisions on this order.

C. Based upon all factors known to Ecology, a “release” or “threatened release” of “hazardous substance(s)” as defined in RCW 70A.305.020(32) and (13), respectively, has occurred at the Site.

D. By letter dated October 11, 1995, Ecology notified Boeing of its status as a “potentially liable person” (PLP) under RCW 70.105D.040. By letter dated November 10, 1995, Boeing made no objection to being named a ‘potentially liable person’. Ecology issued a determination that Boeing is a PLP under RCW 70A.305.040 and notified Boeing of this determination by letter dated November 27, 1995.

E. Pursuant to RCW 70A.305.030(l) and .050(1), Ecology may require PLPs to investigate or conduct other remedial actions with respect to any release or threatened release of hazardous substances, whenever it believes such action to be in the public interest. Based on the foregoing facts, Ecology believes the remedial actions required by this Order at the BOMARC Property are in the public interest.

VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that Boeing take the following remedial action(s) and that this (these) action(s) be conducted in accordance with WAC 173-340 unless otherwise specifically provided for herein.

A. Boeing shall perform a final cleanup action for the BOMARC Property by implementing the remedial actions set forth in the upland cleanup action plan (CAP) and included as Exhibit C. Specifically, Sections 5.11.1, 5.11.5, and 5.11.6 of the CAP describe the cleanup actions, compliance monitoring, and institutional controls for the BOMARC Property. Additional sections of the CAP, Sections 5.11.2 through 5.11.4 describe the cleanup standards, points of compliance, restoration timeframes, and applicable, relevant and appropriate state and federal requirements. Compliance monitoring frequency for indoor air for the BOMARC Property is outlined in Section 4.4 subsection Indoor Air Monitoring.

B. If Boeing learns of a significant change in conditions at the BOMARC Property, including but not limited to a statistically significant increase in contaminant and/or chemical concentrations in soil, groundwater, soil vapor, or air, Boeing shall notify Ecology in writing of said change within seven (7) days of learning of the change in condition, and provide Ecology with any reports or records (including laboratory analyses, sampling results) relating to the change in conditions.

C. Boeing shall submit written Progress Reports to Ecology-NWRO quarterly, starting from the effective date of this Agreed Order until all of the requirements of this Agreed Order are completed to Ecology's satisfaction. The submittal shall be due on the 15th day of the month following the quarterly activity period. Boeing shall describe the following in each Progress Report:

- a. all work conducted pursuant to this Agreed Order during the last quarter period;
- b. occurrence of any problems, how problems were rectified, deviations from the work plans and an explanation for all deviations;
- c. for any deviations in schedule, a plan for recovering lost time and maintaining compliance with the schedule;
- d. projected work to occur and list of deliverables in the upcoming quarter;
- e. summaries of significant findings, changes in personnel, summaries of contacts with all federal, state, local community, public interest groups and other entities with an interest in the cleanup; and
- f. all laboratory analyses (as copies of the original laboratory reporting data sheets, in tabulated data format) for which quality assurance procedures were completed during the quarter.

Unless otherwise specified by Ecology, Progress Reports submitted pursuant to this Order shall be sent by the Boeing project coordinator to Ecology's project coordinator under Boeing cover

letter. The frequency of Progress Report submittals may be revised if both Ecology and Boeing agree that such a change is necessary.

D. All plans or other deliverables submitted by Boeing for Ecology's review and approval under the Cleanup Action Plan (Exhibit B) shall, upon Ecology's approval, become integral and enforceable parts of this Order.

E. Boeing shall notify Ecology's project coordinator in writing of any newly-identified SWMU(s), newly-discovered release(s) from known SWMU(s), and newly-discovered AOCs at the BOMARC Property no later than 15 calendar days after discovery, and shall investigate and report on these areas as directed by Ecology's project coordinator.

F. If Ecology determines that Boeing has failed to make sufficient progress or failed to implement the remedial action, in whole or in part, Ecology may, after notice to Boeing, perform any or all portions of the remedial action or at Ecology's discretion allow Boeing opportunity to correct. In an emergency, Ecology is not required to provide notice to Boeing, or an opportunity for dispute resolution. Boeing shall reimburse Ecology for the costs of doing such work in accordance with Section VIII.A (Remedial Action Costs). Ecology reserves the right to enforce requirements of this Order under Section X (Enforcement).

G. Except where necessary to abate an emergency situation or where required by law, Boeing shall not perform any remedial actions at the BOMARC Property outside those remedial actions required by this Order to address the contamination that is the subject of this Order, unless Ecology concurs, in writing, with such additional remedial actions pursuant to Section VIII.J. (Amendment of Order). In the event of an emergency, or where actions are taken as required by law, Boeing must notify Ecology in writing of the event and remedial action(s) planned or taken as soon as practical but no later than within twenty-four (24) hours of the discovery of the event.

VIII. TERMS AND CONDITIONS

A. Remedial Action Costs

Boeing shall pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for, or on, the Facility under RCW 70A.305, including remedial actions and Order preparation, negotiation, oversight, and administration. These costs shall include work performed both prior to and subsequent to the issuance of this Order. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). For all costs incurred subsequent to the effective date of this Agreed Order, Boeing shall pay the required amount within thirty (30) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general statement of work performed will be provided upon request. Ecology will endeavor to send itemized statements quarterly to Boeing within 30 days of the end of the quarter. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

In addition to other available relief, pursuant to RCW 19.16.500, Ecology may utilize a collection agency and/or, pursuant to RCW 70A.305.055, file a lien against real property subject to the remedial actions to recover unreimbursed remedial action costs.

B. Designated Project Coordinators

The project coordinator for Ecology is:

Mr. Paul Bianco
Washington State Department of Ecology-Northwest Regional Office
3190 160th Avenue S.E.
Bellevue, WA 98008-5452
(425)649-7264

The project coordinator for Boeing is:

Ms. Debbie Taege
Boeing
EHS Remediation Group
PO Box 3707 Mail Code 9U4-26
Seattle, WA 98124-2207
(818) 720-5575

Each project coordinator shall be responsible for overseeing the implementation of this Order. Ecology's project coordinator will be Ecology's designated representative for the Facility. To the maximum extent possible, communications between Ecology and Boeing, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through the project coordinators. The project coordinators may designate, in writing, working level staff contacts for all or portions of the implementation of the work to be performed required by this Order.

Any party may change its respective project coordinator. Written notification shall be given to the other party at least ten (10) calendar days prior to the change.

C. Performance

All geologic and hydrogeologic work performed pursuant to this Order shall be under the supervision and direction of a geologist or hydrogeologist licensed by the state of Washington or under the direct supervision of an engineer registered by the state of Washington, except as otherwise provided for by RCW 18.43 and 18.220.

All engineering work performed pursuant to this Order shall be under the direct supervision of a professional engineer registered by the state of Washington, except as otherwise provided for by RCW 18.43.130.

All construction work performed pursuant to this Order shall be under the direct supervision of a professional engineer or a qualified technician under the direct supervision of a professional engineer. The professional engineer must be registered by the state of Washington, except as otherwise provided for by RCW 18.43.130.

Any documents submitted containing geologic, hydrogeologic, or engineering work shall be under the seal of an appropriately licensed professional as required by RCW 18.43 and 18.220.

Boeing shall notify Ecology in writing of the identity of any engineer(s) and geologist(s), contractor(s) and subcontractor(s), and others to be used in carrying out the terms of this Order, in advance of their involvement at the Facility.

D. Access

Ecology or any Ecology authorized representative shall have access to enter and freely move about the BOMARC property which Boeing either owns, controls, or has access rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing Boeing's progress in carrying out the terms of this Order; conducting such tests or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by Boeing. If Ecology takes photographs or recordings at the facility, upon request Ecology will provide Boeing electronic copies within 7 days of the request. Boeing will seek the cooperation of any subsequent purchaser for the same. Ecology or any Ecology authorized representative shall give reasonable notice before entering the BOMARC Property owned or controlled by Boeing unless an emergency prevents such notice.

Boeing shall make all reasonable efforts to secure access rights for those properties within the BOMARC Property not owned or controlled by Boeing where remedial activities or investigations will be performed pursuant to this Order. For those properties, at Ecology's request, Boeing's Project Coordinator or other representative shall accompany Ecology's representative(s) at all times for purposes of coordination with the current lessee and/or property owner and any specific access or safety requirements they may have.

All persons who access the BOMARC Property pursuant to this section shall comply with any applicable health and safety plan(s). Ecology employees and their representatives shall not be required to sign any liability release or waiver as a condition of Facility property access.

E. Sampling, Data Submittal, and Availability

With respect to the implementation of this Order, Boeing shall make the results of all sampling, laboratory reports, and/or test results generated by it or on its behalf available to Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with Section VII (Work to be Performed), Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified by Ecology for data submittal.

If requested by Ecology, Boeing shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by Boeing pursuant to implementation of this Order. Boeing shall notify Ecology seven (7) days in advance of any sample collection or work activity conducted under this Order at the Facility. Ecology shall, upon request, allow Boeing and/or its authorized representative to take split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order, provided that doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section VIII.E (Access), Ecology shall notify Boeing prior to any sample collection activity unless an emergency prevents such notice.

In accordance with WAC 173-340-830(2)(a), all hazardous substance analyses shall be conducted by a laboratory accredited under WAC 173-50 for the specific analyses to be conducted, unless otherwise approved by Ecology.

F. Public Participation

A Public Participation Plan has been completed by Ecology for the Facility. All public participation regarding the BOMARC Property shall follow the Facility Public Participation Plan

Ecology shall maintain the responsibility for public participation at the BOMARC Property. However, Boeing shall cooperate with Ecology, and shall:

1. If agreed to by Ecology, develop appropriate mailing list, prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of work plans, cleanup action plans, and engineering design reports. As appropriate, Ecology will edit, finalize, and distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings.

2. Notify Ecology's project coordinator prior to the preparation of all press releases and fact sheets, and before meetings related to remedial action work to be performed at the BOMARC Property with the interested public and/or local governments. Likewise, Ecology shall notify Boeing prior to the issuance of all press releases and fact sheets related to the BOMARC Property, and before meetings related to the BOMARC Property with the interested public and/or local governments. For all press releases, fact sheets, meetings, and other outreach efforts by Boeing that do not receive prior Ecology approval, Boeing shall clearly indicate to its audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology.

3. When requested by Ecology, participate in public presentations on the progress of the remedial action at the BOMARC Property. Participation may be through attendance at public meetings to assist in answering questions, or as a presenter.

4. When requested by Ecology, arrange and/or continue information repositories to be located at the following locations:

- (a) Everett Public Library
Information Services
2702 Hoyt Street
Everett, WA 98201-3556
(425) 257-8022

- (b) Ecology Northwest Regional Office
3190 160th Avenue SE
Bellevue, WA 98008-5452
Phone: (425) 649-7190

At a minimum, copies of all public notices, fact sheets, and documents relating to public comment periods shall be promptly placed in these repositories. A copy of all documents related to this Facility shall be maintained in the repository at Ecology's Northwest Regional Office in Bellevue, Washington.

G. Retention of Records

During the pendency of this Order, and for ten (10) years from the date of completion of work performed pursuant to this Order, Boeing shall preserve all records, reports, documents, and underlying data in its possession relevant to the implementation of this Order and shall insert a similar record retention requirement into all contracts with project contractors and subcontractors. Upon request of Ecology, Boeing shall make all records available to Ecology and allow access for review within a reasonable time.

Nothing in this Order is intended to waive any right Boeing may have under applicable law to limit disclosure of documents protected by the attorney work-product privilege and/or the attorney-client privilege. If Boeing withholds any requested records based on an assertion of privilege, Boeing shall provide Ecology with a privilege log specifying the records withheld and the applicable privilege. No Facility-related data collected pursuant to this Order shall be considered privileged.

H. Resolution of Disputes

1. In the event that Boeing elects to invoke dispute resolution, Boeing must utilize the procedure set forth below.

- a. Upon the triggering event (receipt of Ecology's project coordinator's written decision or an itemized billing statement), Boeing has fourteen (14) calendar days

within which to notify Ecology's project coordinator in writing of its dispute ("Informal Dispute Notice").

b. The Parties' project coordinators shall then confer in an effort to resolve the dispute informally. The parties shall informally confer for up to fourteen (14) calendar days from receipt of the Informal Dispute Notice, unless an extension is requested by Boeing and approved by Ecology. If the project coordinators cannot resolve the dispute within those 14 calendar days or the agreed upon time period, then within seven (7) calendar days of the end of that period, Ecology's project coordinator shall issue a written decision ("Informal Dispute Decision") stating: the nature of the dispute; Boeing's position with regards to the dispute; Ecology's position with regard to the dispute; and the extent of resolution reached by informal discussion.

c. Boeing may then request regional management review of the dispute. This request ("Formal Dispute Notice") must be submitted in writing to the Northwest Region Hazardous Waste and Toxics Reduction Section Manager within seven (7) calendar days of receipt of Ecology's Informal Dispute Decision unless an extension is requested by Boeing and approved by Ecology. The Formal Dispute Notice shall include a written statement of dispute setting forth: the nature of the dispute; the disputing Party's position with respect to the dispute; and the information relied upon to support its position.

d. The Northwest Regional Hazardous Waste and Toxics Reduction Section Manager shall conduct a review of the dispute and shall issue a written decision regarding the dispute ("Decision on Dispute") within thirty (30) calendar days of receipt of the Formal Dispute Notice unless the parties agree on a different timeframe for Section Manager review. The Decision on Dispute shall be Ecology's final decision on the disputed matter.

2. The Parties agree to only utilize the dispute resolution process in good faith and agree to expedite, to the extent possible, the dispute resolution process whenever it is used.

3. Implementation of these dispute resolution procedures shall not provide a basis for delay of any activities required in this Order, unless Ecology agrees in writing to a schedule extension.

4. In case of a dispute, failure to either proceed with the work required by this Order or timely invoke dispute resolution may result in Ecology's determination that insufficient progress is being made in preparation of a deliverable, and may result in Ecology undertaking the work under Section VII.E (Work to be Performed) or initiating enforcement under Section X (Enforcement).

I. Extension of Schedule

1. Boeing's request for an extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the deadline for which the extension is requested, and good cause exists for granting the extension. All extensions shall be requested in writing. The request shall specify:

- a. The deadline that is sought to be extended;
- b. The length of the extension sought;
- c. The reason(s) for the extension; and
- d. Any related deadline or schedule that would be affected if the extension were granted.

2. The burden shall be on Boeing to demonstrate to the satisfaction of Ecology that the request for such extension has been submitted in a timely fashion and that good cause exists for granting the extension. Good cause may include, but may not be limited to:

- a. Circumstances beyond the reasonable control and despite the due diligence of Boeing including delays caused by unrelated third parties or Ecology, such as (but not limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by Boeing;

b. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty; or

c. Endangerment as described in Section VIII.L (Endangerment).

However, neither increased costs of performance of the terms of this Order nor changed economic circumstances shall be considered circumstances beyond the reasonable control of Boeing.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give Boeing written notification of any extensions granted pursuant to this Order. A requested extension shall not be effective until approved by Ecology. Unless the extension is a substantial change, it shall not be necessary to amend this Order pursuant to Section VIII.J (Amendment of Order) when a schedule extension is granted.

4. At Boeing's request, an extension shall only be granted for such period of time as Ecology determines is reasonable under the circumstances. Ecology may grant schedule extensions exceeding ninety (90) days only as a result of one of the following:

a. Delays in the issuance of a necessary permit which was applied for in a timely manner;

b. Other circumstances deemed exceptional or extraordinary by Ecology; or

c. Endangerment as described in Section VIII.L (Endangerment).

J. Amendment of Order

The project coordinators may verbally agree to minor changes to the work to be performed without formally amending this Order. Minor changes will be documented in writing by Ecology within seven (7) days of verbal agreement.

Except as provided in Section VIII.M (Reservation of Rights), substantial changes to the work to be performed shall require formal amendment of this Order. This Order may only be formally amended by the written consent of both Ecology and Boeing. Ecology will provided its

written consent to a formal amendment only after public notice and opportunity to comment on the formal amendment.

When requesting a change to the Order, Boeing shall submit a written request to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request is received. If Ecology determines that the change is substantial, then the Order must be formally amended. Reasons for the disapproval of a proposed change to this Order shall be stated in writing. If Ecology does not agree to a proposed change, the disagreement may be addressed through the dispute resolution procedures described in Section VIII.H (Resolution of Disputes).

K. Endangerment

In the event Ecology determines that any activity being performed at the BOMARC Property under this Order is creating or has the potential to create a danger to human health or the environment on or surrounding the BOMARC Property, Ecology may direct Boeing to cease such activities for such period of time as it deems necessary to abate the danger. Boeing shall immediately comply with such direction.

In the event Boeing determines that any activity being performed at the BOMARC Property under this Order is creating or has the potential to create a danger to human health or the environment, Boeing may cease such activities. Boeing shall notify Ecology's project coordinator as soon as possible, but no later than twenty-four (24) hours after making such determination or ceasing such activities. Upon Ecology's direction Boeing shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with Boeing's cessation of activities, it may direct Boeing to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to this section, Boeing's obligations with respect to the ceased activities shall be suspended until Ecology determines the danger is abated, and the time for performance of such activities, as well as the time for any other work dependent upon such activities, shall be extended in accordance with Section VIII.I

(Extension of Schedule) for such period of time as Ecology determines is reasonable under the circumstances.

Nothing in this Order shall limit the authority of Ecology, its employees, agents, or contractors to take or require appropriate action in the event of an emergency.

L. Reservation of Rights

This Order is not a settlement under RCW 70A.305. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any of Ecology's rights or authority. Ecology will not, however, bring an action against Boeing to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against Boeing regarding remedial actions required by this Order, provided Boeing complies with this Order.

Ecology nevertheless reserves its rights under RCW 70A.305, including the right to require additional or different remedial actions at the BOMARC Property should it deem such actions necessary to protect human health or the environment, and to issue orders requiring such remedial actions. Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances at the Facility.

By entering into this Order, Boeing does not admit to any liability for the BOMARC Property. Although Boeing is committing to conducting the work required by this Order under the terms of this Order, Boeing expressly reserves all rights available under law, including but not limited to the right to seek cost recovery or contribution against third parties, and the right to assert any defenses to liability in the event of enforcement.

M. Transfer of Interest in Property

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the BOMARC Property shall be consummated by Boeing without provision for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

Prior to Boeing's transfer of any interest in all or any portion of the BOMARC Property, and during the effective period of this Order, Boeing shall provide a copy of this Order to any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30) days prior to any transfer, Boeing shall notify Ecology of said transfer. Upon transfer of any interest, Boeing shall notify all transferees of the restrictions on the activities and uses of the property under this Order and incorporate any such use restrictions into the transfer documents.

O. Compliance with Applicable Laws

1. *Applicable Laws.* All actions carried out by Boeing pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in RCW 70A.305.090. The permits or specific federal, state, or local requirements that the agency has determined are applicable and that are known at the time of entry of this Order have been identified in Exhibit B-Cleanup Action Plan. Boeing has a continuing obligation to identify additional applicable federal, state, and local requirements which apply to actions carried out pursuant to this Order, and to comply with those requirements. As additional federal, state, and local requirements are identified by Ecology or Boeing, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order, and Boeing must implement those requirements.

2. *Relevant and Appropriate Requirements.* All actions carried out by Boeing pursuant to this Order shall be done in accordance with relevant and appropriate requirements identified by Ecology. At this time, no relevant and appropriate requirements have been identified as being applicable to the actions required by this Order. If additional relevant and appropriate requirements are identified by Ecology or Boeing, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order and Boeing must implement those requirements.

2. Pursuant to RCW 70A.305.090(1), Boeing may be exempt from the procedural requirements of RCW 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 and of any laws requiring or

authorizing local government permits or approvals. However, Boeing shall comply with the substantive requirements of such permits or approvals. For permits and approvals covered under RCW 70A.305.090(1) that have been issued by local government, the Parties agree that Ecology has the non-exclusive ability under this Order to enforce those local government permits and/or approvals. At this time, no state or local permits or approvals have been identified as being applicable but procedurally exempt under this section.

Boeing has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70A.305.090(1) would otherwise be required for the remedial action under this Order. In the event either Ecology or Boeing determines that additional permits or approvals addressed in RCW 70A.305.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify the other party of its determination. Ecology shall determine whether Ecology or Boeing shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, Boeing shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by Boeing and on how Boeing must meet those requirements. Ecology shall inform Boeing in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. Boeing shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

3. Pursuant to RCW 70A.305.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70A.305.090(1) would result in the loss of approval from a federal agency that is necessary for the state to administer any federal law, the exemption shall not apply and Boeing shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70A.305.090(1), including any requirements to obtain permits or approvals.

P. Land Use Restrictions

A. As detailed in the Cleanup Action Plan, institutional controls are required at the BOMARC Property. Environmental (Restrictive) Covenants will be used to implement the institutional controls.

1. In consultation with Boeing, Ecology will prepare the Environmental (Restrictive) Covenant consistent with WAC 173-340-440, RCW 64.70, and any policies or procedures specified by Ecology. The Environmental (Restrictive) Covenant shall restrict future activities and uses of the Site as agreed to by Ecology, Boeing, and the property and building owners.
2. After approval by Ecology, Boeing shall make all reasonable efforts to coordinate with the property and building owners to record the Environmental (Restrictive) Covenant for the affected properties it owns, with the office of the Snohomish County Auditor as detailed in the Schedule (CAP, Exhibit B). Boeing shall provide Ecology with the original recorded Environmental (Restrictive) Covenant within thirty (30) days of the recording date.
3. As detailed in the Cleanup Action Plan, as part of the remedial action for the Site institutional controls are required on the BOMARC property. Since the property is not owned by Boeing, it will make a good faith effort to ensure that the owner of the affected property records an Ecology-approved Environmental (Restrictive) Covenant as detailed in the Schedule (CAP, Exhibit B). Upon a showing that Boeing has made a good faith effort to secure an Environmental (Restrictive) Covenant for the BOMARC property and failed to do so, Ecology may provide assistance to Boeing. Boeing shall provide Ecology with the original recorded Environmental (Restrictive) Covenants within thirty (30) days of the recording date.

Q. Financial Assurance

1. Financial assurance for corrective action is required by WAC 173-303-64620. Ecology's Financial Assurance Officer shall determine when Boeing's actions and submissions meet the requirements of WAC 173-303-64620.

2. Ecology's Financial Assurance Officer is:

Joanna Richards
Washington State Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600
Phone: (360) 407-6754
Fax: (360) 407-6715
Email: joar461@ecy.wa.gov

R. Periodic Review

So long as remedial action, including groundwater monitoring, continues at the BOMARC Property, the Parties agree to review the progress of remedial action at the BOMARC Property, and to review the data accumulated as a result of monitoring the Facility as often as is necessary and appropriate under the circumstances. Unless otherwise agreed to by Ecology, at least every five (5) years after the initiation of cleanup action at the BOMARC Property, the Parties shall meet to confer regarding the status of the BOMARC Property and the need, if any, for further remedial action at the BOMARC Property. At least ninety (90) days prior to each periodic review, Boeing shall submit a report to Ecology that documents whether human health and the environment are being protected based on the factors set forth in WAC 173-340-420(4). Ecology reserves the right to require further remedial action at the BOMARC Property under appropriate circumstances. This provision shall remain in effect for the duration of this Order.

S. Indemnification

Boeing agrees to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action (1) for death or injuries to persons, or (2) for loss or damage to property to the extent arising from or on account of acts or omissions of Boeing, its officers, employees, agents, or contractors in entering into and implementing this

Order. However, Boeing shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action to the extent arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in entering into or implementing this Order.

IX. SATISFACTION OF ORDER

The provisions of this Order shall be deemed satisfied upon Boeing's receipt of written notification from Ecology that Boeing has completed the corrective actions required by this Order, as amended by any modifications, and that Boeing has complied with all other provisions of this Order.

X. ENFORCEMENT

Pursuant to RCW 70.105D.050, this Order may be enforced as follows:

A. The Attorney General may bring an action to enforce this Order in a state or federal court.

B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the BOMARC Property.

C. A liable party who refuses, without sufficient cause, to comply with any term of this Order will be liable for:

1. Up to three (3) times the amount of any costs incurred by the State of Washington as a result of its refusal to comply; and

2. Civil penalties of up to twenty-five thousand dollars (\$25,000) per day for each day it refuses to comply.

D. This Order is not appealable to the Washington Pollution Control Hearings Board. This Order may be reviewed only as provided under RCW 70A.305.060.

Effective date of this Order: _____

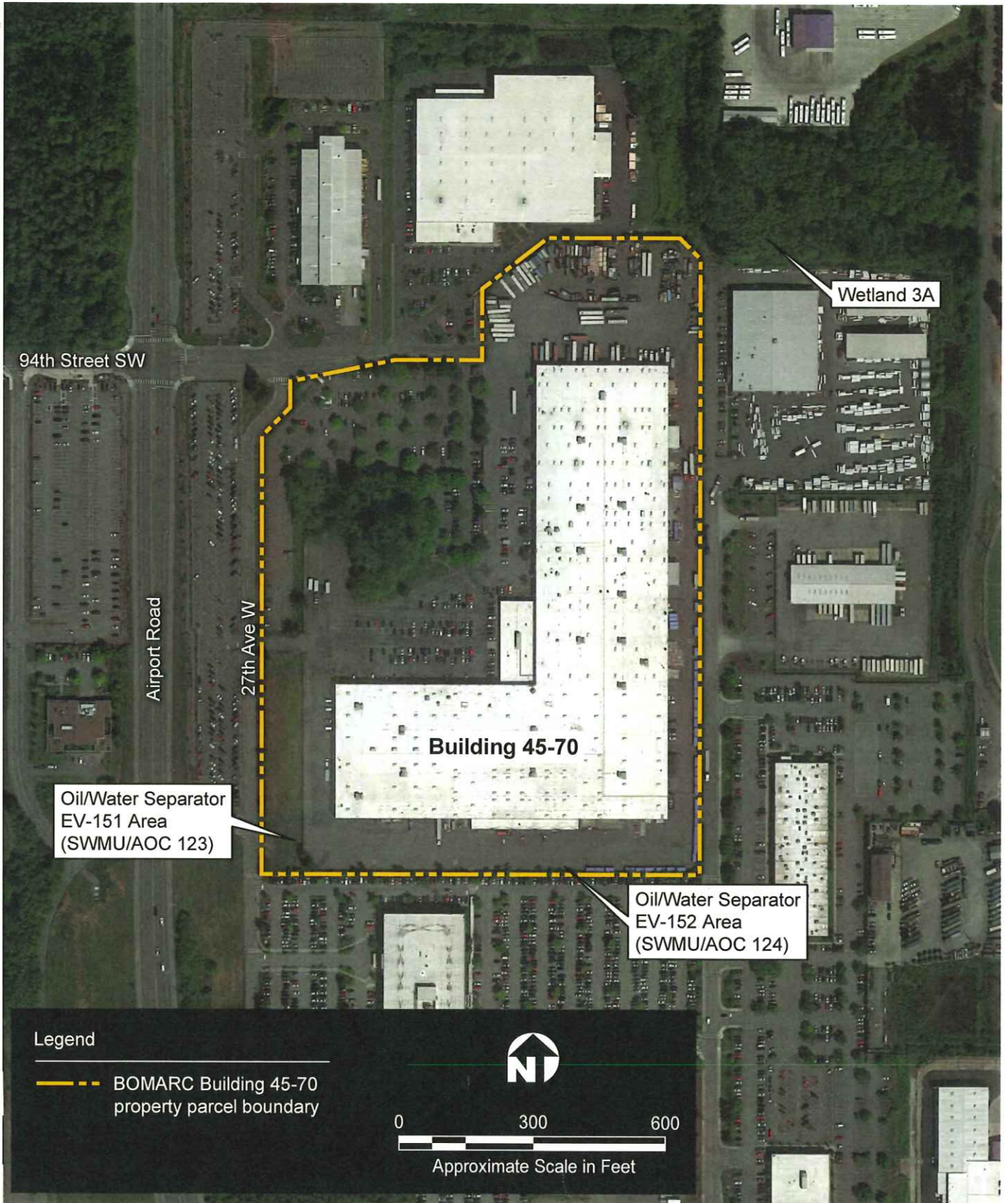
The Boeing Company

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Steve Shestak, Senior Director
Global Enterprise Sustainability
The Boeing Company
425-237-0214

Raman Iyer, Section Manager
Hazardous Waste and Toxics
Reduction Program
Northwest Regional Office
425-649-7053

EXHIBIT A: BOMARC Property Diagram



Source: Google Earth Pro, imagery dated 5/13/18

Figure 1-4
Site Plan – BOMARC Building 45-70

EXHIBIT B: Ecology Cleanup Action Plan (CAP)

Exhibit F

LEASE GUARANTY

BOSA DEVELOPMENT CALIFORNIA II, INC., a California corporation (“Guarantor”), as a material inducement to and in consideration of SNOHOMISH COUNTY, a political subdivision of the State of Washington (“County”), entering into that certain Land Lease, dated June __, 2021 (the “Lease”), between the County and BOSA BOMARC LLC, a Washington limited liability company (“Lessee”), hereby unconditionally and irrevocably guarantees the complete and timely payment and performance of each and every term, condition, covenant, and obligation of Lessee under the Lease and any extensions or renewals of the Lease. This Guaranty is an absolute, primary, and continuing guaranty of payment and performance and is independent of Lessee’s obligations under the Lease. Guarantor shall be primarily liable, jointly and severally, with Lessee and any other guarantor of Lessee’s obligations. Guarantor waives any right to require County to (a) first commence any action or proceedings against Lessee, (b) join Lessee with Guarantor in any suit arising under this Guaranty, (c) proceed against or exhaust any security given to secure Lessee’s obligations under the Lease, or (d) pursue or exhaust any other remedy in County’s power. The enforcement of County’s rights against Lessee will not impair the right of County to enforce this Guaranty, and any such action by County will not operate as a release of the liability of Guarantor under this Guaranty.

Until all of Lessee’s obligations to County have been discharged in full, Guarantor shall have no right of subrogation against Lessee. County may, without notice or demand and without affecting Guarantor’s liability hereunder, from time to time, whether or not Guarantor’s risk is increased thereby, compromise any or all of the terms of the Lease. Guarantor waives any right to participate in any security now or hereafter held by County.

Guarantor agrees that none of its obligations and no right against Guarantor hereunder will in any way be discharged, impaired, or otherwise affected by any extension of time for, or by any partial or complete waiver of the performance of any of Lessee’s obligations under the Lease, or by any other alteration, amendment, assignment, expansion, extension, or modification in or to the Lease, or by any release or waiver of any term, covenant, or condition of the Lease, or by any delay in the enforcement of any rights against Lessee, Guarantor, or any other person or entity under the Lease. Guarantor agrees that the Lease may be altered, amended, assigned, expanded, extended, or modified from time to time on such terms and provisions as may be satisfactory to County without notice to or further assent by Guarantor, and Guarantor hereby waives notice of acceptance of this Guaranty, notice of any obligations guaranteed hereby or of any action taken or omitted in reliance hereon, and notice of any defaults of Lessee under the Lease and waives presentment, demand for payment or performance, protest, notice of dishonor, nonpayment or nonperformance of any such obligations, suit, or taking of other action by County against, and any other notice to, any party liable thereon and waives suretyship defenses generally, other than full and timely payment and performance of all obligations hereby guaranteed, and Guarantor agrees to cause Lessee to preserve the enforceability of all instruments hereby guaranteed, as modified with County’s consent, and to cause Lessee to refrain from any act or omission that might be the basis for a claim that Guarantor has any defense to Guarantor’s obligations hereunder, exclusive only of the defense that Lessee has fully and timely paid and performed all obligations hereby guaranteed. No invalidity, irregularity, or unenforceability of all or any part of such obligations or of any security therefor and no insolvency, bankruptcy, liquidation proceeding, or dissolution

affecting Lessee or Guarantor will affect, impair, or be a defense to this Guaranty. The liability of the Guarantor hereunder is primary and unconditional and will not be subject to any offset, defense (other than the defense of full and timely payment and performance) or counterclaim of Guarantor.

Guarantor shall pay to County all costs incurred by County in enforcing this Guaranty (including, without limitation, reasonable attorneys' fees and expenses). Guarantor further agrees to defend with counsel acceptable to County, and to indemnify and save County harmless from and against any and all loss, cost, damage, or liability arising out of any breach by Lessee of any of the terms, conditions, and covenants of the Lease, or out of any breach of warranty or misrepresentation made by Lessee under the Lease, including reasonable attorneys' fees and any other costs incurred by County in connection therewith or in the enforcement of this Guaranty. The obligations of Lessee under the Lease to execute and deliver estoppel statements, as therein provided, shall be deemed to also require the Guarantor hereunder to do so and provide the same relative to Guarantor following written request by County in accordance with the terms of the Lease. All notices and other communications given pursuant to, or in connection with, this Guaranty shall be delivered in the same manner required in the Lease. All notices or other communications addressed to Guarantor shall be delivered at the same address set forth below. This Guaranty shall be binding upon the heirs, legal representatives, successors and assigns of Guarantor and shall inure to the benefit of County's successors and assigns.

Guarantor represents that this Guaranty, and the Lease hereby guaranteed, as originally delivered and as modified, amended, or supplemented, have been duly authorized and are the legal, valid, and binding obligations of Guarantor and Lessee, enforceable in accordance with their respective terms, and Guarantor further agrees that no invalidity of any such Guaranty will affect or impair Guarantor's liability under this Guaranty.

This Guaranty will be binding upon Guarantor and its successors or assigns, and will inure to the benefit of County, its successors or assigns. Guarantor agrees that this Guaranty will be assignable by County in connection with an assignment of County's interest in the Lease. The benefit of this Guaranty will extend to any successor of County as owner of the premises.

This Guaranty shall be governed by the laws of the State of Washington.


THE PARTIES WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY ANY PARTY AGAINST ANY OTHER PARTY ON ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS GUARANTY OR THE RELATIONSHIP OF THE PARTIES CREATED HEREUNDER.

[Signature on following page]

Executed as of 06-09-21, 2021.

GUARANTOR:

BOSA DEVELOPMENT CALIFORNIA II, INC.

By: 
Name: RICHARD WEIK
Title: VICE PRESIDENT

Guarantor's Contact Information:

1300-2025 Willingdon Avenue
Burnaby BC V5C 0J3
Canada