

Memo



Date: November 23, 2009
File: 2380-20-8025, 0550-05
To: City Manager
From: Airport Director
Subject: KELOWNA FLIGHTCRAFT LEASING LTD. - NEW LEASE OF NORTH COMPONENT WORKSHOP - KELOWNA INTERNATIONAL AIRPORT

RECOMMENDATION:

THAT Council approve a new Sub-Lease between Kelowna Flightcraft Leasing Ltd. and the City of Kelowna.

AND THAT Council authorize the Mayor and City Clerk to sign the Sub-Lease on behalf of the City of Kelowna.

The rental rate and airport maintenance charge will be in accordance with Bylaw 8620 dated December 4, 2000.

BACKGROUND:

In January 1985, Council approved a sub-lease of airport land with Kelowna Flightcraft Ltd., which sub-lease has been amended from time to time. As the sub-lease does not contain an overholding clause, the term of this sub-lease expires December 30, 2009. Kelowna Flightcraft Leasing Ltd. wishes to enter into a new sub-lease of the airport land with the City as follows:

- (a) Term is to be for a two year period less a day, commencing January 1, 2010 until December 30, 2011;
- (b) Rent in effect first year of term- \$5,795.13 per annum (\$482.92 per month);
- (c) Airport Maintenance Charge in effect first year of term - \$363.74 per annum (\$30.31 per month);
- (d) Annual increase in rent and airport maintenance charge - 2% per annum commencing January 1, 2011;
- (e) Overholding Tenancy - upon expiration of fixed term, new month to month tenancy created.

The Kelowna Flightcraft Ltd. sub-lease and City taxes are current.

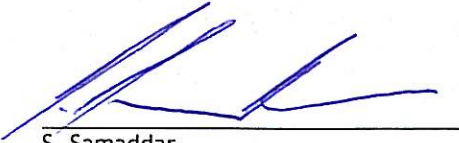
INTERNAL CIRCULATION TO: Airport Finance & Administration Manager
Airport Development Manager

Considerations that were not applicable to this report:

LEGAL/STATUTORY AUTHORITY: N/A
LEGAL/STATUTORY PROCEDURAL REQUIREMENTS: N/A
EXISTING POLICY: N/A
FINANCIAL/BUDGETARY CONSIDERATIONS: N/A
PERSONNEL IMPLICATIONS: N/A
TECHNICAL REQUIREMENTS: N/A
EXTERNAL AGENCY/PUBLIC COMMENTS: N/A
COMMUNICATIONS CONSIDERATIONS: N/A
ALTERNATE RECOMMENDATION: N/A


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Submitted by:



S. Samaddar
Airport Director

Approved for inclusion:



(General Manager, Corporate Sustainability)

COPY

ORIGINAL

KELOWNA INTERNATIONAL AIRPORT

LAND SUB-LEASE

BETWEEN THE

CITY OF KELOWNA

AND

KELOWNA FLIGHTCRAFT LEASING LTD.

**(YLW FILE NO. 2380-20-8025
NORTH COMPONENT WORKSHOP)**

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EXECUTION OF SUB-LEASE

ATTACHMENTS

- Schedule A - Drawing Number 12908 Lease A
- Schedule B - Certificate of Insurance

THIS AGREEMENT made this 14th day of SEPTEMBER, 2009.

BETWEEN:

CITY OF KELOWNA

a municipal corporation having its offices at
1435 Water Street, Kelowna,
British Columbia, V1Y 1J4

(the "Lessee")

OF THE FIRST PART

AND:

KELOWNA FLIGHTCRAFT LEASING LTD.

5655 Airport Way, Kelowna,
British Columbia, V1V 1S1

(the "Sub-Lessee")

OF THE SECOND PART

RECITALS

WHEREAS:

- A. The City of Kelowna entered into a lease (the "Head Lease") with Her Majesty dated the nineteenth day of December 1979, and registered with the Department of Transport, as No. 109806 wherein it was granted to the City of Kelowna all and singular those certain parcels of land situate, lying and being in the province of British Columbia, Osoyoos Division, Yale District, consisting of Lot 3 - Registered Plan 11796, District Lot 120 - Plan 1929, Lot 7 - Registered Plan 1502, comprising all of Kelowna International Airport;
- B. The Sub-Lessee is desirous of leasing from the Lessee part of the Lessee's Land for aviation purposes;
- C. The City of Kelowna is desirous of sub-leasing a portion of the Kelowna International Airport to the Sub-Lessee on the terms and conditions contained herein;
- D. The approval of the Department of Transport shall be obtained for the Sub-Lease herein.

WITNESSETH that the Lessee, in consideration of the rents, covenants, provisos and conditions hereinafter reserved and contained, does hereby demise and lease to the Sub-Lessee:

ALL AND SINGULAR that certain parcel of land (the "said land") situate, lying and being comprised, in the Kelowna International Airport (the "said airport") at Kelowna, in the Province of British Columbia; the said land comprising an area of 13,778.252 square feet, more or less, and being more particularly shown on Drawing No. 12908 Lease A - hereto annexed as Schedule A.

AND the Parties agree as follows:

ARTICLE 1 - DEFINITIONS

- (1) The word "Lessor" means the Sovereign and shall include the successors and assigns of the Sovereign;
- (2) The words "City" or "Lessee" means the City of Kelowna.
- (3) The word "Sub-Lessee" means Kelowna Flightcraft Leasing Ltd. and its successors or assigns;
- (4) The word "Minister" means the person holding the position, or acting in the capacity, of the Minister of Transport, for the time being and shall include the person holding the position, or acting in the capacity, of the Deputy Minister of Transport, for the time being;
- (5) The words "Airport Director" means the person holding that position, or acting in the capacity, of the Airport Director of the Kelowna International Airport.

ARTICLE 2 - PURPOSE

The said land shall be used as a site for aviation purposes (hereinafter referred to as the "said building") and the said land and the said building shall be used for aviation purposes and for no other purpose whatsoever.

ARTICLE 3 - TERM

3.01 LENGTH OF TERM

The Sub-Lessee shall have and hold the said land, from January 1, 2010, for a period of two (2) years, less a day, up to and including December 30, 2011, and then to be complete and ended.

3.02 OVERHOLDING TENANCY

It is hereby agreed by and between the parties hereto that if the Sub-Lessee shall hold over after the expiration of the term hereby granted and the Lessee shall accept rent, the new tenancy thereby created shall be a tenancy from month to month and not a tenancy from year to year, and the Sub-Lessee shall pay as rent during the time of such occupancy a rent to be determined at the discretion of the Lessee, and shall be subject to the covenants and

conditions herein contained so far as the same are applicable to a tenancy from month to month. The overholding month to month tenancy may be terminated by the City by providing thirty (30) days notice in writing.

3.03 CANCELLATION PRIVILEGE

If by reason of fire, flood, lightning, tempest, earthquake, impact of aircraft, explosion, Acts of God, or the Queen's enemies, the said building shall, at any time during the term hereby granted, be destroyed or so damaged as to render the said building unfit for occupancy, the Sub-Lessee will then have a period of ninety (90) days after such damage or destruction within which to decide whether or not it will repair or rebuild. If the Sub-Lessee decides not to rebuild or repair, it may terminate this Sub-Lease by notice, in writing, given to the Lessee within the said ninety (90) day period; provided, however, that in the event of such notice being given to the Lessee pursuant to this clause, the rent reserved to the Lessee under this Sub-Lease shall be due and payable up to the date of removal of the said building and clearance and leveling of the said land to the satisfaction of the Lessee.

3.04 SURRENDER OF PREMISES

At the expiration or sooner determination of the term of this Sub-Lease, the Sub-Lessee shall peaceably surrender and yield to the Lessee, in a condition satisfactory to the Lessee, the said land and the said building. The Sub-Lessee shall thereupon forthwith remove from the said land and the said building all chattels, goods, supplies, articles, equipment, materials, effects or things and shall also, to the satisfaction of the Lessee, repair all and every damage and injury occasioned to the premises of the Lessee by reason of such removal or in the performance thereof, but the Sub-Lessee shall not, by reason of any action taken or things performed or required under this clause, be entitled to any compensation whatever. Unless required by the Lessee, no chattels, goods, supplies, articles, equipment, materials, effects or things shall be removed from the said land or the said building until all rent due or to become due under this Sub-Lease is fully paid. The City may, at its option, remove at the risk of and at the cost and expense of the Sub-Lessee, the chattels, goods, supplies, articles, equipment, materials, effects or things from the said land or the said building and the Sub-Lessee shall reimburse the Lessee forthwith upon receipt of appropriate accounts therefor and for any storage charges which may have been or will be incurred by the Lessee as a result of such removal. Where not removed by the Sub-Lessee, the Lessee may consider the chattels, goods, supplies, articles, equipment, materials, effects or things to be abandoned, and take title thereto in the name of the Lessee.

ARTICLE 4 - RENT AND AIRPORT MAINTENANCE CHARGES

4.01 RENT AND AIRPORT MAINTENANCE CHARGES

The Sub-Lessee shall pay during the currency of this Sub-Lease to the City, in lawful money of Canada rent and airport maintenance charges as follows:

- (a) for the first year of the Term of the Sub-Lease up to December 31st, 2010, rent calculated at the rate of \$0.4206 per square foot of sub-leased area = 13,778.252

square feet x \$0.4206 - \$5,795.13 per annum = \$482.92 per month, payable in advance; and

- (b) for the first year of the Term of the Sub-Lease up to December 31st, 2010, an airport maintenance charge calculated at the rate of \$0.0264 per square foot of sub-leased area = 13,778.252 square feet x \$0.0264 = \$363.74 per annum = \$30.31 per month, payable in advance; and
- (c) an annual increase in the rent and airport maintenance charge payable under the Sub-Lease in the amount of 2 percent per annum commencing January 1, 2011; and
- (d) without waiving any other right of action of the City in the event of default of payment of rent hereunder, in the event that the Sub-Lessee is delinquent after the date above appointed in making the payments required hereunder, the Sub-Lessee shall pay interest thereon at the rate of 1.5 percent per month or any portion of a month, (18.00 per cent per annum), retroactive from the date any such amount is due and payable until paid. In order to reflect prevailing interest rates the City will review and adjust the interest rate from time to time.

4.02 PAYMENT OF RENT AND AIRPORT MAINTENANCE CHARGES

The Sub-Lessee shall pay all rent and airport maintenance charges at the time and in the manner in this Sub-Lease set forth, without any abatement or deduction whatever.

ARTICLE 5 - SUB-LEASED LAND, SERVICES, AND IMPROVEMENTS

5.01 "AS IS" CONDITION

The Sub-Lessee accepts the said land in an "as is" condition and any improvements made to the said land by the Sub-Lessee at any time during the currency of this Sub-Lease, to make the said land suitable for the operations of the Sub-Lessee hereunder, shall be at the risk, cost and expense of the Sub-Lessee and to the satisfaction of the Lessee.

5.02 ACCESS

- (1) The Lessee, its officers, servants or agents, shall have full and free access for inspection purposes during normal business hours and in the presence of the Sub-Lessee or a representative of the Sub-Lessee to any and every part of the said land and the said building; it being expressly understood and agreed, however, that in cases of emergency, the Lessee, its officers, servants or agents shall at all times and for all purposes have full and free access to the said land.
- (2) Subject to the terms and conditions of this Sub-Lease, the Sub-Lessee shall have quiet possession of the said land, and the right of ingress and egress over the airport roadways subject to rules and regulations as may be established by the Lessee respecting such use.

5.03 MAINTENANCE OF SUB-LEASED AREA

The Sub-Lessee shall, at the cost and expense of the Sub-Lessee, maintain the landscaping and paved areas on the said land and shall keep the land free of debris and neat and tidy at all times, all to the satisfaction of the Airport Director.

5.04 ADDITIONAL RIGHTS OF THE SUB-LESSEE

The Lessee reserves the right to grant licenses, rights of way or privileges to others on, over, under, through or across the said land, provided, however, that such rights of way or privileges are not detrimental to the proper conduct of the business or operation of the said building and related services, will not damage or disrupt permanently the physical facilities of the Sub-Lessee, will not impose any cost upon the Sub-Lessee, and will not weaken, diminish or impair the security of this Sub-Lease.

5.05 SERVICES AND UTILITIES

- (1) Subject to the terms and conditions of this Sub-Lease, services required to serve the said building shall be the responsibility of the Sub-Lessee and the Sub-Lessee shall make and maintain all connections required therefor, all at the cost and expense of the Sub-Lessee and to the satisfaction of the Lessee.
- (2) The Sub-Lessee shall construct improvements on the said land in such manner that the surface drainage water on the said land will be discharged into the Lessee's drainage system, and plans for the construction of storm drainage services shall be subject to the approval in writing, of the Airport Director prior to installation of such services, for compatibility with the field drainage channels serving the said land, all at the cost and expense of the Sub-Lessee.
- (3) The Sub-Lessee shall, at the cost and expense of the Sub-Lessee, provide complete and proper arrangements for the adequate sanitary handling and disposal away from the said airport of all trash, garbage and other refuse on or in connection with the Sub-Lessee's operations under this Sub-Lease, all to the satisfaction of the Airport Director. Piling of crates, cartons, barrels or other similar items shall not be permitted in a public area on the said airport.
- (4) The plans and specifications for installation of all services must be approved by the Airport Director and the work performed under the supervision of a designated officer of the Airport Director.

5.06 TEMPORARY SUSPENSION OF SERVICES

Without limiting or restricting the generality of the provisions of Clause 7.01 hereof, the Sub-Lessee shall not have nor make any claim or demand, nor bring any action or suit or petition against the Lessee or any of its officers, servants or agents for any damage which the Sub-Lessee may sustain by reason of any temporary suspension, interruption or discontinuance, in whole or in part from whatever cause arising in service supplied by the Lessee hereunder.

5.07 REASONABLE USE

The Sub-Lessee shall not, during the currency of this Sub-Lease, do, suffer nor permit to be done any act or thing which may impair, damage or injure the said land, the said building or any part thereof, beyond the damage occasioned by reasonable use, and shall, at the cost and expense of the Sub-Lessee, repair and renew in a good, sufficient and workmanlike manner all portions of the said land or the said building which may at any time by the Sub-Lessee be damaged (ordinary wear and tear only excepted) and in the event of the failure on the part of the Sub-Lessee to so repair and renew, the Sub-Lessee shall indemnify and save harmless the Lessee from all damages, costs and expenses suffered or incurred by the Lessee by reason of such impairment, damage or injury to the extent the Sub-Lessee is liable for the same in law, such payment to be made forthwith upon receipt of appropriate accounts therefor.

5.08 NUISANCE

The Sub-Lessee shall not do, suffer or permit to be done any act or thing upon or above the said land or the said building which is or would constitute a nuisance to the occupiers of any lands or premises adjoining or in the vicinity of the said land or the said building or to the public generally.

5.09 ENVIRONMENTAL PROTECTION STATUTES

- (1) The Sub-Lessee shall comply with all environmental protection laws, statutes, enactments, regulations, bylaws, orders or other requirements of any authority having jurisdiction (the "Environmental Laws") concerning the said lands, the said building or the business and operations of the Sub-Lessee.
- (2) In the event of contamination of the said land, the Sub-Lessee must remediate the said land to the satisfaction of the Lessee so as to ensure that the said land and any adjoining properties are free of contaminants. "Contaminants" means any contaminant, pollutant, underground or above ground tank, asbestos materials, urea formaldehyde, deleterious substance, dangerous substance or good, hazardous, corrosive or toxic substance, special waste or any other substance which is now or hereafter regulated under the Environmental Laws.
- (3) The Sub-Lessee hereby indemnifies and saves harmless the Lessee and its officials, officers, employees, agents, successors and assigns (the "Indemnitees") from any actions, liabilities, demands, claims, cost recovery claims, losses, damages, orders, fines, penalties, costs and expenses (including, without limitation, consulting costs, legal costs on a solicitor-client basis and any remediation costs) which may be paid by, incurred by or asserted against any of the Indemnitees arising from or in any way related to the following:
 - (a) the Sub-Lessee's breach of this clause or any of its obligations under the Sub-Lease; or
 - (b) the presence in, on or under the said land, or the escape, seepage, leakage, spillage, discharge, emission or release from the said land into or upon any

other land, water (including groundwater) or the atmosphere, of any Contaminants existing at the said land as of or prior to the ending of the term of this Sub-Lease, even if not discovered until after the ending of the term of this Sub-Lease. This indemnity shall survive the ending of the term of this Sub-Lease.

5.10 POLICE AND FIRE PROTECTION

- (1) The Lessee shall not be responsible for providing fire protection to nor policing of, the said land, the said building and any improvements;
- (2) The Lessee agrees to allow the Sub-lessee, at the cost and expense of the Sub-lessee, to connect to the airport's 300 mm. fire fighting water line as a source of structural fire protection water, subject to the Lessee and Lessor having first priority with respect to the use of this water supply for any other purpose. Any repairs, alterations, improvements or replacements required for this water connection and made by the Sub-lessee become vested in title of the Lessor without any payment of compensation in respect thereof;
- (3) The Sub-lessee acknowledges and agrees that the water supply to the water line is not potable and that the water line should be used exclusively for fire fighting purposes;
- (4) The Sub-lessee agrees to pay to the Lessee all charges and fees associated with connection to this water line at the rates established by bylaws of the Glenmore-Ellison Improvement District;
- (5) The Sub-lessee understands and expressly agrees to indemnify and save harmless the Lessee and Lessor, its officers, agents, servants or employees, from and against any and all suits and claims alleging damage or injury (including death) to any person or property that may occur or that may be alleged to have occurred in the course of connection to or use of the City's water line, whether such claim shall be made by an employee of the Sub-lessee or by a third party, and whether or not it shall be claimed that the alleged damage or injury (including death) was caused by a wilful or negligent act or omission by the Sub-lessee, its officers, agents, servants or employees and at its own expense, the Sub-lessee shall defend any and all such actions and pay all legal charges, costs and other costs arriving therefrom.

5.11 FIRE PREVENTION

The Sub-Lessee shall, at the expense of the Sub-Lessee, take all precautions to prevent fire from occurring in or about the said land and the said building, and shall observe and comply with all laws and regulations in force respecting fires at the said airport, and with all instructions given from time to time by the Airport Director with respect to fires and extinguishing of fires.

5.12 ADVERTISING

The Sub-Lessee shall not construct, erect, place or install on the outside of the said building or on the said land any poster, advertising sign or display, electrical or otherwise, without first obtaining the consent, in writing, of the Airport Director.

5.13 DRAINAGE AND DISCHARGE OF MATERIAL

The Sub-Lessee shall not discharge, cause or permit to be discharged or howsoever to pass into the sewer systems, storm drains or surface drainage facilities at the said airport or elsewhere any Contaminants, deleterious material, noxious, contaminated or poisonous substances, all as determined by the Airport Director, whose decision shall be final; it being expressly understood and agreed that in the event of a discharge or escape of such Contaminants, deleterious material, noxious, contaminated or poisonous substances in and under the control of the Sub-Lessee, the cost incurred in the clean-up to the satisfaction of the Airport Director, shall be to the Sub-Lessee's account.

5.14 INTERCEPTORS

If required by the City of Kelowna, grease, oil and sand interceptors shall be provided by the Sub-Lessee. All interceptors shall be of a type and capacity approved by the City and shall be readily accessible for cleaning and inspection. Such interceptors shall be maintained by the Sub-Lessee, at the expense of the Sub-Lessee, in continuous, efficient operation at all times.

5.15 REPAIR OF DAMAGE

If, at any time or times hereafter, any damage or injury (ordinary wear and tear only excepted) should be occasioned to the said land, the said building, or any part thereof, or to any works of the Lessee on the said airport by reason of or on account of the operations of the Sub-Lessee hereunder or any action taken or things done or maintained by virtue thereof, then, and in every such case, the Sub-Lessee shall, within a reasonable time upon notice thereof from the Lessee given in writing, repair, rebuild and restore the same in good, sufficient and workmanlike manner; in the event of failure on the part of the Sub-Lessee to so repair the City may, at its option, repair such damage or injury in which case the Sub-Lessee shall repay and reimburse the Lessee for all costs and expenses connected therewith or incidental thereto to the extent the Sub-Lessee is liable for the same in law plus such additional charge as may be applicable in accordance with the policies of the Lessee for administration and overhead forthwith upon receipt by the Sub-Lessee of appropriate accounts therefore from the Lessee. In the event of failure on the part of the Sub-Lessee to repair such damage or injury and in the event of non repair by the Lessee, the Sub-Lessee shall remain liable to the Lessee for the amount of such damage or injury to the extent the Sub-Lessee is liable therefor in law and payment of such amount shall be made by the Sub-Lessee to the Lessee forthwith, upon receipt by the Sub-Lessee of appropriate accounts therefor from the Lessee.

5.16 ERECTION AND MAINTENANCE OF BUILDINGS OR STRUCTURES

- (1) The Sub-Lessee shall not construct or erect any building or other structures on the said land without first obtaining the written approval of the City of Kelowna, of plans showing the design and nature of construction of such building or structures and their proposed location, and all such buildings or structures shall be constructed and thereafter maintained by and at the cost and expense of the Sub-Lessee to the satisfaction of the Airport Director.
- (2) If, at any time during the term of this Sub-Lease, the Sub-Lessee defaults in its obligation of maintaining the said land and the said building, structures and improvements, and every of them, in accordance with the requirements of this Sub-Lease, the Airport Director may give written notice, specifying the respect in which such maintenance is deficient, to the Sub-Lessee. If, within fifteen (15) days from the giving of such notice the default specified in such notice has not been remedied or (if the nature of such default reasonably requires more than fifteen (15) days to remedy and make right) the Sub-Lessee has not commenced, or, having commenced, is not diligently completing the remedying of such default, or if such maintenance is not of a type satisfactory to the Airport Director, the Lessee may enter upon the said land and the said building, structures and improvements and perform such maintenance, at the cost and expense of the Sub-Lessee, plus such additional charge as may then be applicable, in accordance with the policies of the Lessee for administration and overhead; it being expressly understood and agreed that the Lessee shall not be under any obligation to perform any maintenance during the term of this Sub-Lease.

5.17 VESTING OF REPAIRS, ALTERATIONS, IMPROVEMENTS OR REPLACEMENTS

Any repairs, alterations, improvements or replacements made by the Sub-Lessee to or upon the said land and the said building which by their nature are determined to be fixtures shall upon termination of this Sub-Lease, except and subject as in this Sub-Lease otherwise specifically provided, be vested in title in the Lessee without any payment of compensation to the Sub-Lessee in respect of the repairs, alterations, improvements or replacements; nevertheless the Lessee shall have the option of requiring or compelling the Sub-Lessee upon written notice, to remove such repairs, alterations, improvements or replacements, and the Sub-Lessee shall be so bound to remove and shall restore the said land to its original condition all at the cost and expense of the Sub-Lessee and without any right on the part of the Sub-Lessee to seek compensation for any reason whatsoever.

5.18 PAYMENT OF TAXES

- (1) The Sub-Lessee shall pay or cause to be paid all rates, taxes and assessments, of whatsoever description, that may at any time during the existence of this Sub-Lease be lawfully imposed, and become due and payable, upon, or in respect of the said land, the said building, or any part thereof.
- (2) The Sub-Lessee shall pay any business tax, value added tax, multi-stage sales tax, sales tax, goods and services tax or any other tax lawfully imposed on any rent receivable by the Lessee hereunder by any governmental or other taxing authority

having jurisdiction, whether known as business transfer tax, value added tax, goods and services tax, or by any other name.

5.19 COMPLIANCE WITH REGULATIONS

- (1) That the Sub-Lessee shall in all respects comply with all laws, rules and regulations of the Federal Government, Provincial Government and all bylaws and regulations of the Lessee and any other governing body whatsoever and shall comply with all local police, health, or fire regulations or bylaws, in any manner affecting the business of the Sub-Lessee, the said land, the said building and the operations of the Sub-Lessee hereunder. In agreeing to comply with all bylaws and regulations of the Lessee, the Sub-Lessee does so voluntarily as a matter of commercial expedience, without protest, without any demand by the Lessee and without qualification by any condition. Further the Sub-Lessee agrees that compliance with all bylaws and regulations of the Lessee is a fundamental term of this agreement and that any breach of this term entitles the Lessee to terminate this agreement.
- (2) That the Sub-Lessee shall abide by and comply with all regulations regarding traffic control, airport security, sanitation and all other regulations relative to the management and operation of the said Airport.

5.20 DEFECT OF TITLE

It is a condition of this Sub-Lease that the Sub-Lessee shall not have any recourse against the Lessee should the Lessee's title to the said land be found to be defective, or should this Sub-Lease prove ineffectual by reason of any defect in such title.

5.21 ENFORCEMENT

- (1) Notwithstanding the provisions of 9.01 any failure by the Sub-Lessee to comply with the specific obligations of the Sub-Lessee to construct and to complete construction of the building and facilities, as set out in 5.21 of the Sub-Lease herein, shall constitute a breach of the conditions of this Sub-Lease and shall be subject to the cancellation of this Sub-Lease without any right on the part of the Sub-Lessee to seek compensation.
- (2) In the event of non-compliance with any of the specific obligations of the Sub-Lessee to construct and complete construction of the building and facilities herein then, and in every such case, provided reasonable steps have not been taken to cure any such breach within thirty (30) days from the date of notice in writing or such other notice as may be specified thereof from the Lessee to the Sub-Lessee and signed by or on behalf of the Lessee, the Lessee may terminate this Sub-Lease by giving the Sub-Lessee thirty (30) days written notice of its intention to terminate signed by or on behalf of the Lessee, during which time the Sub-Lessee will no longer be permitted to cure the breach or non-observance; and thereupon after the expiration of such period of notification this Sub-Lease shall be determined and ended without any further notice or delay.

- (3) The Lessee shall have the option of requiring or compelling the Sub-Lessee, upon written notice, to remove such buildings, facilities and structures, and the Sub-Lessee shall be so bound to remove and shall restore the said land and said building to its original condition at its own cost and expense and without any right on the part of the Sub-Lessee to seek compensation for any reason whatsoever.

ARTICLE 6 - ASSIGNMENT AND CHANGE OF CONTROL

6.01 ASSIGNMENT

The Sub-Lessee shall not make any assignment of this Sub-Lease, nor any transfer or sub-lease of the whole or any portion of the said land demised or sub-leased hereunder, without obtaining the prior consent in writing of the City of Kelowna to such assignment, transfer or sub-lease, such consent not to be unreasonably withheld.

6.02 CORPORATE OWNERSHIP

If the Sub-Lessee is a private corporation and if by the sale or other disposition of its assets, shares or undertaking the control or beneficial ownership of such corporation is changed at any time, such change in control shall be deemed to be an assignment of the Sub-Leased Premises by the Sub-Lessee, requiring the City's consent pursuant to Article 6.01 herein.

ARTICLE 7 - LIABILITY AND INDEMNITY

7.01 LIABILITY

The Sub-Lessee shall be liable for all loss, costs, damages, and expenses whatsoever incurred or suffered by the City, its elected officials, officers, employees and agents (the Indemnitees) including but not limited to damage to or loss of property and loss of use thereof, and injury to or death of a person or persons resulting from or in connection with the performance, purported performance, or non-performance of this Land Sub-Lease, excepting only where such loss, costs, damages and expenses are as a result of the sole negligence of the Indemnitees.

7.02 INDEMNITY

The Sub-Lessee shall defend, indemnify and hold harmless the Indemnitees from and against all claims, demands, actions, proceedings, and liabilities whatsoever and all costs and expenses incurred in connection therewith and resulting from the performance, purported performance, or non-performance of this Land Sub-Lease, excepting only where such claim, demand, action, proceeding or liability is based on the sole negligence of the Indemnitees.

ARTICLE 8 – INSURANCE REQUIREMENTS

8.01 SUB-LESSEE TO PROVIDE

The Sub-Lessee shall procure and maintain, at its own expense and cost, the insurance policies listed in 8.02, with limits no less than those shown in the respective items, unless in connection with the performance of some particular part of this Land Sub-Lease, the City advises in writing that it has determined that the exposure to liability justifies less limits. The insurance policy or policies shall be maintained continuously from commencement of the Land Sub-Lease until the termination of the Land Sub-Lease or such longer period as may be specified by the City.

8.02 INSURANCE

As a minimum, the Sub-Lessee shall, without limiting its obligations or liabilities under any other contract with the City, procure and maintain, at its own expense and cost, the following insurance policies:

- (1) Comprehensive General Liability Insurance
 - (a) providing for an inclusive limit of not less than \$5,000,000 for each occurrence or accident;
 - (b) providing for all sums which the Sub-Lessee shall become legally obligated to pay for damages because of bodily injury (including death at any time resulting therefrom) sustained by any person or persons or because of damage to or destruction of property caused by an occurrence or accident arising out of or related to the operations carried on in connection with this Land Sub-Lease;
 - (c) including coverage for Products/Completed Operations, Blanket Contractual, Contractor's Protective, Personal Injury, Contingent Employer's Liability, Broad Form Property Damage, Airside Operations and Non-Owned Automobile Liability; and
 - (d) including a Cross Liability clause providing that the inclusion of more than one Insured shall not in any way affect the rights of any other Insured hereunder, in respect to any claim, demand, suit or judgement made against any other Insured.
- (2) All Risks Property Insurance for loss of or damage to the said building or other structures constructed on the said Land by the Sub-Lessee. This insurance shall be for an amount not less than the replacement cost value of the building and/or other structures. In the event of loss or damage, Sub-Lessee shall if so requested by the City, forthwith replace such lost or damaged building or structures. Such All Risks Insurance shall be endorsed to waive all rights of subrogation against the City.

8.03 THE CITY NAMED AS ADDITIONAL INSURED

The policy required by sections 8.02 a) above shall provide that the City is named as an Additional Insured thereunder and that said policy is primary without any right of contribution from any insurance otherwise maintained by the City.

8.04 CERTIFICATES OF INSURANCE

The Sub-Lessee agrees to submit a Certificate of Insurance (Schedule D) to the Airport Director of the Kelowna International Airport prior to commencement of this Land Sub-Lease. The Certificate shall provide that 30 days written notice shall be given to the Airport Director of the Kelowna International Airport, prior to any material changes or cancellations of any such policy or policies.

8.05 OTHER INSURANCE

After reviewing the Sub-Lessee's Certificate of Insurance, the City may require other insurance or alterations to any applicable insurance policies in force during the period of this Land Sub-Lease and will give notification of such requirement. Where other insurances or alterations to any insurance policies in force are required by the City and result in increased insurance premium, such increased premium shall be at the Sub-Lessee's expense.

8.06 ADDITIONAL INSURANCE

The Sub-Lessee may take out such additional insurance, as it may consider necessary and desirable. All such additional insurance shall be at no expense to the City.

8.07 INSURANCE COMPANIES

All insurance, which the Sub-Lessee is required to obtain with respect to this Land Sub-Lease, shall be with insurance companies registered in and licensed to underwrite such insurance in the province of British Columbia.

8.08 FAILURE TO PROVIDE

If the Sub-Lessee fails to do all or anything which is required of it with regard to insurance, the City may do all that is necessary to effect and maintain such insurance, and any monies expended by the City shall be repayable by and recovered from the Sub-Lessee. The Sub-Lessee expressly authorizes the City to deduct from any monies owing the Sub-Lessee, any monies owing by the Sub-Lessee to the City.

8.09 NONPAYMENT OF LOSSES

The failure or refusal to pay losses by any insurance company providing insurance on behalf of the Sub-Lessee shall not be held to waive or release the Sub-Lessee from any of the provisions of Article 8 of this Sub-Lease, with respect to the liability of the Sub-Lessee otherwise. Any insurance deductible maintained by the Sub-Lessee under any of the

insurance policies is solely for its account and any such amount incurred by the City will be recovered from the Sub-Lessee as stated in section 8.08.

ARTICLE 9 - DEFAULT AND RE-ENTRY

9.01 DEFAULT AND RE-ENTRY

(1) It is expressly agreed that:

- (a) if the Sub-Lessee shall be in default in the payment of rent or amounts collectable hereunder as rent, whether lawfully demanded or not, and such default shall continue for a period of fifteen (15) days after the rent has become due and payable; or
- (b) if the Sub-Lessee shall be in default of any of its covenants or agreements hereunder (other than its covenant to pay rent or amounts collectable hereunder as rent) and such default shall continue for a period of thirty (30) days (or such longer period as may be reasonably necessary to cure such default considering the nature thereof) after notice by the Lessee to the Sub-Lessee specifying with reasonable particularity the nature of such default and requiring the same to be remedied; or
- (c) if the default set out in the notice given to the Sub-Lessee by the Lessee pursuant to paragraph (b) reasonably requires more time to cure than the thirty (30) day period referred to in that paragraph and the Sub-Lessee has not commenced remedying or curing the same within the thirty (30) day period or; in the opinion of the Lessee fails to diligently complete the same within a reasonable time; or
- (d) if the Sub-Lessee shall make an assignment for the benefit of creditors, or shall make an assignment or have a receiving order made against it under the Bankruptcy Act, or becoming bankrupt or insolvent shall make application for relief under the provisions of any statute now or hereafter in force concerning bankrupt or insolvent debtors, or any action whatsoever, legislative or otherwise shall be taken with a view to the winding-up, dissolution or liquidation of the Sub-Lessee;

then the current month's rent together with the rent for the three (3) months next ensuing shall immediately become due and payable, and at the option of the Lessee the term hereby granted shall become forfeited and void, and the Lessee may without notice or any form of legal process whatsoever forthwith re-enter upon the said land, the said building or any part thereof in the name of the whole and repossess and enjoy the same as of its former estate, anything contained in any statute or law to the contrary notwithstanding.

- (2) Forfeiture of this Sub-Lease by the Sub-Lessee shall be wholly without prejudice to the right of the Lessee to recover arrears of rent or damages for any antecedent breach

of covenant on the part of the Sub-Lessee, and notwithstanding any such forfeiture the Lessee may subsequently recover from the Sub-Lessee damages for loss of rent suffered by reason of the Sub-Lease having been determined prior to the end of the term of this Sub-Lease as set out herein and this clause and the rights hereunder shall survive the termination of this Sub-Lease whether by act of the parties or by operation of law.

9.02 LIEN

The Lessee shall have a lien upon the chattels, goods, supplies, articles, equipment, materials, effects or things of the Sub-Lessee for any loss or damage arising by reason of the breach of any of the conditions or provisions hereof, or the failure on the part of the Sub-Lessee to comply therewith.

9.03 BANKRUPTCY

That, notwithstanding anything in this Sub-Lease contained, if the Sub-Lessee becomes bankrupt or insolvent or makes an assignment for the benefit of the Sub-Lessee's creditors, or takes the benefit of any winding up or insolvency act, then, in each and any of such cases this Sub-Lease shall be and become by any of such acts, absolutely forfeited and terminated, and the Lessee shall be entitled to take the steps in such cases provided.

ARTICLE 10 - GENERAL

10.01 BRIBES

The Sub-Lessee hereby confirms that it has not, nor has any person on its behalf, given, promised or offered to any official or employee of the Lessee for or with a view to obtaining this Sub-Lease any bribe, gift or other inducement and that it has not, nor has any person on its behalf, employed any person to solicit or secure this Sub-Lease upon any agreement for a commission, percentage, brokerage or contingent fee.

10.02 MEMBERS OF THE HOUSE OF COMMONS

No Member of the House of Commons of Canada shall be admitted to any share or part of this Sub-Lease, or to any benefit to arise therefrom.

10.03 HEADINGS

Any note appearing as a heading in this Sub-Lease has been inserted for convenience and reference only, and of itself cannot define, limit or expand the scope or meaning of the present Sub-Lease or any of its provisions.

10.04 DIFFERENCES

All matters of difference arising between the Lessee and the Sub-Lessee in any matter connected with or arising out of this Sub-Lease whether as to interpretation or otherwise, shall be determined by the Lessee but without prejudice to any recourse available under law.

10.05 EFFECT OF SUB-LEASE

This Sub-Lease and everything herein contained shall enure to the benefit of and be binding upon the successors and assigns, as the case may be, of each of the parties hereto, subject to granting of consent by the Lessee as provided herein to any assignment, transfer or sublease of this Sub-Lease, and where there is a male, female or corporate party, the provisions hereof shall be read with all grammatical changes to gender and number required by the context, and all covenants and obligations shall be deemed joint and several.

10.06 PROVISIONS SEPARATELY VALID

If any covenant, obligation, agreement, term or condition of this Sub-Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Sub-Lease or the application of such covenant, obligation, agreement, term or condition to any persons or circumstances other than those in respect of which it is held invalid or unenforceable, shall not be affected thereby and each covenant, obligation, agreement, term or condition of this Sub-Lease shall be separately valid and enforceable to the fullest extent permitted by law.

10.07 WAIVER NEGATED

The failure by the Lessee or its authorized representative, as the case may be, to require the fulfillment of the obligations, or to exercise any rights herein contained shall not constitute a waiver, a renunciation or a surrender of those obligations or rights.

10.08 NO IMPLIED OBLIGATIONS

No implied terms or obligations of any kind by or on behalf of the Lessee shall arise from anything in this Sub-Lease and the express covenants and agreements herein contained and made by the Lessee are the only covenants and agreements upon which any rights against the Lessee may be founded.

10.09 ENTIRE AGREEMENT

This Sub-Lease shall be deemed to constitute the entire agreement between the Lessee and the Sub-Lessee hereto with respect to the subject matter hereof and shall supersede all previous negotiations, representations, and documents in relation hereto made by any party to this Sub-Lease.

10.10 TIME OF ESSENCE

Time shall in respect be of the essence of this Agreement.

ARTICLE 11 - NOTICES

- (1) Whenever in this Sub-Lease, it is required or permitted that notice or demand be given or served by either party of this Sub-Lease to or on the other, such notice or demand will be in writing and will be validly given or sufficiently communicated if forwarded by registered mail, priority post mail, telegram, telex, or facsimile as follows:
 - (a) To the City: City Clerk, City of Kelowna
1435 Water Street
Kelowna, B.C. V1Y 1J4

Facsimile: (250) 470-0697
 - (b) To the Sub-Lessee: Kelowna Flightcraft Leasing Ltd.
5655 Airport Way
Kelowna, B.C. V1V 1S1

Facsimile: (250) 765-1489
- (2) Such addresses or facsimile numbers may be changed from time to time by either party giving notice as above provided.
- (3) If any question arises as to whether any notice was or was not communicated by one party to the other, it shall be deemed to have been effectively communicated or given on the day received or on the fifth day after it was mailed or sent, whichever is the earlier.

ARTICLE 12 - HEAD LEASE

12.01 HEAD LEASE COVENANT

The Sub-Lessee hereby covenants that they will perform and observe all the covenants on the part of the City under the provisions of the Head Lease other than the covenant to pay rent thereunder and other than covenants relating to the premises other than these sub-premises, and will keep the City indemnified against all actions, expenses, claims and demands in respect of such covenants except as aforesaid.

12.02 HEAD LEASE TERMINATION

Upon the termination of the Head Lease for whatsoever reason and provided that each of the following conditions exist:

- (1) the termination of the Head Lease is not in any manner disputed;
- (2) the City has yielded up vacant possession to the Lessor (the Department of Transport) of the Lease area;
- (3) the Sub-Leases immediately preceding the termination of the Head Lease are in full force and effect and the Sub-Lessees at the termination of the Head Lease were not, or are not, in default or breach of their respective Sub-Leases;
- (4) the Lessor is not legally prohibited by reason of defect in title, adverse possession, or otherwise from fulfilling the terms of any of the Sub-Leases;

the Sub-Leases then in full force and effect shall be deemed to have been assigned to the Lessor, thereby creating a new Lessor/Lessee relationship under the terms and conditions of the respective Sub-Leases as the case may be; provided, however, that the Lessor reserves the option to amend the new Lease therein created from time to time in accordance with policy or policies in effect at that time.

IN WITNESS WHEREOF the parties hereto have executed these Presents the day and year first above written.

By the City in the presence of:

Witness Signature

Witness Name

Occupation

Address


Address

) **CITY OF KELOWNA**
) by its authorized signatories:

) _____

) _____

By the Sub-Lessee in the presence of:


Witness Signature

Meryl Corbett
Witness Name

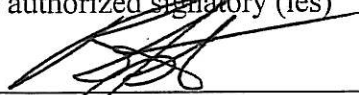
CFO
Occupation

2130 L. Hazel Cres.
Address

Kelowna BC V1V1W3
Address

) **KELOWNA FLIGHTCRAFT LEASING LTD.**

) by its authorized signatory (ies)

) 

) Title: President

) Title:

REFERENCE PLAN OF PART OF
 LOT 3, DISTRICT LOT 32 AND
 SECTION 14, TOWNSHIP 23,
 OSOYOOS DIVISION YALE
 DISTRICT, PLAN 11796

PURSUANT TO SEC. 99(1)(K) LAND TITLE ACT
 B.C.G.S. 82L.094

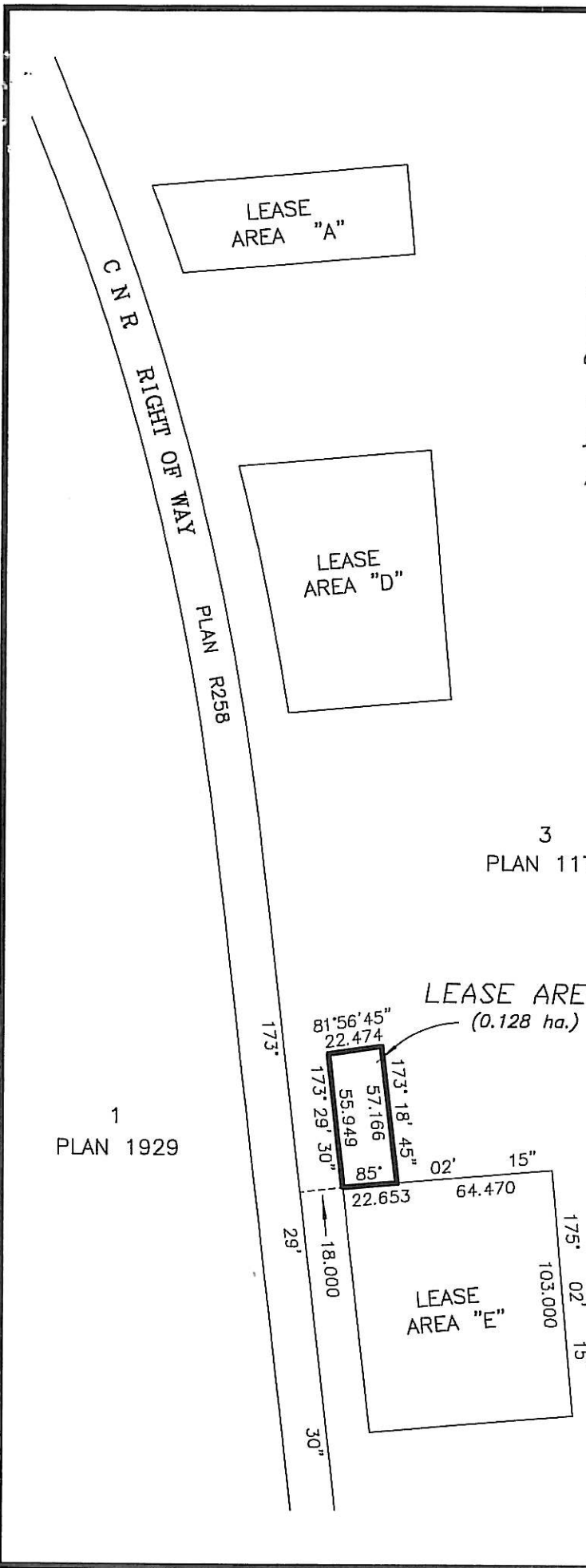


SCALE 1:2500 (All distances are in metres)

LEGEND

Astronomic bearings are derived from Plan 11796.

- Denotes standard iron post found



This plan lies within the Regional District of Central Okanagan.

Certified correct this 25th day of June, 2009.

Neil R. Denby
 Neil R. Denby B.C.L.S.

RUNNALLS DENBY
 british columbia land surveyors

259A Lawrence Avenue Phone: (250)763-7322
 Kelowna, B.C. Fax: (250)763-4413
 V1Y 6L2 Email: neil@runnallsdenby.com

DWG. No.: 12908 LEASE A

FILE: 12908



CERTIFICATE OF INSURANCE

This Certificate is issued to:

The City of Kelowna
1435 Water Street
Kelowna, BC V1Y 1J4

Insured

Name: **KELOWNA FLIGHTCRAFT LEASING LTD.**

Address: **5655 Airport Way, Kelowna, B.C. V1V 1S1**

Broker

Name:

Address:

Location and nature of operation or contract to which this Certificate applies:

Sub-Lease of 13,778.252 square feet of land located at the Kelowna International Airport for aviation purposes

Type of Insurance	Company & Policy Number	Policy Dates		Limits of Liability/Amounts
		Effective	Expiry	
Section 1 Commercial General Liability including: <ul style="list-style-type: none"> • Products/Completed Operations; • Blanket Contractual; • Contractor's Protective; • Personal Injury; • Contingent Employer's Liability; • Broad Form Property Damage; • Airside Operations • Non-Owned Automobile; • Cross Liability Clause. 				Bodily Injury and Property Damage \$ <u>5,000,000</u> Inclusive \$ _____ Aggregate \$ _____ Deductible
Section 2 All Risks Property Insurance				\$ _____ Limit

It is understood and agreed that the policy/policies noted above shall contain amendments to reflect the following:

1. Any Deductible or Reimbursement Clause contained in the policy shall not apply to the City of Kelowna and shall be the sole responsibility of the Insured named above.
2. The City of Kelowna is named as an Additional Insured on the Commercial General Liability Insurance.
3. 30 days prior written notice of material change and/or cancellation will be given to the City of Kelowna.
4. All Risks Property Insurance shall be endorsed waiving all rights of subrogation against the City of Kelowna.

Print Name

Authorized Signatory

Date