

### SUBLEASE AGREEMENT

THIS SUBLEASE dated for reference the 4<sup>th</sup> day of Dec 2018 is

BETWEEN:

**CITY OF KELOWNA**, 1435 Water Street, Kelowna, B.C. V1Y 1J4

(the "City")

AND:

**CALLAHAN CONSTRUCTION COMPANY LTD.** (Inc. No. BC0066876),  
700 – 401 West Georgia Street, Vancouver, B.C. V6B 5A1

(the "Subtenant")

WHEREAS:

- A. By a lease dated December 19, 1979 (the "Head Lease") between the City and Her Majesty the Queen in Right of Canada (the "Head Landlord"), as represented by the Minister of Transport (the "Minister"), the Head Landlord leased to the City the following lands, on the terms and conditions set out in the Head Lease:

Parcel Identifier: 009-459-014

Lot 3 District Lots 32 and 120 and of Section 14 Township 23 Osoyoos Division Yale District Plan 11796

Parcel Identifier: 013-949-101

Lot B District Lot 122 Osoyoos Division Yale District Plan 41159

Parcel identifier: 011-518-189

Lot 7 Section 14 Township 23 Osoyoos Division Yale District Plan 1502 Except Plan H16596

(collectively the "Lands");

- B. The City and the Head Landlord amended the Head Lease on November 8, 1983, January 15, 1985, October 31, 1986, January 19, 1990, November 29, 1990, May 26, 1994, June 14, 1994, and February 16, 1996, and July 24, 2015;
- C. By a sublease dated August 17, 1982 designated No. 115516 in the records of the Department of Transport (the "Former Sublease"), Jabs Construction Ltd. and Callahan Construction Company Ltd. subleased from the City certain parts of the Lands (the "Former Premises");
- D. Pursuant to the Former Sublease, the Subtenant constructed a building on the Former

Premises (the "Building") and upon expiration of the Former Sublease all right and title in the Building shall vest in the City;

- E. The Former Sublease was amended from time to time pursuant to supplemental agreements, including amendments which assigned the Former Sublease exclusively to the Subtenant and extended the term of the Former Sublease to December 29, 2019;
- F. The City has agreed, commencing upon the expiry of the term of the Former Sublease, to sublease the Building to the Subtenant (the "Premises"), the Building having an area of approximately 1,082.32 square metres and being located on that portion of the lands (the "Land") legally described as:

Parcel Identifier: 009-459-014

Lot 3 District Lots 32 and 120 of Section 14 Township 23 Osoyoos Division Yale District Plan 11796

shown outlined in heavy black on the sketch plan which is attached hereto as Schedule A;

- G. As required under section 4 of the Head Lease, the written consent of the Head Landlord is required for this Sublease;
- H. In accordance with section 26 of the *Community Charter*, the City has posted and published notice of its intention to sublease the Premises to the Subtenant;

NOW THEREFORE THIS SUBLEASE WITNESSES that, in consideration of the rents, covenants, and agreements to be paid, observed, and performed by the Subtenant, and other good and valuable consideration (the receipt and sufficiency of which are hereby expressly acknowledged) the City and the Subtenant covenant and agree as follows:

#### **Sublease**

- 1. The City subleases the Premises to the Subtenant for the Term, and the Subtenant subleases the Premises from the City for the Term, on and subject to the terms and conditions of this Sublease.
- 2. It is an express condition subsequent of this Agreement that the City shall obtain the Head Landlord's written consent, which consent shall not be unreasonably withheld. This condition cannot be waived.

#### **Term**

- 3.
  - (a) The term of this Sublease (the "Term") shall be two years, commencing on December 30, 2019 (the "Commencement Date") and expiring on December 30, 2021 (the "Expiry Date"). Notwithstanding the foregoing, the Term of this

Sublease shall not match or exceed the term of the Head Lease, and if it does, the Term of this Sublease shall be deemed to expire one day prior to expiry of the Head Lease.

- (b) If the Subtenant shall hold over after the expiration of the Term, and the City 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 Subtenant shall pay as Rent during the time of such occupancy a monthly amount, in advance, equal to 1/12 of the annual Rent, 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.

#### **Licence**

- 4. By this section, for the Term the City licences the Subtenant and its invitees to use those portions of the Lands surrounding the Premises shown outlined in heavy black line on Schedule B (the "Licence Area") for the sole purposes of accessing the Premises and parking vehicles when using the Premises.

#### **Rent**

- 5. The rent for the Premises shall be \$58,250 for the initial year and \$59,415 for the second year (the "Rent"). The Rent does not include Goods and Services Tax ("GST") or any similar replacement tax. The Subtenant shall pay the Rent in monthly installments, the first payment being due on the Commencement Date, the second before February 1, 2020, and thereafter before the first day of each month of the Term.

#### **Purposes**

- 6. The Subtenant shall only use and occupy the Premises for purposes supporting the operation of an airport and for no other purpose whatsoever.

#### **Subtenant's Covenants**

- 7. The Subtenant covenants and agrees with the City:
  - (a) to promptly pay when due, Rent and any other amounts required to be paid by it under this Sublease;
  - (b) not to do, suffer, or permit anything in, on, or from the Premises that may be or become a nuisance or annoyance to other occupiers or users of the Land, or to the owners, occupiers, or users of other land or premises adjacent to or near the Premises, or to the public, including the accumulation of rubbish or unused personal property of any kind;

- (c) not to do, suffer, or permit any act or neglect that may in any manner directly or indirectly cause injury to the Premises or to the Land, and not to commit or permit waste to the Premises or to the Land;
- (d) to keep and maintain the Premises, and all improvements constructed thereon, in a safe, tidy, and sanitary condition;
- (e) to take all reasonable precautions to ensure the safety of all persons using the Premises;
- (f) to keep the Premises free of any rubbish, litter, and debris and keep the areas adjacent to the Premises free of any rubbish, litter, and debris originating from the Premises;
- (g) not to construct, erect, place, install, or permit, on the outside of any building or structure or other exterior area of the Premises, any poster, advertising sign or display, electrical or otherwise, without first obtaining the written consent of the City;
- (h) to pay to the City all GST (or replacement tax) payable in respect of this Sublease;
- (i) to pay all costs and expenses of any kind whatsoever associated with and payable in respect of the Premises, the Subtenant's improvements and trade fixtures, and all equipment, furniture and other personal property brought onto the Premises by the Subtenant and any business or activity conducted on or from the Premises, including without limitation, all taxes (including property taxes), levies, charges and assessments, permit and license fees, strata fees and levies, repair and maintenance costs, administration and service fees, telephone, electrical, gas, garbage disposal, heating, water, sewage disposal and other utility charges and payments for work and materials;
- (j) to carry on and conduct its activities in, on, and from the Premises in compliance with any and all laws, statutes, enactments, bylaws, regulations, codes, standard and orders of the Federal Government, Provincial Government, local governments or any other governing body whatsoever from time to time in force, and to obtain all required approvals and permits thereunder, and not to do or omit to do anything in, on, or from the Premises in contravention thereof;
- (k) to comply with all regulations and rules made by the City regarding traffic control, airport security, sanitation and all other regulations relative to the management and operation of the Kelowna International Airport;
- (l) to not discharge, cause or permit to be discharged or to howsoever pass into the sewer system, storm drains or surface drainage facilities of the Land any deleterious material, noxious, contaminated or poisonous substances, all as

determined by the City's Airport Director, it being understood that if the Subtenant commits a prohibited act under this section that the Subtenant shall be responsible for all costs incurred by the City for the clean-up of such discharge (including a 15% administration fee) which shall be due and payable within 21 days of receipt of an invoice from the City;

- (m) to comply with the tail height restriction of 8.4 metres along the east edge of the Premises, in accordance with the City's Airport Operating Certificate; and
- (n) to promptly cause to be discharged any builders' lien which may be filed against the title to the Land, and to comply at all times with the *Builders Lien Act* (British Columbia) in respect of any improvements, work, or other activities undertaken in, on, or to the Premises.

#### **Net Sublease**

8. Without limiting any other provisions in this Sublease, the Subtenant agrees that the sublease granted herein is absolutely carefree net to the City, and the Subtenant must promptly pay when due on its own account and without any variation, set-off, or deduction, all amounts, charges, costs, duties, expenses, fees, levies, rates, sums, taxes, and increases in any way relating to the Premises, including all penalties and interest thereon, whether or not referred to in this Sublease and, to the extent that any such amounts remain unpaid after they come due, the City may pay such amounts on behalf of the Subtenant and the amounts so paid by the City shall be immediately due from the Subtenant to the City. Without limiting the foregoing, the City shall have no obligations whatsoever to the Subtenant concerning the Premises except for the City's express obligations under this Sublease.

#### **Quiet Possession**

9. The City shall permit the Subtenant, so long as the Subtenant is not in default of the Subtenant's obligations under this Sublease, to peaceably possess and enjoy the Premises for the Term, without interference or disturbance from the City or those claiming by, from or under the City, except for the City's express rights under this Sublease to enter upon and use the Premises or to permit others to do so.

#### **Security**

10. The City shall have no responsibility whatsoever for the security of the Premises or the Subtenant's property on the Premises, the sole responsibility for which rests with the Subtenant, and the Subtenant hereby releases the City from all claims, actions, damages, liabilities, losses, costs, and expenses whatsoever as may be suffered by the Subtenant arising from or related to any lack of security at the Premises.

### **City Consent for New Improvements and Alterations**

11. The Subtenant shall not make any improvements or alterations to the Premises without the prior written consent of the City, which consent may be withheld in the sole discretion of the City.

### **Minimum Work Standards**

12. The Subtenant shall ensure that any improvements to or work done with respect to the Premises, including any improvements or alterations approved by the City, done by or on behalf of the Subtenant comply with all applicable laws, statutes, enactments, regulations, bylaws and orders from time to time in force, including the applicable building code and bylaws of the City of Kelowna.

### **Repair and Maintenance**

13. The Subtenant shall during the Term, at its cost, by itself or by the use of agents, put and keep in good order and condition (reasonable wear and tear excepted so long as the reasonable wear and tear does not unreasonably affect the exterior appearance or the foundation or structure of the Building) the Premises, and the appurtenance and equipment of the Premises, both inside and outside, including but not limited to fixtures, walls, foundations, roofs, vaults, elevators (if any) and similar devices, heating and air-conditioning equipment, sidewalks, landscaping, yards and other like areas, water and sewer mains and connections, water, steam, gas, and electric pipes and conduits, and all other fixtures on the Premises and machinery and equipment used or required in the operation of it, whether or not enumerated in this Sublease, and will, in the same manner and to the same extent as a prudent owner, make any and all necessary repairs, replacement, alterations, additions, changes, substitutions, and improvements, ordinary or extraordinary, foreseen or unforeseen, structural or otherwise, and keep the Building and aforesaid fixtures, appurtenances, and equipment fully usable for all of the purposes for which the Building was erected and constructed and the specified fixtures, appurtenances, and equipment were supplied and installed. Such repairs will be performed in a workmanlike manner and in all respects to the standard at least substantially equal in quality of material and workmanship to the original work and material in the Building and aforesaid fixtures, appurtenances, and equipment.

### **City Not Obligated to Repair**

14. The City is not obliged to furnish any services or facilities or to make any repairs or alterations in or to the Premises, and the Subtenant hereby assumes the full and sole responsibility for the condition, operation, repair, replacement, maintenance, and management of the Premises.

### **City May Repair**

15. If at any time during the Term, the Subtenant fails to maintain the Premises and the fixtures, appurtenances, and equipment of it, both inside and outside, in the condition required by the provisions of section 13, the City through its agents, servants, contractors, and subcontractors may, but will not be obliged to, enter upon those parts of the Premises required for the purpose of making the repairs required by section 13. The City may make such repairs only after giving the Subtenant 30 days' written notice of its intention to do so, except in the case of an emergency when no notice to the Subtenant is required. Any amounts paid by the City in making such repairs to the Premises or any part or parts thereof, together with all costs and expenses of the City, will be reimbursed to the City by the Subtenant on demand, plus a 15% administration fee together with interest at the rate specified in section 28.

### **Damage or Destruction**

16. It is agreed between the City and the Subtenant that in the event of damage to the Premises:
- (a) if the damage is such that the Premises or any substantial part thereof are rendered not reasonably capable of use and occupancy by the Subtenant for the purposes of its business for any period of time in excess of 10 days, then:
    - (i) unless the damage was caused by the fault of negligence of the Subtenant or its employees, invitees, or others under its control and the damage is not covered by insurance, from and after the date of occurrence of the damage and until the Premises are again reasonably capable of use and occupancy as aforesaid, Rent shall abate from time to time in proportion to the part or parts of the Premises not reasonably capable of use and occupancy; and
    - (ii) unless this Sublease is terminated as hereinafter provided, the Subtenant shall repair such damage with all reasonable diligence, but to the extent that any part of the Premises is not reasonably capable of such use and occupancy by reason of damage which the Subtenant is obligated to repair hereunder, any abatement of Rent to which the Subtenant is otherwise entitled hereunder shall not extend later than the time by which, in the reasonable opinion of the City, repairs by the Subtenant ought to have been completed with reasonable diligence; and
  - (b) if the Premises are substantially damaged or destroyed by any cause to the extent such that in the reasonable opinion of the City they cannot be repaired or rebuilt (based on standard hours of construction work) within 240 days after the occurrence of the damage or destruction, then either the City or Subtenant may at its option, exercisable by written notice to the other party, given within 60 days

after the occurrence of such damage or destruction, terminate this Sublease, in which event the Subtenant shall not be bound to repair as provided in this Sublease and the Subtenant shall instead deliver up possession of the Premises to the City with reasonable expedition but in any event within 60 days after delivery of such notice of termination, and Rent shall be apportioned and paid to the date upon which possession is so delivered up (but subject to any abatement to which the Subtenant may be entitled under sub-clause 16(a) by reason of the Premises having been rendered in whole or in part not reasonably capable of use and occupancy), but otherwise the Subtenant shall repair such damage with reasonable diligence.

17. Except as expressly set out in section 16, the partial destruction or damage or complete destruction by fire or other casualty of the Building will not terminate this Sublease or the sublease granted hereunder, or entitle the Subtenant to surrender possession of the Premises or the Building or to demand any abatement or reduction of the Rent or other charges payable under this Sublease, any law or statute now or in the future to the contrary.

#### **Unavoidable Delays**

18. If, by reason of strike, lock-out, or other labour dispute, material or labour shortage not within the control of the Subtenant, stop-work order issued by any court or tribunal of competent jurisdiction (providing that such order was not issued as the result of any act or fault of the Subtenant or of anyone employed by it directly or indirectly), fire or explosion, flood, wind, water, earthquake, act of God, or other similar circumstances beyond the reasonable control of the Subtenant and not avoidable by the exercise of reasonable efforts or foresight by the Subtenant, the Subtenant is, in good faith and without default or neglect on its part, prevented or delayed in the repair of the Premises or any part of it which under the terms of this Sublease the Subtenant is required to do by a specified date or within a specified time or, if not specified, within a reasonable time, the date or period of time within which the work was to have been completed will be extended by the City by a reasonable period of time at least equal to that of such delay or prevention; and the Subtenant will not be deemed to be in default if it performs and completes the work in the manner required by the terms of this Sublease within such extended period of time or within such further extended period of time as may be agreed upon from time to time between the City and the Subtenant. For the purposes of this section, the inability of the Subtenant to meet its financial obligations under this Sublease or otherwise will not be a circumstance beyond the reasonable control of the Subtenant and not avoidable by the exercise of reasonable effort or foresight by the Subtenant. The Subtenant will act diligently and take all reasonable steps of a prudent owner to remove the cause or causes of delay in the commencement or completion of repairs of the Building.



### **Acknowledgment and Agreements of the Subtenant**

19. The Subtenant acknowledges and agrees that:
- (a) the City has given no representations or warranties with respect to the Premises or the Land, including with respect to the suitability of the Premises for the Subtenant's intended use;
  - (b) the Subtenant subleases the Premises on an "as-is" basis and the City has not made any representations, warranties or agreements as to the condition of the Premises (including the subsurface nature or condition of any part of the Premises, or the environmental condition of the Premises);
  - (c) it is the sole responsibility of the Subtenant to satisfy itself with respect to the condition of the Premises (including the subsurface nature or condition of the Premises and the environmental condition of the Premises), including by conducting any reports, tests, investigations, studies, audits and other inquiries as the Subtenant, in its sole discretion, considers necessary in order to satisfy itself as to the condition of the Premises;
  - (d) this Sublease is subject to the Head Lease and all of its terms, restrictions, and limitations, and the Subtenant has no greater interest in the Premises than the City under the Head Lease and, to the extent that any right or benefit conferred by this Sublease contravenes or is incompatible with the Head Lease, such right or benefit will be amended or modified so as not to contravene or be incompatible with the Head Lease. The Head Lease is available to the Subtenant upon request;
  - (e) the City may register a *Builders Lien Act* "notice of interest" against title to the Land in the land title office.

### **Insurance Requirements**

20. The Subtenant shall obtain and maintain during the Term insurance in accordance with the requirements of Schedule C. For clarity, the insurance requirements set out in Schedule C are minimum requirements and are not to be interpreted in a manner that limits the Subtenant's obligations under this Sublease and the Subtenant shall be responsible for obtaining and maintaining such additional insurance as would a prudent tenant having similar obligations and interests to those of the Subtenant under the terms of this Sublease.

### **Insurance Certificates**

21. The Subtenant shall promptly, upon the City's request from time to time during the Term, provide the City with certificates of insurance confirming the placement and maintenance of the required insurance.

### **City May Insure**

22. If the Subtenant fails to insure as required, the City may, after 30 days' notice to the Subtenant, effect the insurance in the name and at the expense of the Subtenant and the Subtenant shall repay the City all costs (including a 15% administration fee) reasonably incurred by the City within 21 days of receipt of an invoice. For clarity, the City has no obligation to obtain any insurance required to be maintained by the Subtenant under this Sublease.

### **Subtenant Indemnity**

23. The Subtenant shall indemnify and save harmless the City and the Head Landlord and their respective officers, employees, contractors, and agents, from and against all claims, actions, damages, liabilities, costs, and expenses in connection with loss of life, personal injury or damage to property arising from any occurrence on the Premises, or occupancy or use of the Premises, or caused by or arising from any act or omission of the Subtenant, its officers, employees, agents, customers, contractors, or other invitees. This indemnity shall survive the expiry or earlier termination of this Sublease.

### **Subtenant Release**

24. The Subtenant hereby releases the City and its elected officials, employees and agents from detriment, damage, accident, or injury of any nature whatsoever or howsoever caused to the Premises or to any person or property, including the Building and any structures, erections, equipment, materials, supplies, motor or other vehicles, fixtures and articles, effects and things erected, brought, placed, made or being on or about the Premises unless such damage or injury is due to the negligence of the City or its elected officials, employees or agents while acting within the scope of their duties.

The Subtenant further releases the City from any detriment, damage, business losses or any liabilities arising from the temporary interruption or discontinuance, in whole or in part, of any services supplied to the Premises by the City.

### **City Right to Grant Further Interests**

25. The City may, from time to time, grant licences, rights of way, easements and other rights and privileges to third parties on, over, under, through, above and across the Land, provided that such privileges do not materially impair the Subtenant's rights under this Sublease, and the Subtenant agrees to execute such further instruments as may be necessary to give such rights and privileges priority over this Sublease.

### **Permission to Enter**

26. The City, by its authorized representative, may enter the Premises at all regular business hours and in the presence of a representative of the Subtenant for the purpose of inspecting the Premises and the Subtenant's compliance with this Sublease and for the

purpose of exercising its other rights under this Sublease, it being expressly understood that in cases of emergency or apprehended emergency the City shall have at all times and for all purposes full and free access to the Premises.

#### **Payments Generally**

27. All payments, including interest, required to be made by the Subtenant to the City under the terms of this Sublease shall be:
- (a) payable in lawful money of Canada;
  - (b) paid to the City at the office of the City or at such other place as the City may designate from time to time in writing;
  - (c) made when due hereunder, without the need for prior demand and without any set-off, abatement or deduction;
  - (d) applied towards amounts outstanding in such a manner as the City sees fit; and
  - (e) deemed to be rent (if not Rent), in partial consideration for which this Sublease is entered into, and shall be payable and recoverable as rent, and the City shall have all of the rights and remedies against the Subtenant for default in making any such payment which may not be expressly designated as rent, as the City has for a default in payment of Rent.

#### **Interest**

28. All payments due by the Subtenant to the City under this Sublease shall bear interest at the rate of 1.5% per month (equal to 18.00% per annum) calculated monthly not in advance from the date due until paid.

#### **Worker Safety and Compensation**

29. The Subtenant shall, in its use of and activities on the Premises, comply with all statutes, regulations, and orders from time to time in force respecting worker safety and compensation, and, upon request from the City, provide evidence of any required registration under any statute, regulation or order respecting worker safety and compensation.

#### **Environmental Matters**

30. In the following section, the following definitions apply:
- (a) "Contaminants" means:
    - (i) as defined in the *Environmental Management Act* (British Columbia): any

biomedical waste, contamination, effluent, pollution, recyclable material, refuse, hazardous waste or waste;

(ii) matter of any kind which is or may be harmful to safety or health or to the environment; or

(iii) matter of any kind the storage, manufacture, disposal, emission, discharge, treatment, generation, use, transport, release, remediation, mitigation or removal of which is now or is at any time required, prohibited, controlled, regulated or licensed under any Environmental Law;

(b) "Environmental Law" means any past, present or future common law, enactment, statute, regulation, order, bylaw or permit, and any requirement, standard or guideline of any federal, provincial or local government authority or agency having jurisdiction, relating to the environment, environmental protection, pollution or public or occupational safety or health.

31. The Subtenant covenants and agrees with the City to:

(a) carry on and conduct its activities in, on, and from the Premises in compliance with all Environmental Laws;

(b) not permit the storage, use, handling, manufacture, unloading, loading, treatment, disposal or introduction into the environment of any Contaminants in, on, under or from the Premises, except in compliance with all Environmental Laws;

(c) immediately notify the City of the occurrence of any of the following and provide the City with copies of all relevant documentation in connection therewith:

(i) a release of Contaminants in, on or about the Premises, or any adjacent land; or

(ii) the receipt of any citation, directive, order, claim, litigation, investigation, proceeding, judgment, letter or other communication from any person that is related to any Environmental Law;

(d) promptly provide to the City a copy of any environmental site assessment, audit, report or test results relating to the Premises conducted at any time by or for the Subtenant;

(e) if the City suspects that the Subtenant has not complied with its obligations under this section, at the City's request, the Subtenant shall obtain from an independent environmental consultant approved by the City an environmental site assessment, audit, report or testing of the Premises and conduct or cause to be conducted any additional investigations that the environmental consultant may recommend, all

in order to determine compliance of the Premises with Environmental Laws; and

- (f) promptly remove any Contaminants arising from the Subtenant's use or occupation of the Premises in a manner that conforms to Environmental Laws governing their removal.

#### **No Assignment or Sublease**

- 32. The Subtenant may not assign this Sublease or the benefit of this Sublease, or sublet the Premises or any part of the Premises, without the prior written consent of the City, nor may the Subtenant charge, mortgage, or encumber, or purport to charge, mortgage, or encumber the Subtenant's interest in the Premises or this Sublease without the prior written consent of the City. The City may withhold such consents at its sole discretion and without reason. The Subtenant shall be responsible for all costs associated with any assignment or sublease of the Premises, including the City's associated legal and administrative costs. Every assignment or sublet of the Premises or part of the Premises under this section by the Subtenant contain terms substantially similar to this Sublease and shall contain terms with the same effect as this section and sections 39, 40 and 41 of this Sublease binding on the parties.

#### **Termination Due to Default**

- 33. If and whenever:
  - (a) the Subtenant fails to pay any Rent or other amount owing under this Sublease when due, whether or not demanded by the City, and the Subtenant has not, within 15 days after notice from the City cured the default;
  - (b) the Subtenant fails to observe or perform any of its obligations under this Sublease and the Subtenant has not, within 15 days after notice from the City specifying the default, cured the default, or if the cure reasonably requires a longer period, the Subtenant has not commenced to cure the default within the 7-day period and thereafter does not diligently pursue the cure of such default;
  - (c) re-entry is permitted under other terms of this Sublease;
  - (d) without the consent of the City, the Premises are vacant or the Subtenant fails to operate its business within the Premises for 10 days or more;
  - (e) a receiver is appointed to control the conduct of the business of the Subtenant on or from the Premises;
  - (f) the Subtenant becomes bankrupt or insolvent or takes the benefit of any legislation in force for bankrupt or insolvent debtors;
  - (g) proceedings are instituted for the winding-up or termination of the corporate

existence of the Subtenant;

- (h) without the consent of the City, the Subtenant abandons or attempts to abandon the Premises or disposes of the bulk of its goods and chattels on the Premises;
- (i) the Term or any of the goods or chattels on the Premises are at any time seized or taken in execution or attachment by any creditor of the Subtenant or under bill of sale or chattel mortgage; or
- (j) the Subtenant permits a builder's lien to arise in respect of the Land and to remain registered against title to the Land for more than 60 days,

then the City may re-enter and take possession of the Premises upon 15 days' notice to the Subtenant and this Sublease may, at the City's option, be terminated upon 30 days' written notice left at the Premises.

#### **Termination No Default**

- 34. Either party may terminate this Sublease upon ninety (90) days' written notice to the other party.

#### **Right to Relet**

- 35. If the City re-enters the Premises, it may, at its option and without terminating the Subtenant's rights, make alterations and repairs to facilitate reletting and relet the Premises, or any part, as the Subtenant's agent for such period of time and at such rent and on such other terms as the City wishes. Upon reletting, all rent and monies received by the City shall be applied, first, to the payment of indebtedness other than Rent due from the Subtenant to the City, second to the payment of costs and expenses of the reletting including brokerage, legal and repair expenses, and third to the payment of Rent due and unpaid under this Sublease. The residue, if any, shall be applied to the payment of future rent as it becomes due and payable. If at any time the rent received from the reletting is less than the Rent, the Subtenant shall pay the deficiency to the City to be calculated and paid monthly.

#### **Re-entry**

- 36. No re-entry or entry shall be construed as an election by the City to terminate this Sublease unless a written notice of intention to terminate is given to the Subtenant (which may be given by way of notice left at the Premises). Despite a reletting without termination, the City may elect at any time to terminate this Sublease for a previous breach.

#### **Distress**

- 37. If and whenever the Subtenant is in default of the payment of any money, including Rent,

whether expressly reserved by this Sublease or deemed as Rent, the City may without notice or any form of legal process whatsoever, enter the Premises and seize, remove and sell the Subtenant's goods, chattels and equipment and seize, remove, and sell any goods, chattels and equipment at any place to which the Subtenant or any other person may have removed them in the same manner as if they had remained and been distrained on the Premises, notwithstanding any rule of law or equity to the contrary, and the Subtenant hereby waives and renounces the benefit of any present or future statute or law limiting or eliminating the City's right of distress.

#### **State of Premises at Termination**

38. Upon the expiry or earlier termination of this Sublease, the Subtenant shall leave the Premises in a good, neat and tidy condition and otherwise in the condition they are required to be kept by the Subtenant during the Term under the provisions of this Sublease. If the Subtenant does not do so, the City may do so on behalf of the Subtenant and any amounts paid by the City in putting the Premises into the condition required, together with all costs and expenses of the City, will be reimbursed to the City by the Subtenant on demand, plus a 15% administration fee together with interest at the rate specified in section 28. The City's rights and the Subtenant's obligations under this section shall survive the expiry or earlier termination of this Sublease.

#### **Goods and Chattels on Termination**

39. Unless otherwise directed by the City, the Subtenant shall not remove its goods and chattels from the Premises upon termination for default until such time as the Subtenant has paid all amounts due and owing to the date of termination under this Sublease.

#### **Head Lease Covenant**

40. The Subtenant hereby covenants that it 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 the covenants relating to the Lands other than these Premises and Licence Area, and will indemnify the City against all actions, expenses, claims and demands in respect of such covenants except as aforesaid.

#### **Head Lease Termination**

41. Upon termination of the Head Lease for any reason (including default by the City), this Sublease will immediately terminate without any compensation payable to the Subtenant.
42. Notwithstanding section 40, if:
  - (a) the termination of the Head Lease is not in any manner disputed;
  - (b) the City has yielded up vacant possession of the Premises to the Head Landlord;

- (c) immediately preceding the termination of the Head Lease, all airport subleases, including this Sublease, are in full force and effect and the sublessees, including the Subtenant, at the termination of the Head Lease, are not in default or breach of their respective subleases;
- (d) the Head Landlord is not legally prohibited by reason of defect in title, adverse possession, or otherwise from fulfilling the terms of any of the airport subleases, including this Sublease;

then this Sublease shall, at the Head Landlord's option, be deemed to have been assigned to the Head Landlord and the Subtenant shall attorn to the Head Landlord, thereby creating a new lessor/lessee relationship under the terms and conditions of this Sublease under which the Head Landlord is the landlord and the Subtenant is the tenant; provided, however, that the Head Landlord 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.

The Subtenant acknowledges that unless and until the Head Landlord exercises its option under this section, this Sublease creates no privity of estate nor privity of contract between the Subtenant and the Head Landlord.

#### **Differences**

- 43. All matters of difference arising between the parties under this Sublease, whether as to interpretation or otherwise, shall be determined by the City but without prejudice to any recourse available at law.

#### **Remedies Cumulative**

- 44. No reference to or exercise of any specific right or remedy by the City shall prejudice or preclude the City from exercising any other right or remedy, whether allowed at law or in equity or expressly provided for in this Sublease, and no such right or remedy is exclusive or dependent upon any other such remedy and the City may from time to time exercise any one or more of such remedies independently or in combination. Without limiting the generality of the foregoing, the City is entitled to commence and maintain an action against the Subtenant to collect any Rent not paid when due, without exercising the option to terminate this Sublease.

#### **Sublease Not in Registrable Form**

- 45. The City is under no obligation to at any time deliver this Sublease or any instrument creating this Sublease to the Subtenant in a form registrable under the *Land Title Act* (British Columbia).

#### **Waiver or Non-Action**

- 46. Waiver by the City of any breach by the Subtenant of any of its obligations under this



Sublease shall not be considered to be a waiver of any subsequent default or continuing default by the Subtenant. Failure by the City to take any action in respect of any breach of any Subtenant obligation under this Sublease by the Subtenant shall not be considered to be a waiver of such obligation.

#### **Conditions**

47. All of the Subtenant's obligations under this Sublease shall be deemed and construed to be both conditions and covenants as though the words specifically expressing covenants or conditions or used in each separate provision respecting each such obligation.

#### **No Joint Venture**

48. Nothing contained in this Sublease creates the relationship of principal and agent or of partnership, joint venture or business enterprise or entity between the parties or gives the Subtenant any power or authority to bind the City in any way.

#### **Interpretation**

49. In this Sublease:
- (a) reference to the singular includes a reference to the plural and vice versa, unless the context requires otherwise;
  - (b) a particular numbered section or lettered Schedule is a reference to the correspondingly numbered section or lettered Schedule of this Sublease;
  - (c) an "enactment" is a reference to an enactment as that term is defined in the Interpretation Act (British Columbia) on the day this Sublease is made;
  - (d) any enactment is a reference to that enactment as amended, revised, consolidated or replaced;
  - (e) section headings are inserted for ease of reference and are not to be used in interpreting this Sublease;
  - (f) a "party" is a reference to a party to this Sublease;
  - (g) time is of the essence; and
  - (h) where the word "including" is followed by a list, the contents of the list shall not circumscribe the generality of the expression immediately preceding the word "including".

#### **Notices**

50. Where any notice, request, direction or other communication (any of which is a "Notice")

is to be given or made by a party under the Sublease, it shall be in writing and is effective if delivered in person or sent by mail to the address above. A Notice is deemed given if delivered in person, when delivered or if by mail, 5 days following deposit with Canada Post. A party may change its address or fax number by giving notice to the other party under this section.

#### **City and Head Landlord Discretion**

51. Wherever in this Sublease the approval or consent of the City or Head Landlord is required, some act or thing is to be done to the City or Head Landlord's satisfaction, the City or Head Landlord are entitled to form an opinion, or the City or Head Landlord is given the sole discretion:
- (a) the relevant provision is not deemed to have been fulfilled or waived unless the approval, consent, opinion or expression of satisfaction is in writing signed by the City and the Head Landlord as required, or their authorized representative;
  - (b) the approval, consent, opinion or satisfaction is in the discretion of the City or Head Landlord as required, acting reasonably, unless otherwise specified;
  - (c) sole discretion is deemed to be the sole, absolute and unfettered discretion of the City or Head Landlord as required; and
  - (d) no public law duty of procedural fairness or principle of natural justice shall have any application to such approval, consent, opinion, satisfaction or discretion.

#### **No Effect on Laws or Powers**

52. Nothing contained or implied herein prejudices or affects the City's rights and powers in the exercise of its functions under the *Community Charter* (British Columbia), the *Local Government Act* (British Columbia), or any other enactment to the extent the same are applicable to the Premises, all of which may be fully and effectively exercised in relation to the Premises as if this Sublease had not been fully executed and delivered.

#### **Severance**

53. If any portion of this Sublease is held invalid by a court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid shall not affect the validity of the remainder of the Sublease.

#### **Binding on Successors**

54. This Sublease enures to the benefit of and is binding upon the parties and their respective successors and assigns, notwithstanding any rule of law or equity to the contrary.

### **Law of British Columbia**

55. This Sublease shall be construed according to the laws of the Province of British Columbia.

### **Bribes**

56. The Subtenant hereby confirms that it has not, nor has any person on its behalf, given, promised or offered to any official or employee of the City for or with a view to obtaining the sublease granted herein 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 the sublease granted herein upon any agreement for a commission, percentage, brokerage, or contingent fee.

### **House of Commons**

57. No Member of the House of Commons of Canada shall be admitted to any share or part of the sublease granted herein, or to any benefit to arise therefrom.

### **Counterparts**

58. This Sublease may be executed by the parties in counterpart, and the counterparts may be delivered in Adobe PDF or other electronic format.

### **Schedules**

59. The following are the Schedules to this Sublease and form an integral part of this Sublease:

Schedule A – Sketch Plan of Premises  
Schedule B – Sketch Plan of Licence Area  
Schedule C – Insurance Requirements

### **Entire Agreement**

60. The provisions in this Sublease constitute the entire agreement between the parties and supersede all previous communications, representations, warranties, covenants and agreements, whether verbal or written, between the parties with respect to the subject matter of the Sublease.

As evidence of their agreement to be bound by the above terms, the City and the Subtenant have each executed this Sublease below on the respective dates written below:

**CITY OF KELOWNA**

by its authorized signatories:

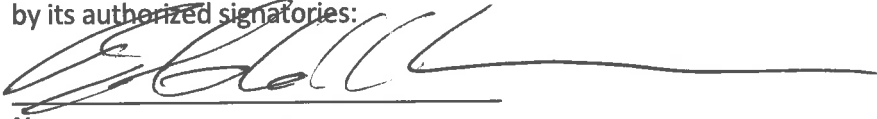
\_\_\_\_\_  
Mayor:

\_\_\_\_\_  
Clerk:

Date: \_\_\_\_\_

**CALLAHAN CONSTRUCTION COMPANY LTD.**

by its authorized signatories:

  
\_\_\_\_\_

Name:

Robert Callahan

Name:

Date: Dec 4/18.

## SCHEDULE A

### Sketch Plan of Premises

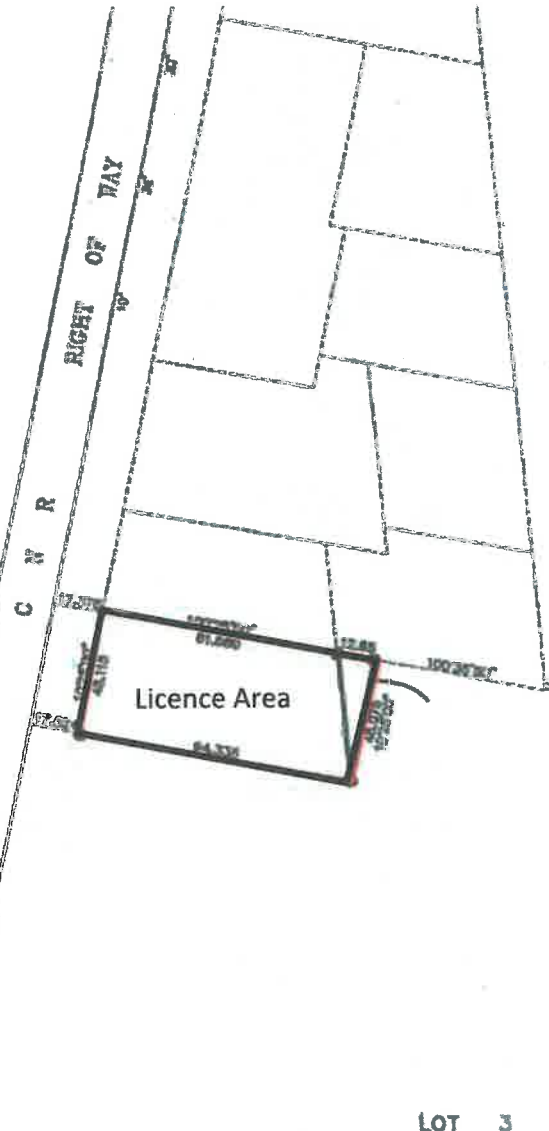
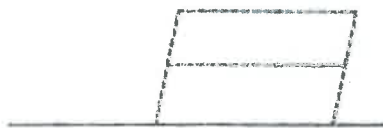


# SCHEDULE B

## Sketch Plan of Licence Area

- ⊙ - denotes standard iron post found
- - denotes standard iron post set

LOT 18  
PLAN 1502



LOT 3  
PLAN 11796

I, R.R. Runnalls, a British Columbia land surveyor, of the City of Kelowna, in British Columbia, certify that I was present at and personally superintended the survey represented by this plan, and that the survey and plan are correct. The survey was completed on the 25th day of August, 1995.

*R.R. Runnalls*  
R.R. RUNNALLS B.C.L.S.

R. R. RUNNALLS & ASSOCIATES  
B. C. LAND SURVEYORS  
No. 2 - 1470 WATER STREET KELOWNA, B. C.  
V1Y 1J5 PH 763 7322

DWG. No.: 9861-B.DWG

FILE: 9861

This plan was made for the District of Columbia, B.C. and is not to be used for any other purpose.

## **SCHEDULE C**

### **Insurance Requirements**

#### **Subtenant to provide and maintain:**

1. At its own expense and cost, the insurance policies listed in section 2 below, with limits no less than those shown in the respective items, unless 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 Sublease or such longer period as may be specified by the City.

2. **Insurance**

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

- 2.1 Comprehensive General Liability Insurance

- (i) providing for an inclusive limit of not less than \$5,000,000 for each occurrence or accident;
    - (ii) providing for all sums which the Subtenant 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 or any operations carried on in connection with this Sublease;
    - (iii) including coverage for Products/Completed Operations, Blanket Contractual, Subtenant's Protective, Personal Injury, Contingent Employer's Liability, Broad Form Property Damage, and Non-Owned Automobile Liability;
    - (iv) providing for the use of explosives for blasting; vibration from pile driving or caisson work; the removal of, or weakening of support of such property, building or land, whether such support shall be natural or otherwise; demolition; or any other work below ground level;
    - (v) 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; and
    - (vi) providing that the policy of insurance shall not be cancelled or materially altered without the insurer providing the City with 30 days' notice.

- 2.2 Automobile Liability Insurance covering all motor vehicles, owned, operated and used or to be used by the Subtenant at the Premises or in the Licence Area. The

Limit of Liability shall not be less than \$2,000,000 inclusive, for loss or damage including personal injuries and death resulting from any one accident or occurrence.

- 2.3 Workers Compensation Insurance covering all employees of the Subtenant engaged at or visiting the Premises in accordance with statutory requirements.

3. **The City Named as Additional Insured**

The policy required by section 2.1, 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.

4. **Subtenant's Contractor and Agents**

The Subtenant shall require each of its contractors and agents that make use of the premises or provide services to the Subtenant at the premises provide comparable insurance to that set forth under section 2, above.

6. **Other Insurance**

After reviewing the Subtenant's Certificates of Insurance, the City may require other insurance or alterations to any applicable insurance policies in force during the period of this Sublease and will give notifications of such requirement. Where other insurance or alterations to any insurance policies in force are required by the City and result in an increased insurance premium, such increased premium shall be at the Subtenant's expense.

7. **Additional Insurance**

The Subtenant 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. **Insurance Companies**

All insurance, which the Subtenant is required to obtain with respect to this Sublease, shall be with insurance companies registered in and licensed to underwrite such insurance in the province of British Columbia.

10. **Nonpayment of Losses**

The failure or refusal to pay losses by any insurance company providing insurance on behalf of the Subtenant shall not be held to waive or release the Subtenant from any of the provisions of these insurance requirements or this Sublease with respect to the liability of the Subtenant, including any indemnity. Any insurance deductible maintained by the Subtenant under any of the insurance policies is solely for their account and any



such amount incurred by the City will be recovered from the Subtenant as stated in the Sublease.

