

GROUND LEASE – KELOWNA INTERNATIONAL AIRPORT LAND

THIS LEASE dated for reference September 12 2022 is

BETWEEN:

CITY OF KELOWNA

1435 Water Street, Kelowna BC V1Y 1J4

(the "City")

AND:

PJS REAL ESTATE HOLDINGS LTD. (Reg. No. AO123978)

1311 9 Ave S.W. Suite 300, Calgary AB T3C 0H9

(the "Tenant")

WHEREAS:

- A. The City is the registered owner in fee simple of the lands located at 6280 Lapointe Drive, Kelowna, British Columbia and legally described as:

PID: 030-478-430

LOT 2 DISTRICT LOT 120 OSOYOOS DIVISION YALE DISTRICT PLAN EPP65593

(the "Lands").

- B. The City has agreed to lease the Lands to the Tenant for the Term in order that the Tenant may erect the Buildings and use, occupy, and enjoy the Lands and the Buildings upon the terms and conditions, and subject to the provisos, contained in this Lease.

- C. Pursuant to section 26 of the *Community Charter*, the City has posted and published notice of its intention to lease the Lands to the Tenant.

NOW THIS LEASE WITNESSES that in consideration of the Rent, covenants, and agreements to be paid, observed, and performed by the Tenant, the City leases to the Tenant and the Tenant leases from the City the Lands upon the terms and conditions and subject to the provisos contained in this Lease.

This Lease is made upon and subject to the following covenants and conditions which each of the City and the Tenant respectively covenants and agrees to keep, observe, and perform to the extent that the same are binding or expressed to be binding upon it.



1. DEFINITIONS

- 1.1 The terms defined in this Section 1.1, for all purposes of this Lease unless otherwise specifically provided, have the following meanings:
- (a) **"Additional Rent"** means the amounts, if any, payable by the Tenant pursuant to Sections 3.9, 4.1, 4.2, 4.3, 4.4, 9.8 and 9.9 of this Lease and section 9 of Schedule A of this Lease, together with any other and additional amounts that are expressed in this Lease to be added to and made part of Additional Rent, other than Basic Rent.
 - (b) **"Appraisal"** means a written opinion of the Fair Market Rent prepared by an Appraiser in accordance with generally accepted appraisal practices.
 - (c) **"Appraiser"** means a person who is accredited as an appraiser by the Appraisal Institute of Canada AACI designation or the Real Estate Institute of British Columbia (REIBC) designation.
 - (d) **"Architect"** means architect(s) appointed by the Tenant with a written approval of the City, who is a member in good standing of the Architectural Institute of British Columbia.
 - (e) **"Authority"** means the City of Kelowna or other municipal authority having jurisdiction over development on the Land.
 - (f) **"Basic Rent"** as of any particular time means the net basic rental provided for in this Lease as specified in Section 3.1 of this Lease.
 - (g) **"Buildings"** means an approximately 24,000 square feet industrial warehouse constructed upon the Lands by or for the Tenant pursuant to the provisions of this Lease, including, without limitation, hard landscaping and all necessary services and ancillary facilities, together with all replacements, alterations, additions, changes, substitutions, improvements, or repairs to them and all other improvements from time to time constructed upon or affixed or appurtenant to the Lands.
 - (h) **"Commencement Date"** means October 1, 2022.
 - (i) **"Commencement of Construction"** means that a building permit or permits have been issued to the Tenant by the Authority for the Buildings, and the foundations and footings of the Buildings have been commenced as certified to the City by the Architect.



- (j) **"Cost of Site Works"** means costs and expenses incurred by the Tenant to complete the Site Works.
- (k) **"Development Permit"** means the development permit issued by the Authority to the Tenant relating to the development of the Lands.
- (l) **"Environmental Contaminants"** means any contaminants, pollutants, hazardous, corrosive or toxic substances, flammable materials, explosive materials, radioactive materials, dangerous goods, microwaves, hazardous waste, urea formaldehyde, asbestos, noxious substances, compounds known as chlorobiphenyls, mould, and any other substance or material the storage, manufacture, disposal, treatment, generation, use, transport, remediation, or Release of which into the environment is prohibited, regulated, controlled, or licensed under Environmental Laws.
- (m) **"Environmental Laws"** means any laws, statutes, regulations, orders, bylaws, permits, or lawful requirements of any government authority with respect to environmental protection, or regulating, controlling, licensing, or prohibiting Environmental Contaminants.
- (n) **"Fair Market Rent"** means the rent, being Basic Rent, that would reasonably be obtained by a willing landlord for similar premises from a willing tenant dealing in good faith and at arm's length, for the highest and best use as permitted from time to time by the Authority.
- (o) **"Facility Alteration Permit"** means an application submitted to Kelowna International Airport for the review of all proposed construction and development on new or existing buildings to ensure the work does not harm airport operations or infrastructure.
- (p) **"Land"** means these lands in the Province of British Columbia described in Recital A.
- (q) **"Lease"** means this lease, including all schedules attached to this lease.
- (r) **"Mortgage"** means a mortgage or mortgages upon or in respect of and specifically charging the leasehold interest of the Tenant in the Lands and the Buildings or any part of them and includes any debenture or deed of trust and mortgage to secure any bonds or debentures issued under it, and any assignment of rents made to the Mortgagee as security.
- (s) **"Mortgagee"** means a mortgagee or mortgagees under a Mortgage.

- (t) **"Person"** or any word or expression descriptive of a person, includes any body corporate and politic, the heirs, executors, administrators, or other legal representatives of such person.
- (u) **"Prime Rate"** means the annual percentage rate of interest established from time to time by the Royal Bank of Canada, Main Branch, Vancouver, British Columbia as the base rate that will be used to determine rates of interest charged by it for Canadian dollar loans to customers in Canada and designated by the Royal Bank of Canada as the prime rate.
- (v) **"Occupation Date"** means the earlier of i) the date that an occupancy permit has been issued in respect of any part of the Lands by the City or ii) the date that is twenty-four (24) months after the Commencement Date or iii) the date mutually agreed between the City and the Tenant.
- (w) **"Release"** includes any release, spill, leak, pumping, pouring, emission, emptying, discharge, injection, escape, leaching, migration, disposal, or dumping.
- (x) **"Rent"** means the Basic Rent, Additional Rent, and any other amounts payable by the Tenant under this Lease.
- (y) **"Security Deposit"** means the sum of \$50,000.00 to be paid and applied in accordance with Section 3.6 of this Lease.
- (z) **"Site Works"** means excavation and grading the Lands to a state of a fully graded site suitable for construction.
- (aa) **"Substantial Completion"** means substantial completion as defined in Section 5.2 of this Lease.
- (bb) **"Tenancy Arrangements"** means all subleases, licences, tenancy agreements, and all rights of use and occupation of every nature and kind, present and future, existing or at any time made during the existence of this Lease in respect of any portion of the Lands or Buildings.
- (cc) **"Term"** means the 60-year period commencing on October 1, 2022 and ending at 4:00 p.m. on August 31, 2082.
- (dd) **"Trustee"** means a trust company duly authorized to carry on business in the Province of British Columbia appointed by the City for the purposes of Sections 5.5 and 8.3.



- 1.2 All of the provisions of this Lease will be deemed and construed to be conditions as well as covenants as though the words specifically expressing or importing covenants or conditions were used in each separate section of this Lease.
- 1.3 The words "herein", "hereby", "hereunder", and words of similar import refer to this Lease as a whole and not to any particular article or section of the Lease.
- 1.4 The captions and headings throughout this Lease are for convenience and reference only and the words and phrases used in the captions and headings will in no way be held or deemed to define, limit, describe, explain, modify, amplify, or add to the interpretation, construction, or meaning of any section or the scope or intent of this Lease, nor in any way affect this Lease.

2. TERM

2.1. Term

The Term of this Lease shall be for the period set out in Section 1.1(cc), beginning on the Commencement Date, and subject to earlier termination or renewal on the terms and conditions as set out in this Lease.

2.2. Option to Renew

If the Tenant:

- (a) gives notice to the City that the Tenant wishes to obtain renewal of this Lease, such notice to be given not more than 12 months and not later than six (6) months prior to the expiration of the initial Term of 60 (sixty) years or subsequent renewal;
- (b) at the time of giving such notice, the Tenant is not in breach of any covenant or condition herein contained and which has not been remedied within the time provided for in this Lease; and
- (c) has duly and regularly throughout the Term observed and performed the covenants and conditions herein contained,

then the City, at its sole and absolute discretion, may grant to the Tenant at the Tenant's expense a renewal of this Lease for the renewal term of ten (10) years, upon the same terms and conditions, except the Base Rent shall be Fair Market Rent determined pursuant to Section 3.4 each time when the Tenant exercises the option to renew.

The Term of this Lease may be renewed four (4) times for a total of 100 years including the original Term, at the City's sole and absolute discretion.



3. PAYMENT OF RENT

3.1. Rent

The Tenant covenants and agrees to pay to the City, monthly and in advance, the Basic Rent of \$6,034.88 (\$0.81 per square foot per year), adjusted every 5 years as per Section 3.3, which amount excludes GST or any similar or replacement tax, for the Term, payable on the Occupation Date and each anniversary thereafter.

3.2. Rent Reduction

In acknowledgement of the Tenant completing the Site Works, an annual rent discount will be applied based on the Cost of Site Works divided by the 60-year Term (the "Discount"). The Discount will apply after the Tenant submits receipts for the Site Works and the City reviews and approves the submitted receipts. The Discount will apply until the Cost of Site Works are fully paid. For the purpose of this Lease, the Site Works will not exceed \$220,000.00.

3.3. Rent Adjustment

Except for on the forty-year anniversary, the Basic Rent shall be adjusted on each five-year anniversary, of the first full month during the Term of this Lease to the Fair Market Rent determined pursuant to Section 3.4 but such adjustment may not exceed 10% of the Basic Rent of the previous five-year term or be less than the previous five-year term's Basic Rent.

On the forty-year anniversary of the first full month during the Term of this Lease, the Basic Rent shall be adjusted to the Fair Market Rent determined pursuant to Section 3.4.

3.4. Fair Market Rent Determination

The process to determine the Fair Market Rent is as follows:

- (a) No later than 90 days and no more than 180 days before each five (5) year anniversary, the Tenant, at its sole cost and expense, will obtain and provide the City with an Appraisal by an Appraiser chosen by the City.
- (b) The Appraiser shall estimate the Fair Market Value of the Basic Rent based on the Lands only without account of the Buildings or other improvements constructed by the Tenant and the use of the Lands.
- (c) The Appraiser shall also determine the market capitalization rate which will be calculated based on the average of the capitalization rate at the time of the Appraisal.
- (d) It shall be assumed by the Appraiser that there are no hidden conditions that would render the Lease more or less valuable.



- (e) If either party does not agree with the Fair Market Rent determination in the Appraisal, then, within 30 days of receipt of the Appraisal, such party, at its sole cost and expense, will obtain an Appraisal (the "Second Appraisal"), a copy of which such party will promptly deliver to the other party. The average of the Appraisal and the Second Appraisal shall be used as the Fair Market Value.

3.5. Airport Maintenance Charge

The airport maintenance charge for the initial year of the Term is \$0.03339 per square foot multiplied by the Lands. The initial airport maintenance charge is \$2,985.25 per annum (the "AMC"). The Tenant shall pay the AMC, including annual increases pursuant to the Airport Fees Bylaw No. 7982, as amended, to the City in monthly instalments, payable on the first day of each month of the Term. The AMC does not include GST or any similar or replacement tax.

3.6. Security Deposit

Upon execution of this Lease, the Tenant shall deposit with the City the Security Deposit as security to be held by the City. The City shall return to the Tenant the Security Deposit and any interest collected on the Security Deposit by the City on the Occupation Date. If at any time from the Commencement Date to the Occupation Date the Tenant fails to observe or perform any of its obligations under this Lease, the City may, in addition to its other rights under this Lease or at law or in equity, apply the Security Deposit, or so much of it as is necessary, to compensate the City on account of loss or damage the City has incurred by reason of the Tenant's breach. If the City so applies the whole or part of the Security Deposit during the time from the Commencement Date to the Occupation Date, the Tenant will promptly remit to the City a sum equal to the amount so applied by the City.

3.7. Payments Generally

All payments by the Tenant to the City of whatsoever nature required or contemplated by this Lease will be:

- (a) paid to the City by the Tenant in lawful currency of Canada;
- (b) made when due under this Lease, without prior demand and without any set-off, Abatement, or deduction whatsoever, at the office of the City or such other place as the City may designate from time to time to the Tenant;
- (c) applied towards amounts then outstanding under this Lease, in such manner as the City may see fit; and
- (d) deemed to be Rent, in partial consideration for which this Lease has been entered into, and will be payable and recoverable as Rent, such that the City will have all



of the rights and remedies against the Tenant for default in making any such payment that may not be expressly designated as rent, as the City has for default in payment of Rent.

3.8. Net Lease

It is the intention of the City and Tenant that all expenses, costs, payments, and outgoings incurred in respect of the Lands, the Buildings, and any other improvements of the Lands or for any other matter or thing affecting the Lands, will be borne by the Tenant and unless expressly stipulated to the contrary, the Basic Rent will be absolutely net to the City and free of all abatements, set off, or deduction of real property taxes, charges, rates, assessments, expenses, costs, payments, or outgoings of every nature arising from or related to the Lands, the Buildings or any other improvements on the Lands and, unless expressly stated to the contrary, the Tenant will pay or cause to be paid all such taxes, charges, rates, assessments, expenses, costs, payments, and outgoings.

3.9. Interest on Amounts in Arrears

All unpaid amounts due by the Tenant to the City under this Lease shall bear interest at the rate of 18.00 per cent per annum, calculated monthly not in advance 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. The City will have all the remedies for the collection of such interest, if unpaid after demand, as in the case of Rent in arrears, but this stipulation for interest will not prejudice or affect any other remedy of the City under this Lease. If the Tenant fails to pay taxes under Section 4.1 when due, then Section 4.2 will apply rather than this Section 3.9.

3.10. Goods and Services Taxes

The Tenant agrees to pay to the City at the times required by the applicable legislation all goods and services taxes or harmonized sales taxes payable under the *Excise Tax Act*, R.S.C. 1985, c. E-15, or such other tax as may be substituted for those taxes from time to time.

4. PAYMENT OF TAXES

4.1. Payment of Taxes

Except as otherwise provided in Section 4.2, the Tenant will in each and every year during the Term, not later than the day immediately preceding the date or dates on which real property taxes and other charges imposed upon real property within the Province of British Columbia become due and payable, whether monthly, quarterly, twice yearly, or otherwise, pay and discharge or cause to be paid and discharged all taxes, rates, duties, charges, and assessments, including school taxes, local improvement rates, and other charges that now are or will or may be levied, rated, charged, or assessed against the Lands, the Buildings, all other structures, all

machinery, equipment, facilities, and other property of any nature whatsoever in or on them, whether such taxes, rates, duties, charges, and assessments are charged by any municipal, parliamentary, legislative, regional, school, or other authority during the Term and will indemnify and keep indemnified the City from and against payment of all losses, costs, charges, and expenses occasioned by or arising from any and all such taxes, rates, duties, charges, and assessments; and any such losses, costs, charges, and expenses incurred by the City may be collected by the City as Additional Rent. The Tenant further covenants and agrees that during the Term it will deliver to the City for inspection receipts for payments of all taxes, rates, duties, charges, and assessments, including school taxes, local improvement rates, and other charges in respect of the Lands, the Buildings, all other structures, all machinery, equipment, facilities, and other property of any nature whatsoever on or in the Lands or Buildings that were due and payable during the Term within 30 days following receipt by the Tenant of each of such receipts for payment. The City will, not later than 30 days following receipt of any assessment notices delivered to the City by any taxing authority relating to the Lands, the Buildings or any other structures, any machinery, equipment, facilities, and other property of any nature whatsoever on or in the Lands or Buildings, forward a copy of those notices to the Tenant. The Tenant will have the right to appeal any assessment of the Lands or the Buildings or any other tax, rate, duty, charge, or amount referred to in this Section 4.1 provided that such appeal will be at the sole cost and expense of the Tenant. The City will cooperate with the Tenant, at the Tenant's expense, in order to assist the Tenant with any such appeal.

The Tenant will be responsible for the payments referred to in this Section 4.1 from the Commencement Date.

4.2. Delinquent Taxes

If the Tenant in any year during the Term fails to pay the taxes under Section 4.1 when due, the Tenant will pay to the City, on demand, interest on the amount outstanding at the percentage rate or rates established by the Province of British Columbia, the Authority, or any other taxing authority for unpaid real property taxes in the Province of British Columbia.

4.3. Payment of Utility Services

The Tenant covenants with the City to pay for or cause to be paid when due to the providers thereof all charges for all utilities and services used in or supplied to the Lands and the Buildings throughout the Term, including without limitation gas, electricity, light, heat, power, telephone, cable, internet, water, and will indemnify and keep indemnified the City from and against payment of all losses, costs, charges, and expenses occasioned by or arising from any and all such charges, and any such loss, costs, charges, and expenses that relate to such charges suffered by the City may be collected by the City as Additional Rent.

The Tenant will be responsible for the payments referred to in this Section 4.3 from the Commencement Date.



4.4. Business Tax and Licence Fees

The Tenant covenants with the City to pay for or cause to be paid when due every tax and permit and licence fee in respect of the use or occupancy of the Lands by the Tenant (and any and every subtenant, permittee, and licensee) whether such taxes or permit and licence fees are charged by any municipal, parliamentary, legislative, regional, or other authority during the Term, and will indemnify and keep indemnified the City from and against payment of all losses, costs, charges, and expenses occasioned by or arising from any and all such taxes and permit and licence fees; and any such loss, costs, charges, and expenses that relate to such charges incurred by the City may be collected by the City as Additional Rent.

5. CONSTRUCTION

5.1. Tenant to Construct Buildings

- (a) Prior to the commencement of any development on the Lands and within twelve (12) months after the Commencement Date, the Tenant will apply to the Authority for a Development Permit and any other permits necessary to construct the Buildings, and at the same time deliver to the City drawings, elevations (where applicable), specifications (including the materials to be used), locations (where applicable), and exterior decoration and design of the proposed Buildings for the City's approval, which approval the City agrees not to unreasonably withhold or delay. Upon receipt of the City's approval and a building permit from the Authority, the Tenant will construct the Buildings, together with other facilities ancillary to and connected with the Buildings on the Lands, expeditiously and in a good and workmanlike manner and in substantial accordance with the drawings, elevations, specifications (including materials to be used), location on the Lands, and exterior decoration and design all upon which the issuance of the building permits by the Authority having jurisdiction are based.
- (b) Any changes to the drawings, specifications, location, exterior decoration, design, or exterior appearance of the Buildings or the appearance of the Lands will first be approved by the City.

5.2. Substantial Completion of Buildings

The Buildings will be deemed to have been Substantially Completed when the Architect or engineer of the Tenant has issued a certificate to the City, signed and sealed by the Architect or engineer, certifying that:

- (a) the Buildings are "completed" in accordance with the *Builders Lien Act* (British Columbia) and substantially complete in all material respects in a proper and



workmanlike manner and in accordance with the applicable plans, specifications, and supporting documents submitted to and accepted by the City upon which the issuance by the Authority of any development permit and building permits for the Buildings has been based, except for deficiencies the correction of which, in the opinion of the Architect or engineer, is adequately ensured;

- (b) all building bylaws and regulations of the Authority have been complied with by the Tenant except for deficiencies the correction of which, in the opinion of the Architect or engineer, is adequately ensured;
- (c) all permits for occupancy that may be required by the Authority have been obtained; and
- (d) the Buildings are ready for occupancy.

For purposes other than Section 5.2(b), Substantial Completion may be achieved in respect of portions of the Buildings.

5.3. Deadlines for Commencement of Construction and Substantial Completion of Buildings

The Tenant covenants and agrees with the City that, subject always to Article 12:

- (a) Commencement of Construction of the Buildings will take place on or before March 31, 2024; and
- (b) all of the Buildings will be Substantially Completed in accordance with the requirements of Section 5.2 on or before March 31, 2026.

5.4. Termination Where Tenant Defaults in Commencement of Construction or Substantial Completion

- (a) If Commencement of Construction or Substantial Completion of the Buildings does not occur by the dates specified in Section 5.3, the City will have the right and option to terminate this Lease and the provisions of Section 20.1 will apply.
- (b) In the event of a dispute between the City and the Tenant as to whether or not the City is entitled to terminate this Lease pursuant to the provisions of this Section 5.4, the City and the Tenant agree to submit such dispute to arbitration by a single arbitrator.
- (c) If the City terminates this Lease under this Section 5.4, then the City will be entitled to, by providing written notice to the Tenant within 30 days following Termination, require that the Tenant remove any and all improvements done by



or on behalf of the Tenant during the Term. Upon such notice, the specified improvements shall become the property of the Tenant and the Tenant shall remove such improvements within 30 days of receipt of such notice or, in the event the removal of such improvements will take greater than 30 days, commence removal of within the said 30 day period and thereafter promptly and diligently and continuously proceed with removal, failing which the City may, without notice or compensation to the Tenant, dispose of such improvements as it sees fit and the Tenant shall reimburse the City for its costs of doing so (including a 15% administration fee) within 30 days of receipt of an invoice from the City. The City's rights and the Tenant's obligations under this section shall survive the expiry or earlier termination of this Lease.

5.5. Fire and Liability Insurance During Construction of Buildings

- (a) The Tenant will effect or will cause its contractor or contractors to effect prior to the Commencement of Construction of the Buildings, or any of them, and will maintain and keep in force until the insurance required under Article 8 is effected, insurance:
 - (i) protecting both the Tenant and the City and the City's employees and agents (without any rights of cross claim or subrogation against the City) against claims for personal injury, death, or property damage, or other third-party or public liability claims arising from any accident or occurrence upon, in, or about the Lands and from any cause, including the risks occasioned by the construction of the Buildings, and to an amount reasonably satisfactory to the City, for any personal injury, death, property, or other claims in respect of any one accident or occurrence; and
 - (ii) protecting both the Tenant and the City and the City's employees and agents from loss or damage (without any rights of cross-claim or subrogation against the City) to the Buildings and all fixtures, equipment, improvements, and building materials on the Lands from time to time both during and after construction (but which may be by policies effected from time to time covering the risk during different phases of construction of the Buildings) against fire, earthquake, and all other perils from time to time customarily included in the usual all-risks builders' risk form of policy applicable to similar properties during construction and effected in the Province of British Columbia by prudent owners, and such other perils as the City may reasonably require to be insured against to the full insurable value thereof at all times and in any event in the amount sufficient to prevent the City or the Tenant being deemed co-insurer.



- (b) All of the provisions of Article 8 respecting insurance that are of general application will apply to the insurance applying during construction of the Buildings required by this Section 5.5.

5.6. As-Built Drawings

The Tenant shall, within three (3) months of Substantial Completion of each Building on the Lands provide the City with as-built drawings.

6. USE OF LANDS AND BUILDINGS

The Tenant covenants and agrees with the City that neither the Lands nor the Buildings, nor any part of the Lands or the Buildings, will be used for any purposes except that in accordance with the City's Comprehensive Development Zone 12, Kelowna International Airport's Master Plan, and all charges and encumbrances registered on title to the Lands, unless otherwise approved by the City.

7. DEVELOPMENT COSTS

7.1. Servicing Costs

The Tenant shall pay all costs associated with providing offsite improvements, including improvements to road, water and sewer, and on-site improvements, including internal roads, water, sewer, and any other services the Tenant considers necessary or desirable.

8. INSURANCE

8.1. Insurance

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

8.2. Release of City from Liability for Insured Loss or Damage

The Tenant hereby releases the City and its elected and appointed officials, officers, employees, agents, representatives, contractors, successors, and assigns from any and all liability for loss or damage caused by any of the perils against which the Tenant has insured, or pursuant to the terms of this Lease is obligated to insure, the Buildings, or any part or parts of them, and the Tenant hereby covenants to indemnify and save harmless the City and its respective elected and appointed officials, officers, employees, agents, representatives, contractors, successors, and assigns from and against all manner of actions, causes of action, suits, damages, losses, costs,

claims, and demands of any nature whatsoever relating to such insured loss or damage, or loss or damage that the Tenant is obligated to insure.

8.3. Payment of Loss Under the Insurance Policies Referred to in Section 5.5 and Section 2.4 of Schedule A

- (a) The insurance monies payable under any or all of the policies of insurance referred to in Section 5.5 of this Lease and Section 2.4 of Schedule A will, notwithstanding the terms of the policy or policies, be paid to the order of the Mortgagee, or to the order of the Trustee if there is no Mortgagee.
- (b) Subject to Article 10, the City and the Tenant agree that the Mortgagee or Trustee (as the case may be) will use such insurance monies for the restoration, reconstruction, or replacement of the loss or damage in respect of which such insurance monies are payable under this Article 8 against certificates of the Architect engaged by the Tenant or such other person as the City and the Tenant may agree upon who is in charge of such restoration, reconstruction, or replacement.

8.4. City's Right to Repair and Receive the Insurance Proceeds

Should the Tenant fail to effect the restoration, reconstruction, or replacement of the loss or damage in respect of which the insurance monies are payable, without unreasonable delay, the City will be entitled to effect such restoration, reconstruction, or replacement and the Mortgagee or Trustee to whom such insurance monies are payable will pay or cause to be paid to the City such insurance monies in the same manner the Mortgagee or Trustee (as the case may be) would have done had the Tenant effected such restoration, reconstruction, or replacement.

9. REPAIRS AND MAINTENANCE

9.1. City Not Obligated to Repair

The City will not be obliged to furnish any services or facilities or to make repairs, alterations, or replacements in or to the Lands or the Buildings, the Tenant hereby assuming the full and sole responsibility for the condition, operation, repair, replacement, maintenance, and management of the Lands and the Buildings.

9.2. Repair by the Tenant

The Tenant will 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 of the Buildings or the foundation or structure of the Buildings) the Lands and the Buildings, and the appurtenances and



equipment of them, both inside and outside, including but not limited to fixtures, walls, foundations, roofs, vaults, elevators (if any) and similar devices, heating, cooling, 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 Lands and the Buildings and machinery and equipment used or required in the operation of them, whether or not enumerated in this Lease, and will, in the same manner and to the same extent as a prudent owner, make any and all necessary repairs, replacements, alterations, additions, changes, substitutions, and improvements, ordinary or extraordinary, foreseen or unforeseen, structural or otherwise, and keep the Buildings and aforesaid fixtures, appurtenances, and equipment fully usable for all of the purposes for which the Buildings were erected and constructed and the specified fixtures, appurtenances, and equipment were supplied and installed. Such repairs and replacements will be in all respects to the standard at least substantially equal in quality of material and workmanship to the original work and material in the Buildings and aforesaid fixtures, appurtenances, and equipment.

9.3. Tenant Not to Commit Waste or Injury

The Tenant will not commit or permit waste to the Lands or the Buildings or any part of them (reasonable wear and tear excepted so long as the reasonable wear and tear does not unreasonably affect the exterior appearance of the Buildings or the foundation or structure of the Buildings); nor will the Tenant injure or disfigure the Lands or the Buildings or permit them to be injured or disfigured in any way.

9.4. No Unlawful Purpose

The Tenant will not use or occupy or permit to be used or occupied the Lands or the Buildings or any part of them for any illegal or unlawful purpose or in any manner that will result in the cancellation of any insurance, or in the refusal of any insurers generally to issue any insurance as requested.

9.5. At Expiration Deliver Up Lands and Buildings

At the expiration or other termination of this Lease, the Tenant will, except as may be otherwise expressly provided in this Lease, surrender and deliver up the Lands with the Buildings and the fixtures, appurtenances, and equipment attached thereto, including all replacements and substitutions, 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 of the Buildings or the foundation or structure of the Buildings. If the Tenant does not do so, the City may do so on behalf of the Tenant and any amounts paid by the City in putting the Lands and Buildings into the condition required, together with all costs and expenses of the City, will be reimbursed to the City by the Tenant on demand, plus a 15% administration fee together with interest at the rate specified in Section 3.9. The City's rights and the Tenant's obligations under this Section shall survive the expiry or earlier termination of this Lease.



9.6. Required Improvement Removal

Notwithstanding anything to the contrary in this Lease, the City will be entitled to, by providing written notice to the Tenant within 21 days following Termination, require that the Tenant remove any and all improvements, including any or all of the Buildings, done by or on behalf of the Tenant during the Term. Upon such notice, the specified improvements shall become the property of the Tenant and the Tenant shall remove such improvements within 21 days of receipt of such notice or, in the event the removal of such improvements will take greater than 21 days, commence removal of within the said 21 day period and thereafter promptly and diligently and continuously proceed with removal, failing which the City may, without notice or compensation to the Tenant, dispose of such improvements as it sees fit and the Tenant shall reimburse the City for its costs of doing so (including a 15% administration fee) within 21 days of receipt of an invoice from the City. The City's rights and the Tenant's obligations under this Section shall survive the expiry or earlier termination of this Lease.

9.7. Lands Accepted "As Is"

The Tenant accepts the Lands "as is" knowing the condition of the Lands, and agreeing that the City has made no representation, warranty, or agreement with respect to the Lands, except as may be otherwise expressly provided in this Lease.

9.8. Repairs to Buildings by City

If at any time during the Term the Tenant fails to maintain the Lands and maintain, repair, or replace the Buildings and the fixtures, appurtenances, and equipment of them, both inside and outside, in the condition required by the provisions of Section 9.2, the City through its agents, employees, contractors, and subcontractors may but will not be obliged to enter upon those parts of the Lands and the Buildings required for the purpose of making the repairs required by Section 9.2. The City will make such repairs, only after giving the Tenant 30 days' written notice of its intention so to do, except in the case of an emergency when no notice to the Tenant is required. Any amount paid by the City in making such repairs to the Lands and the Buildings or any part or parts thereof, together with all costs and expenses of the City, will be reimbursed to the City by the Tenant on demand plus a 15% administration fee together with interest at the rate specified in Section 3.9.

9.9. Removal of Ice and Snow

The Tenant covenants and agrees with the City at any time during the Term, at its cost, by itself or by the use of agents, to keep the Lands clean from ice and snow and to ensure that any snow cleared from the Lands is contained on the Lands.



10. DAMAGE OR DESTRUCTION

10.1. Rent Not to Abate

The partial destruction or damage or complete destruction by fire or other casualty of the Buildings will not terminate this Lease or entitle the Tenant to surrender possession of the Lands or the Buildings or to demand any abatement or reduction of the Rent or other charges payable under this Lease, any law or statute now or in the future to the contrary.

10.2. Tenant's Obligations When the Buildings Are Damaged or Partially Destroyed

The Tenant covenants and agrees with the City that in the event of damage to or partial destruction of the Buildings, the Tenant, subject to the regulations and requirements of the Authority and any other government authority having jurisdiction, will repair, replace, or restore any part of the Buildings so destroyed.

10.3. Tenant's Obligations When the Buildings Are Completely or Substantially Destroyed

The Tenant covenants and agrees with the City that in the event of complete or substantially complete destruction of the Buildings, the Tenant, subject to the regulations and requirements of the Authority and any other government authority having jurisdiction, will reconstruct or replace the Buildings with structures comparable to those being replaced.

10.4. Replacement, Repair, or Reconstruction Under Sections 10.2 or 10.3 to Be Carried Out in Compliance with Section 9.2 and Article 11

Any replacement, repair, or reconstruction of the Buildings or any part of the Buildings pursuant to the provisions of Sections 10.2 or 10.3 will be made or done in compliance with the provisions of Section 9.2 and Article 11.

11. REPLACEMENT, CHANGES, ALTERATIONS, AND SUBSTITUTIONS

11.1. City's Consent

The Tenant will not make or permit to be made any changes, alterations, replacements, substitutions, additions, improvement affecting the structure of the Buildings, the major electrical and/or mechanical systems contained in them, or the exterior decoration, design, or appearance of the Buildings or erect or cause to be erected any building or buildings on the Lands without the written consent of the City and a Facility Alteration Permit. The Tenant shall apply for such permits at least 60 days prior to the desired commencement of any such changes, alterations, replacements, substitutions, or additions.



11.2. Tenant to Present Plans and Specifications

When seeking the City's consent and a Facility Alteration Permit as required by this Section 11, the Tenant shall submit to the City drawings, elevations (where applicable), plans, specifications (including the materials to be used), locations (where applicable), and exterior decoration and design of the proposed changes, alterations, replacements, substitutions, or additions, and may not commence any changes, alterations, replacements, substitutions, or additions until the Tenant has received a Facility Alteration Permit duly executed by or on behalf of the City.

11.3. Performance of Replacement, Changes, Alterations, and Substitutions

All changes, alterations, replacements, substitutions, or additions to be performed by or on behalf of the Tenant on the Lands shall be performed in accordance with the requirements, terms and conditions specified in the appropriate Facility Alteration Permit and in any consent given by the City, by competent contractors and subcontractors of whom the City shall have first approved in its sole and absolute discretion.

11.4. Before Commencing Excavation or Work for Construction

Before commencing excavation or any work on the Lands for the construction of any buildings or improvements, the Tenant shall have submitted to the City:

- (a) the plans that relate to the portion of the work which the Tenant proposes to commence; and
- (b) proof of insurance acceptable to the City.

11.5. Tenant Covenants

The Tenant covenants and agrees with the City to obtain all necessary permits and licences before commencement of any work. The Tenant also covenants and agrees with the City that, subject to Article 12, all changes, alterations, replacements, substitutions, and additions undertaken by or for the Tenant once begun will be prosecuted with due diligence to completion. All such changes, alterations, and additions will meet the requirements of the Authority and any other government authorities having jurisdiction.

11.6. Stop Work Orders

If any of the above Sections 11.1 - 11.5 is in breach, then, in addition to any other remedy available to the City, the City may:



- (a) issue a "stop work order";
- (b) bar any person performing any activity that is contributing to such breach from the Lands until such time as the breach is rectified by obtaining all of the required consents, approvals, authorizations, and plans required under Sections 11.1 - 11.5;
- (c) the Tenant will promptly remediate any damage to the Lands arising from such breach that is not otherwise approved of, consented to or authorized under Sections 11.1 - 11.5; and
- (d) the City is entitled to obtain an injunction from a court of competent jurisdiction against the continuation of such breach, its costs (including legal costs on a solicitor and own client basis) are to be paid promptly upon notice to the Tenant.

11.7. Signs

The Tenant shall not install, hang, affix or place any signs on the Buildings or on the Lands without the written consent of the City.

12. UNAVOIDABLE DELAYS

If, by reason of circumstances beyond the reasonable control of the Tenant and not avoidable by the exercise of reasonable effort or foresight by the Tenant, including without limitation strike, lock out, or other labour dispute, material or labour shortage not within the control of the Tenant, stop-work order issued by any court or tribunal of competent jurisdiction (provided that such order was not issued as the result of any act or fault of the Tenant or of any one employed by it directly or indirectly), fire or explosion, flood, wind, water, earthquake, act of God, pandemic, epidemic, or communicable disease (including a mass influenza outbreak or any other illness or health issue or any event or situation that a governmental authority has labelled a pandemic or epidemic), the Tenant is, in good faith and without default or neglect on its part, prevented or delayed in the Commencement of Construction or the prosecution of construction or in the Substantial Completion or completion of the Buildings or repair of the Buildings or any part or parts of them which under the terms of this Lease the Tenant 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 Tenant will not be deemed to be in default if it performs and completes the work in the manner required by the terms of this Lease 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 Tenant. If the City and the Tenant cannot agree as to whether or not there is a prevention or delay within the meaning of this Article, or they cannot agree as to the length of such prevention or delay, then such matter will be determined by reference to arbitration by a single arbitrator. For the purposes of this Article 12 the inability of the Tenant to meet its financial obligations

under this Lease or otherwise will not be a circumstance beyond the reasonable control of the Tenant and not avoidable by the exercise of reasonable effort or foresight by the Tenant.

The Tenant will act diligently and take all reasonable steps of a prudent owner to remove the cause or causes of delay in the Commencement of Construction or completion of the Buildings.

13. BUILDERS' LIENS

13.1. Tenant to Remove Liens

The Tenant will, throughout the Term at its own cost and expense, cause any and all builders' liens and other liens for labour, services, or materials alleged to have been furnished with respect to the Lands or the Buildings, which may be registered against or otherwise affect the Lands or the Buildings, to be paid, satisfied, released (including, without limitation, the release of all such liens from the interest of the City in the Lands), or vacated within 30 days after the City sends to the Tenant written notice by registered mail of any claim for any such lien. Provided however that in the event of a bona fide dispute by the Tenant of the validity or correctness of any claim for any such lien the Tenant will not be bound by the foregoing, but will be entitled to defend against the claim in any proceedings brought in respect of the claim after first paying into court the amount claimed or sufficient security, and such costs as the court may direct, or the Tenant may provide, as security in respect of such claim, an irrevocable letter of credit, lodged with the City, for 120% of the full amount of any claim for any such lien, the amount of which letter of credit will be increased every six months to include interest on the claimed amount at the Prime Rate, calculated semi-annually not in advance from the date any such claim is registered against or otherwise affects the Lands or the Buildings, continuing so long as the proceedings continue and which letter of credit will be on terms sufficient to protect the City's interest in the Lands and the Buildings and in a form reasonably satisfactory to the City and will be issued by one of the chartered Banks of Canada; and, upon being entitled to do so, the Tenant will register all such documents as may be necessary to cancel such lien from the Lands and the Buildings, including the City's interest in them.

13.2. City Not Responsible for Liens

It is agreed that the City will not be responsible for claims of builders' liens filed by persons claiming through the Tenant or persons for whom the Tenant is in law responsible. The Tenant acknowledges and agrees that the improvements to be made to the Lands are made at the Tenant's request solely for the benefit of the Tenant and those for whom the Tenant is in law responsible.

14. INSPECTION BY CITY

The City and the Tenant agree that it will be lawful for a representative of the City at all reasonable times during the Term to enter the Lands and the Buildings, or any of them and to examine their condition. The City will give to the Tenant notice of any repairs or restorations



required in accordance with Section 9.2 and the Tenant will, within 30 days after every such notice or such longer period as provided in Section 20.2, well and sufficiently repair, restore, and make good accordingly.

15. OBSERVANCE OF REGULATIONS

The Tenant covenants with the City that, notwithstanding any other provision of this Lease to the contrary, throughout the Term the Tenant will comply with all provisions of law, including without limitation municipal, regional, provincial, and federal legislative enactments concerning, without limitation, all environmental, police, fire, and sanitary regulations, all aeronautics and aviation-related regulations, including the *Aeronautics Act* and the Canadian Aviation Regulations, zoning and building bylaws, and any municipal, regional, provincial, federal or other government regulations that relate to the construction and erection of the Buildings, to the equipment and maintenance of the Buildings, to the operation, occupation, and use of the Buildings or the Lands to the extent that the Tenant operates, occupies, and uses the Buildings or the Lands, whether by subletting them or any part of them or otherwise, and to the making of any repairs, replacements, alterations, additions, changes, substitutions, or improvements of or to the Buildings, the Lands, or any part of them. For certainty, the Tenant shall fully observe and comply with all municipal bylaws and the British Columbia Building Code notwithstanding any rule of law restricting the applicability of such bylaws and the Building Code to airports, aviation, and aeronautics-related activities.

In addition to the above, the Tenant shall observe and comply with all policies and directives of the City with respect to operations at the Kelowna International Airport and the surrounding area.

16. INDEMNITY

16.1. Breach, Violation, or Non-performance of Covenants by Tenant

The Tenant will indemnify, defend and save harmless the City, its elected and appointed officials, officers, employees, agents, representatives, contractors, successors, and assigns from any and all manner of actions, causes of action, suits, damages, loss, costs, builders' liens, claims, and demands of any nature whatsoever relating to and arising during the Term and any extension or renewal thereof out of any breach, violation, or non-performance of any covenant, condition, or agreement in this Lease to be fulfilled, kept, observed, and performed by the Tenant.

16.2. Injury, Damage, or Loss of Property

Notwithstanding the provisions of Article 8, the Tenant will indemnify, defend and save harmless the City from any and all manner of actions, causes of action, suits, damages, loss, costs, claims, and demands of any nature whatsoever relating to and arising during the Term out of:



- (a) any injury to person or persons, including death resulting at any time therefrom, occurring in or about the Lands or the Buildings; and
- (b) any damage to or loss of property occasioned by the use and occupation of the Lands or the Buildings,

however, no provision of this Lease will require the Tenant to indemnify the City against any actions, causes of actions, suits, claims, or demands for damages arising out of the wilful or negligent acts or omissions of the City, its employees, agents, or contractors, unless the act or omission involves a peril against which the Tenant is obligated to place insurance, in which case the release and indemnity specified in Section 8.2 absolves the City of all liability with respect to the act or omission.

16.3. Indemnification Survives Termination of Lease

The obligation of the Tenant to indemnify the City under any provision of this Lease with respect to liability by reason of any matter arising prior to the end of the Term, including without limitation under the provisions of Sections 4.1, 4.3, 4.4, 8.2, 16.1, 16.2, and 28.1(g) will survive any termination of this Lease, anything in this Lease to the contrary notwithstanding.

17. NO ASSIGNMENT, SUBLEASE AND MORTGAGE

17.1. Subletting and Assigning

The Tenant may not assign this Lease or the benefit of this Lease, or sublet the Lands or any part of the Lands, without the prior written consent of the City, nor may the Tenant charge, mortgage, or encumber, or purport to charge, mortgage, or encumber the Tenant's interest in the Lands or this Lease without the prior written consent of the City. The City may withhold such consents at its sole discretion and without reason. Notwithstanding the provisions in this Section 17.1, the Tenant may assign this Lease or the benefit of this Lease to an affiliated upon the notice and prior written consent of the City.

17.2. Mortgaging by Tenant

The Tenant will not mortgage its leasehold interest under this Lease and its interest in the Lands and the Buildings without the consent of the City, including mortgage (whether by assignment or sublease) for the purpose of financing and refinancing the cost of constructing the Buildings.

17.3. Tenant to Comply with All of its Obligations in Respect of Assignments, Subleases, Tenancies and Mortgages

The Tenant will observe and perform all of its obligations incurred in respect of assignments, subleases, agreements for lease, and Mortgages of its leasehold interest in the Buildings, and will not allow any such obligations to be in default; and if any such default occurs, the City may,



but will not be obliged to, rectify such default for the account of the Tenant, and any amount paid by the City in so doing, together with all costs and expenses of the City, will be reimbursed to the City by the Tenant on demand plus an administration fee of 15% together with interest at the rate specified in Section 3.7.

18. MORTGAGE

18.1. Rights of Mortgagee

The Mortgagee under any Mortgage referred to in Article 17 may enforce such Mortgage and acquire title to the leasehold estate in any lawful way and, by its representative or by a receiver, as the case may be, take possession of and manage the Lands, and upon foreclosure of such mortgage may sell or assign the leasehold estate; and the purchaser or assignee of the leasehold estate will be liable to perform the obligations imposed upon the Tenant by this Lease only so long as such purchaser or assignee has ownership or possession of such leasehold estate.

18.2. Notice to and Remedies of Mortgagee

- (a) No re-entry, termination, acceptance of surrender, disclaimer, or forfeiture of this Lease by the City or by a receiver, interim receiver, receiver-manager, liquidator, custodian, or trustee will be valid against the Mortgagee who has executed and delivered to the City a tripartite agreement in the form attached hereto as Schedule B unless the City first has given to the Mortgagee notice of the default entitling the City to re-enter, terminate, or forfeit this Lease, specifying the nature of that default and stating the City's intention to take such proceedings and requiring the Mortgagee:
 - (i) to cure the default specified in the notice within a period of 30 days from the date of receipt of that notice by the Mortgagee; or
 - (ii) if the default is other than the failure to pay Rent or any other sums required to be paid to the City by any provisions of this Lease and if the default cannot reasonably be cured within such 30 day period, then to immediately commence to cure the default and to diligently prosecute to conclusion all acts necessary to cure the default, and the City hereby grants the Mortgagee access to the Lands and the Buildings for that purpose.
- (b) If the default is cured within the period specified, the Mortgagee will be entitled to become tenant of the Lands and Buildings for the balance of the Term remaining at the date of the notice of default or contingency, providing that the Mortgagee attorns as tenant to the City and undertakes to be bound by and to perform the covenants and agreements of this Lease for so long as it remains tenant and has not assigned the balance of the Term. If there is more than one



Mortgage and more than one Mortgagee wishes to cure the default or contingency specified in the notice referred to in Section 18.2(a), then the City agrees to permit the curing of the default or contingency specified in such notice and the assumption of the balance of the Term by that Mortgagee whose Mortgage ranks higher in priority; but if any Mortgagee has commenced a foreclosure action, the provisions of Section 18.2(c) will apply.

(c)

- (i) If the Mortgagee commences foreclosure proceedings against the Tenant, whether or not the Tenant is in default of the performance of its covenants and agreements with the City under this Lease at the time such foreclosure proceedings are commenced, the City will not re-enter, terminate, or forfeit this Lease after the commencement of foreclosure proceedings on the ground of any default or contingency entitling the City to re-enter, terminate, or forfeit this Lease if the Mortgagee:
 - A. first gives notice to the City of the foreclosure proceedings;
 - B. is actively prosecuting the foreclosure proceedings without undue delay;
 - C. cures the default or contingency within a period of 60 days from the date of receipt of notice from the City specifying the nature of the default or contingency, or if the default or contingency is other than the failure to pay Rent or any other sums required to be paid to the City by any provision of this Lease and if such default or contingency cannot reasonably be cured within such 60 day period, immediately commences to cure the default and to diligently prosecute to conclusion all acts necessary to cure the default or contingency; and
 - D. performs and observes all of the Tenant's covenants and agreements under this Lease and without undue delay diligently prosecutes to a conclusion the foreclosure proceedings commenced by the Mortgagee.
- (ii) If the Mortgagee acquires title to the Tenant's interest in the Lands and the Buildings pursuant to the foreclosure proceedings, the Mortgagee will then become subrogated to the rights of the Tenant under this Lease, provided it attorns to the City as tenant and undertakes to be bound by and to perform the covenants and agreements of this Lease for so long as it remains tenant and has not assigned the balance of the Term. If there is more than one Mortgage and more than one Mortgagee commences foreclosure proceedings, the right to cure any default or contingency



granted by this Section 18.2(c) to a foreclosing Mortgagee will be granted to the Mortgagee whose Mortgage ranks higher in priority.

- (d) If this Lease becomes subject to termination or forfeiture pursuant to Article 19 by reason of the bankruptcy or insolvency of the Tenant and the Mortgagee has filed with the City notice of Mortgage in favour of the Mortgagee and specified an address for notice under Article 27, the City will give to the Mortgagee notice of the bankruptcy or insolvency of the Tenant entitling the City to terminate or forfeit this Lease, and stating the City's intention to take such proceedings, and requiring the Mortgagee to cure any other default of the Tenant; and the Tenant's other default will be deemed to have been sufficiently cured if the Mortgagee:
- (i) commences foreclosure proceedings against the Tenant as more particularly set out in Section 18.2(c);
 - (ii) takes possession and control of the Lands and the Buildings, or causes a receiver to be appointed, under the terms of the Mortgage or by a court of competent jurisdiction, who takes possession and control of the Lands and the Buildings, and the City hereby grants the Mortgagee or such receiver access to the Lands and the Buildings for that purpose;
 - (iii) cures every default within a period of 60 days from the date of receipt by the Mortgagee of the notice from the City of the bankruptcy or insolvency of the Tenant, or if such default or defaults are other than the failure to pay Rent or any other sums required to be paid to the City by any provision of this Lease and if such default or defaults cannot reasonably be cured within such 60 day period, immediately commences to cure the default and to diligently prosecute to conclusion all acts necessary to cure the default or defaults; and
 - (iv) attorns as tenant to the City and undertakes to be bound by and to perform the covenants and agreements of this Lease for so long as it remains tenant and has not assigned the balance of the Term.

If there is more than one Mortgagee, the right to take possession and control to cure any default and to assume the Lease will be granted to the Mortgagee who wants to do so and whose mortgage ranks higher in priority.

- (e) Any re-entry, termination, or forfeiture of this Lease made in accordance with the provisions of this Lease as against the Tenant will be valid and effectual against the Tenant even though made subject to the rights of any Mortgagee to cure any default of the Tenant and to continue as tenant under this Lease.



- (f) No entry upon the Lands or into the Buildings by the Mortgagee pursuant to this Section 18.2 for the purpose of curing any default or defaults of the Tenant will release or impair the continuing obligations of the Tenant.

18.3. Mortgage Subject to City's Rights Under Lease

Subject to the provisions of Section 18.2, every Mortgage will be made expressly subject to the rights of the City under this Lease.

18.4. Protection of Mortgagee (Tripartite Agreements)

The City and the Tenant agree that the obligations of the City under Section 18.2 are subject to the Mortgagee entering into an agreement in the form attached to this Lease as Schedule B, whereby the Mortgagee covenants and agrees that if it acquires title to the Tenant's interest in this Lease, but only for so long as it holds such title, it will perform and observe the covenants and agreements required of the Tenant to be performed and observed, if not performed or observed by the Tenant, whether or not the City has taken any steps to enforce performance or observance of any of the covenants and agreements in this Lease to be performed or observed by the Tenant.

19. BANKRUPTCY OF TENANT

19.1. Events of Bankruptcy or Receivership

The parties agree, subject to the provisions of Sections 18.2 and 18.4, that:

- (a) if the Tenant makes a general assignment for the benefit of creditors; or
- (b) if the Tenant institutes proceedings to be adjudicated bankrupt or insolvent or consents to the institution of bankruptcy or insolvency proceedings against the Tenant or files an application or petition or answer or consent seeking reorganization or readjustment of the indebtedness of the Tenant under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 or the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as may be amended or replaced from time to time, or any law of Canada or any province of Canada relating to bankruptcy or insolvency, or consents to the filing of any such application or petition, or consents to the appointment of a receiver or receiver-manager; or
- (c) if a receiver, interim receiver, receiver-manager, trustee, liquidator, or custodian of all or substantially all of the property of the Tenant or of the Tenant's leasehold interest in the Lands and interest in the Buildings is appointed or applied for by the Tenant or appointed pursuant to an instrument or by order of a court; or



- (d) if a judgment, decree, or order is entered by a court of competent jurisdiction adjudging the Tenant a bankrupt or insolvent or subject to the provisions of the Bankruptcy and Insolvency Act or determining that proceedings for re-organization, arrangement, adjustment, composition, liquidation, or any similar relief under the Bankruptcy and Insolvency Act or the Companies' Creditors Arrangement Act as may be amended or replaced from time to time, or any law of Canada or any province of Canada relating to bankruptcy or insolvency have been properly instituted otherwise than by the Tenant, provided that such judgment, decree or order is not in good faith contested by the Tenant; or
- (e) if any application or petition or certificate or order is made or granted for the winding-up or dissolution of the Tenant, voluntary or otherwise,

then in any such case the receiver, interim receiver, receiver-manager, liquidator, custodian, or trustee will have the right to disclaim this Lease or to hold and retain the Lands and the Buildings for a period not exceeding six months from the effective date of any such appointment, bankruptcy order, assignment, judgment, decree, order, or the commencement of dissolution or winding-up, as the case may be, or until the expiration of the Term, whichever first happens, on the same terms and conditions as the Tenant might have held the Lands and the Buildings had no such appointment, bankruptcy order, assignment, judgment, decree, or order been made or dissolution or winding-up commenced.

If the receiver, interim receiver, receiver-manager, liquidator, or custodian holds and retains the Lands and the Buildings as aforesaid, it will during the specified period either:

- (a) surrender possession at any time and the Term will thereupon terminate; or
- (b) with the consent of the City, which the City may withhold in its sole discretion, sell, transfer, or otherwise dispose of all of the interest of the Tenant in this Lease and the Lands and the Buildings for the remainder of the Term or any part thereof and all of the rights of the Tenant under this Lease, notwithstanding anything to the contrary in Article 17 contained; or
- (c) continue as tenant for the balance of the Term remaining provided that the receiver, interim receiver, receiver-manager, liquidator, custodian, or trustee attorns as tenant to the City and undertakes to be bound by and to perform the covenants and agreements of this Lease on the part of the Tenant to be performed and observed.

19.2. Certain Rights of the Parties

The City and the Tenant agree that:



- (a) should the receiver, interim receiver, receiver-manager, liquidator, custodian, or trustee at any time before or after taking possession disclaim this Lease or surrender possession to the City, its liability and the liability of the estate of the Tenant and of the Tenant for payment of Rent is limited to the period of time during which the receiver, interim receiver, receiver-manager, liquidator, custodian, or trustee remains in possession of the Lands and the Buildings for the purposes of the trust estate. If the receiver, receiver-manager, liquidator, custodian, or trustee disclaims this Lease or surrenders possession, the City or the City's agents or employees authorized by the City may immediately or at any time thereafter re-enter the Lands and the Buildings without being liable for any prosecution or damages therefor, and may repossess and enjoy the Lands and the Buildings and all fixtures and improvements in and on them, except fixtures and improvements that are of the nature of usual tenant's fixtures and normally removable by tenants and that are not part of the Buildings or the Lands; and such receiver, receiver-manager, liquidator, custodian, or trustee will execute a surrender or assignment to the City in registrable form;
- (b) entry into possession of the Lands and the Buildings by the receiver, interim receiver, receiver-manager, liquidator, custodian, or trustee and occupation of them by it while required for the purposes of the performance of its duties in its office will not be deemed to be evidence of an intention on its part to retain the Lands and the Buildings, nor affect its right to disclaim or to surrender possession pursuant to the provisions of Section 19.1; and
- (c) if after occupation of the Lands and the Buildings, the receiver, interim receiver, receiver-manager, liquidator, custodian, or trustee elects to retain them, and thereafter sells, transfers, or otherwise disposes of the Lease, the Lands, and the Buildings and all interests and rights of the Tenant in them and under this Lease to a person approved by the City as provided by Section 19.1, its liability and the liability of the Tenant and the Tenant's estate for the payment of the Rent, if any, is limited to the period of time during which the receiver, interim receiver, receiver-manager, liquidator, custodian, or trustee remains in possession of the Lands and the Buildings.

19.3. No Abatement of Rent

The receiver, receiver-manager, liquidator, custodian, or trustee will pay to the City for the period during which the receiver, receiver-manager, liquidator, custodian, or trustee has taken possession of or is managing the Lands and the Buildings pursuant to Section 19.1 the Rent calculated on the basis of this Lease and payable in accordance with the terms of this Lease.

20. DEFAULT BY TENANT

20.1. Re-entry on Certain Defaults by Tenant



The City and the Tenant agree that if:

- (a) the Tenant defaults in payment of Rent or any other sums required to be paid to the City by any provision of this Lease, and such default continues for a period of 30 days after written notice of such default has been given by the City to the Tenant; or
- (b) the Tenant defaults in ensuring Commencement of Construction or Substantial Completion of the Buildings by the dates specified in Section 5.3, and such default continues for a period of 45 days after written notice of intention to terminate this Lease by reason of such default has been given by the City to the Tenant,

the City or the City's agents or employees authorized by the City may immediately or at any time thereafter re-enter the Lands and the Buildings without being liable to any prosecution or damages therefor and may repossess and enjoy the Lands, the Buildings and all fixtures and improvements on the Lands except fixtures and improvements that are of the nature of usual tenant's fixtures and normally removable by tenants, and that are not part of the Buildings or the Lands, as liquidated damages, without such re-entry and repossession constituting a forfeiture or waiver of the Rent paid or to be paid to the City, all of which Rent may be retained by the City as liquidated damages and not as a penalty and without forfeiture or waiver of the covenants to be performed by the Tenant up to the date of such re-entry and repossession.

20.2. Forfeiture on Certain Other Defaults by Tenant

The City and the Tenant agree that if the Tenant defaults in performing or observing any of its covenants or obligations under this Lease (other than those referred to in Section 20.1) and the City has given to the Tenant notice of such default and at the expiration of 30 days after the giving of such notice the default continues to exist or, in the case of a default that cannot with due diligence be cured within the period of 30 days, the Tenant fails to proceed promptly after the giving of such notice to cure such default then the City or the City's agents or employees shall be authorized to re-enter the Lands and the Buildings without being liable to any prosecution or damages therefor, and repossess and enjoy the Lands and the Buildings and all fixtures and improvements (except for fixtures and improvements that are of the nature of usual tenant's fixtures and normally removable by tenants, and that are not part of the Buildings or the Lands), as liquidated damages, without such re-entry and repossession constituting a forfeiture or waiver of the Rent and other money paid or to be paid to the City, all of which Rent may be retained by the City as liquidated damages and not as a penalty and without forfeiture or waiver of the covenants to be performed by the Tenant up to the date of such re-entry and repossession.

20.3. Remedies of City Are Cumulative



The remedies of the City specified in this Lease are cumulative and are in addition to any remedies of the City at law or equity. No remedy will be deemed to be exclusive, and the City may from time to time have recourse to one or more or all of the available remedies specified in this Lease or at law or equity. In addition to any other remedies provided in this Lease, the City will be entitled to restrain by injunction any violation or attempted or threatened violation by the Tenant of any of the covenants or agreements under this Lease.

20.4. Waiver by City

The failure of the City to insist upon the strict performance of any covenant or agreement of this Lease will not waive such covenant or agreement, and the waiver by the City of any breach of any covenant or agreement of this Lease will not waive such covenant or agreement in respect of any other breach. The receipt and acceptance by the City of rent or other moneys due under this Lease with knowledge of any breach of any covenant or agreement by the Tenant will not waive such breach. No waiver by the City will be effective unless made in writing.

21. COVENANTS OF CITY

21.1. Covenant Respecting Charges and Encumbrances

The City covenants with the Tenant that the City has a good and marketable title in fee simple to the Land and that the City has not at any time prior to the reference date of this Lease made, done, committed, executed, or wilfully or knowingly permitted any act, deed, matter, or thing whatsoever whereby the Land or any part of the Land are charged or encumbered in title or estate other than the subsisting exceptions and reservations contained in the original grant of the Land from the Crown, and any restrictive covenants and/or easements and/or rights-of-way in favour of the City, other public bodies and utility providers that may be registered against the Land.

21.2. Covenant Respecting Authority to Lease

The City covenants with the Tenant that it now has in itself good right, full power, and authority to lease the Lands to the Tenant in the manner and according to the true intent of this Lease.

22. ARBITRATION

If the City and the Tenant do not agree on any matter that is by any provision of this Lease to be determined by arbitration, such disagreement will be referred to a single arbitrator mutually agreed to by the City and the Tenant. If, within 30 days or such extended time as the parties may agree upon, the parties do not agree upon an arbitrator, then the parties may apply to the Supreme Court of British Columbia for the appointment of an arbitrator. Each party will pay its own costs of attending the reference. The costs of the arbitrator and the award will be in the discretion of the arbitrator, who may direct to and by whom and in what manner those costs or any part of those costs be paid, and may tax or settle the amount of costs to be paid or any part of those costs, and may award costs to be paid on a full indemnity basis. Except as to matters



otherwise provided in this Article 22, the rules of the Vancouver International Arbitration Centre as amended from time to time will apply. The case will be administered by the Vancouver International Arbitration Centre in accordance with its Domestic Arbitration Rules.

23. CONDUCT ON LANDS AND BUILDINGS

Taking into account that during construction of the Buildings the Lands will be operated as a normal construction site, the Tenant covenants and agrees with the City that it will not carry on or do, or allow to be carried on or done upon the Lands or in the Buildings any work, business, or occupation that may be a nuisance or that may be improper, noisy, or contrary to any law or to any bylaw or to any regulation of the Authority or any enactment of any other government agencies or authorities having jurisdiction for the time being in force.

24. SURRENDER OF LEASE

At the expiration or sooner determination of the Term, the Tenant will surrender the Lands and the Buildings to the City in the condition in which they were required to be kept by the Tenant under the provisions of this Lease, except as otherwise expressly provided in this Lease. The Tenant will not be entitled to any compensation from the City for surrendering and yielding up the Lands and the Buildings as provided.

25. QUIET ENJOYMENT AND OWNERSHIP OF TENANT'S FIXTURES

25.1. Covenant for Quiet Enjoyment

If the Tenant pays the Rent hereby reserved and the other charges, and performs the covenants hereinbefore on the Tenant's part contained, the Tenant will and may peaceably enjoy and possess the Lands for the Term, without interruption or disturbance whatsoever from the City or any other person, firm, or corporation lawfully claiming from or under the City, except for the City's express rights under this Lease to enter upon and use the Lands, or to permit others to do so.

25.2. Ownership of Tenant's Fixtures

The Tenant may confer upon subtenants or occupants of the Buildings the right of property in, or the right to remove fixtures or improvements that are of the nature of usual tenant's fixtures and normally removable by tenants, and that are not part of the Buildings or the Lands. The Tenant will make good, or will cause such subtenants to make good, any damage to the Buildings caused by any removal of the tenant's fixtures and personal property. If any such subtenant's fixtures and personal property are not removed upon the termination of this Lease, the Tenant agrees to remove them at its cost, if requested to do so by the City, within 30 days of the termination of this Lease. If the City does not request that the Tenant remove any such



subtenant's fixtures and personal property, then upon the termination of this Lease they will become the absolute property of the City free of all encumbrances.

25.3. City's Right to Further Encumber

The City hereby reserves the right to further charge the Lands, or any part of them, by way of easement, right of way, or restrictive covenant in favour of a Crown corporation or agency, a municipality, a regional district, or other government agency or authority; and the Tenant agrees, at the request of the City, promptly to execute and deliver to the City such instrument as may be necessary to subordinate the Tenant's right and interest in the Lands under this Lease to such charge.

25.4. Ownership of the Buildings

The City and the Tenant agree that the title to and ownership of the Buildings and all alterations, additions, changes, substitutions, or improvements to them will at all times during the Term be vested in the Tenant, notwithstanding any rule or law as to the immediate vesting of the title to and ownership of the Buildings in the City as owner of the freehold. The title to and ownership of the Buildings will not pass to or become vested in the City until the expiration of the Term either by forfeiture, default, or lapse of time under the terms of this Lease, in which event the Buildings will become the absolute property of the City free of all encumbrances.

25.5. Expropriation

If the Lands or any portion thereof are expropriated or condemned at any time during the Term, the City shall have no liability to the Tenant for the City's inability to fulfill any of its covenants herein from the date possession is taken by or on behalf of such expropriating Authority. In each such event the City and the Tenant may seek compensation separately from the expropriating Authority. The City and the Tenant shall cooperate in seeking such compensation, and if a joint award of compensation is made against the expropriating Authority, the compensation shall be divided as agreed between the City and the Tenant and, failing agreement, within 60 days of the award, as determined by arbitration by a single arbitrator.

26. OVERHOLDING

The Tenant covenants and agrees with the City that if the Tenant holds over and the City accepts Rent after the expiration of the Term, the new tenancy thereby created will be a tenancy from month to month, at a rent that is the Fair Market Rent of the Lands as agreed between the City and the Tenant, or, failing such agreement, as determined by arbitration by a single arbitrator, and not a tenancy from year to year and will be subject to the covenants and conditions in this Lease so far as they are applicable to a tenancy from month to month.



27. NOTICE

All notices, demands, and requests that may be or are required to be given pursuant to this Lease will be in writing and will be sufficiently given if served personally upon the party or an executive officer of the party for whom it is intended or mailed prepaid and registered addressed to the parties at the addresses set out on the title page of this Lease, or such other addresses as the parties may from time to time advise by notice in writing. The date of receipt of any such notice, demand, or request will be deemed to be the date of delivery if such notice, demand, or request is served personally or if mailed on the second business day following the date of such mailing, provided however that if mailed, should there be between the time of mailing and the actual receipt of the notice a mail strike, slowdown of postal service, or other labour dispute that affects the delivery of such notice, then such notice will be deemed to be received when actually delivered.

28. ENVIRONMENTAL

28.1. Environmental Provisions

The Tenant covenants and agrees with the City to:

- (a) develop and use the Lands and Buildings only in compliance with all Environmental Laws;
- (b) permit the City to investigate the Lands and Buildings, any goods on the Lands or Buildings, and the Tenant's records at any time and from time to time to verify such compliance with Environmental Laws and this Lease;
- (c) at the reasonable request of the City, obtain from time to time at the Tenant's cost a report from an independent consultant designated or approved by the City verifying compliance with Environmental Laws and this Lease or the extent of any non-compliance;
- (d) not store, manufacture, dispose, treat, generate, use, transport, remediate, or Release Environmental Contaminants on or from the Lands or Buildings without notifying the City in writing and receiving prior written consent from the City, which consent may be withheld in the sole discretion of the City;
- (e) promptly remove any Environmental Contaminants from the Lands or Buildings in a manner that conforms to Environmental Laws governing their removal;
- (f) notify the City in writing of:



- (i) any enforcement, clean-up, removal, litigation, or other governmental, regulatory, judicial, or administrative action instituted, contemplated, or threatened against the Tenant, the Lands, or the Buildings pursuant to any Environmental Laws;
 - (ii) all claims, actions, orders, or investigations instituted, contemplated, or threatened by any third party against the Tenant, the Lands, or the Buildings relating to damage, contribution, cost recovery, compensation, loss, or injuries resulting from any Environmental Contaminants or any breach of the Environmental Laws; and
 - (iii) the discovery of any Environmental Contaminants or any occurrence or condition on the Lands or Buildings or any real property adjoining or in the vicinity of the Lands that could subject the Tenant, the Lands, or the Buildings to any fines, penalties, orders, or proceedings under any Environmental Laws; and
- (g) indemnify, defend, and save harmless the City and its elected and appointed officials, officers, employees, agents, representatives, contractors, successors, and assigns from any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses (including, without limitation, diminution in value), orders, fines, penalties, costs, and expenses whatsoever (including without limitation any and all environmental or statutory liability for remediation, all legal fees and expenses on a full indemnity basis, all consultants' fees and expenses, and all costs of removal, treatment, storage, and disposal of Environmental Contaminants and remediation of the Lands, Buildings, and any adjacent property) that may be paid by, incurred by, or asserted against the City or its elected and appointed officials, officers, employees, agents, representatives, successors, or assigns, during or after the Term (or any extension or renewal of the Term), arising from or in connection with any breach of or non-compliance with the provisions of this Article 28 by the Tenant or arising from or in connection with:
- (i) any legal or administrative action, proceeding, investigation, demand, claim, or notice of any third party, including without limitation any government authority, against any one or more of them pursuant to or under Environmental Laws; or
 - (ii) the presence of any Environmental Contaminants in, on, at, or under the Lands or Buildings, or any Release or alleged Release of any Environmental Contaminants at or from the Lands or Buildings,
- related to or as a result of the use and occupation of the Lands by the Tenant or those for whom it is in law responsible or any act or omission of the Tenant or any



person for whom it is in law responsible, including, without limitation, its employees, agents, contractors, subcontractors, subtenants, permittees, and licensees.

The Tenant acknowledges and agrees that the City conducted a Stage 1 Preliminary Site Investigation of the Lands, a copy of the results of which are attached to this Lease as Schedule C (the "Baseline Report"). No earlier than 90 days, and no later than 30 days, prior to the expiry of the Term the Tenant shall conduct a Stage 1 Preliminary Site Investigation, or an environmental assessment of similar investigative rigour to the satisfaction of the City, of the Lands and shall share the Tenant's report with the City. If the Tenant's report reveals the presence of Contaminants which were not identified in the Baseline Report, the Tenant shall be responsible for conducting such further investigations and promptly removing the Tenant's Contaminants from the Lands and Buildings, in a manner that conforms to Environmental Laws governing their removal, at the Tenant's cost.

28.2. City May Make Inquiries

The Tenant hereby authorizes the City to make inquiries from time to time of any government authority with respect to the compliance by the Tenant with Environmental Laws, and the Tenant agrees that the Tenant will from time to time provide to the City such written authorization as the City may reasonably require in order to facilitate the obtaining of such information.

28.3 Climate Change Initiatives

The Tenant shall make reasonable efforts to participate in the Kelowna International Airport's Carbon Accreditation Program and other greenhouse gas and climate change initiatives introduced by the Kelowna International Airport from time to time.

29. TENANT REPRESENTATIONS, WARRANTIES AND ACKNOWLEDGEMENTS

29.1. Tenant Representations and Warranties

The Tenant represents and warrants to the City that:

- (a) the Tenant has the capacity and power to enter into the Lease; and
- (b) the Tenant has completed all necessary resolutions and other preconditions to the validity of this Lease.

29.2. Tenant Acknowledgments and Agreements

- (a) The Tenant acknowledges that:



- (i) the head lease granted to the City by Her Majesty the Queen in Right of Canada on which the Kelowna International Airport is located expires in 2054; and
 - (ii) there is no guarantee that the head lease will be renewed and that in such circumstances the Kelowna International Airport may cease operation;
- (b) The Tenant agrees that it shall have no claim against the City in the event that the Kelowna International Airport ceases operation and the Tenant hereby releases the City and its elected officials, employees and agents from any and all claims, losses, damages, costs, expenses, and liabilities of any nature which the Tenant may suffer as a result of the Kelowna International Airport ceasing operation. For certainty, the Tenant acknowledges and agrees that the Kelowna International Airport's ceasing operation shall have no effect on the validity of this Lease.

30. ADDITIONAL TERMS

30.1. Demolition Funds

Upon the 40th anniversary of the Occupation Date the City and the Tenant shall, acting reasonably, at the Tenant's cost, estimate an amount necessary to demolish and remove the Buildings and restore the Lands to the state they were in prior to the commencement of this Lease (the "Demolition Cost"). The amount agreed upon shall be divided into twenty (20) equal parts and the Tenant shall pay, into a separate account held jointly in the name of the Tenant and the City (the "Demolition Fund"), one such equal part on each of the remaining 20 anniversaries of the Occupation Date. Such payments shall constitute Additional Rent. Upon expiration or earlier termination of the sublease:

- (a) the amount in the Demolition Fund shall be used to pay for the Tenant's obligations to restore the Lands and the balance if any paid to the Tenant; or
- (b) the City may, upon written notice to the Tenant, elect to retain the Building in which case the Tenant shall not be required to restore the Lands and the Demolition Fund or portion of the Demolition Funds will be used towards restoration of the Building, if required, and the City will retain title of the property. If the City elects to retain the Building and no restoration of the Building is required, the City shall return the Demolition Funds to the Tenant.

If the Tenant requests and the City agrees to renew this Lease on the terms and conditions of this Lease, the City and the Tenant shall, at the Tenant's cost, review the Demolition Cost and extend payments to the Demolition Fund.

31. MISCELLANEOUS



31.1. Time Is of the Essence

Time is of the essence of this Lease.

31.2. No Modification

This Lease may not be modified or amended except by an instrument in writing of equal formality as this Lease executed by the City and the Tenant or by the successors or assigns of the City and the successors or permitted assigns of the Tenant.

31.3. City Discretion

Wherever in this Lease the approval or consent of the City is required, some act or thing is to be done to the City's satisfaction, the City is entitled to form an opinion, or the City 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 or its authorized representative;
- (b) the approval, consent, opinion, or satisfaction is in the discretion of the City, acting reasonably;
- (c) sole discretion is deemed to be the sole, absolute, and unfettered discretion of the City; 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.

31.4. No Effect on Laws or Powers

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 Lands, all of which may be fully and effectively exercised in relation to the Lands as if this Lease had not been fully executed and delivered.

31.5. Successors and Assigns

It is agreed that these presents will extend to, be binding upon, and enure to the benefit of the City and the Tenant and the successors and assigns of the City and the successors and permitted assigns of the Tenant.

31.6. Law of British Columbia



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

31.7. Counterparts

This Lease may be executed in counterparts and when each party has executed a counterpart each of the counterparts will be deemed to be an original and all of the counterparts when taken together will constitute one and the same agreement.

31.8. Electronic Transmission

The Lease or a counterpart thereof may be executed by a party and transmitted by electronic transmission and if so executed and transmitted this Lease will be for all purposes as effective and binding upon the party as if the party had delivered an originally executed agreement.

31.9. Schedules

The following are the schedules to this Lease and form an integral part of this Lease:

- Schedule A – Insurance Requirements
- Schedule B – Tripartite Agreement
- Schedule C – Baseline Environmental Report

31.10. No Joint Venture

This Lease is intended to create only the relationship of landlord and tenant and nothing in this Lease creates the relationship of principal and agent or of partnership, joint venture, or business enterprise or gives the Tenant any power or authority to bind the City in any way.

31.11. Entire Lease

The provisions in this Lease 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 Lease.

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

CITY OF KELOWNA by its authorized signatory(ies):

Mayor:



Clerk:

Date: September 18/2022

PJS REAL ESTATE HOLDINGS LTD. by its authorized signatory(ies):



Authorized Signatory

SPROUTSCOUT

Authorized Signatory

Date: _____



SCHEDULE A

Insurance Requirements

1. Tenant to Provide

The Tenant shall procure and maintain, at its own expense and cost, the insurance policies listed in section 2, 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 Date or such longer period as may be specified by the City.

2. Insurance

As a minimum, the Tenant 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:

- 2.1 Worker's compensation insurance covering all employees of the Tenant engaged in this Agreement, services and/or occupancy in accordance with statutory requirements of the Province or territory having jurisdiction over such employees;
- 2.2 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 Tenant 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 this agreement, services and/or occupancy or any operations carried on in connection with the Tenant's occupation of the Lands;
 - (iii) including coverage for Products/Completed Operations, Blanket Contractual, Tenant'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.

2.3 Automobile Liability Insurance covering all motor vehicles, owned, operated, and used or to be used by the Tenant directly or indirectly in the performance of this agreement, services and/or occupancy in connection with the Tenant's commercial operation. The Limit of Liability shall not be less than \$5,000,000 inclusive, for loss or damage including personal injuries and death resulting from any one accident or occurrence.

2.4 Tenant's All Risk property insurance, providing for Tenant's legal liability, providing for an inclusive limit of not less than the value of the Lands and all leasehold improvements.

3. The City Named as Additional Insured

The policies required by sections 2.2 and 2.3 above shall provide that the City is named as an Additional Insured thereunder and that said policies are primary without any right of contribution from any insurance otherwise maintained by the City.

4. Tenant's Contractor and Agents

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

5. Certificates of Insurance

The Tenant agrees to submit Certificates of Insurance, in the form of Appendix B-1, attached hereto and made a part hereof, for itself and for all of its Subcontractors to the City prior to the Commencement Date of this Agreement. Such Certificates shall provide that 30 days' written notice shall be given to the City, prior to any material changes or cancellations of any such policy or policies.

6. Other Insurance

After reviewing the Tenant's Certificates of Insurance, the City may require other insurance or alterations to any applicable insurance policies in force during the period of this Lease Agreement and will give notifications 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 Tenant's expense.



7. Additional Insurance

The Tenant 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 Tenant is required to obtain with respect to this Lease Agreement, shall be with insurance companies registered in and licensed to underwrite such insurance in the Province of British Columbia.

9. Failure to Provide

If the Tenant 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 in the name and at the expense of the Tenant, and any monies expended by the City shall be repayable by and recovered from the Tenant. The Tenant expressly authorizes the City to deduct from any monies owing the Tenant, any monies owing by the Tenant to the City.

10. Nonpayment of Losses

The failure or refusal to pay losses by any insurance company providing insurance on behalf of the Tenant or any subcontractor shall not be held to waive or release the Tenant from any of the provisions of the Insurance Requirements or this Lease Agreement, with respect to the liability of the Tenant otherwise. Any insurance deductible maintained by the Tenant or any subcontractor under any of the insurance policies is solely for their account and any such amount incurred by the City will be recovered from the Tenant as stated in section 9.





SCHEDULE A-1
City staff to complete prior to circulation

City Dept.: _____
Dept. Contact: _____
Project/Contract/Event: _____

CERTIFICATE OF INSURANCE

This Certificate is issued to:

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

Insured

Name:
Address:

Broker

Name:
Address:

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

--

Type of Insurance	Company & Policy Number	Policy Dates		Limits of Liability/Amounts
		Effective	Expiry	
Section 1 Comprehensive 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;• Non-Owned Automobile;• Cross Liability Clause.				Bodily Injury and Property Damage \$ <u>5,000,000</u> Inclusive \$ _____ Aggregate \$ _____ Deductible
Section 2 Automobile Liability				Bodily Injury and Property Damage \$ <u>5,000,000</u> Inclusive

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.
3. 30 days prior written notice of material change and/or cancellation will be given to the City of Kelowna.

Print Name

Title

Company (Insurer or Broker)

Signature of Authorized Signatory

Date

SCHEDULE B

TRIPARTITE AGREEMENT NON-DISTURBANCE AGREEMENT (TENANT FINANCING)

THIS AGREEMENT dated for reference *[month, day, year]* is made

BETWEEN:

CITY OF KELOWNA

1435 Water Street, Kelowna BC V1Y 1J4

(the "Landlord")

AND:

[name of lender] (incorporation/registration number *[number]*)
of *[address]* (Fax: *[fax number]*) (Email: *[email address]*)

(the "Lender")

AND:

PJS REAL ESTATE HOLDINGS LTD. (Reg. No. AO123978)

1311 9 Ave S.W. Suite 300, Calgary AB T3C 0H9

(the "Tenant")

BACKGROUND

- A. By a lease dated *[month, day, year]* and registered in the *[location]* land title office under number *[number]* (the "Lease"), the Landlord leased to the Tenant the lands located at 6280 Lapointe Drive, Kelowna, British Columbia and legally described as:

PID: 030-478-430

LOT 2 DISTRICT LOT 120 OSOYOOS DIVISION YALE DISTRICT PLAN EPP65593

(the "Lands").

- B. The Tenant has granted certain security (together, the "Lender's Security") to the Lender including a mortgage of the Lease (the "Mortgage of Lease").



- C. As a condition of advancing funds to the Tenant, the Lender requires the Landlord to confirm certain information to the Lender and to enter into this Agreement with the Lender.

AGREEMENTS

For good and valuable consideration, the receipt and sufficiency of which each party acknowledges, the parties agree as follows:

1. LANDLORD'S CONSENT

The Landlord hereby consents to the granting and registration of the Mortgage of Lease; however, this consent does not extend to the other contents of the Lender's Security; nor will it be, or be deemed to be, a consent to any further or other sublease of the Lands or any part of the Lands or to any assignment of the Lease or any further parting of possession of the Lands or any part of them; nor will it be, or be deemed to be, a waiver of the requirement for the consent of the Landlord to any further or other assignment of the Lease or subletting or parting with possession of the Lands in whole or in part.

2. LANDLORD'S REPRESENTATIONS AND WARRANTIES

The Landlord represents and warrants to the Lender that:

- (a) a true copy of the Lease is registered in the *[location]* land title office under number *[number]*;
- (b) as of the date of this Agreement, the Lease has not been modified or amended and constitutes the entire agreement between the Landlord and the Tenant in connection with the Lands;
- (c) to the best of the Landlord's knowledge, information, and belief, the Lease is in good standing and the Tenant is not presently in default under the Lease; and
- (d) to the best of the Landlord's knowledge, information, and belief, the Tenant has not previously assigned or sublet its interest in the Lands or the Lease.

3. LANDLORD'S COVENANTS

3.1 General Covenants

The Landlord covenants and agrees with the Lender that, notwithstanding anything to the contrary in the Lease, the Landlord will:



(a) in connection with matters relating to the Lease, provide to the Lender such information as may reasonably be required by the Lender from time to time in order to remedy any default by the Tenant under the Lease or to advise the Lender as to the status of the Lease;

(b) give the Lender a period of [30] days (or such longer period of time as is reasonably required by the Lender in the circumstances to remedy) after the Lender's receipt of notice from the Landlord of a breach or default by the Tenant under the Lease to cure any such breach or default, provided that the Lender will have no liability to cure any default in the following circumstances:

(i) an execution, attachment, distress, or similar process is taken against any of the assets of the Tenant;

(ii) a trustee, receiver, or receiver-manager (each a "Receiver") is appointed for any business or assets of the Tenant;

(iii) the Tenant makes an assignment for the benefit of creditors;

(iv) the Tenant makes a bulk sale of all or a substantial portion of its assets;

(v) the Tenant becomes bankrupt or insolvent or takes the benefit of any law now or hereafter in force for bankrupt or insolvent debtors;

(vi) the Tenant is a corporation and an order is made for the winding up or termination of the corporate existence of the Tenant; or

(vii) any other default by the Tenant under the Lease that cannot be remedied by the Lender

(each, a "Non-curable Default"). If such breach or default, other than a Non-curable Default, is remedied within the period referred to in this Section, the Landlord will not terminate the Lease and the Landlord will have no other rights against the Lender with respect to such breach or default;

(c) at the Lender's request, and with the consent of the Tenant, permit the Lender to enter the Lands to cure any default;



(d) not unreasonably withhold consent to the assignment of the Lease or the New Lease or subletting or other parting with possession of the Lands requested by the Lender;

(e) endeavour to periodically notify the Lender of any default of the Tenant of which it is aware, but will have no liability to the Lender if it fails to do so; and

[Alternative Section:

(e) promptly give to the Lender a copy of any notice that the Landlord gives to the Tenant with respect to any breach or default by the Tenant or any other act, omission, or event on which the Landlord proposes to act and that would give the Landlord the right to terminate or otherwise forfeit the term of the Lease;]

(f) endeavour to notify and obtain the consent of the Lender to any surrender of the Lease or material modifications of the Lease, but will have no liability to the Lender if it fails to notify or to obtain such consent from the Lender.

3.2 Lender's Liability for Tenant's Obligations

The Landlord covenants and agrees with the Lender that, notwithstanding anything to the contrary contained in the Lease, if the Lender takes enforcement proceedings under the Mortgage of Lease and advises the Landlord of its intention to cause the Lease to be maintained, the Lender will only be liable for:

(a) the payment of arrears of Rent that are outstanding and any other breach by the Tenant of any of the Tenant's obligations under the Lease (except for a Non-curable Default) on which the Landlord had given notice to the Lender of the Landlord's intention to act before the commencement of enforcement proceedings by the Lender; and

(b) the performance of the Tenant's obligations under the Lease during any period of actual possession of the Lands by the Lender or in the absence of actual possession, then from the time of commencement of enforcement proceedings by the Lender until any assignment or transfer of the Tenant's interest under the Lease or any surrender, cancellation, or other termination of the Lease.

3.3 New Lease

The Landlord covenants and agrees with the Lender that the Landlord will, at the written request of the Lender, enter into a new lease ("New Lease") with the Lender or with the nominee of the Lender approved by the Landlord, such approval not to be unreasonably withheld, only if:



- (a) the Landlord terminates the Lease by reason of the occurrence of a Non-curable Default;
- (b) the Lender delivers written notice to the Landlord within [10] days of the Lender's receipt of the Landlord's notice of default; and
- (c) if the Lender or its nominee approved by the Landlord pays the arrears of Rent payable under the Lease and remedies all other defaults of the Tenant under the Lease (except for a Non-curable Default).

The New Lease will be for the balance of the Term of the Lease commencing immediately on the Landlord's receipt of the Lender's written request for a New Lease, and otherwise will be on the same terms and conditions as are contained in the Lease.

3.4 No Seizure for Default

The Landlord covenants and agrees with the Lender that the Landlord will not, for non-payment of Rent or any other default under the Lease, seize any equipment, inventory, goods, or other moveable assets of the Tenant mortgaged or charged in favour of the Lender under the Lender's Security without first giving [30] days' notice to the Lender regarding the Landlord's intent to seize such equipment, inventory, goods, or other moveable assets, and allowing the Lender during the [30]-day period to cure the default, should the Lender elect to do so by notice in writing delivered to the Landlord within [10] days of receipt of the Landlord's notice of default.

3.5 Exercise of Rights

If the Landlord does not receive the Lender's notice as required under Section 3.4 in this Agreement, or if the Landlord having received such notice the default is not remedied within the [30]-day notice period, the Landlord will be entitled to exercise its rights and remedies under the Lease as if this Agreement had not been executed and delivered.

3.6 No Requirement to Advance Funds

The Landlord acknowledges that it is aware that the Lender will be relying on the representations, warranties, covenants, and agreements of the Landlord contained in this Agreement in determining whether or not to advance funds to the Tenant, except that nothing contained in this Agreement will impose or be deemed to impose any obligation or liability on the Lender to advance such funds.

4. LENDER'S COVENANTS

4.1 General Covenants

The Lender covenants and agrees with the Landlord that:



(a) it will not assign the Mortgage of Lease or further sublet the Lands or any part of the Lands without the prior written consent of the Landlord, which consent will not be unreasonably withheld or delayed;

(b) it will indemnify and save the Landlord harmless with respect to any claims arising in any way in respect of the Lender's entry and activities at the Lands; and

(c) if the Landlord does not receive the Lender's notice that it intends to remedy a default of the Tenant, as provided in Section 3.1(b), or if the Landlord having received such notice the default is not remedied within the period specified in that section, the Landlord will be entitled to exercise its rights and remedies under the Lease and at law as if this Agreement had not been entered into with the Lender.

4.2 Removal/Sale of Goods and Business

Notwithstanding this Agreement, the Lender will not be allowed to use the Lands to conduct a bankruptcy, receivership, or liquidation sale of the Tenant's goods or business provided that this will not prevent the Lender from removing the property of the Tenant from the Lands subject to the Landlord's right of distress, or from selling the business of the Tenant as a going concern subject to the Landlord's consent to any assignment or sublease of the Lease or other parting with possession of the Lands, as provided in the Lease.

5. TENANT'S COVENANTS

5.1 Tenant's Indemnity

The Tenant hereby indemnifies and saves harmless the Landlord for any and all additional costs, damages, title clearing, or other similar costs and expenses related to the Landlord entering into this Agreement. This indemnity shall survive the expiry of the Term or any termination of the Lease or this Agreement.

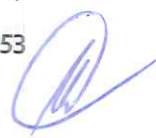
5.2 Tenant's Consent

The Tenant acknowledges and consents to the provisions of this Agreement.

6. GENERAL

6.1 Notice

Any notice under this Agreement must be given in writing and be sent by email or fax or delivered addressed to the party to which notice is to be given at the recipient party's address,



email, or fax number set out on the first page of this Agreement (or to such other address, email, or fax number as a party may specify by notice given in accordance with this section) and such notice will be deemed to have been given at the time of transmission or delivery.

6.2 Meaning of Terms

The parties covenant and agree that any reference in this Agreement to the "Lease" will include any extensions or renewals of the Lease pursuant to the terms of such extension or renewal. All capitalized terms will have the meaning assigned to them in this Agreement and, if not specifically defined in this Agreement, will have the meaning assigned to them in the Lease.

6.3 Time of Essence

Time is of the essence of this Agreement.

6.4 Enurement

This Agreement enures to the benefit of and is binding on the parties and their heirs, executors, administrators, successors, and permitted assigns.

6.5 Sale of Land

If the Landlord sells the Lands are located, the Landlord will be relieved from any liability under this Agreement from and after the closing of the sale if the purchaser agrees to assume the obligations of the Landlord under this Agreement.

6.6 Rights of Landlord Retained

Except as expressly provided for in this Agreement, neither this Agreement nor the Lender's Security will derogate from the rights and remedies of the Landlord as provided for in the Lease and at law.

6.7 Effective Date of Agreement

This Agreement, including without limitation the Landlord's consent to the Mortgage of Lease contained in the Lender's Security, will only be effective on its execution and delivery by all parties until the earlier of the date when:

- (a) the Mortgage of Lease is discharged;
- (b) the Term of the Lease expires without extension or renewal;
- (c) the Lender assigns its leasehold interest (if any) in the Lease in accordance with the terms of the Lease, as modified by this Agreement;



(d) the Lease is terminated by the Landlord in accordance with the terms of the Lease, as modified by this Agreement; or

(e) the Lender advises the Landlord that its Mortgage of Lease is no longer in effect,

provided that nothing in this section releases the Tenant from any of its obligations under the Lease.

6.8 Entire Agreement

This Agreement contains the entire agreement between the parties to it and will not be modified, waived, or cancelled except by an agreement in writing executed by the party against whom enforcement of such modification, waiver, or cancellation is sought.

6.9 Further Assurances

Each of the parties to this Agreement will do all such further acts and things and execute and deliver all such further documents or instruments as may be reasonably required by any other party or as may be reasonably necessary to effect the purpose of and to carry out the provisions of this Agreement.

6.10 Counterparts

This Agreement may be executed in one or more counterparts, each of which will be an original, and all of which together will constitute a single instrument. Further, the parties agree that this Agreement may be signed and/or transmitted by fax or by electronic mail of a .PDF document or electronic signature (e.g., DocuSign or similar electronic signature technology) and thereafter maintained in electronic form, and that such electronic record will be valid, and effective to bind the party so signing, as a paper copy bearing such party's handwritten signature. The parties further consent and agree that the electronic signatures appearing on this Agreement will be treated, for the purposes of validity, enforceability, and admissibility, the same as handwritten signatures.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.



PJS REAL ESTATE HOLDINGS LTD.

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

CITY OF KELOWNA

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

[LENDER]

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory



SCHEDULE C
BASELINE ENVIRONMENTAL REPORT

A handwritten signature in blue ink, consisting of a stylized 'C' followed by a checkmark-like flourish.