

AMENDMENT TO MAIN HANGAR SUBLEASE

THIS AGREEMENT dated for reference the 1st day of May, 2023 is

BETWEEN:

CITY OF KELOWNA
1435 Water Street
Kelowna, BC V1Y 1J4

(the "City")

AND:

KELOWNA FLIGHTCRAFT LTD.
5655 Airport Way
Kelowna, BC V1V 1S1

(the "KFC")

AND:

REGENCY AERO LEASE INC.
5655 Airport Way
Kelowna, BC V1V 1S1

("RAL")

(with KFC and RAL together referred to as the "Occupants")

WHEREAS:

- A.** By a lease agreement dated the 19th day of December, 1979, and registered in the Legal Registry of Transport Canada as No. 109806 (the "Lease"), Her Majesty did lease those lands and premises described in the Lease to the City, which lease was amended by the following supplemental agreements: "Supplemental Agreement #1" dated November 8, 1983, "Supplemental Agreement #2" dated January 15, 1985, "Supplemental Agreement #3" dated October 31, 1996, "Supplemental Agreement #4" dated November 15, 1989, "Supplemental Agreement #5" dated September 1, 1990, "Supplemental Agreement #6" dated June 14, 1994, "Supplemental Agreement #7" dated May 26, 1994, "Supplemental Agreement #8" dated February 16, 1996, "Supplemental Agreement #9" dated June 24, 2015, and "Supplemental Agreement #10" dated March 25, 2021;
- B.** KFC entered into a sublease with the City dated for reference the 1st day of September, 1981, as amended from time to time pursuant to supplemental agreements including,

without limitation, agreements dated November 25, 1986, March 8, 1990, March 9, 1995, May 14, 1997, February 14, 2002, November 15, 2002, May 17, 2005, and February 27, 2015 (collectively, the "Sublease"), wherein the parties established the terms and conditions under which the City would grant KFC a sublease of the Land (as defined in the Sublease) for aviation purposes;

- C. By a separate Consent of Assignment agreement dated July 29, 2009, between the City, KFC, and RAL, all of KFC's rights and obligations under the Sublease were assigned to RAL with consent of the City;
- D. By a separate Sub-sublease agreement dated July 13, 2022, between the City, KFC, and RAL (the "Sub-sublease"), KFC undertook all the obligations for the Land for the Term defined in the Sub-sublease;
- E. By a separate agreement dated May 1, 2023 between the City, KFC and RAL (the "Amendment to Aircraft Maintenance Facility Lease"), the City, KFC and RAL agreed to amend the Aircraft Maintenance Facility Lease by adding the Additional Leased Area to the Leased Area, as those terms are defined in the Amendment to Aircraft Maintenance Facility Lease; and
- F. The parties have agreed to amend the Sublease in accordance with the terms of this Agreement.

NOW THEREFORE in consideration of the mutual promises below, the payment of \$1.00 by the City to the Occupants and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

Removal of Subleased Land

1. The Occupants hereby assign and surrender to the City that 7,760.78 square foot portion of the Land shown in gray on the site plan attached as Schedule "A" to this Agreement (the "Removed Sublease Area").
2. The Occupants shall, no later than 30 days following the execution of this Agreement:
 - (a) remove from the Removed Sublease Area all of its furniture, furnishings, equipment and fixtures;
 - (b) repair any damage caused by the removal of any furniture, furnishings, fixtures and equipment; and
 - (c) leave the Removed Sublease Area in a clean and tidy condition.

3. Subject to damage resulting from the Occupants activities pursuant to Article 2 (a) and (b), the City acknowledges and agrees that it has had the opportunity to inspect the Removed Sublease Area and is satisfied with the condition of the asphalt pavement covering the Removed Sublease Area and that the Occupants are not obligated to remove, repair or otherwise alter the asphalt pavement.
4. The Sublease shall remain in full force with respect to the Land as it is constituted following the surrender of the Removed Sublease Area (the "Remaining Premises") only, as shown in red outline on the survey plan attached as Schedule "A" to this Agreement, and will be discharged and surrendered with respect to the Removed Sublease Area only. All references in the Sublease to "Land" are deemed to refer to the Remaining Premises.

Access to Make-up Air Unit

5. The City hereby grants a non-exclusive license to the Occupants, and their employees or contractors, to enter on, access and use the Removed Sublease Area at any time with such vehicles and machinery, tools and equipment in the opinion of the Occupants may from time to time be necessary for the sole purpose of accessing, maintaining, repairing, improving, altering, protecting and/or replacing the Make-up Air Unit, as deemed necessary by the Occupants.

Rent and Airport Maintenance Charges

6. The rent and airport maintenance charges payable by the Occupants for the Land shall be reduced in accordance with the square footage of the Removed Sublease Area, such that the Occupants shall pay rent and airport maintenance charges for the Land as follows, effective April 1, 2023:
 - (a) Rent is calculated at the rate of \$0.2549 per square foot of the Land = 432,709.02 square feet x \$0.2549 per annum, payable in advance in monthly installments of \$9,191.46;
 - (b) an airport maintenance charge is calculated at the rate of \$0.03405 per square foot of the Land = 432,709.02 square feet x \$0.03405 = \$14,733.74 per annum, payable in advance in monthly instalments of \$1,227.81; and
 - (c) the rent and airport maintenance charge shall be subject to the annual fee increases under the Airport Fees Bylaw No. 7982, including any amendments thereto.

Paving Work in Removed Sublease Area

7. Prior to August 22, 2022, KFC completed paving improvements (the “Initial Paving Work”) in the Removed Sublease Area, at its own cost.
8. Upon assigning and surrendering the Removed Sublease Area to the City pursuant to this Agreement, KFC shall complete paving improvement in another area of the Land equivalent to the Removed Sublease Area (the “New Paving Work”).
9. The City shall compensate KFC for the costs incurred by KFC for the New Paving Work.
10. The City agrees that no later than ninety (90) days following the receipt of an invoice in the amount of \$15,004.61 for the New Paving Work given to the City by KFC, the City shall pay KFC directly for KFC’s costs of the New Paving Work.

Moving Costs

11. On December 8, 2022, the City paid to KFC \$3,975.30 for the cost of reconfiguring an HVAC unit from the Removed Sublease Area, which receipt and sufficiency KFC hereby acknowledges.

Entire Agreement

12. The City has made no representations, covenants, warranties, guarantees, promises or agreements (oral or otherwise) with the Occupants other than those contained in this Agreement.

Severability

13. If any section of this Agreement or any part of a section is found to be unlawful or unenforceable, that part or section, as the case may be, shall be considered separate and severable and the remaining parts or sections, as the case may be, shall not be affected thereby and shall be enforceable to the fullest extent permitted by law.

Enurement

14. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

Interpretation

15. Wherever the singular or masculine is used herein, the same shall be construed as meaning the plural, feminine or the body corporate or politic where the context or the parties so require.

16. All terms, conditions, covenants and agreements of the Sublease not specifically modified by this Agreement shall remain unchanged and in full force and effect.

Counterparts

17. This Agreement may be executed in multiple counterparts, each of which is to be deemed to be an original and all of which together constitute one and the same agreement.

IN WITNESS whereof the parties have executed this Agreement on the dates written below.

CITY OF KELOWNA by its authorized signatories:

Real Estate Manager

KELOWNA FLIGHTCRAFT LTD. by its authorized signatories:

Authorized Signatory:

Authorized Signatory:

REGENCY AERO LEASE INC. by its authorized signatories:

Authorized Signatory:

Authorized Signatory:

Schedule A

Removed Sublease Area



Removed Sublease Area