

**LEASE AGREEMENT – AIRPORT LANDS**

THIS AGREEMENT dated for reference the 22 day of JUNE, 2022 is

BETWEEN:

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

(the “City”)

AND:

**REGENCY AERO LEASE INC.** (No. C1229665), 5655 Airport Way,  
Kelowna, British Columbia, V1V 1S1

(the “Tenant”)

WHEREAS:

- A. The City is the registered owner in fee simple of that parcel of land located at 5700 Airport Way, legally described as:
- PID: 031-208-657  
Lot 2 District Lot 32 and of Section 14 Township 23 Osoyoos Division Yale District  
Plan EPP87190
- (the “City Lands”);
- B. The City has agreed to lease that portion of the City Lands having an area of approximately 0.6985 acres shown on the sketch attached to this Lease as Schedule A to the Tenant on the terms and conditions of this Agreement (the “Lands”);
- C. The Tenant previously occupied the Lands under licences of occupation dated for reference September 10, 2021, December 10, 2021 and March 22, 2022, under which the Tenant completed construction of the parking lot contemplated in section 13 of this Lease; and
- D. In accordance with section 26 of the *Community Charter*, the City has posted and published notice of its intention to lease the Lands to the Tenant;

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

#### **Lease**

1. The City leases the Lands to the Tenant for the Term, and the Tenant leases the Lands from the City for the Term, on and subject to the terms and conditions of this Agreement.

#### **Term**

2. The term of this Agreement (the "Term") shall commence on the date this Agreement is fully executed by the parties (the "Commencement Date") and shall expire twenty-five (25) years from the Commencement Date.

#### **Rent**

3. As required by City of Kelowna Airport Fees Bylaw No. 7982 (the "Bylaw"), the City has obtained an independent appraisal for the Lands, which appraisal has determined the rental rate for the initial year of the Term at \$0.85 per square foot (\$25,865.13 per annum) (the "Rent"). The Tenant shall pay the Rent, including annual increases pursuant to the Bylaw, to the City in monthly instalments, payable on the first day of each month of the Term. The Rent does not include GST or any similar or replacement tax.

#### **Airport Maintenance Charge**

4. The airport maintenance charge for the initial year of the Term is \$0.03339 per square foot multiplied by the area of the Lands; the initial airport maintenance is (\$1,016.04) (the "AMC"). The Tenant shall pay the AMC, including annual increases pursuant to the Bylaw, 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.

#### **Use of Lands**

5. The Tenant shall only use and occupy the Lands for automobile parking and shall not use the Lands for any other purpose whatsoever.

#### **Tenant's Covenants**

6. The Tenant covenants and agrees with the City:
  - (a) to promptly pay when due, Rent and any other amounts required to be paid by it under this Agreement;
  - (b) not to do, suffer, or permit anything in, on, or from the Lands that may be or

become a nuisance or annoyance to other occupiers or users of the Lands, or to the owners, occupiers, or users of other land or premises adjacent to or near the Lands, or to the public, including the accumulation of rubbish or unused personal property of any kind;

- (c) not to do, suffer, or permit any act or neglect that may in any manner directly or indirectly cause injury to the Lands, and not to commit or permit waste to the Lands;
- (d) to keep and maintain the Lands, and all improvements constructed thereon, in a safe, tidy, and sanitary condition;
- (e) to take all reasonable precautions to ensure the safety of all persons using the Lands;
- (f) to keep the Lands free of any rubbish, litter, and debris and keep the areas adjacent to the Lands free of any rubbish, litter, and debris originating from the Lands;
- (g) not to construct, erect, place, install, or permit, on the outside of any building or structure or other exterior area of the Lands, any poster, advertising sign or display, electrical or otherwise, without first obtaining the written consent of the City;
- (h) to pay to the City all GST (or replacement tax) payable in respect of this Agreement;
- (i) to pay all costs and expenses of any kind whatsoever associated with and payable in respect of the Lands, the Tenant's improvements and trade fixtures, and all equipment, furniture and other personal property brought onto the Lands by the Tenant and any business or activity conducted on or from the Lands, including without limitation, all taxes (including property taxes), levies, charges and assessments, permit and license fees, strata fees and levies, repair and maintenance costs, administration and service fees, telephone, electrical, gas, water, sewage disposal and other utility charges and payments for work and materials;
- (j) to carry on and conduct its activities in, on, and from the Lands in compliance with any and all laws, statutes, enactments, bylaws, regulations, and orders from time to time in force, and to obtain all required approvals and permits thereunder, and not to do or omit to do anything in, on, or from the Lands in contravention thereof; and
- (k) to promptly cause to be discharged any builders lien which may be filed against the title to the Lands, and to comply at all times with the *Builders Lien Act* (British

Columbia) in respect of any improvements, work, or other activities undertaken in, on, or to the Lands.

### **Net Lease**

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

### **Quiet Possession**

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

### **Wingspan Encroachment**

9. The Tenant acknowledges that the City has granted a licence to the KF Aerospace Centre for Excellence Association to use lands adjacent to the Lands as an aircraft tugway (the "Tugway Licence"). The Tenant acknowledges that in order to accommodate the wingspan clearance of aircraft using the tugway a portion of the licence area granted by the City under the Tugway Licence, shown on the sketch attached to this Lease as Schedule "C", encroaches into the Lands leased to the Tenant under this Lease. The Tenant has satisfied itself that due to the higher elevation of the licence area under the Tugway Licence the activities under the Tugway Licence shall not interfere with the Tenant's use of the Lands. The Tenant hereby acknowledges and permits the encroachment of the licence area under the Tugway Licence into the Lands and releases the City and its elected officials, employees and agents from any and all liability, loss, claims, costs and expenses it may have or incur that are associated with or in any way related to the encroachment.

### **Landscape Area**

10. Notwithstanding that it does not form part of the Lands leased to the Tenant under this Lease, the Tenant shall, in part consideration for the grant of this lease, landscape and maintain that part of the City Lands depicted by pink lines running diagonally on the

sketch plan attached to this Agreement as Schedule "A".

### **Security**

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

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

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

### **Construction of Parking Lot**

13. Prior to the commencement of any development on the Lands and as soon as is reasonably practical after the Commencement Date, the Tenant will:
  - (a) apply to the City of Kelowna for all permits necessary to construct a paved parking lot of approximately 30,429.57 square feet ; (the "Parking Lot");
  - (b) without limiting subsection (a) above, apply to the City of Kelowna for a development permit for the construction of the Parking Lot. The parties hereby confirm and agree that, for the purposes of this Agreement, the parties will treat the Lands as though they are located within the Comprehensive Development Permit Area (Multiple Unit Residential, Commercial, and Industrial Design Guidelines) as that area is designated in Kelowna 2040 – Official Community Plan Bylaw No. 10500 (the "OCP") and the Tenant will, prior to commencing any development on the Lands, voluntarily apply for and obtain a development permit addressing the design guidelines for such development permit area as set out in the OCP. In connection with such application, the Tenant will comply with the development permit application procedures for Urban Design Development Permits as set out in Development Application Procedures Bylaw No. 10540, and will pay the fee applicable to Urban Design Development Permits pursuant to Development Application Fees Bylaw No. 10560. Once issued, the Tenant will, as a term of this Agreement, comply with the development permit as though it were required by and issued pursuant to the bylaws of the City of Kelowna;
  - (c) deliver to the City drawings, elevations (where applicable), specifications (including the materials to be used), location on the Lands, and design of the Parking Lot for the City's consent and approval pursuant to section 11, which drawings and specifications, if required by the City, shall be prepared by and under

seal of an appropriately qualified professional engineer or registered architect acceptable to the City;

Upon receipt of all necessary permits pursuant to (a) and (b) and written consent from the City pursuant to (c), the Tenant shall construct the Parking Lot 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 design upon which issuance of the necessary permits and approvals are based.

#### **Deadlines for Commencement and Completion of Construction**

14. The Tenant covenants and agrees with the City that, subject always to section 11:
  - (a) the Tenant shall commence construction of the Parking Lot on or before the day that is 90 days following the Commencement Date;
  - (b) the Tenant shall substantially complete the Parking Lot in accordance with the requirements of section 12 on or before the day that is 180 days following the Commencement Date.
15. For the purposes of section 13(a), construction will be considered to have been commenced once a development permit or permits have been issued by the City of Kelowna for the Parking Lot.
16. For the purposes of section 13(b), construction of the Parking Lot will be considered substantially complete 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 Parking Lot is 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 and upon which issuance of any permits for the Parking Lot have 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 City of Kelowna 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 City of Kelowna have been obtained; and
  - (d) the Parking Lot is ready for occupancy.

### **Termination if Tenant Defaults in Commencement or Completion of Construction**

17. If the Tenant does not commence or substantially complete construction of the Parking Lot by the dates specified in section 13, the City will have the right and option to terminate this Agreement and the lease granted herein, without any right on the part of the Tenant to seek compensation, and sections 38 through 43 of this Agreement will apply.

### **Minimum Work Standards**

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

### **Repair and Maintenance**

19. The Tenant shall during the Term, at its cost, by itself or by the use of agents, put and keep in good order and condition (reasonable wear and tear excepted so long as the reasonable wear and tear does not unreasonably affect the exterior appearance of the Parking Lot or the structure of the Parking Lot) the Lands and the Parking Lot, and the appurtenances and equipment of them, including but not limited to 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 Parking Lot and machinery and equipment used or required in the operation of them, whether or not enumerated in this Agreement, and will, in the same manner and to the same extent as a prudent owner, make any and all necessary repairs, replacement, alterations, additions, changes, substitutions, and improvements, ordinary or extraordinary, foreseen or unforeseen, structural or otherwise, and keep the Parking Lot and aforesaid fixtures, appurtenances, and equipment fully usable for all of the purposes for which the Parking Lot was constructed and the specified fixtures, appurtenances, and equipment were supplied and installed. Such repairs 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 Parking Lot and aforesaid fixtures, appurtenances, and equipment.

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

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

**City May Repair**

21. If at any time during the Term, the Tenant fails to maintain the Lands and the Parking Lot and the fixtures, appurtenances, and equipment of them,, in the condition required by the provisions of section 18, the City through its agents, servants, contractors, and subcontractors may, but will not be obliged to, enter upon those parts of the Lands and the Parking Lot required for the purpose of making the repairs required by section 18. The City may make such repairs only after giving the Tenant 30 days' written notice of its intention to do so, except in the case of an emergency when no notice to the Tenant is required. Any amounts paid by the City in making such repairs to the Lands or to the Parking Lot 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 34.

**Damage or Destruction**

22. The partial destruction or damage or complete destruction by fire or other casualty of the Parking Lot will not terminate this Agreement or the lease granted hereunder, or entitle the Tenant to surrender possession of the Lands or the Parking Lot or to demand any abatement or reduction of the Rent or other charges payable under this Agreement, any law or statute now or in the future to the contrary.
23. The Tenant covenants and agrees with the City that, in the event of damage to or partial destruction of the Parking Lot, the Tenant, subject to the regulations and requirements of the City of Kelowna and any other government authority having jurisdiction, will repair, replace, or restore any part of the Parking Lot so destroyed.
24. The Tenant covenants and agrees with the City that, in the event of complete or substantially complete destruction of the Parking Lot, the Tenant, subject to the regulations and requirements of the City of Kelowna and any other government authority having jurisdiction, will reconstruct or replace the Parking Lot with a structure comparable to that being replaced.
25. Any replacement, repair, or reconstruction of the Parking Lot or any part of the Parking Lot pursuant to the provisions of sections 22 or 23 will be made or done in compliance with sections 11, 17, and 18 of this Agreement.

**Unavoidable Delays**

26. If, by reason of 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 (providing that such order was not issued as the result of any act or fault of the Tenant or of anyone employed by it directly or indirectly), fire or explosion, flood, wind, water, earthquake, act of God, or other similar circumstances beyond the reasonable control of the Tenant and not avoidable by the exercise of reasonable efforts



or foresight by the Tenant, the Tenant is, in good faith and without default or neglect on its part, prevented or delayed in the commencement or substantial completion of construction of the Parking Lot or repair of the Parking Lot or any part of it which under the terms of this Agreement 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 Agreement 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. For the purposes of this section 25, the inability of the Tenant to meet its financial obligations under this Agreement 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 or completion of construction of the Parking Lot.

#### **Acknowledgments and Agreements of the Tenant**

27. The Tenant acknowledges and agrees that:
- (a) the City has given no representations or warranties with respect to the Lands, including with respect to the suitability of the Lands for the Tenant's intended use;
  - (b) the Tenant leases the Lands on an "as-is" basis and the City has not made any representations, warranties or agreements as to the condition of the Lands (including the subsurface nature or condition of any part of the Lands, or the environmental condition of the Lands);
  - (c) it is the sole responsibility of the Tenant to satisfy itself with respect to the condition of the Lands (including the subsurface nature or condition of the Lands and the environmental condition of the Lands), including by conducting any reports, tests, investigations, studies, audits and other inquiries as the Tenant, in its sole discretion, considers necessary in order to satisfy itself as to the condition of the Lands; and
  - (d) the City may register a *Builders Lien Act* "notice of interest" against title to the Lands in the land title office.

#### **Insurance Requirements**

28. The Tenant shall obtain and maintain during the Term insurance in accordance with the requirements of Schedule "B". For clarity, the insurance requirements set out in Schedule "B" 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 Agreement.

#### **Insurance Certificates**

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

#### **City May Insure**

30. If the Tenant fails to insure as required, the City may, after 30 days' notice to the Tenant, effect the insurance in the name and at the expense of the Tenant and the Tenant shall repay the City all costs reasonably incurred by the City within 21 days of receipt of an invoice. For clarity, the City has no obligation to obtain any insurance required to be maintained by the Tenant under this Agreement.

#### **Tenant Indemnity**

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

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

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

#### **Permission to Enter**

33. The City, by its authorized representative, may enter the Lands at all reasonable times for the purpose of inspecting the Lands and the Tenant's compliance with this Agreement and for the purpose of exercising its other rights under this Agreement.

#### **Payments Generally**

34. All payments, including interest, required to be made by the Tenant to the City under the terms of this Agreement shall be:

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

### **Interest**

35. All payments due by the Tenant to the City under this Agreement 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.

### **Workers Safety and Compensation**

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

### **Environmental Matters**

37. In section 37, the following definitions apply:
- (a) "Contaminants" means:
    - (i) as defined in the *Environmental Management Act* (British Columbia): any biomedical waste, contamination, effluent, pollution, recyclable material, refuse, hazardous waste or waste;
    - (ii) matter of any kind which is or may be harmful to safety or health or to the environment; or
    - (iii) matter of any kind the storage, manufacture, disposal, emission, discharge, treatment, generation, use, transport, release, remediation,

mitigation or removal of which is now or is at any time required, prohibited, controlled, regulated or licensed under any Environmental Law;

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

38. The Tenant covenants and agrees with the City to:

- (a) carry on and conduct its activities in, on, and from the Lands in compliance with all Environmental Laws;
- (b) not permit the storage, use, handling, manufacture, unloading, loading, treatment, disposal or introduction into the environment of any Contaminants in, on, under or from the Lands, except in compliance with all Environmental Laws;
- (c) immediately notify the City of the occurrence of any of the following and provide the City with copies of all relevant documentation in connection therewith:
  - (i) a release of Contaminants in, on or about the Lands, or any adjacent land;  
or
  - (ii) the receipt of any citation, directive, order, claim, litigation, investigation, proceeding, judgment, letter or other communication from any person that is related to any Environmental Law;
- (d) promptly provide to the City a copy of any environmental site assessment, audit, report or test results relating to the Lands conducted at any time by or for the Tenant;
- (e) if the City suspects that the Tenant has not complied with its obligations under this section, obtain from an independent environmental consultant approved by the City an environmental site assessment, audit, report or testing of the Lands and conduct or cause to be conducted any additional investigations that the environmental consultant may recommend, all in order to determine compliance of the Lands with Environmental Laws; and
- (f) promptly remove any Contaminants arising from the Tenant's use or occupation of the Lands in a manner that conforms to Environmental Laws governing their removal.

**No Assignment or Sublease**

39. The Tenant may not assign this Agreement or the benefit of this Agreement, 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 Agreement without the prior written consent of the City. The City may withhold such consents at its sole discretion and without reason.

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

40. If and whenever:
- (a) the Tenant fails to pay any rent or other amount owing under this Agreement when due, whether or not demanded by the City;
  - (b) the Tenant fails to observe or perform any of its obligations under this Agreement and the Tenant has not, within 7 days after notice from the City specifying the default, cured the default, or if the cure reasonably requires a longer period, the Tenant has not commenced to cure the default within the 7-day period and thereafter does not diligently pursue the cure of such default;
  - (c) re-entry is permitted under other terms of this Agreement;
  - (d) without the consent of the City, the Lands are vacant or the Tenant fails to operate its business within the Lands for 10 days or more;
  - (e) a receiver is appointed to control the conduct of the business of the Tenant on or from the Lands;
  - (f) the Tenant becomes bankrupt or insolvent or takes the benefit of any legislation in force for bankrupt or insolvent debtors;
  - (g) proceedings are instituted for the winding-up or termination of the corporate existence of the Tenant;
  - (h) without the consent of the City, the Tenant abandons or attempts to abandon the Lands or disposes of the bulk of its goods and chattels on the Lands;
  - (i) the Term or any of the goods or chattels on the Lands are at any time seized or taken in execution or attachment by any creditor of the Tenant or under bill of sale or chattel mortgage; or
  - (j) the Tenant permits a builders lien to arise in respect of the Lands and to remain registered against title to the Lands for more than 60 days,

then the City may re-enter and take possession of the Lands as though the Tenant or other occupant was holding over after the expiration of the Term and this Agreement may, at the City's option, be immediately terminated by notice left at the Lands.

**Right to Relet**

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

**Re-entry**

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

**State of Lands at Termination**

43. Upon the expiry or earlier termination of this Agreement, the Tenant shall leave the Lands in a good, neat and tidy condition and otherwise in the condition they are required to be kept by the Tenant during the Term under the provisions of this Agreement. 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 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 34. The City's rights and the Tenant's obligations under this section shall survive the expiry or earlier termination of this Agreement.

**Ownership of Improvements during Term and at Termination**

44. The City and the Tenant agree that the title to and ownership of all buildings, structures, and improvements on the Lands, including the Parking Lot, and all alterations, additions, changes, substitutions, or improvements thereto 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 them in the owner of the freehold. Upon the expiry or earlier termination of this Agreement, all buildings, structures, and improvements on the Lands, and all alterations, additions, changes, substitutions, or improvements thereto, shall, without compensation to the Tenant, become the permanent property of the City, though the City shall have the option of requiring or compelling the Tenant to remove the improvements in accordance with section 44 of this Agreement.

**Required Improvement Removal**

45. Notwithstanding anything to the contrary in this Agreement, the City may, by providing written notice to the Tenant within 21 days following termination or expiry of this Agreement, require that the Tenant remove any or 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 21 days of receipt of such notice, 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 Agreement.

**Remedies Cumulative**

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

**Holding Over**

47. If the Tenant continues to occupy the Lands after the expiration of the Term, then, without any further written agreement, the Tenant shall be a monthly lessee paying monthly rent in an amount determined by the City and subject always to the other provisions in this Agreement insofar as the same are applicable to a month-to-month tenancy and nothing shall preclude the City from taking action for recovery of possession of the Lands.

**Lease Not In Registrable Form**

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

**Waiver or Non-Action**

49. Waiver by the City of any breach by the Tenant of any of its obligations under this Agreement shall not be considered to be a waiver of any subsequent default or continuing default by the Tenant. Failure by the City to take any action in respect of any breach of

any Tenant obligation under this Agreement by the Tenant shall not be considered to be a waiver of such obligation.

### Conditions

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

### No Joint Venture

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

### Interpretation

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

### Notices

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



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

### **City Discretion**

54. Wherever in this Agreement 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.

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

55. 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 Agreement had not been fully executed and delivered.

### **Severance**

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

### **Binding on Successors**

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

### **Law of British Columbia**

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

**Counterparts**

59. This Agreement may be executed by the parties in counterpart, and the counterparts may be delivered in facsimile or electronic mail.

**Schedules**

60. The following are the Schedules to this agreement and form an integral part of this Agreement:

- Schedule "A" – Sketch Plan
- Schedule "B" – Insurance Requirements
- Schedule "C" – Wingspan Encroachment

**Entire Agreement**

61. The provisions in this Agreement 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 Agreement.

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

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

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

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

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

REGENCY AERO LEASE INC. by its authorized signatories:

GRANT STEVEN S

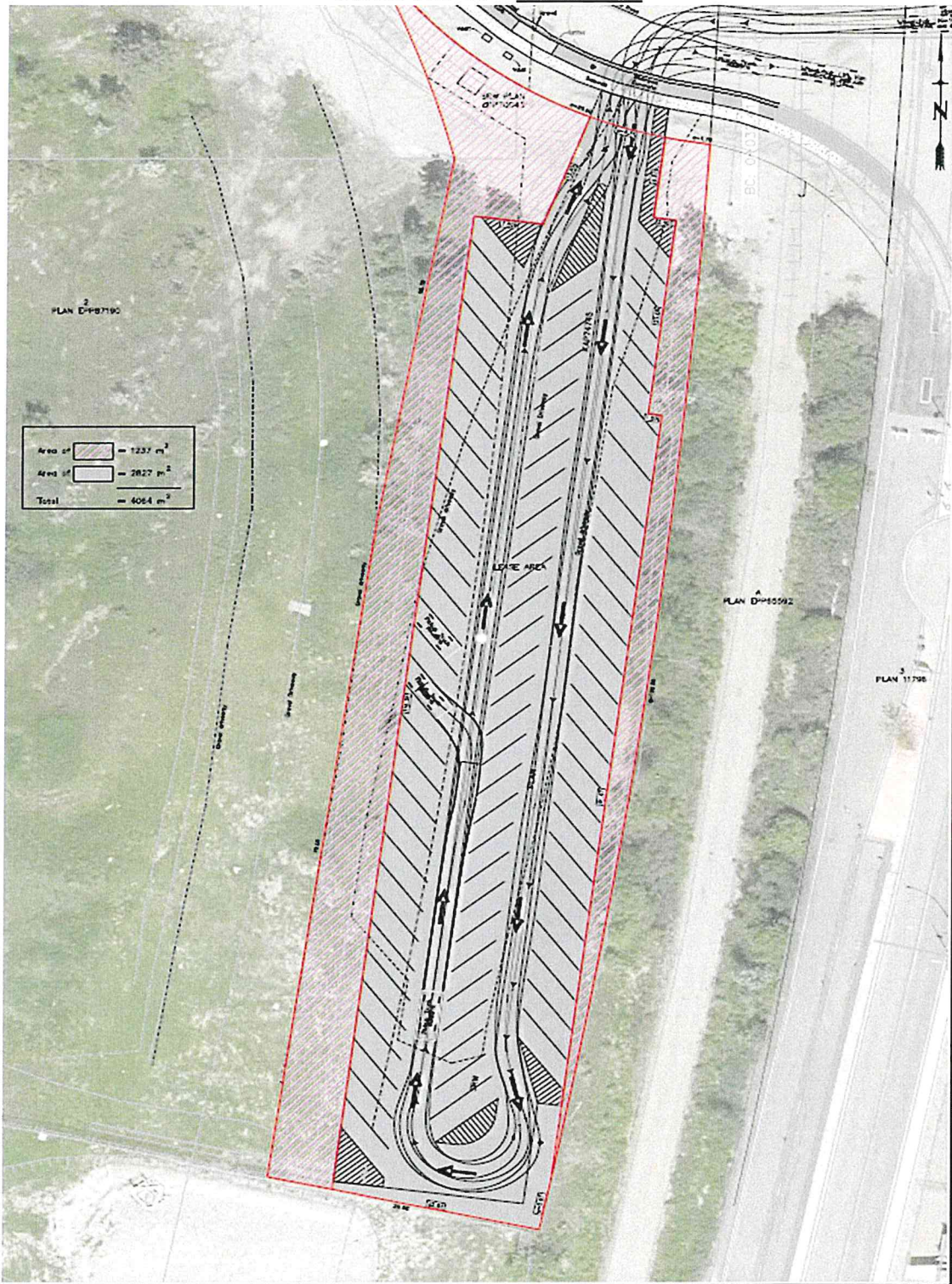
Name:



Name:

Date: JUNE 22/22

SCHEDULE "A" - Sketch Plan



SKETCH PLAN SHOWING LEASE AREA  
ON PART OF LOT 2, D.L. 32, AND OF  
SEC. 14, T.P., O.D.Y.D., PLAN EPP87190  
(5700 Airport Way, Kelowna)

13881 P-LEASE AREA 13881	RUNNALLS DENBY British Columbia Land Surveyors 2024 License # 13881 Kelowna, BC V1Y 6L4 Phone: (250) 860-1388 Fax: (250) 860-1387 Email: info@runnallsdenby.com	1:200 (22"x34") May 5, 2022 13881 P-Lease Area 13881	2
-----------------------------	---	---	---

## SCHEDULE "B"

Insurance RequirementsINSURANCE REQUIREMENTS**1. Tenant to Provide**

The Tenant shall procure and maintain, at its own expense and cost, the insurance policies listed in Article 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 of the Sublease Agreement 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 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 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 contractor's and agent's 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 effective 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 Sublease 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 Sublease 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, 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 shall not be held to waive or release the Tenant, or from any of the provisions of the Insurance Requirements or this Sublease Agreement, with respect to the liability of the Tenant otherwise. Any insurance deductible maintained by the Tenant 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 "B-1"

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:

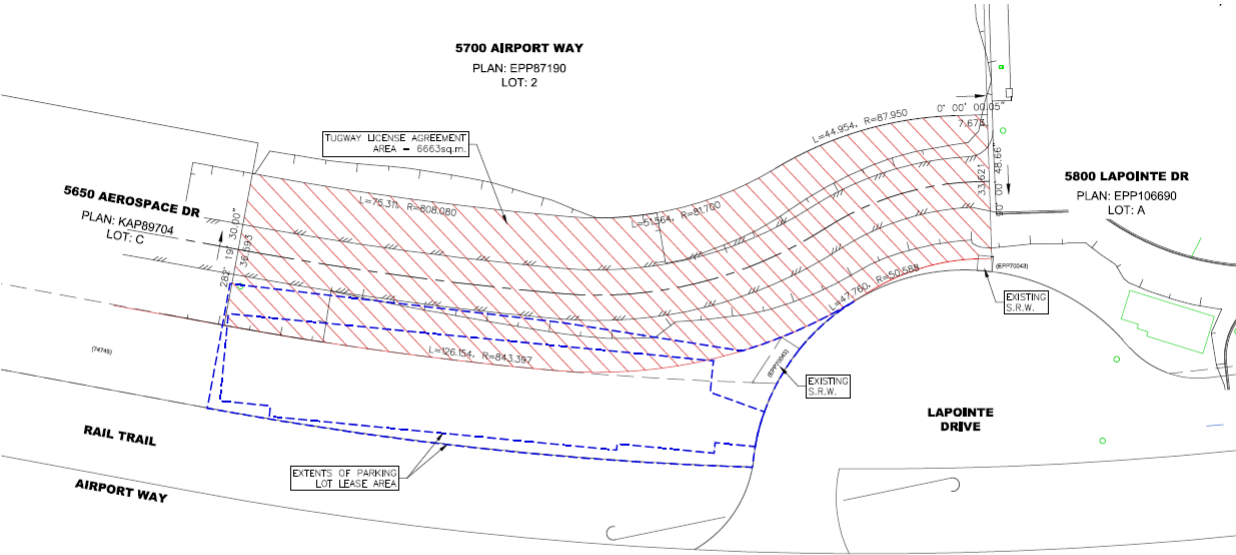
Location and nature of operation or contract to which this Certificate applies:

--

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

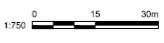


SCHEDULE "C"  
WINGSPAN ENCROACHMENT



**URBAN**  
SYSTEMS

ISSUED FOR  
INFORMATION  
JUNE 2021  
urbansystems.ca



**Client**  
CITY OF KELC  
CENTER FOR EXCELLI

**Revision Date**  
2022-06-01  
475A.0001.01