
Draft Airport Sublease (BLLP Revised)

1 message

Paul, Marlana <mpaul@brownleelaw.com>

Mon, Jul 4, 2022 at 8:48 AM

To: "'Toby Kliem' [REDACTED]"

Cc: "Markaj, Stela" <smarkaj@brownleelaw.com>

Good Morning Toby,

Attached is a revised copy of the Subleased based on our discussions as well as a few points from Quita. I apologize for not sending this Thursday. It was a very busy day as I prepared to leave for vacation.

I believe this should address the majority of what we discussed. I have also reformatted the version we previously provided as I believe the readability of this version is a bit better.

I also spoke with Ryan Payne last week and he advised that it is still the County and Town's expectation that insurance at \$5M be required from Tenants. He did note that RMA may be open to discussing the insurance requirements, so he requested that it may be best to set up a meeting with RMA to discuss the options.

This should serve as a good starting point for Quita's review. If she has any additional concerns, we can discuss them further and I can provide alternatives/options where appropriate.

I am out of the office this week, but will check my email intermittently should you have questions, etc.

Regards,

Marny

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THIS SUBLEASE made the ____ day of _____, 20_____.

BETWEEN:

HIGH RIVER REGIONAL AIRPORT LIMITED
(hereinafter referred to as the "HRRA")

AND

(hereinafter referred to as the "Tenant")

AIRPORT SUBLEASE

WHEREAS:

- A.** Pursuant to the Head Lease, the Landlord leased to the HRRA, and the HRRA leased from the Landlord, the Leased Premises;
- B.** The Subleased Premises forms part of the Leased Premises;
- C.** Pursuant to Section 3.9 of the Head Lease, the HRRA is entitled to sublease the Leased Premises, or any portion thereof, subject to the prior written consent of the Landlord; and
- D.** The HRRA has agreed to sublease to the Tenant, and the Tenant has agreed to sublease from the HRRA, the Subleased Premises in accordance with the terms, covenants and conditions contained herein.

NOW THEREFORE in consideration of the grant of leasehold interest, rents payable, and the mutual covenants contained within this Sublease, the parties hereby agree as follows:

ARTICLE 1 - DEFINITIONS

1.1 Definitions. In this Sublease the following terms have the following meanings:

- (a) "**Additional Rent**" means any amounts payable by the Tenant to the HRRA under or pursuant to this Sublease in addition to Base Rent;
- (b) "**Airport**" means the High River Regional Airport located on the Leased Premises and operated by the HRRA;
- (c) "**Base Rent**" means the annual rent payable by the Tenant to the HRRA pursuant to Section 4.2 of this Sublease.
- (d) "**Commencement Date**" means that date falling Fifteen (15) Days after the satisfaction or waiver of the final condition precedent contained within Section 2.1 of this Sublease;
- (e) "**Common Areas**" means those portions of the Leased Premises which the HRRA designates from time to time for the use by the Tenant and all other occupants of the Leased Premises;
- (f) "**Environmental Laws**" means any statutes, laws, regulations, orders, bylaws, standards, guidelines, codes of practice, permits and other lawful requirements of any governmental authority having jurisdiction over the Subleased Premises or the Project now or hereafter in force relating in any way to the environment, health, occupational health and safety, and the storage, transportation, treatment and disposal of Hazardous Substances, including the principles of common law and equity;

- (g) **"Force Majeure"** means any event causing a bona fide delay in the performance of any obligations under this Sublease (other than as a result of financial incapacity) and not caused by an act or omission of either party, or a person not at arms' length with such party, resulting from:
- (i) an inability to obtain materials, goods, equipment, services, utilities or labour;
 - (ii) any statute, law, bylaw, regulation, order in council, or order of any competent authority other than one of the parties;
 - (iii) an inability to procure any license, permit, permission, or authority necessary for the performance of such obligations, after every reasonable effort has been made to do so;
 - (iv) a strike, lockout, slowdown, or other combined action of workers; or
 - (v) an act of God;
- (h) **"Hazardous Substance"** means any substance which is defined as a contaminant or pollutant or as a hazardous or toxic substance under any Environmental Laws, or which is hazardous to persons or property and includes, without limiting the generality of the foregoing:
- (i) radioactive materials;
 - (ii) explosives;
 - (iii) any substance that, if added to any water, would degrade or alter or form part of a process of degradation or alteration of the quality of that water to the extent that it is detrimental to its use by man or by any animal, fish or plant;
 - (iv) any solid, liquid, gas or odour or combination of any of them that, if emitted into the air, would create or contribute to the creation of a condition of the air that:
 - (A) endangers the health, safety or welfare of persons or the health of animal life;
 - (B) interferes with normal enjoyment of life or property; or
 - (C) causes damage to plant life or to property;
 - (v) toxic substances including toxic wastes, polychlorinated biphenyl's, hydrocarbons, radon gas, asbestos, urea formaldehyde foam insulation;
- (i) **"Head Lease"** means that lease agreement between the Landlord and the HRRRA dated June 25, 2003, as amended;
- (j) **"Landlord"** means, collectively, Foothills County and The Town of High River;
- (k) **"Leased Premises"** means those premises leased to the HRRRA pursuant to the Head Lease;
- (l) **"Operating Costs"** means the total amount, without duplication, of all expenses paid or incurred, whether by the HRRRA or others on behalf of the HRRRA, related to the operation, maintenance and management of the Airport, including without restriction:
- (i) costs or expenses associated with the construction and maintenance of any access road or roads servicing the Leased Premises, and other maintenance of the Leased Premises; and

- (ii) cost or expenses to provide lighting, security, or other services to the Leased Premises as a whole;
- (m) **"Permitted Use"** means:
 - (i) the construction and maintenance of the Project;
 - (ii) uses and activities which are associated with aviation including the repair, maintenance, construction and operation of aircraft;
 - (iii) additional ancillary uses collateral to the above-noted primary uses including, without restriction, those uses set out within the Head Lease;

all in accordance with the provisions of this Sublease, the Head Lease and all applicable laws, regulations or bylaws affecting the Subleased Premises, and for no other purpose whatsoever unless expressly authorized in writing by the HRRRA;
- (n) **"Project"** means the construction and operation of a _____ and includes any other associated improvements upon the Subleased Premises;
- (o) **"Rent"** means the Base Rent, together with any other sums, amounts, costs or charges as may be required to be paid by the Tenant to the HRRRA pursuant to the terms of this Sublease;
- (p) **"Stipulated Rate"** means the Alberta Treasury Branches prime lending rate charged at its main branch in Edmonton, Alberta, plus 3%;
- (q) **"Sublease"** means this lease agreement, as amended from time to time in writing by agreement between the HRRRA and the Tenant;
- (r) **"Subleased Premises"** means all that portion of the Leased Premises referred to as airport lot _____ as outlined on the site diagram attached as Schedule "A" to this Sublease; and
- (s) **"Term"** means the term of this Sublease as set forth in Section 3.1 of this Sublease.

1.2 Capitalized Terms. Capitalized Terms not otherwise defined herein shall have the same meaning ascribed to them as contained in the Head Lease.

ARTICLE 2 – DEMISE & CONDITIONS PRECEDENT

2.1 Conditions Precedent. Notwithstanding the foregoing, the grant of the subleasehold estate to the Tenant, and all rights, privileges and obligations contained within this Sublease, are conditional upon the waiver or satisfaction of each of the following conditions precedent:

- (a) written consent to this Sublease from the Landlord, including as to the use of the Subleased Premises by the Tenant, and
- (b) the Tenant applying for and obtaining a development permit respecting the Project;

all within Ninety (90) Days from the date indicated on page 1 of this Sublease, failing which, and unless said conditional period is extended as agreed upon in writing by both the HRRRA and the Tenant, this Sublease shall be null and void. The conditions precedent cannot be waived by either party, and must be satisfied.

2.3 Demise. Subject to the satisfaction of the true condition precedent contained within Section 2.1 above, the HRRRA hereby subleases to the Tenant, and the Tenant hereby subleases from the HRRRA, the Subleased Premises for the Term and upon and subject to:

- (a) the terms, covenants and conditions contained within the Head Lease and the rights of the Landlord thereunder;
- (b) any existing encumbrance, registration or instrument registered against title to the Leased Premises; and
- (c) the terms, covenants and conditions contained within this Sublease.

2.4 "As Is, Where Is". The HRRRA shall provide, and the Tenant shall accept, the Subleased Premises in an "as is, where is" condition, including without restriction with respect to topography, vegetation, geotechnical and hydrological conditions.

2.5 Satisfactory Condition. Without limiting the foregoing, the Tenant agrees:

- (a) that no warranties or representations whatsoever respecting the Subleased Premises (including, without restriction, the condition or quality of the Subleased Premises, or its suitability for the purposes and use intended by the Tenant) have been made by the HRRRA, the Landlord, or its agents or employees; and
- (b) that the Tenant has examined the Subleased Premises and as at the date of this Sublease the Subleased Premises are in good order, ready for occupancy and in satisfactory condition.

2.6 Common Areas. In addition to the exclusive use of the Subleased Premises, the Tenant shall be entitled to non-exclusive use of the Common Areas in common with all other occupants of the Leased Premises, subject to the reasonable rules and regulations established from time to time by the HRRRA for the orderly and safe use and enjoyment of the Common Areas.

2.7 Access. The HRRRA grants to the Tenant a non-exclusive right to utilize the driveways and roadways contained within the Leased Premises for the purpose of pedestrian and vehicular access to and from the Subleased Premises by the Tenant and its agents, contractors, employees, servants, and invitees subject to the reasonable restrictions imposed by the HRRRA from time to time.

2.8 HRRRA Right of Entry. The Tenant covenants to abide by the rights of access and inspection provided to the Landlord pursuant to the Head Lease. The Tenant further covenants that the HRRRA may enter the Subleased Premises upon Twenty Four (24) Hours' notice to Tenant and at reasonable times to inspect the Subleased Premises for the purpose of determining whether the Tenant is in compliance with the requirements and covenants of this Sublease.

ARTICLE 3 - TERM OF SUBLEASE

3.1 Term. The term of this Sublease shall be for Twenty (20) Years commencing on the Commencement Date, and expiring as of the end of the day on the date falling on the Twentieth (20th) Anniversary of the Commencement Date, subject always to earlier termination or renewal of this Sublease and the Term as provided in this Sublease.

3.2 Options to Renew. Provided that this Sublease remains in good standing and the Tenant is not in default of any of its obligations under this Sublease, the Tenant shall have Three (3) options to renew this Sublease for Three (3) further renewals terms of Ten (10) Years, subject to the following provisions:

- (a) there shall be successively one less option to extend;
- (b) this option shall be exercised by the Tenant by delivering to the HRRRA written notice of the Tenant's intention to exercise the option for each renewal term as may be provided in this Sublease;
- (a) such written notice of the option being exercised shall be delivered to the HRRRA no earlier than

Twelve (12) Months before and no later than Six (6) Months before the last day of the Term or any renewal term, as the case may be;

- (b) upon the receipt of such written notice by the HRRRA, the Term shall be extended for the period(s) specified, subject to all of the terms, conditions, covenants and provisos contained in this Sublease, save and except that the Base Rent charged for any renewal period shall be at the HRRRA's sole discretion, such Base Rent not to exceed the Base Rent chargeable for the period immediately prior to such renewal, plus 10%.

It is understood and agreed that notwithstanding any such option to renew as set for the above, any renewal term shall not exceed the balance of the term of the Head Lease, less one day. To the extent that the term of the Head Lease must be renewed in order for the Tenant's option to renew contained within this Sublease to be effective, the renewal of the Head Lease shall be a condition precedent to the Tenant's option to renew this Sublease and the Tenant's ability to exercise its option to renew.

3.3 Termination of Head Lease. This Sublease is subject and subordinate to the Head Lease, its remaining term, and any provisions of the Head Lease which may contemplate or otherwise permit a termination prior to the expiration of the term of either the Head Lease or the Sublease including, without restriction, termination as a result of substantial damage to or destruction of the Subleased Premises, the Leased Premises, and the Lands. The Tenant acknowledges having received a complete copy of the Head Lease from the HRRRA.

ARTICLE 4 – RENT

4.1 Initial Fee. On or before the Commencement Date, the Tenant shall pay to the HRRRA an Initial Fee in the amount of \$ [REDACTED] for the initial development of the Subleased Premises including utility installation and lot preparation. The Initial Fee will also include any applicable prime location fee payable by the Tenant to the HRRRA.

4.2 Base Rent. The Tenant shall pay to the HRRRA an annual Base Rent in the amount of \$ [REDACTED] for the first calendar year of the Term, such Base Rent to be payable by the Tenant in advance of the Commencement Date. Thereafter, the Tenant shall pay to the HRRRA, at the HRRRA's sole discretion, such base rent not to exceed the Base Rent chargeable for the previous calendar year, plus 10%, on or before January 1st of each year of the Term.

4.3 Additional Rent. The Tenant shall pay, in each and every year during the Term, its proportionate share of the Operating Costs, calculated on the basis of the ratio of the frontal footage of the Subleased Premises to the Leased Premises as a whole and applied against the total Operating Costs and expenses of the Leased Premises. The Additional Rent shall be due at the same time as Base Rent.

4.4 Tenant Costs. The Tenant shall, in addition to the above, be responsible for any costs or expensed incurred by the Landlord or the HRRRA in respect of the Subleased Premises, and the Tenant's use, occupation, maintenance and repair of the Subleased Premises, as contemplated within this Sublease including, without restriction:

- (a) costs of additional services require by the Tenant, or required at or within the Subleased Premises, whether provided by the Landlord or the HRRRA, either at the request of the Tenant or due to the occupation and use of the Subleased Premises by the Tenant;
- (b) costs or expenses imposed by the Landlord upon either the HRRRA or the Tenant by virtue of the existence of this Sublease, any review or approval thereof, or any review or approval of the use, occupation, or alternation of the Subleased Premises by the Tenant; and
- (c) costs or expenses imposed by the Landlord upon either the HRRRA or the Tenant by virtue of signage required or otherwise provided in respect of the Tenant including, without restriction, the review, approval, amendment, generation, or maintenance of any such signage;

all of which shall be payable upon demand or presentation of invoice therefor and shall be deemed to be, and be collectable in the same manner as Rent payable under this Sublease.

4.5 Extraordinary Expenditures. Furthermore, the HRRRA may, at its sole discretion, impose on the Tenant, as well as other occupants within the Leased Premises, any necessary extraordinary expenditures for the Airport. If, at the HRRRA's sole discretion, those extraordinary expenditures are undertaken, the Tenant shall pay its proportionate share of any extraordinary expenditure, calculated on the basis of the ratio of the frontal footage of the Subleased Premises to the Leased Premises as a whole and applied against the total extraordinary expenditure.

4.6 Late Payment Interest. Should the Tenant default in the prompt payment of any sum due hereunder, the HRRRA shall have the same rights and remedies upon such default as if the sum were Rent in arrears, and interest shall accrue at a rate of 12% per annum, calculated daily until all late payments are received.

4.7 Net Lease. The HRRRA and the Tenant hereby covenant and agree that for all purposes that this Sublease shall be a net lease for the HRRRA, and that save and except for as specifically set forth within this Sublease the HRRRA shall not be responsible for any cost, charge, expense or outlay of any nature whatsoever arising from or relating to the Subleased Premises, the Project, or any impositions, costs and expenses of every nature and kind relating to the Subleased Premises and the Project whether or not specifically provided for within this Sublease. All such costs shall be the responsibility of the Tenant to pay promptly when due. To the extent that any such costs are paid by the HRRRA, the Tenant shall reimburse the HRRRA immediately upon demand, such sums being collectable in the same manner as rent.

ARTICLE 5 – TAXES & UTILITIES

5.1 The Tenant's Taxes. The Tenant shall pay, when and if they shall become due and payable, all real estate taxes, assessments, rates and charges and other government impositions, general or special, ordinary or extraordinary, foreseen or unforeseen, of every kind, including assessments for local or public improvements and school taxes which may at any time during the Term be imposed, assessed or levied, in respect of the Project and the Tenant's subleasehold interest in the Subleased Premises and all fixtures and improvements from time to time located thereon, or which, howsoever imposed, might constitute a lien on the Project or any part thereof or a liability of the HRRRA.

5.2 Goods and Services Tax. The Tenant shall be responsible for the payment of any and all goods and services tax pursuant to the *Excise Tax Act* (Canada), or other value-added tax which may be imposed in place of or in addition to the goods and services tax, which may become payable in respect of any sums to be paid pursuant to the terms of this Sublease.

5.3 Utilities. The Tenant shall pay promptly when due any rates, levies and charges (including installation charges) for water, gas, sewer, electricity, telephone, cable, telecommunication, and any and all other services and utilities supplied to or used within the Subleased Premises, and shall indemnify the HRRRA against any and all liability or damages pertaining thereto.

5.4 Evidence of Payments. The Tenant shall produce to the HRRRA, within Thirty (30) Days of receipt of a written request from the HRRRA, satisfactory evidence of the due payment by the Tenant of all payments required to be made by the Tenant under this Sublease including, without restriction, payment of utilities and the taxes.

ARTICLE 6– THE PROJECT

6.1 Construction of the Project. The Tenant shall be responsible for the design, construction, and commissioning of the Project upon the Subleased Premises, including the supervision of any and all design and construction activities in accordance with the terms of this Sublease.

6.2 Completion of Construction. The Tenant shall complete construction of the Project to the point of occupancy and use within One (1) Year of the Commencement Date.

6.3 Builders' Liens. The Tenant covenants not to permit any builders' or other liens to be registered against either the HRRRA's leasehold title to the Leased Premises, or the Tenant's subleasehold interest pursuant to this Sublease. Upon the registration of such a lien on any of the said titles, the Tenant shall obtain a discharge thereof

within Thirty (30) Days after the Tenant has notice of the lien.

6.4 Liability for Liens. Notwithstanding anything contained within this Sublease, the HRRRA and the Tenant hereby covenant and agree that the HRRRA shall not be considered to be an owner for the purposes of the attachment of builders' liens. Without limiting the generality of the foregoing, nothing contained within this Sublease shall be interpreted as an admission of liability on the part of the HRRRA for the performance of any work or furnishing of any materials in relation to any improvements made to the Subleased Premises.

ARTICLE 7- QUIET ENJOYMENT

7.2 The Tenant's Quiet Enjoyment. Subject to the terms, covenants and conditions contained in this Sublease, the HRRRA covenants that upon duly performing and observing all its covenants and obligations contained in this Sublease the Tenant shall and may peaceably possess and enjoy the Subleased Premises for the Term without any disturbance or interruption from the HRRRA.

ARTICLE 8 – USE AND OCCUPANCY

8.1 Permitted Use. The Subleased Premises shall be used continuously throughout the Term by the Tenant for the Permitted Use, and for no other use whatsoever. The Tenant shall not carry on nor permit to be carried on the Subleased Premises any other trade or business without prior written consent of the HRRRA and the Landlord.

8.2 No Nuisance. The Tenant shall not at any time during the Term, use, exercise or carry on or permit or suffer to be used, exercised or carried on, in, about or upon the Subleased Premises or any part thereof any waste or any offensive act, trade, business, occupation or calling, and no act, matter or thing whatsoever shall at any time during the Term or renewal thereof, be done in, about or upon the Subleased Premises or any part thereof which shall be inconsistent or incompatible with the intended use of the Subleased Premises, or which may be or grow to the annoyance, nuisance, damage or disturbance of the occupants and other users of the Subleased Premises, as well as occupants of lands and property owners in the vicinity of the Subleased Premises.

8.3 Comply with Laws and Regulations. The Tenant will promptly comply with and conform to the requirements of every applicable law, bylaw, regulation ordinance and order at any time or from time to time in force affecting the Tenant, the Subleased Premises, the Permitted Use, the Project or the machinery, equipment and other facilities located in the Subleased Premises.

8.4 Caretaking. All cleaning and caretaking of the Subleased Premises shall be carried out by the Tenant at the Tenant's expense including, without restriction, the picking up and removal of all trash and litter from the Subleased Premises on a regular basis and as and when necessary to maintain a clean and tidy condition.

8.5 Alterations and Improvements. Subject always to the restrictions and requirements contained in the Head Lease, the Tenant will not, without the prior written consent of the HRRRA, construct, install, erect or permit to be constructed, or erected upon or within the Subleased Premises any alteration, addition, partition, fence, improvement or other structure. If the Tenant desires to construct, install, erect or permit to be constructed, or erected any alteration, addition, partition, fence, improvement or other structure upon or within the Subleased Premises, the Tenant shall, at the time of its application for the HRRRA's consent, inform the HRRRA and furnish plans and specifications of the necessary work and if the HRRRA shall consent to such work being done, the HRRRA shall have the right impose any reasonable conditions upon such consent which the HRRRA may deem necessary. In the event any alteration, addition, improvement or installation has been made without the written consent of the HRRRA, the HRRRA may require the Tenant to restore the Subleased Premises to such an extent as the HRRRA deems expedient

8.6 Permits, Approvals, Etc. Notwithstanding anything contained within this Sublease, the Tenant shall promptly apply for and obtain requisite licenses, permits and approvals with respect to the construction of any improvements on the Subleased Premises by the Tenant, the Permitted Use, and otherwise applicable to the Tenant's occupancy of the Subleased Premises. The Tenant shall not commence the construction of any improvements until such time as it has provided the HRRRA with copies of all necessary permits and other approvals.

8.7 Drainage. Throughout the Term, the Tenant shall be responsible for surface water management on the Subleased Premises and shall, at all, times, direct the flow of surface water away from building foundations and toward Airport storm drainage systems without adversely affecting adjacent properties or Airport infrastructure and shall indemnify the HRRRA against any and all liability or damages pertaining thereto.

8.8 Tenant's Environmental Obligations. The Tenant shall utilize and occupy the Subleased Premises in a manner that ensures the Subleased Premises are maintained in compliance with all Environmental Laws. The Tenant shall not spill or discharge or permit to be spilled or discharged, intentionally or otherwise any Hazardous Substances or any other deleterious, noxious, contaminating or poisonous substances or materials onto the Subleased Premises or into the surface drainage improvements located on or under the Subleased Premises, and shall store and use and ensure the storage and use of Hazardous Substances in strict compliance with Environmental Laws.

8.9 Maintenance and Repair. During the Term, the Tenant covenants to maintain, repair and keep the Subleased Premises in such good order, condition and repair as would a careful and prudent owner of property similar in size, quality, construction, age, use and usership (reasonable wear and tear excepted) and to keep the same fully usable for the purposes for which they were constructed and so as to meet the requirements of municipal or governmental authorities having jurisdiction, as determined by the HRRRA acting reasonably. The Tenant's obligations shall include the requirement to periodically repair, reconstruct and replace any portions of the improvements because of age, obsolescence, wear and tear, and inefficiency.

ARTICLE 9 – ASSIGNMENT, SUBLETTING, ETC.

9.1 Restricted Assignment, Subletting, Etc. The Tenant shall not assign this Sublease in whole or in part, nor sublet all or any portion of the Subleased Premises, nor part with possession of the whole of the Subleased Premises, or any portion thereof, nor mortgage by either specific or floating charge or encumber in any way whatsoever this Sublease or the Subleased Premises or any part thereof, without the written consent of the HRRRA's and the Landlord (such consent not to be unreasonably withheld or delayed). For clarity, any change in the voting control of the Tenant shall be deemed to be an assignment for the purposes of this Sublease.

9.2 HRRRA Consent. The HRRRA shall provide its response to the Tenant's requested approvals or consents (approval/consent, and/or requirements for provision of requested approval/consent, as the case may be) as soon as reasonably practical and in any event within Thirty (30) Days of the receipt of the complete submission by the Tenant of information required in order to satisfy the conditions of the HRRRA's consent, as established by the HRRRA from time to time. If the HRRRA consents to an assignment of this Sublease, or a subletting of the Subleased Premises, the HRRRA's form shall be prepared by the HRRRA or its solicitors and all of the HRRRA's costs with respect thereto shall be borne by the Tenant.

ARTICLE 10 – INSURANCE AND INDEMNITY

10.1 Tenant's Insurance. The Tenant shall purchase and maintain in force during the Term and any renewal term the following insurance coverage satisfactory to the HRRRA:

- (a) during any periods of construction upon the Subleased Premises, property insurance in an amount not less than One Hundred (100%) Percent of the replacement value of the improvements upon the Subleased Premises, providing coverage by way of a "builder's all risk" policy, such policy to be satisfactory to the HRRRA acting reasonably;
- (b) comprehensive general liability insurance against, among other things, claims for personal injury, death, property damage, or third party or public liability claims arising from any one accident or occurrence upon, in or about the Subleased Premises of and from any cause to an amount of not less than Five Million (\$5,000,000.00) Dollars (or from time to time such greater amounts as are sufficient, as determined from time to time by the HRRRA acting reasonably, to afford equivalent protection against all such claims) in respect of any one accident or occurrence; such general liability insurance coverage to be satisfactory to the HRRRA acting reasonably;

- (c) broad form comprehensive boiler and machinery insurance on a blanket repair and replacement basis with limits for each accident in an amount not less than the full replacement costs of all property owned by the Tenant and located in or upon the Subleased Premises; and
- (d) from and after completion of construction, property insurance on the Subleased Premises and all fixtures and improvements within the Subleased Premises from loss or damage caused by:
 - (i) fire and other perils as may from time to time be included in fire insurance policies generally available to owners of commercial premises in the Province of Alberta; and
 - (ii) risks normally insured against by owners of premises in the Province of Alberta for a development of the size, construction, location and use similar to the Project.

Such insurance shall be for the full replacement value of the Project and all fixtures and improvements within the Subleased Premises, and to be satisfactory to the HRRRA acting reasonably.

Each insurance policy referred to in this Section 10.1 shall name the Landlord and the HRRRA and any person, firm or corporation designated by the HRRRA as additional insureds or loss payees, as applicable, and as their interest may appear and such policies will contain:

- (a) a waiver of any subrogation rights which the Tenant's insurers may have against the Landlord and the HRRRA;
- (b) a severability of interests clause or a cross liability clause;
- (c) a clause stating that the Tenant's insurance policy will be considered as the primary insurance and shall not call into contribution any other insurance that may be available to the HRRRA or the Landlord; and
- (d) an undertaking by the insurers to notify the HRRRA in writing of any cancellation of any policy, not less than Thirty (30) Days prior to the cancellation thereof.

All policies shall be taken out with insurers and shall be in a form acceptable to the HRRRA acting reasonably. The Tenant agrees that certificates of insurance acceptable to the HRRRA or if required by the HRRRA, certified copies of each such insurance policy, will be delivered to the HRRRA as soon as practicable after the placing of the required insurance.

10.2 Indemnity to the HRRRA. The Tenant shall indemnify and save harmless the HRRRA from any and all liabilities, damages, expenses, costs, fees (including all legal and other professional costs on a solicitor and his own client full indemnity basis), claims, suits or actions to the extent arising out of the use and occupation of the Subleased Premises by the Tenant and its invitees including, without restriction:

- (a) any breach, violation, or non-performance of any covenant, condition or agreement in this Sublease on the part of the Tenant to be fulfilled, kept, observed and performed;
- (b) any damage to property occasioned by the use or occupation of the Subleased Premises or any part thereof by the Tenant, any occupant of the Subleased Premises, or any of their respective invitees;
- (c) any injury to any person or persons including death resulting at any time arising in connection with or out of the use or occupation of the Subleased Premises or any part thereof by the Tenant, any occupant of the Subleased Premises, or any of their respective invitees;
- (d) any act or omission of the Tenant, occupants of the Subleased Premises, or their respective agents, employees, licensees, servants, invitees or other persons from time to time in, on or about the

Subleased Premises; and

- (e) any deductible payable by the HRRRA as a result of any insurance claim made against the insurance policies maintained by the HRRRA to the extent arising from or out of the use and occupation of the Subleased Premises by the Tenant and its invitees, and the construction, operation, maintenance, repair and replacement of the Project by the Tenant.

This indemnity shall specifically exclude any and all such claims, costs and expenses arising solely from the negligence of the HRRRA, or those for whose actions the HRRRA is legally responsible for. This indemnity shall survive the expiry or earlier termination of this Sublease.

ARTICLE 11 – DAMAGE AND DESTRUCTION

11.1 Damage or Destruction of Project. In the event that the Project is damaged or destroyed by any cause whatsoever, the Tenant shall promptly repair such damage subject to the following provisions:

- (a) if, in the reasonable opinion of the Tenant the Project cannot be rebuilt or made fit for the purposes of the Tenant within Eighteen (18) Months of the damage or destruction, the Tenant may, at its option, terminate this Sublease by giving the HRRRA Six (6) Months' notice of termination and the Tenant shall deliver up possession of the Subleased Premises to the HRRRA in the condition required under the terms of this Sublease on or before the expiry of such Six (6) Months; and
- (b) if, in the reasonable opinion of the Tenant, no less than Fifty (50%) Percent of the Project is rendered unusable and requires reconstruction, the Tenant may, at its option, terminate this Sublease by giving the HRRRA Six (6) Months' notice of termination and the Tenant shall deliver up possession of the Subleased Premises to the HRRRA in the condition required under the terms of this Sublease on or before the expiry of such Six (6) Months.

11.2 Distribution of Insurance Proceeds. Notwithstanding anything contained within this Sublease, the proceeds of any insurance received by the HRRRA and the Tenant as a result of the damage or destruction of the Project, or a portion thereof, shall be dealt with as follows:

- (a) subject to the provisions of Section 11.1 of this Sublease, applied to the costs of repairing, replacing, or reconstructing the Project; and
- (b) in the event of a termination pursuant to Section 11.1 of this Sublease, the proceeds shall be applied in the following order:
 - (i) the payment in full of any and all costs incurred in relation to the demolition of the Project and restoration of the Subleased Premises to a condition substantially similar to that which existed prior to the construction of the Project; and
 - (ii) any remaining portion of the insurance proceeds shall be distributed to the Tenant and the HRRRA as their respective interests may appear.

11.3 Notice of Accidents, Defects or Damages. The Tenant shall give the HRRRA prompt notice of any accident to or defect in the Subleased Premises or of any damage or injury to the Subleased Premises or to any person therein howsoever caused, provided that nothing herein shall be construed so as to require repairs to be made by the HRRRA except as expressly provided in this Sublease.

ARTICLE 12 – DEFAULT BY THE TENANT AND TERMINATION

12.1 Events of Default. Each and every of the following events shall constitute an event of default (hereinafter referred to as an "Event of Default"):

- (a) if the Tenant fails to make any payment, in whole or in part, of any amount payable to the HRRAs when due as provided in this Sublease, and the Tenant fails to remedy such failure within Five (5) Days from the date of receipt of written notice from the HRRAs requiring that the Tenant cure such failure;
- (b) if the Tenant makes an assignment of its assets for the benefit of its creditors, makes a proposal to its creditors under any bankruptcy or insolvency legislation of any jurisdiction;
- (c) if a petition in bankruptcy is filed and presented against the Tenant, or if a receiver, receiver and manager, custodian or similar agent is appointed or takes possession of any property or business of the Tenant;
- (d) if the Tenant defaults under any mortgage of encumbrance charging this Sublease, the Project, or the subleasehold titled created by this Sublease, and such default results in the applicable mortgagee or encumbrance taking possession or control over the Development;
- (e) if the interest of the Tenant in the Project becomes liable to be taken or sold under any form of execution, writ of enforcement, or other like process;
- (f) if the Tenant ceases to carry on the Permitted Use;
- (g) if the Tenant neglects or fails to observe, perform or comply with any of its obligations pursuant to this Sublease (other than those contained within Section 6.2 of this Sublease), howsoever arising, and fails to remedy such default within Thirty (30) Days from the date of receipt of written notice from the HRRAs requiring that the Tenant cure the default (provided always that in the event that the default is not reasonably capable of being cured within the required time period, the Tenant shall not be in default unless the Tenant fails to commence remedying the default within the required time period, or thereafter fails to continuously pursue the remedying of the default); or
- (h) if the Tenant fails to commence or complete construction of the Project as and when required under this Sublease.

12.2 Option to Terminate. Upon the occurrence of an Event of Default, in addition to any and all other rights and remedies available to HRRAs the HRRAs may terminate this Sublease by delivery of notice in writing to that effect to the Tenant. Such termination shall not limit in any way the HRRAs' recourse to any remedies available to it at law, equity or otherwise.

12.3 Collection of Costs. In addition to any other rights available to the HRRAs pursuant to this Sublease, the HRRAs shall be entitled to collect from the Tenant the following costs as rent:

- (a) all payments made by the HRRAs or costs incurred by the HRRAs which ought to have been paid or incurred by the Tenant, or for which the HRRAs is entitled to be paid or to be reimbursed by the Tenant pursuant to the terms of this Sublease;
- (b) all disbursements and costs (including legal and other professional costs on a solicitor and his own client full indemnity basis) relating to any failure to observe or perform the obligations of the Tenant under this Sublease, and all fees and costs related to recovery or collection of such sums or the enforcement of the terms of this Sublease generally; and
- (c) interest at the Stipulated Rate on amounts due under this Sublease from the date they are due to the date of payment in full to the HRRAs.

12.4 Force Majeure. Whenever and to the extent that either the HRRAs or the Tenant shall be unable to perform, or shall be delayed or restricted in the full performance of, any obligation within this Sublease (other than any obligation to pay Rent or any other amount contemplated under this Sublease) by reason of an event of Force Majeure,

such party shall, so long as any such impediment exists, be relieved from the performance of such obligation to the extent restricted or prevented by that event of Force Majeure (to a maximum of One Hundred (180) Days), and the other party shall not be entitled to compensation for any damage, inconvenience, nuisance or discomfort caused by such delayed or restricted performance to the extent so relieved.

ARTICLE 13 – HRRRA'S PERFORMANCE & REMEDIES

13.1 HRRRA May Perform the Tenant's Covenants. If the Tenant shall fail to perform or cause to be performed any of the covenants or obligations of the Tenant in this Sublease contained on the part of the Tenant to be observed or performed, the HRRRA shall have the right, but shall not be obligated, to perform or cause the same to be performed, and to do or cause not to be done such things as may be necessary or incidental thereto, including without limiting the foregoing, the right to make repairs, installations, erections and expend monies, and all payments, expenses, costs, charges, fees, including all legal fees on a solicitor and his own client full indemnity basis, and disbursements incurred or paid by or on behalf of the HRRRA in respect thereof shall be immediately due and payable to the HRRRA as rent.

13.2 Overlooking and Condoning. Any condoning, excusing or overlooking by either the HRRRA or the Tenant of any default, breach or non-observance by the Tenant or the HRRRA, respectively, at any time or times in respect of any covenant, proviso or condition contained in this Sublease shall not operate as a waiver of the HRRRA's or Tenant's rights under this Sublease in respect of any such default, breach or non-observance nor so as to defeat or affect in any way the rights of the HRRRA or the Tenant in respect of any subsequent default, breach or non-observance.

13.3 Remedies Generally. Mention in this Sublease of any particular remedy of the HRRRA in respect of the default by the Tenant does not preclude the HRRRA from any other remedy in respect of any such default, whether available at law or in equity or by statute or expressly provided for in this Sublease. No remedy shall be exclusive or dependent upon any other remedy, but the HRRRA may from time to time exercise any one of more of such remedies generally or in combination, such remedies being cumulative and not alternative.

ARTICLE 14 – RESPONSIBILITY

14.1 Theft. The HRRRA shall not be liable for the theft of any property at any time in or on the Subleased Premises. The Tenant acknowledges that it is aware that the liability of the Landlord is limited pursuant to the Head Lease.

14.2 Personal Injury. The HRRRA shall not be liable for any injuries or death, or any losses or damages caused to any individual while within the Subleased Premises as a result of or in any way arising out of the occupation or use of the Subleased Premises by the Tenant or any of its invitees. The Tenant acknowledges that it is aware that the liability of the Landlord is limited pursuant to the Head Lease.

ARTICLE 15 – OWNERSHIP OF IMPROVEMENTS

15.1 Ownership during Term. Unless and until otherwise agreed to or provided within this Sublease, the Project and all improvements presently existing on the Subleased Premises and all improvements hereafter constructed on the Subleased Premises shall at all times during the Term remain and vest, as the case may be, in the name of the Tenant.

15.2 Ownership upon Expiry or Termination. Upon the expiration or other termination of this Sublease, the Project and all alterations, additions, partitions, improvements or structures which may have been made or installed by the Tenant upon or within the Subleased Premises, (whether with or without the HRRRA's consent) and which are attached to the Subleased Premises shall remain upon and be surrendered with the Subleased Premises as a part of the Subleased Premises without disturbance, molestation or injury and such be and become the absolute property of the HRRRA without compensation to the Tenant.

15.3 Removal and Restoration. Notwithstanding Section 15.2, the HRRRA may, by written notice to the Tenant prior to or after the termination or expiration of the Term, require the removal at the expense of the Tenant of any and all alterations, additions, partitions, improvements or structures on the Subleased Premises and/or the restoration of the

Subleased Premises to the same condition that it was in before any alterations, additions, partitions, improvements or structures were made, erected or installed, such work to be done by or at the direction of the HRRRA.

15.4 Removal of Fixtures. Notwithstanding Section 15.2, but subject to Sections 8.5 and 15.3, and provided the Tenant has paid the Rent and performed and observed all the covenants and conditions contained in this Sublease, the Tenant shall at the expiration or other sooner termination of this Sublease have the right to remove its trade fixtures, but shall make good the damage caused to the Subleased Premises which may result from such installation and removal including the restoration of the Subleased Premises to the same condition that it was in before any improvement, alteration or fixture was made, erected or installed, such work to be done by or at the direction of the HRRRA.

ARTICLE 16 – GENERAL

16.1 Expropriation. In the event that the whole or any part of the Subleased Premises or the Subleased Premises shall be taken by, or conveyed to, federal, provincial, county, city or other authority for public use or under any statute or by right of eminent domain:

- (a) without in any way restricting the Tenant's right to claim compensation from the public authority exercising the right of expropriation and pursuing its claim under the relevant law or legislation, the HRRRA shall not be liable to the Tenant under this Sublease for damage, loss of use, or other impact suffered by the Tenant as a result of such taking;
- (b) subject to the following provisions, this Sublease shall continue in full force and effect after the completion of any such taking, with appropriate amendments as required to accommodate the impact of the taking including, without restriction, amendments to the description of the Subleased Premises and the corresponding adjustment of Rent; and
- (c) if such taking in the opinion of the Tenant renders the remainder of the Subleased Premises and the Subleased Premises unusable for the purposes of this Sublease, the Tenant shall have the option to terminate this Sublease upon Sixty (60) Days written notice to the Tenant, provided always that such option is exercised not later than One Hundred and Twenty Days after the completion of the taking.

16.2 Certificate of Status. Whenever requested from time to time by the HRRRA the Tenant shall promptly execute and deliver, to the party requesting the same, a certificate or acknowledgement as to the status and validity of this Sublease and such other information as may reasonably be required.

16.3 Notices. Whether or not stipulated in this Sublease, all notices, communication, requests and statements (the "Notice") required or permitted under this Sublease shall be in writing. Notice shall be served by one of the following means:

- (a) personally, by delivering it to the party on whom it is to be served at the address set out in this Sublease, provided such delivery shall be during normal business hours. Personally delivered Notice shall be deemed received when actually delivered as aforesaid; or
- (b) by telecopier or by any other like method by which a written or recorded message may be sent, directed to the party on whom it is to be served at that address set out in this Sublease. Notice so served shall be deemed received on the earlier of:
 - (i) upon transmission with answer back confirmation if received within the normal working hours of the business day; or
 - (ii) at the commencement of the next ensuing business day following transmission with answer back confirmation of delivery; or
- (c) by mailing via first class registered post, postage prepaid, to the party on whom it is served. Notice so served shall be deemed to be received Seventy-Two (72) Hours after the date it is postmarked. In

the event of postal interruption, no notice sent by means of the postal system during or within Seven (7) Days prior to the commencement of such postal interruption or Seven (7) Days after the cessation of such postal interruption shall be deemed to have been received unless actually received.

All Notices to be sent in accordance with this Section shall be addressed as follows:

(d) to the HRRA at:

Attention: _____
Facsimile: (____) ____-____
E-mail: _____

(e) to the Tenant at:

Attention: _____
Facsimile: (____) ____-____
E-mail: _____

or to such other address as each party may from time to time direct in writing.

16.4 Governing Law. This Lease shall be construed and governed by the laws of the Province of Alberta.

16.5 Time of Essence. Time shall be of the essence throughout this Sublease.

16.6 Captions. The headings, captions, paragraph numbers, subparagraph numbers, article numbers and indices appearing in this Sublease have been inserted as a matter of convenience and for reference only and in no way define, limit, construct or enlarge the scope or meaning of this Sublease or any provisions of this Sublease.

16.7 Relationship Between Parties. Nothing contained herein shall be deemed or construed by the HRRA or the Tenant, nor by any third party, as creating the relationship of principal and agent or of partnership, or of a joint venture agreement between the HRRA and the Tenant, it being understood and agreed that none of the provisions contained in this Sublease nor any act of the parties shall be deemed to create any relationship between the HRRA and the Tenant other than the relationship of a HRRA and tenant.

16.8 Lease Entire Relationship. The Tenant acknowledges that there are no covenants, representations, warranties, agreements or conditions expressed or implied, collateral or otherwise forming part of or in any way affecting or relating to this Sublease save as expressly set out in this Sublease and that this Sublease constitutes the entire agreement between the HRRA and the Tenant and may not be modified except by subsequent agreement in writing of equal formality executed by the HRRA and the Tenant.

16.9 Binding Effect. This Lease and everything contained within this Sublease shall enure to the benefit of and be binding upon the heirs, executors, administrators, successors, permitted assigns and other legal representatives, as the case may be, of each of the HRRA and the Tenant, subject to the granting of consent by the HRRA as provided to any assignment or sublease. Where Tenant is comprised of more than one legal entity, this Sublease shall be binding upon all such parties on a joint and several basis.

16.10 Independent Legal Advice. The parties hereby acknowledge and confirm that each was advised by the other to obtain independent legal or other professional advice, and that each has had an opportunity to read, review and understand the nature and effect of the provisions of this Agreement prior by executing this Agreement. Each hereby

confirms that it has had the opportunity to seek independent legal or professional advice prior to executing this Agreement and has either:

- (a) obtained such legal or other professional advice; or
- (b) waived the right to obtain such independent legal or other professional advice.

16.11 Counterpart Execution. This Agreement may be executed in counterparts, including execution and delivery by facsimile or email PDF, each of which so executed and sent shall be deemed to have been an original, and such counterparts together shall constitute one and the same agreement and shall be deemed to be and constitute a properly executed, delivered and binding agreement.

IN WITNESS WHEREOF each of the HRRA and the Tenant have executed this Sublease on the day and year first written above.

HIGH RIVER REGIONAL AIRPORT LIMITED

Per: _____

Per: _____ (c/s)

[CORPORATE TENANT]

Per: _____

Per: _____ (c/s)

OR

WITNESS

[INDIVIDUAL TENANT]

SCHEDULE "A"

THE SUBLEASED PREMISES