

LEASE AGREEMENT (DRAFT)

THIS LEASE made the _____ day of _____, 2017.

BETWEEN:

DISTRICT OF KITIMAT

270 City Centre
Kitimat, BC
V8C 2H7

(the "**Landlord**" or the "**District**")

AND:

KITIMAT FLYING CLUB

Society # S-0066292
P.O. Box 436
Kitimat, BC
V8C 2R9

(the "**Tenant**")

RECITALS:

- A. The District is the registered owner of those lands and premises in the Regional District of Kitimat-Stikine, in the Province of British Columbia, and legally described as:
- PID: 008-568-812
District Lot 8000 Range 5 Coast District
- (the "**Lands**").
- B. One or more buildings are situated on the Lands, as shown in bold outline on Schedule A - Map 2 of this Lease (collectively, the "**Buildings**").
- C. The Tenant wishes to lease the Lands and the Buildings (collectively, the "**Premises**", as more specifically defined below) for the continued purpose of constructing, operating and maintaining a municipal air park (the "**Air Park**") and accessory flying club premises.
- D. The District has agreed to grant to the Tenant a lease of the Premises on the terms and conditions set out in this Lease.

NOW THEREFORE in consideration of the mutual covenants and agreements set forth in this Lease and other good and valuable consideration (the receipt and sufficiency of which is acknowledged by the parties), the parties covenant and agree as follows:

1.0 DEFINITIONS

In this Lease the following words or phrases will, unless there is something in the context inconsistent with them, have the following meanings:

- (a) “**Environmental Laws**” means any statutes, laws, regulations, orders, bylaws, standards, guidelines, permits and other lawful requirements of any government authority having jurisdiction over the Premises now or hereafter in force, relating in any way to the environment, health, occupational health and safety, or transportation of dangerous goods, including the principles of common law and equity.
- (b) “**Hazardous Substance**” or “**Hazardous Substances**” means any pollutants, contaminants, deleterious substances, underground or above-ground tanks, asbestos materials, hazardous, corrosive, or toxic substances, special waste or waste of any kind, or any other substance that is now or hereafter prohibited, controlled or regulated under Environmental Laws.
- (c) “**Lease**” means this agreement together with all schedules attached to it.
- (d) “**Leasehold Improvements**” means all fixtures, improvements, additions, partitions, equipment, and alterations from time to time made to or installed in the Premises by any person, which include but are not limited to runways, taxiways, pavement, power lines, aeronautical ground lights and aviation equipment and improvements, and adjacent ditches, used for or in relation to the operation of the Air Park.
- (e) “**Premises**” means the Lands, the Buildings shown boldly outlined on Schedule A – Map 2, and the Leasehold Improvements.
- (f) “**Registered Aerodrome**” means an aerodrome on record with Transport Canada Civil Aviation (TCCA) as meeting the requirements of Subpart 301 of the Canadian Aviation Regulations (CARs) – Aerodromes, and any successor regulations.
- (g) “**Taxes**” means all taxes, rates, charges, assessments and levies and other governmental impositions, general or special, ordinary or extraordinary, foreseen or unforeseen, of every kind and of whatsoever nature which may at any time during the term be levied in respect of or against the Lands, the Premises, or any part or parts thereof or in respect of any use or occupation of the Lands and the Premises by any authority of proper jurisdiction and without limiting the generality of the foregoing shall include any assessment for school, municipal or general purposes, local improvements, business machinery and equipment taxes and water taxes.
- (h) “**Transport Canada**” means the Minister of Transport or the Minister’s authorized representative, including the Regional Director General, Airports Group, Pacific Region.
- (i) “**Utility Costs**” means all charges for water, gas, garbage, recycling, telephone, electric light and power, cable and other telecommunications, and all other utilities and services used on or in respect of the Premises or as allocated by the Landlord, acting reasonably, to the Premises together with all costs and charges for all fittings, machines, apparatus, meters, and any other thing leased or supplied in respect of them and all costs and charges for all work and services performed by any corporation, authority, or commission in connection with such utilities and services in respect of the Premises, whether separately charged to the Premises or allocated by the Landlord, acting reasonably, to the Premises.

2.0 THE DEMISE

In consideration of the rents, covenants, conditions and agreements in this Lease, the Landlord hereby leases to the Tenant the Premises, subject to the Crown's Possibility of Reverter now registered against title to the Lands under registration number S12476.

3.0 TERM

The Tenant will have and hold the Premises, subject to the rents, covenants, conditions and agreements in this Lease, for a term of **twenty-seven (27) years**, commencing on the ___ day of _____, 2017, and ending on the ___ day of _____, 2044 (the "**Term**"), unless earlier terminated in accordance with the terms of this Lease.

4.0 USE

The Tenant will use the Premises for the purpose of municipal air park, which includes constructing, operating and maintaining the Air Park and flying club premises, and for other purposes necessarily incidental thereto, and for no other uses without the written consent of the Landlord, subject to the Crown's Possibility of Reverter now registered against title to the Lands under registration number S12476.

5.0 RENT

5.1 Annual Rent

Subject to Section 5.2, the Tenant will pay to the Landlord during the Term ten dollars (\$10) plus all applicable taxes per annum (the "**Rent**") and such fee shall be paid to the Landlord without invoice, in advance without deduction, on or before the first day of the Term, and thereafter annually on the first day of each and every subsequent year of the Term.

5.2 Rent Review

In consideration of the length of the Term, the Rent will be reviewed every three (3) years and may be increased on each third anniversary of the commencement of the Term, with total increases not to exceed 100 percent (100%) at the end of twenty-seven (27) years of the Term.

5.3 Net Lease

This Lease is a completely carefree net lease to the Landlord, and the Rent provided to be paid to the Landlord under this Lease will be net to the Landlord and will yield to the Landlord the entire such rental during the Term without abatement for any cause whatsoever. Except as specifically provided in this Lease, all costs, expenses, and obligations of every kind and nature whatsoever relating to the Premises, whether or not referred to in this Lease and whether or not of a kind now existing or within the contemplation of the parties, will be paid by the Tenant.

6.0 TENANT'S COVENANTS

Subject to the terms and conditions of this Lease, the Tenant covenants with the Landlord as follows:

6.1 To Pay

The Tenant will pay the Rent when due in accordance with the provisions of this Lease.

6.2 To Observe

The Tenant will observe and perform all of the covenants and conditions of this Lease on the part of the Tenant to be observed and performed.

6.3 Taxes and Utilities

- (a) The Tenant will promptly pay all Taxes and Utility Costs charged upon the Tenant or the Landlord as they become due.
- (b) The Tenant will provide to the Landlord, when and if requested by the Landlord, receipts for payments made by the Tenant in respect of the Taxes and Utility Costs.

6.4 Repair & Maintenance

- (a) The Tenant will, at all times during the Term, utilizing available grants and monies derived through club fundraising or other means, promptly repair, clean, renew, and maintain the Premises in a condition that is safe and visually-acceptable to the Landlord including all Buildings, structures, facilities, landscaping, runways, taxiways, pavement, power lines, aeronautical ground lights and aviation equipment and improvements, adjacent ditches, sewers and fences.
- (b) The Tenant will permit the Landlord and its duly authorized agents or nominees, with or without workers and others, at all reasonable times to enter upon the Premises for the purpose of examining the state of repair, condition and use of them, and the Tenant will repair and maintain, according to notice received from the Landlord within thirty (30) days from the date of the giving of such notice by the Landlord.

6.5 Air Park Regulations

In addition to the other repair and maintenance obligations under this Lease, the Tenant will at all times during this Lease, operate, manage, maintain and repair the Premises as a registered aerodrome, in full compliance with the *Aeronautics Act (Canada)* and associated regulations, standards and guidelines, or those of any successor Act or Acts, now or at any time hereafter made, and will, at its sole cost and expense operate, maintain and repair the Premises in a condition of complete operational integrity, safety and visual acceptability, as determined by the Landlord acting reasonably, and without limiting the generality of the foregoing will comply with all applicable rules, regulations, requirements, recommendations, directions, policies, standards and guidelines of Transport Canada and all governmental and other authorities having jurisdiction.

6.6 Aerodrome Registration and Standards

The Tenant will:

- (a) at its own cost, maintain Registered Aerodrome status for the Air Park.
- (b) throughout the Term, operate the Air Park as a Registered Aerodrome and strive to adhere to *Aerodrome Standards and Recommended Practices – TP 312* and successor standards and practices.

6.7 Fees for Use of Air Park

- (a) Throughout the Term, the Tenant may charge for the use of the Air Park or for any services performed in connection with it, only such fees as the Landlord has approved.

6.8 Construction

- (a) The Tenant will not construct or alter any buildings or structures on the Premises unless such construction is in compliance with the *Aeronautics Act* and any successor Act or Acts, and consistent with *Aerodrome Standards and Recommended Practices – TP 312* and successor standards and practices, and unless, prior to any construction, the Tenant has obtained the Landlord's approval, in the Landlord's sole discretion, in writing to the plans, specifications, and elevations proposed.
- (b) All construction or alteration of any buildings or structures on the Premises must conform to all applicable building safety and health standards and any applicable zoning regulations in effect in the jurisdiction in which the Premises are located, and must be certified as conforming thereto by a qualified professional (for example, an engineer or architect) registered in British Columbia.
- (c) Any construction or alteration on the Premises carried out by the Tenant will be at the sole cost of the Tenant.
- (d) The Tenant will not perform or allow to be performed any construction or alteration on the Premises unless it is done promptly and in a good and proficient manner in accordance with the terms and conditions of the consent of the Landlord.

6.9 Assign or Sublet

- (a) The Tenant may, from time to time, enter into subleases or licences of occupation with sublessees or licensees for parts of the Premises for the following uses:
 - (i) personal use of hangars; or
 - (ii) commercial business related to aviation,

but only if the specific uses are consistent with the purpose of a municipal air park and all applicable municipal, provincial and federal regulations, provided always that no such sublease or licence of occupation shall be valid and binding unless the approval in writing of the Landlord has been first had and obtained (in the Landlord's sole discretion), and until the following conditions have been complied with:

- (iii) no sublease or licence of occupation shall be for a period (taking into account any renewals and extensions) which shall extend beyond one day before the expiration of the Term of this Lease;
- (iv) no sublease or licence of occupation shall release or relieve the Tenant from its obligations to perform all the terms, covenants and conditions that this Lease requires the Tenant to perform, or discharge the Tenant to or from any liability, whether past, present or future under this Lease, and the Tenant shall continue fully liable under this Lease and fully responsible to the Landlord for the Tenant's sublease or licence of occupation;
- (v) each sublease or licence of occupation shall be expressly subject and subordinate to this Lease and to the rights of the Landlord under this Lease and shall terminate upon the termination of this Lease;
- (vi) the Tenant shall not make any sublease or licence of occupation of the Premises or any part or parts thereof which in legal effect would create a total assignment of this Lease;
- (vii) each sublessee, licensee or occupant has agreed in writing with the Landlord and the Tenant to comply with and be bound by all the applicable terms, covenants and conditions of this Lease, and in the event of conflict between the provisions of this Lease and the sublease or licence of occupation, the provisions of this Lease shall govern; and
- (viii) the Tenant shall pay the Landlord's reasonable costs incurred in connection with the Tenant's request for consent.

6.10 Compliance with Laws

The Tenant will:

- (a) do, observe and perform all of its obligations and all matters and things necessary or expedient to be done, observed or performed by the Tenant by virtue of any law, statute, bylaw, ordinance, regulation, or lawful requirements of any government authority or any public utility lawfully acting under statutory authority, and all demands and notices in pursuance of them, whether given to the Tenant or the Landlord and in any manner or degree affecting the exercise or fulfillment of any right or obligation arising under or as a result of this Lease and affecting the Premises and the use of them by the Tenant.
- (b) ensure that its officers, employees and agents, and all persons using the Premises shall, at all times during this Lease, observe and comply with the provisions of the *Aeronautics Act* (Canada) and regulations, and any other law, statute, bylaw, ordinance, regulation or lawful requirement related to air transport in force from time to time as well as all local rules pertaining to the Premises.
- (c) comply promptly at its own expense with the requirements of all authorities, including an association of fire insurance underwriters or agents, and all notices issued under them that are served upon the Landlord or the Tenant, as instructed by the Landlord, in its sole discretion, and

- (d) indemnify the Landlord from all claims, lawsuits, damages, losses, costs or expenses that the Landlord may incur by reason of noncompliance by the Tenant with any of the requirements of this Section 6.10 or by reason of any defect in the Premises or any injury to any person or to any personal property contained on the Premises unless the claims, damages, losses, costs, expenses or injuries are the result of the negligence of the Landlord.

6.11 Insurance

- (a) The Tenant will reimburse the Landlord forthwith upon invoicing by the Landlord for the cost of the premiums of a policy of general public liability insurance taken out by the Landlord in the joint names of the Landlord and the Tenant insuring both of them against claims for bodily injury, death or property damage arising out of the use and occupancy of the Premises by the Tenant, in an amount of not less than Five Million Dollars (\$5,000,000) per single occurrence or such greater amount as the Landlord may from time to time designate.
- (b) The Tenant will be responsible for insuring the Tenant's own improvements and personal property on the Premises.
- (c) All policies of insurance shall contain a waiver of subrogation clause in favour of the Landlord.
- (d) If both the Landlord and the Tenant have claims to be indemnified under any insurance taken out under this Lease, the indemnity shall be applied first to the settlement of the claim of the Landlord and the balance, if any, to the settlement of the claim of the Tenant.

6.12 Indemnification

- (a) The Tenant will indemnify the Landlord from and against all manner of actions or causes of action, claims, lawsuits, damages, losses, costs, including legal costs, or expenses of whatever kind (including, without limitation, legal fees on a solicitor and client basis) that the Landlord may sustain, incur or be put to by reason of or arising out of any act or omission of the Tenant or any persons for whom the Tenant is, at law, responsible, or from the use or occupation of the Premises, the Lands, or the Buildings, in whole or in part and, without limiting the generality of the foregoing, from the non-observance or non-performance by the Tenant, any persons for whom the Tenant is, at law, responsible, or any persons on the Premises for the purpose of doing business with the Tenant or otherwise dealing with the Tenant, or any of the obligations imposed under the provisions of any laws, ordinances, regulations, or requirements of any federal, provincial, municipal, or other authority, or any of the covenants, agreements, terms, conditions, and provisos contained in this Lease to be observed and performed by the Tenant.
- (b) The liability and indemnity contained in this Section 6.12 will survive any termination of this Lease and the expiry of the Term, anything in this Lease to the contrary notwithstanding.

6.13 Limitation of Liability of Landlord

- (a) The Landlord will not be liable for any personal injury, death or property loss or damage sustained by the Tenant or its officers, employees, agents, sublessees, licensees, or those doing business with it on the Premises, in the Buildings or on the Lands, no matter how caused, except to the extent caused by the negligence of the Landlord or those for whom the Landlord is, in law, responsible; and the Tenant:
- (i) will indemnify the Landlord against all actions or liabilities arising out of such personal injury, death, or property damage or loss, except to the extent caused by the negligence of the Landlord or those persons for whom the Landlord is, in law, responsible; and
 - (ii) hereby releases the Landlord and its officers, employees, agents, successors and assigns from all claims for damages or other expenses arising out of such personal injury, death, or property loss or damage, except to the extent caused by the negligence of the Landlord or those persons for whom the Landlord is, in law, responsible.
- (b) Without limiting the foregoing, the Landlord will not be liable for any personal injury, death, or property loss or damage sustained by the Tenant or its officers, employees, agents, sublessees, licensees, or invitees on the Premises, in the Buildings, or on the Lands caused by theft or breakage or by steam, water, rain, snow, radioactive materials, microwaves, deleterious substances, gases, pollutants, or any other materials or substances that may leak into, or issue or flow from any neighbouring lands or adjacent premises, or from the water, steam or drainage pipes or plumbing works of the same or from any place, or any loss or damage caused by or attributable to the condition or arrangements of any electric or other wiring, or any damage caused or anything done or omitted to be done by any other tenant or occupant of the Lands except to the extent caused by the negligence of the Landlord or by those persons for whom the Landlord is, in law, responsible; and the Tenant:
- (i) will indemnify the Landlord against all actions or liabilities arising out of such personal injury, death, or property damage or loss except to the extent caused by the negligence of the Landlord or those persons for whom the Landlord is, in law, responsible; and
 - (ii) hereby releases the Landlord and its officers, employees, agents, successors and assigns from all claims for damages or other expenses arising out of such personal injury, death, or property loss or damage, except to the extent caused by the negligence of the Landlord or those persons for whom the Landlord is, in law, responsible.

6.14 Prohibited Actions

The Tenant will not carry on or do or allow to be carried on or done on the Premises anything that:

- (a) is inconsistent with the Crown's Possibility of Reverter now registered against title to the Lands under registration number S12476, which only permits the use of the Lands for "municipal air park purposes",
- (b) is inconsistent with the use and occupation of this Lease,
- (c) may be or become a nuisance to the Landlord or the public,
- (d) increases the hazard of fire, dangerous condition, or liability of any kind, over and above activities which are usually carried out at a municipal air park, or
- (e) may invalidate any policy of insurance for the Premises, the Buildings, or the Lands.

6.15 Signs

The Tenant will not display any sign, picture, advertisement, notice, lettering or direction on any part of the Premises unless prior written approval of the Landlord is obtained and the sign, picture, advertisement, notice, lettering or direction complies at all times with the requirements of any lawful authority having jurisdiction over it. The Landlord may remove at the Tenant's sole expense, any sign, picture, advertisement, notice, lettering or direction that no longer complies with the terms of the consent given by the Landlord or the requirements of any lawful authority having jurisdiction over it, after giving the Tenant thirty (30) days' notice, and the costs, charges and expenses of such removal will promptly be paid by the Tenant to the Landlord.

6.16 Garbage

The Tenant will keep the Premises clean and tidy and in good order.

6.17 Hazardous Substances

The Tenant will:

- (a) not use or permit to be used all or any part of the Premises for the sale, storage, manufacture, disposal, use, or any other dealing with any Hazardous Substances, without the prior written consent of the Landlord, which may be unreasonably withheld;
- (b) strictly comply, and cause any person for whom it is in law responsible to comply, with all Environmental Laws regarding the use and occupancy of the Premises;
- (c) promptly provide to the Landlord a copy of any environmental site assessment, audit or report relating to the Premises conducted by or for the Tenant at any time, and, at the Landlord's request from time to time, obtain from an independent environmental consultant approved by the Landlord an environmental site assessment of the Premises or an environmental audit of the operations of at the Premises, including any additional investigations as the environmental consultant may recommend;

- (d) promptly notify the Landlord in writing of any release of a Hazardous Substance or Hazardous Substances or any other occurrence or condition at the Premises, or any adjacent property that would contaminate the Premises or subject the Landlord or the Tenant to any fines, penalties, orders, investigations, or proceedings under Environmental Laws;
- (e) on the expiry or earlier termination of this Lease, or at any time if requested by the Landlord or required by any government authority pursuant to Environmental Laws, remove from the Premises all Hazardous Substances and remediate any contamination of the Premises or any adjacent property resulting from Hazardous Substances, in either case brought onto, used at, or released from the Premises by the Tenant or any person for whom it is in law responsible. The Tenant will perform these obligations promptly at its own cost and in accordance with Environmental Laws. All such Hazardous Substances will remain the property of the Tenant, notwithstanding any rule of law or other provision of this Lease to the contrary and notwithstanding the degree of their affixation to the Premises; and
- (f) indemnify the Landlord and its officers, employees, agents, successors and assigns from any and all liabilities, actions, damages, claims, losses, costs, fines, penalties and expenses whatsoever (including all legal and consultants' fees and expenses and the cost of remediation of the Premises, and any adjacent property) arising from or in connection with:
 - (i) any breach or non-compliance with the provisions of this Section 6.17 by the Tenant; or
 - (ii) any release or alleged release of any Hazardous Substance or Hazardous Substances at or from the Premises related to or as a result of the use and occupation of the Premises or any act or omission of the Tenant or any person for whom it is in law responsible.

The obligations of the Tenant under this Section 6.17 will survive the expiry or earlier termination of this Lease.

6.18 No Excavation

The Tenant will not excavate, dig, or extract any sand, gravel, earth or minerals of any description out of the Lands for any purpose other than to repair, conduct maintenance on, or make improvements to Air Park facilities and site.

6.19 Encumbrances

The Tenant will not, without the prior written consent of the Landlord, permit any encroachment, right-of-way, easement, mortgage, or other encumbrance to be made or entered into, against, or upon the Premises or the Lands or any part of them.

6.20 **Builder's Liens**

- (a) The Tenant will use its best efforts to ensure that no claim of lien will be filed in respect of any work that may be carried out by it or on its behalf in the Buildings or on the Premises, and if a claim of lien is filed in respect of any such work the Tenant will take all necessary steps to have the claim of lien cancelled and discharged from the Lands and the Buildings within twenty-one (21) days of the date the Tenant has knowledge of such filing.
- (b) The Tenant will indemnify and save harmless the Landlord from and against any and all loss, cost, expense, damage and liability in respect of any claims for liens for wages or materials or for damage to persons or property caused during the making of or in connection with any excavation, construction, repair, alteration, installation and addition which the Tenant may make or cause to be made on, in or to the Premises.
- (c) The Landlord, in addition to any right or remedy, will have the right, but will not be obliged, to discharge any claim of lien from the Lands and the Buildings by paying the amount claimed to be due or by procuring a discharge of such liens by deposit in the appropriate court, and in any such event the Landlord will be entitled, if it so acts, to expedite the prosecution of any action for the enforcement of such claim of lien by the lien claimant and to pay the amount of the judgment, if any, in favour of the lien claimant with interest and costs. In any such event the Tenant will promptly pay to and reimburse the Landlord for all money expended by the Landlord and all costs and expenses incurred by the Landlord.

6.21 **Caretaker Area**

- (a) The Tenant may designate a caretaker for the Premises, subject to the following:
 - (i) a maximum of one (1) caretaker dwelling is permitted on the Lands, and shall be located within the "Caretaker Area" delineated by dashed line on Schedule A – Map 2;
 - (ii) any buildings or structures within the Caretaker Area in Schedule A – Map 2 must comply with Section 6.8 of this Lease; and
 - (iii) subject to Landlord's approval, the Tenant may adopt a policy or policies to establish duties, conditions or guidelines pertaining to use and occupancy of the Caretaker Area.

7.0 **LANDLORD'S COVENANTS**

Subject to the terms and conditions of this Lease (including, without restriction, the Landlord's rights pursuant to Section 8.8), the Landlord covenants with the Tenant as follows:

- (a) The Tenant shall have quiet enjoyment of the Premises.
- (b) All revenues derived from the operations of the Premises as a municipal air park during the currency of this Lease shall be the property of the Tenant in its capacity as a society, and shall be reinvested into the Air Park, subject to any claims upon the revenues that the Landlord may have resulting from breach of one or more of the provisions of this Lease.

8.0 MISCELLANEOUS

8.1 Fixtures

- (a) All buildings, structures, and Leasehold Improvements used for any municipal air park function or use once constructed or installed on the Premises become the sole property of the Landlord, at no cost to the Landlord.
- (b) All other buildings, structures and Leasehold Improvements constructed or installed on the Premises by the Tenant will, unless the Tenant, upon notice from the Landlord, removes them, at the end of the term or the termination of the Lease, become the sole property of the Landlord at no cost to the Landlord.

8.2 Landlord's Repairs

- (a) If the Tenant at any time defaults in the performance or observance of any of the covenants in this Lease for or relating to the repair, maintenance, cleaning, renewal, or decoration of the Premises or any part of them and such default continues for thirty (30) days after notice in writing from the Landlord of default in respect of repair, maintenance, cleaning, renewal or decoration of the Premises, then the Tenant will permit the Landlord and its duly authorized agents and nominees, with or without workers and others, and without prejudice to the Landlord's right of re-entry, to enter into and upon the Premises on four (4) days' notice, and repair, clean, renew, and maintain them at the expense of the Tenant; and the Tenant will give the Landlord all aid and facilities in doing or causing them to be done and will repay to the Landlord on demand all costs and expenses in respect of such repairs, maintenance, cleaning, renewal, and decoration as provided, and:
 - (i) in doing the repairs, maintenance, cleaning, renewing or maintaining, the Landlord may bring and leave upon the Premises all necessary materials, tools and equipment; and
 - (ii) the Landlord will not be liable to the Tenant for any inconvenience, annoyance, loss of business or injury suffered by the Tenant by reason of the Landlord effecting the repairs, maintenance, cleaning, renewing or maintaining.
- (b) Nothing in this Agreement will require the Landlord to directly or indirectly commence or complete such performance of the Tenant's covenants or obligations.

8.3 Landlord's Payments

If the Landlord incurs any damage, loss or expense or makes any payment for which the Tenant is liable under this Lease, then the Landlord may at its option add the cost or amount of the damage, loss, expense or payment to the Rent and may recover it by all remedies available to the Landlord for the recovery for Rent in arrears.

8.4 Fitness of Premises

- (a) The Landlord has made no representations or warranties as to the condition, fitness or nature of the Premises, including, without limitation, the environmental condition of the Premises and the Tenant's ability to use the Premises for its intended uses, and by executing this Lease, the Tenant releases the Landlord from any and all claims which the Tenant now has or may have in future in these respects.

- (b) The Tenant has inspected the Premises and has satisfied itself that they are suitable for the Tenant's purposes.
- (c) The Landlord or any person designated by the Landlord shall have the right at all reasonable times during the Term to enter upon the Premises for the purpose of inspecting the Premises, the Buildings, the Leasehold Improvements or any part or parts thereof and for such other purposes as the Landlord may deem necessary.

8.5 Destruction

If the Premises or any part of them are at any time during the Term burned down or damaged by fire, lightning, or tempest, or any other peril so as to render them unfit for the purposes of the Tenant:

- (a) the Rent or a proportionate part of it according to the nature and extent of the damage sustained shall be from and after the date of damage suspended or abated until the Premises have been rebuilt or made fit for the purpose of the Tenant; and
- (b) at the option of the Landlord, if the Premises are not rebuilt or made fit for the purpose of the Tenant within ninety (90) days, the Term shall end and the Tenant shall not be required to pay Rent except the Rent then due, and shall be repaid any of the Rent paid in advance for the balance of the Term.

8.6 Overholding

If the Tenant remains in possession of the Premises after the end of the Term, and the Landlord accepts Rent, this Lease becomes a tenancy from month to month subject to those conditions in this Lease applicable to a tenancy from month to month, except that the monthly instalments of Rent will be payable in advance on the first day of each and every month during such overholding period, equal to the sum of two times the monthly instalments of Rent payable for the last month of the later of the Term, pro-rated on a monthly basis for each month that the Tenant remains in possession, and in addition the Tenant will be liable for all costs, expenses, losses and damages resulting or arising from the failure of the Tenant to deliver up possession of the Premises to the Landlord.

8.7 Peaceful Surrender

The Tenant will at the expiration, sooner termination or any permitted period of overholding of this Lease immediately peaceably surrender and give up to the Landlord possession of the Premises including all Leasehold Improvements, without notice from the Landlord, any right to notice to quit or vacate being hereby expressly waived by the Tenant, despite any law or custom to the contrary, and the Premises and Leasehold Improvements at that time shall be in the state of repair required to be maintained by the Tenant under this Lease.

8.8 Events of Default

The Landlord may forthwith terminate the Term and this Lease and take full possession of the Premises without further notice to the Tenant if:

- (a) any amount due from the Tenant to the Landlord under this Lease is in arrears and is not paid within twenty-one (21) days after written demand by the Landlord;
- (b) the Tenant has breached any of its obligations under this Lease, other than payment of any amounts due from the Tenant, and after twenty-one (21) days notice in writing from the Landlord, the Tenant fails to remedy such breach or, in the case of a failure which cannot with due diligence be cured within such twenty-one (21) day period, if the Tenant shall not promptly proceed to cure the same and thereafter prosecute such curing with diligence, it being intended in connection with a failure not capable of being cured within such twenty-one (21) day period that the time within which the Tenant shall have to cure the same shall be extended for such period as may be reasonably necessary to cure the same with diligence;
- (c) a creditor of the Tenant executes or attaches the Lease or any of the goods and chattels, improvements or fixtures erected or placed by the Tenant in or upon the Premises and the same is not stayed within twenty-one (21) days;
- (d) the Tenant makes any assignment for the benefit of creditors, or becomes insolvent or bankrupt or ceases to function or proceedings are commenced to wind up the Tenant;
- (e) a liquidator or a receiver or a trustee in bankruptcy is appointed for or in relation to the Tenant under the *Bankruptcy and Insolvency Act* (Canada) or the *Companies' Creditors Arrangement Act* (Canada) or any law of Canada or any province thereof relating to bankruptcy or insolvency if such appointment is not vacated or terminated within twenty-one (21) days or stayed on appeal;
- (f) without the Landlord's approval, this Lease is assigned or sublet;
- (g) in the Landlord's sole discretion, the Crown's Possibility of Reverter now registered against title to the Lands under registration number S12476 may be triggered by any activity or lack of activity taking place on the Lands, or
- (h) the Crown's Possibility of Reverter, which was registered against the Lands under registration number S12476 on October 7, 1987, is triggered so that the fee simple ownership of the Lands is transferred from the District,

and in every such event the Landlord shall have the right to declare the Term ended and this Lease terminated and thereupon the estate of the Tenant and the Term of the Lease shall absolutely cease, determine and be void without the requirement of re-entry or any other act by the Landlord.

8.9 Termination by Tenant

Notwithstanding any other provision of this Lease, the Tenant may terminate this Lease without cause on one (1) year's written notice to the Landlord.

8.10 No Waiver

- (a) No waiver of any provision of this Lease is binding unless it is in writing and signed by the party having rights under, or holding the benefit of, the provision being waived.
- (b) No failure to exercise or delay in exercising any remedy under this Lease will be deemed to be a waiver of the right or remedy.
- (c) No waiver of any breach of any provision of this Lease will be deemed to be a waiver of any subsequent breach of that provision or of any similar provision.
- (d) A termination of this Lease by the Landlord will not be deemed to be a waiver or satisfaction in whole or in part of any right, claim, or demand arising out of or connected with any breach of any covenant or agreement of the Tenant.

8.11 Distress

The Tenant waives and renounces the benefit of any present or future statutes purporting to limit or qualify the Landlord's right to distraint and agrees with the Landlord that in addition to the other rights and remedies whether hereby reserved or not to it, shall have the right to enter the Premises or any part or parts of them whether by force or otherwise without being liable for any prosecution therefor and to take possession of any goods or chattels whatsoever anywhere in British Columbia or on the Premises or any part or parts of them save and except any such goods and chattels as are owned by any occupiers of the Premises or any part or parts of them other than the Tenant and to sell them at public or private sale without notice and apply the proceeds of such sale on account of the rent due or in satisfaction of the breach of any covenant or agreement contained in this Lease and the Tenant shall remain liable for the deficiency, if any.

8.12 Remedies Cumulative

No remedy conferred on or reserved to the Landlord is exclusive of any other remedy herein or provided by law, but such remedy shall be cumulative and shall be in addition to any other remedy herein or hereafter existing at law, in equity or by statute.

8.13 Time

Time will be of the essence of this Lease notwithstanding the extension of any of the timelines under this Agreement.

8.14 Notice

Any notice or other communication required or permitted to be given under this Lease will be sufficiently given if delivered personally or if sent by fax or email with a copy by regular mail:

(a) to the Landlord at:

District of Kitimat
270 City Centre
Kitimat, BC V8C 2H7

Attention: Corporate Officer
Phone Number: 250-632-8900
Fax Number: 250-632-4995
Email: dok@kitimat.ca

(b) to the Tenant at:

Kitimat Flying Club
P.O. Box 436
Kitimat, BC V8C 2R9

Attention: Bob Rypma, President
Phone Number: 250-632-3096
Email: bobrypma@gmail.com

Attention: Fred Seiler, Treasurer
Phone Number: 250-635-9359
Email: grizzlyseiler@telus.net

and the date of receipt of any such notice or communication will be deemed to be the date of delivery or transmittal by fax or email if delivered by 4:30pm on a business day in the place of the recipient, and if otherwise delivered or transmitted by fax or email, on the next business day following the date of such delivery or transmittal. A party may at any time give notice in writing to the other party of any change of address by giving notice of it to the other party in accordance with the terms of this Lease.

8.15 Registration

This Lease will be registered against title to the Lands at the expense of the Tenant.

8.16 No Derogation from Statutory Powers

Nothing in this Lease shall be interpreted as prejudicing or impairing the District in the exercise of any statutory legislative powers under the *Local Government Act* (British Columbia), the *Community Charter* (British Columbia), or any other enactment, all of which may be exercised as if this Lease had not been executed. Provided that the foregoing shall not restrict or limit the rights and remedies of the District resulting or arising from a breach of this Lease by the Tenant.

8.17 Interest

Interest on any money due to the Landlord under this Lease will be paid by the Tenant and will accrue on a daily basis at the Prime Rate plus three percent (3%) per annum, such rate of interest to be calculated and compounded monthly, not in advance, from the respective date upon which any such money becomes due to the Landlord.

8.18 Binding Effect

This Lease will enure to the benefit of and be binding upon the parties, their respective heirs, executors, administrators, and other legal representatives and, to the extent permitted in this Lease, their respective successors and assigns.

8.19 Extended Meanings

Words importing the singular number include the plural and vice versa, and words importing the masculine gender include the feminine and neuter genders.

8.20 Covenants

The Landlord and the Tenant agree that all of the provisions of this Lease are to be construed as covenants and agreements as though the words importing such covenants and agreements were used in each separate provision of it. Should any provision or provisions of this Lease be illegal or not enforceable, it or they will be considered separate and severable from this Lease and its remaining provisions will remain in force and be binding upon the parties as though the illegal or unenforceable provision or provisions had never been included.

8.21 Headings

The headings are for convenience of reference only and will not affect the construction or interpretation of this Lease.

8.22 Applicable Law

This Lease shall be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein. The Landlord and the Tenant agree to submit to the jurisdiction of British Columbia with respect to any dispute relating to this Lease.

8.23 Entire Agreement

This Lease constitutes the entire agreement between the parties with respect to the subject matter of the Lease and contains all of the representations, warranties, covenants and agreements of the respective parties, and may not be amended or modified except by an instrument in writing executed by all parties. This Lease supersedes all prior agreements, memoranda, and negotiations between the parties.

8.24 Schedule

The Schedule attached to this Lease forms part of this Lease.

DISTRICT OF KITIMAT

By its authorized signatories:

Per: _____
Philip Germuth, Mayor

Per: _____
Debbie Godfrey, Corporate Officer

KITIMAT FLYING CLUB

By its authorized signatory(ies):

Per: _____
Authorized Signatory

_____ President (print name)

Per: _____
Authorized Signatory

_____ Treasurer (print name)

DRAFT

Schedule A – Map 1 (Context)



Schedule A – Map 2 (Site Plan)

