

UNOFFICIAL VERSION

AMENDED AND RESTATED GROUND LEASE

Between

HMQ (Minister of Transport)

&

Winnipeg Airports Authority Inc.

of December 31, 1996

CURRENT TO May 1, 2021

IMPORTANT:

- 1. This is an office consolidation. While every effort has been made to ensure it is accurate and complete, it is not an official version. Where there are any differences between this version and the original lease or amendments, the original(s) shall govern.**
- 2. Amendments to the base Ground Lease that remain in effect as of May 1, 2021 are incorporated in this document and noted. (Amendments that are no longer in force have been ignored.)**
- 3. Only selected Schedules to the Ground Lease have been included; the remainder are available upon request.**

As of May 1, 2021 the base Ground Lease has been amended twelve (12) times as follows:

- 1. Amendment #1, Dec. 19, 2002 – 1st Land Use Plan**
- 2. Amendment #2, Mar. 24, 2004 – 1st Rent provisions**
- 3. Amendment #3, Oct. 6, 2004 – Insurance provisions**
- 4. Amendment #4, Dec. 20, 2005 – 2nd (current) Rent provisions**
- 5. Amendment #5, Sep. 29, 2010 – 2nd Land Use Plan**
- 6. Amendment #6, Dec. 1, 2011 – Addition of Ryan Lands to “Leased Premises”**
- 7. Amendment #7, Dec. 1, 2011 – Removal of one-time 20-year renewal right**
- 8. Amendment #8, Dec. 1, 2011 – Renewal for 20 years to December 31, 2076**
- 9. Amendment #9, Nov. 24, 2014 – MacDon-Moray land swap**
- 10. Amendment #10, Sep. 25, 2015 – 3rd Land Use Plan**
- 11. Amendment #11, April 28, 2021 – Remove need for GIC consent for amendments**
- 12. Amendment #12, April 28, 2021 – COVID Rent Relief**

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THIS LEASE made as of the 31st day of December, 1996.

BETWEEN: **HER MAJESTY THE QUEEN IN RIGHT OF CANADA,**
(hereinafter called "**the Landlord**"),
represented by the Minister of Transport,

PARTY OF THE FIRST PART

AND:

WINNIPEG AIRPORTS AUTHORITY INC.
(hereinafter called "**the Tenant**"),

PARTY OF THE SECOND PART

WHEREAS the Landlord and the Tenant have entered into an Agreement to Transfer ("**Agreement to Transfer**") which has been executed on the 29th day of August, 1996, and which is registered in the Legal Registry of the Department of Transport as instrument No. 146733;

AND WHEREAS under the Agreement to Transfer the Landlord and the Tenant have agreed to enter into this Lease, *inter alia*, if certain conditions precedent were met or waived;

AND WHEREAS the said conditions precedent have been met or waived;

AND WHEREAS the Governor in Council has, by Order in Council Number P.C. 19961387, dated the 28th day of August, 1996, authorized the Minister of Transport to execute and deliver this Lease on behalf of the Landlord;

NOW THEREFORE THIS AGREEMENT WITNESSES that, in consideration of the mutual covenants and agreements herein contained and subject to the terms and conditions hereinafter set out, the parties hereto agree as follows:

ARTICLE 1 - DEFINITIONS AND INTERPRETATION

Section 1.01 Definitions

1.01.01 The parties hereto agree that, when used in this Lease, unless the context otherwise requires, the following words or expressions have the meaning hereinafter set forth.

“2020 Lease Year” has the meaning ascribed thereto in Subsection 4.02.01;
[NTD: Added by Am. #12.]

“2021 Lease Year” has the meaning ascribed thereto in Subsection 4.02.01;
[NTD: Added by Am. #12.]

“2022 Lease Year” has the meaning ascribed thereto in Subsection 4.02.01;
[NTD: Added by Am. #12.]

“Aboriginal Claim” means any aboriginal title or aboriginal claim, whether comprehensive, specific or of any other kind;

“Additional Rent” has the meaning ascribed thereto in Section 4.02;

“Adjustment Amount” has the meaning ascribed thereto in Section 4.02;

“Aeronautical Communication Services” has the meaning ascribed thereto in the ANS Act;

“Aeronautical Information Services” has the meaning ascribed thereto in the ANS Act;

“Aeronautical Radio Navigation Services” has the meaning ascribed thereto in the ANS Act;

“Agreement to Transfer” has the meaning ascribed thereto in the preamble of this Lease;

“Air Navigation Services” has the meaning ascribed thereto in the ANS Act;

“Air Terminal Building” means any building on the Demised Premises used for public and commercial passenger service facilities associated with the transfer of commercial passengers and their baggage from the point of interchange between ground transportation and the building to the point of connection with the aircraft,

and with the transfer of connecting and in-transit commercial passengers and their baggage between flights, and includes all 'bridged gates attached to such building; [NTD: Revised by Am. #4.]

“**Air Traffic Control Services**” has the meaning ascribed thereto in the ANS Act;

“**Airport**” means the Winnipeg James Armstrong Richardson International Airport; [NTD: Revised by Am#6.]

“**Airport Base Rent**” has the meaning ascribed thereto in Section 4.02;

“**Airport Certificate**” means a “**Canadian aviation document**” as defined in the *Aeronautics Act*, R.S.C. 1985, c. A-2 and the regulations made thereunder;

“**Airport Improvement Fee**” means a charge by the Tenant to any Airport Passenger whether such charge is known as a passenger facility charge, an airport improvement fee, an airport development fee or by any other name and regardless of how such charge is collected; [NTD: Added by Am. #4.]

“**Airport Infrastructure**” means:

- (a) Airside,
- (b) any Air Terminal Building on the Demised Premises,
- (c) the Ground Transportation Reserve, and
- (d) any Parking Facility on the Demised Premises;

“**Airport Infrastructure Expenditure**” means the aggregate of the cost incurred by the Tenant for the acquisition, the construction or the development after the Date of Commencement by the Tenant of Airport Infrastructure, as determined in accordance with Generally Accepted Accounting Principles, minus the aggregate of:

- (a) any assistance provided by any Person to the Tenant toward the acquisition, the construction or the development of any Airport Infrastructure that according to Generally Accepted Accounting Principles could be applied to the reduction of costs or as a deferred credit, and
- (b) the aggregate of the net carrying amount, as determined in accordance with Generally Accepted Accounting Principles as at the date of disposal of

any Airport Infrastructure acquired by the Tenant after the Date of Commencement and disposed of by the Tenant,

provided that the costs of any Airport Infrastructure which the Tenant acquired from any occupant or user of any part of the Demised Premises shall not exceed the fair market value thereof;

“Airport Infrastructure Lender” means a Person who has financed any Airport Infrastructure Expenditure;

“Airport Master Plan” means a document setting out the strategy for the development of the Airport over a planning horizon of not less than twenty (20) years, including the conceptual development strategies for the Airport’s main sub-systems (e.g. Groundside, Air Terminal Building, Airside, surface access and utilities);

“Airport Operators Liability Insurance” means the Insurance specified in Sections 10.01, 10.03 and 10.08; **[NTD: Added by Am. #3 to replace def’n of “Liability Insurance”]**

“Airport Operations Manual” means the manual which is submitted by the Tenant and approved by the Minister pursuant to the *Airport Regulations*, S. O. R./94-613;

“Airport Passenger” means a person who is transported by air by an air carrier and who pays remuneration, other than token remuneration, to the air carrier; **[NTD: Added by Am. #4.]**

“Airport Rent” has the meaning ascribed thereto in Section 4.02;

“Airport Reserve” means that part of the Demised Premises designated on the Approved Land Use Plan for uses related to Airside, Air Terminal Buildings, Terminal Reserve, Parking Facilities and Ground Transportation Reserve; **[NTD: Revised by Am. #4 and again in Am#10.]**

“Airport Revenue” has the meaning ascribed thereto in Section 4.02;

“Airport Undertaking” means an undertaking the object of which is to manage, operate and maintain the Airport;

“Airside” means:

- (a) That part of the Demised Premises designated as “Airfield” on the Approved Land Use Plan;
- (b) That part of the Demised Premises designated as “Operations & Support” on the Approved Land Use Plan;
- (c) After December 31, 2033, that part of the Demised Premises designated as “Interim Commercial” on the Approved Land Use Plan;
- (d) Any Apron associated with any Air Terminal Building; and,
- (e) The airspace above and the ground beneath the areas referred to in Paragraphs (a) through (d).

[NTD: Revised by Am. #10.]

“**ANS Act**” means the *Civil Air Navigation Commercialization Act*, S.C. 1996, c.20;

“**Applicable Federal Environmental Laws**” has the meaning ascribed thereto in Section 37.02;

“**Applicable Provincial Environmental Laws**” has the meaning ascribed thereto in Section 37.02;

“**Approved Land Use Plan**” means the Land Use Plan attached hereto as Schedule “C” and any amendment thereto or replacement thereof, as approved by the Minister pursuant to Section 7.02;

“**Apron**” means that part of Demised Premises that is intended to accommodate the loading and unloading of passengers and cargo, the refuelling, servicing, maintenance and parking of aircraft and any movement of aircraft, vehicles and pedestrians necessary for those purposes, but does not include the Manoeuvring Area or the Air Terminal Building;

“**Architect**” means a Person who is appointed by the Tenant or an Occupant, as the case may be, and who is qualified and licensed to practice and who is actively practising architecture in the Jurisdiction;

“**Arm’s Length**” has the meaning ascribed thereto in Section 4.02;

“**Auditor**” has the meaning ascribed thereto in Subsection 4.02.01; [NTD: Added by Am. #4.]

“Aviation Services and Facilities Agreement” means the Existing Agreement executed between Her Majesty and NAVCAN relating to the provision of civil air navigation services at the Airport referred to in Paragraph 3.02.02(a) of the Agreement to Transfer;

“Aviation Weather Services” has the meaning ascribed thereto in the ANS Act;

“Basic Interest Rate” has the meaning ascribed thereto in Section 4.02;

“Bill of Sale” means the agreement executed concurrently with this Lease as amended from time to time, referred to in Paragraph 3.02.01(b) of the Agreement to Transfer;

“Board” means the Tenant’s board of directors;

“Business Day” means a day other than a Saturday, Sunday or statutory holiday in the Jurisdiction;

“Business Taxes” has the meaning ascribed thereto in Section 5.03;

“Canadian Inspection Services Agreement” means the agreement executed concurrently with this Lease as amended from time to time, referred to in Paragraph 3.02.01(e) of the Agreement to Transfer;

“Caused Statement” has the meaning ascribed thereto in Subsection 4.02.01; **[NTD: Added by Am. #4.]**

“Chartered Bank Prime Business Rate” has the meaning ascribed thereto in Section 4.02;

“CICA Handbook” has the meaning ascribed thereto in Subsection 4.02.01; **[NTD: Added by Am. #4.]**

“CIS Departments” means:

- (a) the Department of National Revenue;
- (b) the Department of Citizenship and Immigration;
- (c) the Department of Agriculture and Agri-Food; and
- (d) the Department of Health;

“Civil Air Navigation Services” means the civil air navigation services as described in the ANS Act;

“Claims” means any claims, losses, suits, proceedings, actions, causes of action, demands, judgments, executions, liabilities, and responsibilities for any Damages and for any Injuries;

“Commercial and Industrial Area” has the meaning ascribed thereto in Subsection 4.02.01; **[NTD: Added by Am. #4.]**

“Competing Business” means a business or undertaking which is carried on outside the Demised Premises within a radius of six (6) kilometres from any point on the perimeter of the Lands and which business or undertaking is the same as, similar to, or in competition with, the Tenant's business or undertaking or any other business or undertaking carried on, or which could be carried on, in or on the whole or any part of the Demised Premises; **[NTD: Revised by Am. #4.]**

“Costs” means all expenses, losses, charges and payments relating to an event including judgments, orders and interest and any professional, consultant and legal fees (on a “solicitor and his own client” basis) of professionals and consultants retained by a party;

“C.P.I.” means the index known as “The All-items Consumer Price index” (Not Seasonally Adjusted) by Urban Centre base year 1992=100, for the City of Winnipeg, published by Statistics Canada as Table 9 of the Consumer Price Index Catalogue Number 62-001-XIS (or by a successor governmental agency); **[NTD: Revised by Am. #4.]**

“C.P.I. Adjustment Factor” means, for each Lease Year, the numerical value obtained by dividing the C.P.I. for the calendar month prior to the calendar month in which the first day of that Lease Year occurs by the Numerical value ONE HUNDRED AND TEN DECIMAL EIGHT (110.8); **[NTD: Revised by Am. #4.]**

“Damages” means any loss, cost or damage including, but not limited to direct, indirect, incidental, special, exemplary, consequential or otherwise, loss of profits or revenue, interference with business operations, loss of tenants, lenders, investors or buyers, diminution in value of the Demised Premises or any part thereof and the inability to use any part of the Demised Premises and Costs;

“Date of Commencement” means the 1st day of January, 1997;

“Demised Premises” means collectively the Lands, any Existing Facility, any New Facility, any other building, improvement or structure now or hereafter located on the Lands and all fixed equipment, fixed machinery, fixed apparatus,

fixed fixtures and Leasehold Improvements forming part thereof but excludes all Licensed Civil Air Navigation Services Assets and all buildings, structures and other improvements listed on Schedule "R" which the Landlord transferred to NAVCAN;

"Emergency Assistance Services" has the meaning ascribed thereto in the ANS Act;

"Employment Claims" means all grievances, arbitrations, complaints appeals or proceedings, including without limitation, occupational health and safety complaints, workers' compensation claims, human rights complaints, directions of health and safety officers and prosecutorial charges resulting from or arising out of Part II of the *Canada Labour Code* including appeals and applications for review, arising prior to the Transfer Date with respect to the operation of the Demised Premises or to a bargaining unit or to a Continued Employee employed at the Airport immediately prior to the Transfer Date;

"Engineer" means a Person who is appointed by the Tenant or an Occupant, as the case may be, and who is qualified and licensed to practise and who is actively practising public engineering in the Jurisdiction;

"Environmental Baseline Study Report" has the meaning ascribed thereto in Subsection 37.01.01;

"Event of Bankruptcy" means, with respect to a Person:

- (a) to take or consent to any resolution or action for or in respect of its liquidation, dissolution or winding-up, whether by extra-judicial means or under any statute of any applicable jurisdiction, to make an assignment for the benefit of its creditors or any substantial number or portion of its creditors, to file an assignment in bankruptcy under the ***Bankruptcy and Insolvency Act***, R.S.C. 1985, c. B-3 or any comparable statute of any applicable jurisdiction, or to take or consent to any resolution or action for or in respect of a proposal for any reorganization, arrangement, compromise, compounding, scheme or arrangement, composition, extension of time or moratorium of or in respect of any of its debts or obligations, whether by extra-judicial means or under the ***Bankruptcy and Insolvency Act*** or the ***Companies' Creditors Arrangement Act***, R.S.C. 1985, c. C-36 or any comparable statute of any applicable jurisdiction;
- (b) whenever a custodian, receiver, receiver and manager, sequestrator, liquidator, trustee, agent for a secured creditor or other Person with similar powers is appointed for any substantial portion of its properties or assets,

whether by a court or by extrajudicial means unless such custodian, receiver, receiver and manager, sequestrator, liquidator, trustee or agent is removed within sixty (60) days of such appointment; or

- (c) whenever a petition or other legal process for or in respect of its bankruptcy, insolvency, liquidation, dissolution or winding-up is issued or presented or filed against it, unless the same is dismissed or discharged within sixty (60) days and during such period the effectiveness of such petition or other legal process is stayed;

“Event of Default” has the meaning ascribed thereto in Subsection 20.01.01;

“Existing Agreements” means all Existing Revenue Agreements and all Existing Expenditure Agreements and all Existing Other Agreements;

“Existing Expenditure Agreement” means any contract, agreement or arrangement whatsoever existing between Her Majesty, except where Her Majesty is represented by the minister of a CIS Department listed in the definition of CIS Departments, and any other Person immediately prior to the Date of Commencement whereby the other Person:

- (a) has agreed to supply any service or any goods or materials for the management, operation or maintenance of the Demised Premises; or
- (b) has agreed to construct any building, structure or improvement on any part of the Demised Premises;

whether or not such contract, agreement or arrangement is listed in Schedule “F”;

“Existing Facility” means:

- (a) any loading bridge owned by the Landlord or the Tenant, and any building, structure, gate, runway, taxiway, Apron, road, infrastructure, facility, utility, plant and any other improvement located on, in, over, under or through the Lands and which is in existence immediately prior to the Date of Commencement, and all pavement, landscaping, structures, fixtures and improvements including Leasehold Improvements associated therewith; and
- (b) Visual Aids located on, in, over, under or through the Lands and which are in existence immediately prior to the Date of Commencement;

and includes any addition to, improvement to, alteration of or replacement of any such building, structure, loading bridge, gate, runway, taxiway, Apron, road,

infrastructure, facility, utility, plant and any other improvement located on, in, over, under or through the Lands and any addition to, improvement to, alteration of or replacement of any such Visual Aid;

“Existing Other Agreements” means any agreement, arrangement or understanding between Her Majesty, except where Her Majesty is represented by the minister of a CIS Department listed in the definition of CIS Departments, and any other Person immediately prior to the Date of Commencement relating to the Demised Premises or any part thereof other than an Existing Revenue Agreement or an Existing Expenditure Agreement, whether or not such agreement, arrangement or understanding is listed on Schedule “G”;

“Existing Revenue Agreement” means any lease, agreement for lease, easement, licence, concession, franchise, permit, authorization, or any other arrangement whatsoever existing between Her Majesty, except where Her Majesty is represented by the minister of a CIS Department listed in the definition of CIS Departments, and any other Person immediately prior to the Date of Commencement whereby the Landlord has granted a right to occupy or use the whole or any part of the Demised Premises whether or not such lease, agreement for lease, easement, licence, concession, franchise, permit, authorization, or arrangement is listed on Schedule “E”;

“Final Airport Rent for 2005” has the meaning ascribed thereto in Subsection 4.02.01 of Transition Article 4; **[NTD: Added by Am. #4.]**

“First Class Facility” means a facility that has been renovated from time to time to modern standards, to the extent necessary to attract a high percentage occupancy and generate high gross proceeds from the operation of the Airport;

“Flight Information Services” has the meaning ascribed thereto in the ANS Act;

“Force Majeure” means an event causing a bona fide delay, notwithstanding the best efforts of the party delayed with respect thereto, in the performance of any obligation under this Lease arising from strike, lockout, riot, insurrection, war, fire, tempest, Act of God; provided that the party claiming the Force Majeure notifies the other party forthwith after the party claiming the Force Majeure becomes aware of the commencement of any event which is a cause of a “Force Majeure”;

“Generally Accepted Accounting Principles” has the meaning ascribed thereto in’ Section 4.02;

“Generally Accepted Auditing Standards” has the meaning ascribed thereto in Subsection 4.02.01; [NTD: Added by Am. #4.]

“Gross Revenue” has the meaning ascribed thereto in Section 4.02;

“Ground Transportation Reserve” means the network of roads on the Demised Premises used by the public or passengers to provide access from any provincial, regional or municipal road system to any and all Air Terminal Buildings or any and all Parking Facilities on the Demised Premises; [NTD: Revised by Am. #4.]

“Groundside” means the Lands other than Airside;

“Hazardous Substance” has the meaning ascribed thereto in Section 37.02;

“Her Majesty” means Her Majesty the Queen in right of Canada and Her successors but, for greater certainty, shall, except where otherwise provided either expressly or by necessary implication, not include any assign of Her Majesty;

“Imposed” has the meaning ascribed thereto in Subsection 5.01.01;

“Injury” means any personal injury and any bodily injury including death resulting therefrom and whether the death occurs before or after the end of the Term;

“Instrument” means the documents listed in Subsection 3.02.01 of the Agreement to Transfer executed concurrently with this Lease, as amended from time to time;

“Insurance” means any and all insurance set out in this Lease;

“Insurance Trust Agreement” means the agreement referred to in Paragraph 3.02.01(j) of the Agreement to Transfer which agreement has been executed and delivered concurrently with this Lease and as amended from time to time;

“Insurance Trustee” means a Person authorized to carry on the business of a trustee in the Jurisdiction, designated in accordance with the provisions of Article 11 as the Insurance Trustee pursuant to the Insurance Trust Agreement;

“Interest Rate” has the meaning ascribed thereto in Section 4.02;

“Joint Use Facility” means a building or structure and any improvement thereto located on the Demised Premises and used in part for any Civil Air Navigation Service, other than a Stand Alone Facility;

“**Jurisdiction**” means the Province of Manitoba;

“**Land Use Plan**” means a drawing or plan with accompanying text presenting how the Lands will be put to use over the planning horizon and describing permissible development in each area of the Airport, clearly indicating any restrictions, and joining together the development strategies for Airside, Groundside and the interface between Airside and Groundside;

“**Landlord**” means the First Party and Her successors and assigns. In any section of this Lease which contains a release, hold harmless, indemnity, limitation of liability or other exculpatory language in favour of the Landlord, the term “**Landlord**” also means any Department of the Government of Canada, any Minister of the Crown, any officers, servants, employees, agents or contractors of the Landlord, any other Person for whom the Landlord may be responsible in law and any Person who has a right of contribution as against the Landlord, and, in addition, “**Landlord**”, solely for the purpose of any such section, is the agent or trustee of, and acting for the benefit of, each of them;

“**Landlord’s Auditor**” has the meaning ascribed thereto in Subsection 4.02.01; [NTD: Added by Am. #4.]

“**Lands**” means all and singular those certain parcels or tracts of lands and premises situate, lying and being in the City of Winnipeg and in the Rural Municipality of Rosser in the Province of Manitoba, as more particularly described in Schedule “A” attached hereto; [NTD: Revised by Am#6.]

“**Lease**” means this lease as amended or supplemented from time to time;

“**Lease Year**” has the meaning ascribed thereto in Section 4.02;

“**Leasehold Improvements**” means all items generally considered as leasehold improvements, including, without limitation, all fixtures (excluding the Tenant’s or Occupant’s trade fixtures), fixed equipment and alterations from time to time made, constructed, erected, or installed by, for or on behalf of the Tenant or any Occupant in, on, to, for or which serves the Demised Premises or any part thereof, whether or not easily disconnected or movable;

“**Leasehold Interest**” means the right, title and interest of the Tenant in the Demised Premises pursuant to this Lease;

“**Leasehold Mortgage**” means a mortgage or charge of the Leasehold Interest in whole or in part granted by the Tenant;

“Leasehold Mortgagee” means a mortgagee or chargee under a Leasehold Mortgage;

“Leasehold Mortgage for Airport Purposes” has the meaning ascribed thereto in Subsection 18.03.04;

“Leasehold Mortgagee for Airport Purposes” means a mortgagee or chargee under a Leasehold Mortgage for Airport Purposes;

“Leasehold Mortgage Requiring Consent” has the meaning ascribed thereto in Subsection 18.03.03;

“Leasehold Mortgagee’s Covenants” has the meaning ascribed thereto in Subsection 18.03.01;

“Leasehold Mortgage in the Ordinary Course of Operations” has the meaning ascribed thereto in Subsection 18.03.02;

“Letter of Credit” means an irrevocable letter of credit in the Letter of Credit Format from any bank named in Schedule I of the **Bank Act**, R.S.C. 1985, c. B-1.01, or from any other financial institution which is acceptable to the Minister;

“Letter of Credit Format” means the draft letter of credit attached hereto as Schedule “D”;

“Licensed Civil Air Navigation Services Assets” means:

- (a) all navigation equipment, weather equipment, communication equipment, surveillance equipment, electronic landing aids and other equipment, and
- (b) all associated antennae, cables or circuits including coaxial cables, cable ducting and telecommunications systems,

whether located in or on a Stand Alone Facility, or a Joint Use Facility or on or under any land used by NAVCAN in the provision of a Civil Air Navigation Service and includes any building required solely for any equipment or aids referred to in Paragraph (a) of this definition, for which a licence has been granted pursuant to Section 2.01 of the Aviation Services and Facilities Agreement, but does not include Visual Aids, any Stand Alone Facility or any Joint Use Facility;

“List of Employment Claims” has the meaning ascribed thereto in Clause 1.16.01(b)(ii);

“**List of Litigation**” has the meaning ascribed thereto in Clause 1.16.01(b)(i);

“**Maintenance and Repair Obligation**” has the meaning ascribed thereto in Subsection 13.03.01;

“**Major Air Carrier**” means for any Lease Year, an airline providing passenger traffic to the Airport which, in the calendar year prior to the calendar year which corresponds to that Lease Year, carried more than twenty percent (20%) of the aggregate of Airport Passengers transported to and from the Airport; **[NTD: Revised by Am. #4.]**

“**Major International Airport**” means an airport serving large population centres which links Canada from coast to coast and internationally and which is used by air carriers as the point of origin and destination for international and interprovincial passenger and cargo air service in Canada;

“**Management Agreement**” means an agreement, between the Tenant and a third party whereby the third party undertakes on behalf of the Tenant to manage the Demised Premises or any part thereof or to manage the Airport Undertaking or any part thereof, on behalf of the Tenant;

“**Manoeuvring Area**” means that part of the Demised Premises intended to be used for the taking off and landing of aircraft and for the movement of aircraft associated with take-off and landing of aircraft, but does not include any Apron;

“**Maximum Foreseeable Loss**” has the meaning ascribed thereto in Section 10.06; **[NTD: Added by Am#3.]**

“**MCA Handbook**” has the meaning ascribed thereto in Subsection 4.02.01;

“**Memorandum of Agreement on Police and Security**” means the agreement referred to in Paragraph 3.02.01(f) of the Agreement to Transfer executed concurrently with this Lease, and as amended from time to time.

“**Minister**” means the Minister of Transport and any person authorized in writing by the Minister of Transport to act on his or her behalf;

“**NAVCAN**” means Nav Canada, a corporation incorporated under the provisions of Part II of the **Canada Corporations Act**, R.S.C. 1970, c. C-32;

“**New Facility**” means any loading bridge owned by the Tenant, and any building, structure, gate, runway, taxiway, Apron, road, infrastructure, facility, utility, plant and any other improvement other than an Existing Facility and includes any

addition to, improvement to, alteration of or replacement of any such building, structure, loading bridge, gate, runway, taxiway, Apron, road, infrastructure, facility, utility, plant and other improvement and any Visual Aid, other than a Visual Aid which is an Existing Facility;

“Nominators” has the meaning ascribed thereto in the by-laws of the Tenant;

“Non-Disturbance Agreement” means an agreement, when executed and delivered, substantially in the form of the agreement attached hereto as Schedule “H”, as amended from time to time;

“Notice” has the meaning ascribed thereto in Article 27;

“Notice of Arm’s Length Amount” has the meaning ascribed thereto in Subsection 4.02.01; **[NTD: Added by Am. #4.]**

“Notice of Default to Landlord” has the meaning ascribed thereto in Subsection 20.07.01;

“Notice of Intention to Appoint a Receiver” has the meaning ascribed thereto in Paragraph 20.02.01(d);

“Notice of Intention to Terminate” has the meaning ascribed thereto in Subsection 20.01.04;

“Notice of Landlord’s Auditor” has the meaning ascribed thereto in Subsection 4.02.01; **[NTD: Added by Am. #4.]**

“Notice of Non-Performance” has the meaning ascribed thereto in Subsection 20.01.01;

“Notice of Termination” has the meaning ascribed thereto in Paragraph 20.02.01(a);

“Notice or Short Form of Lease” has the meaning ascribed thereto in Section 53.01;

“Notice to Perform Remedial Work” has the meaning ascribed thereto in Section 37.04;

“Notice to Select Landlord’s Auditor” has the meaning ascribed thereto in Subsection 4.02.01; **[NTD: Added by Am. #4.]**

“Notional Airport Rent” has the meaning ascribed thereto in Subsection 4.02.01.

[NTD: Added by Am. #12.]

“Occupant” means the tenant, subtenant, licensee, concessionaire, franchisee, user or other third party who holds any part of the Demised Premises under any Occupant Agreement, Existing Revenue Agreement or Existing Other Agreement but for greater certainty does not include Her Majesty where She occupies space or land on the Demised Premises;

“Occupant Agreement in the Ordinary Course of Operations” has the meaning ascribed thereto in Subsection 18.02.03;

“Occupant Agreement Requiring Consent” means an Occupant Agreement other than an Occupant Agreement in the Ordinary Course of Operations;

“Original Airport Reserve” means

- a) for the period up to and including December 31, 2015, those parts of the Demised Premises shown in Figure 7 - 5 of the Approved Land Use Plan as Terminal Reserve and Operations Reserve; and
- b) for the period following December 31, 2015, that part of the Demised Premises shown in Figure 7-4 of the Approved Land Use Plan as Terminal Reserve; [NTD: Added by Am#4. Revised by Am#5. Replaced by “Airport Reserve” in 8.02.03 by Am#10. Term not deleted from definitions but, no longer found in Lease.]

“Parking Facility” means a facility on the Demised Premises for the parking of motor vehicles, other than

- (a) such a facility which is held, by an Occupant under an Occupant Agreement for a part of the Demised Premises and which is reserved by the Occupant exclusively for the use of its directors, officers and employees, and
- (b) such a facility which is held by an Occupant under an Occupant Agreement which is ancillary to and reasonably required for the service of a hotel, shopping centre, or any other building that is used by the Occupant exclusively for a purpose other than the parking of motor vehicles, provided that such a facility is not larger than is reasonably required for such service and is reserved by the Occupant for the use of its patrons, customers and visitors;

[NTD: Revised by Am. #4.]

“Person” means any individual, company, corporation, partnership, limited partnership, firm, trust, sole proprietorship, government or government agency, authority or entity, however designated or constituted;

“Property Insurance” means the Insurance specified in Sections 10.01 and 10.04 and Paragraph 10.08.01(c), but does not include Insurance maintained under Paragraphs 10.04.02(d), 10.04.03(c) and 10.04.03(d) and Subparagraph 10.08.01(c)(iv); **[NTD: Added by Am#3.]**

“Property Insurance Proceeds” means insurance proceeds payable in respect of Property Insurance and includes any money derived from investing any of such proceeds;

“Quarterly Period” has the meaning ascribed thereto in Subsection 4:02:01; **[NTD: Added by Am#4.]**

“Real Property Taxes” has the meaning ascribed thereto in Section 5.01;

“Receiver” has the meaning ascribed thereto in Paragraph 20.02.01(d);

“Remedial Work” has the meaning ascribed thereto in Section 37.02;

“Rent” has the meaning ascribed thereto in Section 4.02;

“Repairs” means the repair, replacement, restoration or reconstruction of any portion of a Tenant Insured Facility damaged or destroyed, to the same state of order, condition and repair in which the Tenant was required to maintain such portion of such Tenant Insured Facility pursuant to this Lease, with new materials of like kind and quality; **[NTD: Revised by Am#3.]**

“Replacement Cost” has the meaning ascribed thereto in Section 10.05;

“Reported Airport Rent” has the meaning ascribed thereto in Subsection 4.02.01; **[NTD: Added by Am#4.]**

“Representations” has the meaning ascribed thereto in Subsection 45.01.01;

“Special Conditions” has the meaning ascribed thereto in Subsection 18.05.01;

“Stand Alone Facility” means a building or structure and any improvement thereto used in the provision of a Civil Air Navigation Service

- (a) located on the Demised Premises immediately prior to the Date of Commencement, or
- (b) constructed by or on behalf of NAVCAN on any part of the Demised Premises on or after the Date of Commencement,

which is under the exclusive control of NAVCAN and is wholly or the majority of which is used by NAVCAN after the Date of Commencement but excludes a hut used exclusively to house licensed Civil Air Navigation Services Assets;

“Tenant Insured Facility” means

- (a) any Existing Facility on any part of the Demised Premises other than an Existing Facility which at the relevant time is owned by a third party pursuant to an Existing Revenue Agreement or an Existing Other Agreement; and
- (b) any New Facility on any part of the Demised Premises, except any New Facility which at the relevant time is owned by a third party pursuant to an Occupant Agreement;

[NTD: Added by Am#3.]

“Tenant’s Airport Master Plan” means an Airport Master Plan with the characteristics ascribed thereto in Subsection 7.01.01 and which is prepared by or for the Tenant;

“Tenant’s Annual Financial Statements” has the meaning ascribed thereto in Subsection 4.02.01;

“Tenant’s Annual Statement” has the meaning ascribed thereto in Subsection 4.02.01; [NTD: Added by Am#4.]

“Tenant’s Auditor’s Report” has the meaning ascribed thereto in Subsection 4.02.01; [NTD: Added by Am#4.]

“Tenant’s Auditor’s Report on Tenant’s Annual Financial Statements” has the meaning ascribed thereto in Subsection 4.02.01; [NTD: Added by Am#4.]

“Tenant’s Gross Revenue” has the meaning ascribed thereto in Subsection 10.01.08; [NTD: Added by Am#4.]

“Term” means the period referred to in Subsection 3.01.01 and, in addition, after the Tenant has exercised its option to renew pursuant to Subsection 3.01.02, the period referred to in Subsection 3.01.02;

“Third Party Insured Facility” means

- (a) any Existing Facility on any part of the Demised Premises which at the relevant time is owned by a third party pursuant to an Existing Revenue Agreement or an Existing Other Agreement; and
- (b) any New Facility on any part of the Demised Premises which at the relevant time is owned by a third party pursuant to an Occupant Agreement;”.

[NTD: Added by Am#3.]

“**Transfer**” means any agreement, arrangement or understanding including a partnership which results in

- (a) the assignment or transfer of this Lease or any interest therein, including an undivided interest,
- (b) the assignment or transfer of the Leasehold Interest or any part thereof, including an undivided interest,
- (c) the transfer by way of assignment of a security interest in the Lease or in the Leasehold Interest, or
- (d) the assignment or transfer of any interest, including an undivided interest, in all or substantially all of the Airport Undertaking other than a security interest therein to secure the payment of any indebtedness or other obligation of the Tenant but for greater certainty excludes any Occupant Agreement, Leasehold Mortgage, assignment of rents, assignment of book debts, or general security agreement;

“**Transferee**” means the Person to whom a Transfer is made;

“**Visual Aids**” means

- (a) approach lights, visual approach aids, runway lights, taxiway lights, airside lights, airside signs and any other similar physical instruments for the safe and efficient operation and control of aircraft;
- (b) any equipment or special electrical distribution cables required to bring electrical power to or to operate any lights or aids contemplated in paragraph (a) of this definition; and
- (c) obstruction lighting required for the safe manoeuvring of aircraft in the vicinity of the Airport;

“Work” means all the effort, material, services, matters and things being done, furnished or performed in order to carry out any objective;

Section 1.02 Extended Meanings

1.02.01 The words **“hereof”**, **“herein”**, **“hereto”**, **“hereunder”**, **“therein”** and **“thereto”** and similar expressions used in this Lease mean and refer to the whole of this Lease and not to any particular Article or Section, unless the context indicates otherwise.

1.02.02 In this Lease, **“includes”** means “includes, without limitation”; **“including”** means “including, without limitation”; **“without any set-off”** means “without any set-off, notice, demand, deduction, alteration, diminution, compensation or abatement whatsoever”; **“construct”** means “construct or erect”; **“construction”** means “construction or erection”; **“alterations”** means “alterations, adjustments, changes, repairs, renewals, restorations, additions, reconstructions, replacements, modifications, improvements, betterments, and installations”; **“any”** means “any and all”; **“Tenant shall not permit”** means “Tenant shall not cause, suffer or permit”; **“law”** means “law, by-law, regulation, order, decision and rule”; and **“Tenant agrees”** or **“Tenant acknowledges”** means “Tenant expressly acknowledges and agrees”.

1.02.03 Notwithstanding any provision to the contrary, where this Lease provides that the Tenant shall **“ensure”** a covenant or obligation of an Occupant or Transferee or shall **“ensure”** compliance by an Occupant or Transferee or provides that the Tenant covenants or agrees to a specific matter on behalf of an Occupant or Transferee, the obligation of the Tenant herein shall be deemed to have been performed if:

- (a) in the case of a Transferee or in the case of an Occupant under an Occupant Agreement
 - (i) the Tenant shall have obtained from such Occupant or Transferee, a covenant, obligation or agreement in terms which is no less stringent; and
 - (ii) in the event of a breach of such covenant, obligation or agreement by the Occupant or Transferee, the Tenant shall have used diligent efforts to enforce such covenant, obligation or agreement, including the initiation and continuance and prosecution of legal proceedings with due diligence;
- (b) in the case of an Occupant under an Existing Revenue Agreement or Existing Other Agreement, the Tenant shall have used diligent efforts to enforce any covenant, obligation or agreement contained in the Existing Revenue Agreement or Existing Other Agreement in the event of a breach of such covenant, obligation or agreement by the Occupant, including the

initiation and continuance and prosecution of legal proceedings with due diligence.

- 1.02.04 In this Lease, the expression “**applicable laws**” means applicable laws as they relate to the Demised Premises or the use thereof or any activity thereon.

Section 1.03 Subdivisions

- 1.03.01 Unless otherwise stated, a reference herein or in a Schedule by numerical or alphabetical designation to an Article, Section, Subsection, Paragraph, Subparagraph or Schedule shall refer to the Article, Section, Subsection, Paragraph, Subparagraph or Schedule bearing that designation in this Lease or in a Schedule.

Section 1.04 Headings

- 1.04.01 The division of this Lease into Articles, Sections, Subsections, Paragraphs, and Subparagraphs and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Lease.

Section 1.05 Number and Gender

- 1.05.01 Words importing the singular shall include the plural and vice versa and words importing a particular gender shall include all genders. The use of the neuter singular pronoun to refer to the Landlord or the Tenant is deemed a proper reference. The necessary grammatical changes required to make the provisions of this Lease apply shall in all instances be assumed as though in each case fully expressed.

Section 1.06 Statutes, Regulations and Rules

- 1.06.01 Any reference in this Lease to all or any part of any statute, regulation or rule shall, unless otherwise stated, be a reference to that statute, regulation or rule or the relevant part thereof, as amended, substituted, replaced or reenacted from time to time.

Section 1.07 Accounting Terms and Principles

- 1.07.01 All accounting and financial terms used in this Lease shall, except where otherwise provided either expressly or by necessary implication in this Lease, be interpreted and applied in accordance with Generally Accepted Accounting Principles and generally accepted auditing standards in Canada as they exist from time to time.

Section 1.08 Business Day

1.08.01 If the day on which any act or payment is required to be done or made under this Lease is a day which is not a Business Day, then such act or payment shall be duly performed or made if done on the next following Business Day.

Section 1.09 Contract Always Speaking

1.09.01 Where a matter or thing is expressed in the present tense, it shall be applied to the circumstances as they arise, so that effect may be given to this Lease according to its true spirit, intent and meaning.

Section 1.10 Schedules

1.10.01 The documents attached hereto as Schedules "A" to "R" form an integral part of this Lease as fully as if they were set forth herein *in extenso* and consist of:

- Schedule "A" - Description
- Schedule "B" - Plan
- Schedule "C" - Land Use Plan
- Schedule "D" - Letter of Credit Format
- Schedule "E" - List of Existing Revenue Agreements
- Schedule "F" - List of Existing Expenditure Agreements
- Schedule "G" - List of Existing Other Agreements
- Schedule "H" - Form of Non Disturbance Agreement
- Schedule "I" - I.A.O. Commercial Building, Stock and Equipment Broad Form
- Schedule "J" - CCDC 101 - Liability Policy
- Schedule "K" - CCDC 101-2 - Endorsement
- Schedule "L" - CCDC 201 - Builders Risk Form
- Schedule "M" - Resolution
- Schedule "N" - Form of Landlord Acknowledgement Agreement
- Schedule "O" - Form of Landlord's Certificate
- Schedule "P" - Form of Tenants Certificate
- Schedule "Q" - Form of Leasehold Mortgagee's Certificate
- Schedule "R" - List of Buildings, Structures or Improvements which have been transferred to NAVCAN
- Schedule "S" - Location of Administration Building and Power Plant.

1.10.02 All capitalized words and phrases used in any of the Schedules annexed hereto will have the same meanings as defined in this Lease.

1.10.03 Notwithstanding Subsection 1.10.01, in the event of any inconsistency or conflict between either a Schedule or any provision contained therein, and this Lease or any provision of this Lease, this Lease or the provision of this Lease prevails to the extent of the inconsistency or conflict.

Section 1.11 Governing Law

- 1.11.01 This Lease shall be interpreted in accordance with the laws in force in the Jurisdiction, subject always to any paramount or applicable federal laws. Nothing in this Lease is intended to nor shall be construed as limiting, waiving or derogating from any Federal Crown prerogative.
- 1.11.02 Nothing herein is intended to nor shall be construed as releasing the Tenant from any obligation which it has under the common law vis-a-vis either the Landlord or any third party.

Section 1.12 Construed Covenants

- 1.12.01 All of the provisions and each obligation or agreement of this Lease, even though not expressed as a covenant, are to be construed as covenants and agreements as though the words importing such covenants and agreements were used in each separate provision hereof.

Section 1.13 Inconsistency or Conflict

- 1.13.01 Except where otherwise provided either expressly or by necessary implication in the Agreement to Transfer, this Lease, any other Instrument or any Existing Agreement, subject to Subsection 1.13.02, in the event of any inconsistency or conflict between any Instrument or any provision contained therein and this Lease, or any provision contained in this Lease, this Lease or the provision of this Lease prevails to the extent of the inconsistency or conflict.
- 1.13.02 Except where otherwise provided either expressly or by necessary implication in the Agreement to Transfer, this Lease, any other Instrument or any Existing Agreement, in the event of any inconsistency or conflict between the Assignment, Assumption and Indemnity Agreement or any provision contained therein on the one hand and Subsections 3.02.02 to 3.02.10 inclusive, Subsection 3.02.13 or Subsection 3.02.15 of this Lease or any other Instrument or any provision contained therein on the other hand, the Assignment, Assumption and Indemnity Agreement or the provision of the Assignment, the Assumption and Indemnity Agreement prevails to the extent of the inconsistency or conflict.

Section 1.14 Tenant's Representations and Warranties

- 1.14.01 The Tenant represents and warrants to the Landlord that:
- (a) it is a corporation which has been duly incorporated and organized under the laws of Canada and is validly existing under the laws of Canada;
 - (b) all Members of the Board of the Tenant have been appointed and the Nominators have each nominated, in accordance with the by-laws of the Tenant, a person or persons to become directors of the Tenant, and, on

the Date of Commencement, all such nominees are directors of the Tenant;

- (c) the composition of the Board and the qualifications of the directors meet the requirements of Paragraph 4 of the **Public Accountability Principles for Canadian Airport Authorities**;
- (d) it is duly qualified, licensed or registered to carry on business in the Jurisdiction;
- (e) it has all necessary corporate power, authority and capacity
 - (i) to manage, operate and maintain the Demised Premises,
 - (ii) to enter into this Lease and the other Instruments and to perform its obligations herein and therein,
 - (iii) to borrow,
 - (iv) to impose fees and charges including user charges, landing fees, general terminal fees, and other related charges, as well as passenger facility charges or airport improvement fees,
 - (v) to collect all current airport revenues, and
 - (vi) to acquire and hold an interest in real property in the Jurisdiction;
- (f) the execution and delivery of this Lease and each of the other Instruments and the consummation of the transactions contemplated herein and therein have been duly authorized by all necessary corporate action on the part of the Tenant;
- (g) the documents of incorporation and the by-laws of the Tenant have not, except with the written consent of the Minister, been modified, altered or changed since the date of incorporation of the Tenant other than the supplementary letters patent dated the 29th day of November, 1994;
- (h) (i) it is not a party to, bound or affected by or subject to any indenture, mortgage, lease, agreement, instrument, charter or by-law provision, and,

- (ii) to the best of its knowledge, it is not bound or affected by or subject to any statute, rule, regulation, judgment, order, writ, decree or law

which, with or without the giving of notice or the lapse of time, or both, would be violated, contravened, breached by, or under which default would occur as a result of the execution, delivery and performance of this Lease or any of the Instruments or the consummation of any of the transactions provided for in any of them;

- (i) no approval, authorization, consent, permit, or other action by, or filing with, any governmental body or authority or any regulatory agency, body or tribunal having jurisdiction, or by any Person, whether pursuant to a contract or otherwise, is required in connection with the execution and delivery of this Lease or any of the other Instruments and the performance of its obligations hereunder or thereunder, except as otherwise stated herein;

there is, as of the Date of Commencement, no suit, action, litigation, arbitration proceeding or governmental proceeding, including appeals and applications for review in progress, pending or threatened against or involving the Tenant or any judgment, decree, injunction or order of any court or arbitrator which might adversely affect the capacity or power of the Tenant to execute and deliver this Lease or any of the other Instruments or to consummate the transaction contemplated herein or therein or which might adversely affect to a significant degree the Tenant, its assets, its financial condition or its future prospects;

- (k) this Lease and the other Instruments will, upon execution and delivery, constitute legal, valid and binding obligations of the Tenant enforceable against the Tenant in accordance with their terms except as they may be limited by applicable bankruptcy laws or laws affecting the enforcement of creditors' rights generally and except as limited by the general principles of equity; and
- (l) each statement of fact contained in a certificate of a knowledgeable and authorized officer of the Tenant referred to in Paragraph 4.01.01(a) of the Agreement to Transfer is true and correct in all material respects.

Section 1.15 Landlord Acknowledgements

- 1.15.01 The Landlord acknowledges that the Tenant and any Person for whom the Tenant may be responsible in law have not made any representations and warranties with respect to the Agreement to Transfer, this Lease or any of the other Instruments and that none is implied or to be implied by statute or otherwise, except the representations and warranties expressly made in the Agreement to Transfer, this

Lease or in any of the other Instruments or in any certificate or statement of fact made or delivered thereunder or hereunder.

1.15.02 The Landlord further acknowledges that it has not relied on and will not rely on any information provided by the Tenant in connection with the Agreement to Transfer, this Lease or any of the other Instruments, other than the warranties and representations expressly made in the Agreement to Transfer, this Lease or in any of the other Instruments or in any certificate or statement of fact made or delivered thereunder or hereunder.

Section 1.16 Landlord's Representations and Warranties

1.16.01 The Landlord represents and warrants to the Tenant that:

- (a) this Lease and the other Instruments will, upon execution and delivery, constitute legally valid and binding obligations of the Landlord enforceable against the Landlord in accordance with their terms except as they may be limited by law and the general principles of equity; and,
- (b) there is, as of the Date of Commencement, no suit, action, litigation, arbitration proceeding or governmental proceeding, including appeals and applications for review, in progress, pending or threatened against or involving the Landlord or any Employment Claim or any judgment, decree, injunction, or order of any court, or arbitrator which might adversely affect the capacity or power of the Landlord to execute and deliver this Lease or any of the other Instruments or to consummate the transaction contemplated herein or therein or which might adversely affect to a significant degree the financial position of the Tenant, other than those that will be listed on
 - (i) the lists of Litigation prepared and delivered by the Minister to the Tenant as contemplated in Paragraphs 4.03.01(e) and 4.03.01(f) of the Agreement to Transfer, or
 - (ii) the Lists of Employment Claims prepared and delivered by the Minister to the Tenant as contemplated in Paragraphs 4.03.01(k) and 4.03.010) of the Agreement to Transfer.

Section 1.17 Tenant Acknowledgements

1.17.01 The Tenant acknowledges that the Landlord and any Person for whom the Landlord may be responsible in law have not made and will not make any representations and warranties with respect to the Agreement to Transfer, this Lease or any of the other Instruments and that none is implied or to be implied by statute or otherwise, except the representations and warranties expressly made

in the Agreement to Transfer, this Lease or in any of the other Instruments or in any certificate or statement of fact made or delivered thereunder or hereunder.

- 1.17.02 The Tenant further acknowledges that it has not relied on and will not rely on any information provided by the Landlord in connection with the Agreement to Transfer, this Lease or in any of the other Instruments, other than the warranties and representations expressly made in the Agreement to Transfer, this Lease or in any of the other Instruments or the certificates or other statements of fact provided thereunder or hereunder.

Section 1.18 Survival of Representations and Warranties

- 1.18.01 Each party shall have the benefit of a representation or warranty contained in the Agreement to Transfer, this Lease or in any of the other Instruments or in a certificate or other statement of fact provided thereunder or hereunder on the part of the other party hereto, provided that a Notice of a breach of any such representation or warranty is given by the party claiming the benefit of such representation or warranty to the other party within a period of three (3) years from the Date of Commencement.

Section 1.19 Survival of Covenants and Agreements

- 1.19.01 The covenants and agreements of the parties hereto contained in the Agreement to Transfer shall survive the closing of the transaction contemplated by the execution and delivery of this Lease and the other Instruments and do not merge with this Lease and the other Instruments.

Section 1.20 Independent Legal Advice

- 1.20.01 The parties hereto each acknowledge having obtained their own independent legal advice with respect to this Lease and the other Instruments to the full extent deemed necessary by each party prior to its execution and delivery. Furthermore, the parties acknowledge that neither acted under any duress in negotiating, drafting and executing this Lease or the other Instruments. There shall be no presumption that any ambiguity in this Lease or the other Instruments be resolved in favour of either of the parties.

Section 1.21 Costs

- 1.21.01 All costs and expenses (including without limitation the fees and disbursements of legal counsel) incurred in connection with this Lease and the other Instruments shall be paid by the party hereto incurring such costs and expenses.

ARTICLE 2 - NET LEASE

Section 2.01 Net Lease

2.01.01 The Tenant acknowledges and agrees that, except for any amount which the Landlord has specifically agreed to pay pursuant to this Lease or any of the other Instruments:

- (a) this Lease is a completely carefree, absolutely net lease to the Landlord, and that the Landlord shall not be responsible during the Term for any costs, charges, expenses, and outlays of any nature or kind whatsoever including those arising from or relating to:
 - (i) the Demised Premises or any part thereof;
 - (ii) the contents of the Demised Premises or any part thereof;
 - (iii) the use or occupancy of the Demised Premises or any part thereof;
 - (iv) the development of the Demised Premises or any part thereof;
 - (v) the making of any alterations or the carrying out of any construction, on or in the Demised Premises or any part thereof;
 - (vi) the management, operation, or maintenance of the Demised Premises or any part thereof; and
 - (vii) any business or undertaking carried on, on the whole or any part of the Demised Premises;
- (b) the Tenant shall pay all costs, charges, expenses and outlays of every nature whatsoever and whether extraordinary or ordinary, and whether foreseen or unforeseen, including those arising from or relating to any subject matter referred to in Subparagraphs 2.01.01 (a) (i) to (vii) inclusive, in a manner and at the times more particularly described herein;

2.01.02 Except as may otherwise be set out in Article 37, the Tenant assumes as of the Date of Commencement:

- (a) any obligation of the Landlord as landlord or owner of the Demised Premises or any part thereof which arises on or after the Date of Commencement including any obligation arising out of, resulting from or pursuant to any law or pursuant to the common law and the Tenant covenants with the Landlord to observe and perform any such obligation

of the Landlord during the entire Term and to indemnify and hold the Landlord harmless with respect thereto;

- (b) any obligation of the Landlord accruing on or after the Date of Commencement under any of the Existing Agreements; and
- (c) any obligation of the Landlord as landlord or owner of the Demised Premises which accrues on or after the Date of Commencement and which relates to the Demised Premises or any part thereof.

ARTICLE 3 - GRANT AND TERM OF LEASE

Section 3.01 Demise and Term

3.01.01 Subject to this Lease, and, in particular, subject to the rights reserved for the Landlord and subject to the payment of Rent as herein provided and the performance by the Tenant of all the covenants and agreements herein reserved and contained on the part of the Tenant, the Landlord hereby leases to the Tenant the Demised Premises, together with and subject to any rights and obligations which run with the Lands, for and during the period of sixty (60) years commencing on the Date of Commencement and terminating on the expiration of sixty (60) years from the Date of Commencement, but subject to prior early termination in any of the events herein set out. **[NTD: Pursuant to Am#8, option contemplated in 3.01.02 exercised and Lease renewed by twenty (20) years to commence January 1, 2057 and end December 31, 2076.]**

~~3.01.02 The Landlord covenants with the Tenant that if the Tenant pays the Rent and is not in default of the covenants contained in this Lease the Landlord shall, only with respect to that part of the Lands for which the Landlord has fee simple title during the Term, grant a renewal of this Lease for one (1) period of twenty (20) years commencing immediately upon the expiry of the period referred to in Subsection 3.01.01 provided that the Tenant shall give to the Landlord a notice in writing of its intention to renew not later than five (5) years before the expiry of the period referred to in Subsection 3.01.01. Such renewal shall be on the same terms and conditions as set out in this Lease except for this option to renew. **[NTD: Deleted by Am#7.]**~~

Section 3.02 Existing Agreements

3.02.01 This Lease of the Demised Premises is made by the Landlord, and accepted by the Tenant, subject to all Existing Revenue Agreements (until terminated as herein provided), including any rights of the Occupants thereunder to remove Leasehold Improvements and subject to all Existing Expenditure Agreements (until terminated as herein provided) and subject to all Existing Other Agreements (until terminated as herein provided).

- 3.02.02 Subject to reassignment to the Landlord as provided in Subsection 3.02.13, the Landlord hereby assigns to the Tenant the right of reversion of the Landlord in any Existing Revenue Agreement, and all of the right, title and interest of the Landlord in any such Existing Revenue Agreement accruing on or after the Date of Commencement.
- 3.02.03 The Tenant hereby assumes and covenants to recognize and comply with any covenant to perform and any obligation of the Landlord accruing on or after the Date of Commencement under any such Existing Revenue Agreement and hereby covenants with the Landlord to observe and perform all covenants and agreements of the Landlord thereunder accruing on or after the Date of Commencement and to indemnify and hold the Landlord harmless with respect thereto. The Tenant shall ensure that the Occupant under any such Existing Revenue Agreement will keep, perform and observe all of the covenants, agreements, provisions, conditions and provisos in any such Existing Revenue Agreement on the part of the Occupant to be kept, performed or observed to the extent required for the Tenant to meet its obligations hereunder.
- 3.02.04 The Tenant shall not alter or amend any Existing Revenue Agreement to renew or extend the unexpired portion of the term thereof or grant to the Occupant any right to renew or extend the term thereof beyond the term thereof or any right to renew or extend which the Occupant may have had under that Existing Revenue Agreement immediately prior to the Date of Commencement.
- 3.02.05 Subject to reassignment to the Landlord as provided in Subsection 3.02.13, the Landlord hereby assigns to the Tenant all of the Landlord's interest in all Existing Expenditure Agreements accruing on or after the Date of Commencement.
- 3.02.06 The Tenant hereby assumes and covenants to recognize and comply with all the obligations of the Landlord under such Existing Expenditure Agreements accruing on or after the Date of Commencement and hereby covenants with the Landlord to observe and perform all covenants and agreements of the Landlord thereunder accruing on or after the Date of Commencement and to indemnify and hold the Landlord harmless with respect thereto.
- 3.02.07 Subject to reassignment to the Landlord as provided in Subsection 3.02.13, the Landlord hereby assigns to the Tenant the right of reversion of the Landlord in any Existing Other Agreement, and all of the right, title and interest of the Landlord in any such Existing Other Agreement accruing on or after the Date of Commencement.
- 3.02.08 The Tenant hereby assumes and covenants to recognize and comply with any covenant to perform and any obligation of the Landlord accruing on or after the Date of Commencement under any such Existing Other Agreement and hereby covenants with the Landlord to observe and perform all covenants and agreements of the Landlord thereunder accruing on or after the Date of Commencement and to indemnify and hold the Landlord harmless with respect thereto. The Tenant shall ensure that the third party under any such Existing Other Agreement will keep, perform and observe all of the covenants, agreements, provisions, conditions and provisos in any such Existing Other Agreement on the part of the

third party to be kept, performed or observed to the extent required for the Tenant to meet its obligations hereunder.

- 3.02.09 The Tenant shall not alter or amend any Existing Other Agreement to renew or extend the unexpired portion of the term thereof or grant to the third party any right to renew or extend the term thereof beyond the term thereof or any right to renew or extend which the third party may have had under that Existing Other Agreement immediately prior to the Date of Commencement.
- 3.02.10 For greater certainty, it is agreed between the parties hereto that the Tenant shall have all the rights of the Landlord, the Minister, the Airport Manager, Airport General Manager or any other person representing the Landlord as operator of the Airport under any Existing Agreement and that the Tenant shall assume, recognize and comply with any covenant to perform and any obligation of the Landlord, the Minister, the Airport Manager, the Airport General Manager or any other person representing the Landlord under any Existing Agreement, accruing on or after the Date of Commencement.
- 3.02.11 Subject to the notice requirement provided for in Subsection 3.02.12, the Landlord undertakes to cure any default existing immediately prior to the Date of Commencement on the part of the Landlord under any Existing Agreement to the extent that the Tenant is unable to obtain performance under that Existing Agreement as a result of such default within a period of thirty (30) days after the Tenant gives to the Landlord notice requiring the Landlord to do so.
- 3.02.12 The Tenant shall not have the benefit of Subsection 3.02.11 unless the Tenant has, forthwith upon any default referred to therein coming to its attention, delivered to the Landlord a notice of any such default and unless such notice has been delivered to the Landlord prior to the last day of the second (2nd) Lease Year.
- 3.02.13 In the event of expiry or early termination of this Lease, any Existing Agreement which has not then expired or been early terminated shall, upon expiry or early termination of this Lease, be deemed to be automatically reassigned to the Landlord, and the Tenant shall forthwith execute any assignments, assurances or notices which are required to effect any such reassignment of any Existing Agreement to the Landlord. In the event the Tenant is unable or unwilling to execute any such assignment, assurance or notice, the Tenant hereby irrevocably appoints the Minister as the Tenant's attorney with full power and authority to execute and deliver, in the name of the Tenant, all documents required to effect any such assignment, assurance or notice.
- 3.02.14 The Landlord represents and warrants that there are no Existing Agreements, charges, easements or other rights referred to in Paragraph 3.03.01(d) or any claim other than an Employment Claim arising from or predicated on the completion of the transaction contemplated in the Agreement to Transfer,
- (a) of which the Landlord knew or ought to have known and,
 - (b) which have not been,

- (i) registered on title or have not been listed on either Schedule “E”, “F”, or “G”,
 - (ii) listed on the List of Litigation or the update of the List of Litigation, or
 - (iii) listed on the List of Employment Claims or the update of the List of Employment Claims, and
- (c) which will,
- (i) in the case of a class of Employment Claims, in the aggregate adversely affect to a significant degree the financial position of the Tenant, and
 - (ii) in any other case, adversely affect to a significant degree the financial position of the Tenant.

Subject to the time limitation and notice requirement provided for in Subsection 3.02.15, the Landlord shall indemnify and save harmless the Tenant for any loss suffered as a consequence of the breach of this warranty.

3.02.15 The Tenant shall not have the benefit of the warranty referred to in Subsection 3.02.14 unless the Tenant has, forthwith upon any such Existing Agreement, charge, easement, other right referred to in Paragraph 3.03.01(d) or any claim coming to its attention, delivered to the Landlord a notice of any such Existing Agreement, charge, easement, other right referred to in Paragraph 3.03.01(d) or any claim together with:

- (a) the complete details, and
- (b) a copy, if it exists and is available to the Tenant

of any such Existing Agreement, charge, easement, other right referred to in Paragraph 3.03.01(d) or any claim and unless such notice has been delivered to the Landlord prior to the last day of the fifth (5th) Lease Year.

3.02.16 Nothing in this Lease requires the Tenant to do or to refrain from doing, in respect of any part of the Demised Premises which is held by an Occupant under an Existing Agreement or by Her Majesty under a sublease or any other document, anything that the Tenant cannot reasonably cause the Occupant or Her Majesty to do or to refrain from doing under either the Existing Agreement, the sublease, any other document or the applicable law.

Section 3.03 Title

3.03.01 The Demised Premises are let subject to:

- (a) the state of the title of the Demised Premises as of the Date of Commencement;
- (b) the subsisting conditions, and any provisos, restrictions, exceptions and reservations, including royalties, contained in the original grant or contained in any other grant or disposition from the Crown;
- (c) any state of fact which an accurate survey of the Lands and Existing Facilities or a comprehensive physical inspection of the Lands and Existing Facilities might show;
- (d) any Existing Agreements, charges, mines and mineral rights, easements or any other right the Landlord or any predecessor in title may have given to third parties prior to the Date of Commencement, whether written or oral, and whether registered or unregistered;
- (e) all applicable laws now in effect or hereafter made by any competent authority;
- (f) subject to Article 48, any Aboriginal Claim which may affect any right, title or interest of the Tenant in the whole or any part of the Demised Premises other than Airport Infrastructure;
- (g) the rights and licence in favour of the Landlord as set out in Section 3.04;
- (h) a right of access or a right of way in favour of Her Majesty to any part of the Airport occupied by, used by or operated by or on behalf of Her Majesty which is not part of the Demised Premises;
- (i) all subleases of land or space to Her Majesty for purposes of provision of any federal government function; and
- (j) all of the other Instruments.

3.03.02 The Tenant acknowledges that the Landlord makes no representations or warranties whatsoever, whether express or implied, that in any way relate to the state of the title of the Demised Premises except the warranty in Subsection 3.02.14.

Section 3.04 Benefits for Land or Space Occupied by Her Majesty

3.04.01 This Lease of the Demised Premises is also subject to the Tenant complying with its obligation to provide services, facilities, roads, utilities, other infrastructure and all other rights set out for the benefit of land or space occupied or used by Her Majesty or for the benefit of Her Majesty.

3.04.02 The Tenant hereby agrees that, at the request of the Landlord, it shall forthwith execute any document to grant to the Landlord an easement or a right of way or surrender sufficient land for the purposes of any services, facilities, roads, utilities other infrastructure or any other rights referred to in Subsection 3.04.01. In the event the Tenant is unable or unwilling to execute any such easement, right of way or surrender, the Tenant hereby irrevocably appoints the Minister as the Tenant's attorney with full power and authority to execute and deliver, in the name of the Tenant, all documents required to effect any such easement, right of way or surrender.

Section 3.05 Use of Demised Premises by Federal Government Departments or Agencies

3.05.01 The Tenant shall provide and maintain, free of any charge whatsoever to Her Majesty, on terms satisfactory to Her Majesty, the use and occupancy of the areas of the Demised Premises required from time to time during the Term by departments and agencies of the federal government in connection with the provision of federal government functions for airport operations, security, and policing and inspection services at the Airport and for purposes of implementation of aeronautical legislation, regulations or any rule or order pursuant thereto enacted to protect safety or security or for purposes of any inspection and compliance activities associated therewith. The provision by the Tenant of such areas shall include heating, ventilation, air conditioning, power, lighting, plumbing, water and all other utilities, janitorial and all other necessary services, equipment, fixturing and finishing of the premises and vehicle parking, all as required by the said departments and agencies. Without limitation, the Tenant acknowledges that it is required to provide such accommodation to the following departments and agencies in a manner and location acceptable to Her Majesty:

- (a) the Department of National Revenue or its successor or successors,
- (b) the Department of Citizenship and Immigration or its successor or successors,
- (c) the Department of Agriculture and Agri-Food or its successor or successors,
- (d) the Department of Health or its successor or successors, and
- (e) the Department of Transport, or its successor or successors.

3.05.02 Notwithstanding anything else herein contained, it is agreed that each of the aforesaid departments and agencies shall have, as a minimum, at least the same or, provided such is acceptable to the minister(s) of the affected departments, the equivalent facilities, equipment, utilities and services as they had at the Demised Premises immediately prior to the Date of Commencement.

3.05.03 The rights of Her Majesty or any department or agency in respect of any use or occupancy of any space or land on the Demised Premises, regardless of when entered into, shall have priority over the interests of any Leasehold Mortgagee.

Section 3.06 Rights of Access

3.06.01 This Lease of the Demised Premises is also subject to, and the Landlord hereby reserves, a right of access in favour of and at no cost to the Landlord, Her servants, employees, agents, contractors, licensees, tenants and invitees:

- (a) in common with others for pedestrian and vehicular traffic over, along and upon any areas of the Demised Premises used from time to time for pedestrian and vehicular traffic;
- (b) from any area referred to in Paragraph 3.06.01(a) to any land or space occupied by, used by or operated by or on behalf of Her Majesty or the Landlord.

3.06.02 In the event, in the Minister's opinion, any right of access provided to the Landlord, Her servants, employees, agents, contractors, licensees, tenants and invitees for access to any land or space occupied by, used by or operated by or on behalf of the Landlord is not adequate for the Landlord's purposes, then the Tenant shall forthwith grant a right of way to the Landlord to ensure that the Landlord, Her servants, employees, agents, contractors, licensees, tenants and invitees have adequate access to any such facility in a location satisfactory to the Minister. In the event the Tenant is unable or unwilling to execute any such document granting such right of way, the Tenant hereby irrevocably appoints the Minister as the Tenant's attorney with full power and authority to execute and deliver, in the name of the Tenant, all documents required to effect any such right of way.

Section 3.07 Reserve Right to Grant Rights

3.07.01 The Tenant covenants to grant, upon request of the Minister, easements, licences, rights of way or privileges on, over, under, through or across the Demised Premises or any part thereof, for the purpose of permitting or causing any services to be brought on, over, under, through or across any part of the Lands to provide services to any land or space occupied or used by the Landlord or to any part of the Airport which is not part of the Demised Premises, provided that in no event will the exercise of the Landlord's rights under this Section unduly interfere with:

- (a) the business or property of any Occupant; or
- (b) the property of the Tenant.

Section 3.08 Qualification of Subsection 3.04.02, 3.06.02 and 3.07.01

3.08:01 It is intended that any easement, right of way, licences, privileges or access referred to in Subsection 3.04.02, 3.06.02 or 3.07.01 should be in a location which will not significantly adversely affect the operations of the Tenant and which is satisfactory to the Landlord, provided that where the Tenant does not or can not:

- (a) provide any easement or right of way referred to in Subsection 3.04.02, or access referred to in Subsection 3.06.02 which will not significantly adversely affect the operations of the Tenant, or
- (b) agree to the location of the easement, licence, right of way or privilege referred to in Subsection 3.07.01 which will not significantly adversely affect the operations of the Tenant,

then the Tenant agrees that it will:

- (c) provide an easement or right of way referred to in Subsection 3.04.02 or access referred to in Subsection 3.06.02, or
- (d) agree to a location for the easement, licence, right of way or privilege referred to in Subsection 3.07.01,

which is satisfactory to the Landlord, even though such location, easement, licence, right of way, privilege or access will significantly adversely affect the operations of the Tenant.

Section 3.09 Surrender On Early Termination Or Expiry

3.09:01 The Tenant covenants with the Landlord that the Tenant shall, on expiry or early termination of this Lease, surrender and deliver up to the Landlord vacant possession of the Demised Premises in the state of good order, condition and repair in which, by this Lease, the Tenant has covenanted to keep the Demised Premises during the Term hereof, free and clear of:

- (a) all Occupant Agreements, Transfers, Leasehold Mortgages and encumbrances of any nature or kind whatsoever granted by the Tenant, an Occupant or a Transferee subject to any rights the Landlord may have granted under a Non-Disturbance Agreement, and
- (b) all servitudes, easements and rights of way created by the Tenant, an Occupant or a Transferee except any easements, rights of way, licences and privileges granted by the Tenant to the Landlord pursuant to Subsections 3.04.02, 3.06.02 and 3.07.01.

Section 3.10 Ownership of New Facilities During the Term

3.10.01 The Landlord and the Tenant agree that:

- (a) any New Facility and any addition to, improvement to, alteration of or replacement of any Existing Facility which may be constructed upon the Lands from time to time are and shall be fixtures to the Lands and are intended to be and shall become the absolute property of the Landlord upon the expiry or early termination of this Lease without any payment being made therefor, free and clear of all mortgages, charges and encumbrances, but shall be deemed, as between the Landlord and the Tenant to be the separate property of the Tenant and not of the Landlord, during this Lease;
- (b) any New Facility and any addition to, improvement to, alteration of or replacement of any Existing Facility shall be subject to and governed by all the provisions of this Lease notwithstanding that such New Facility and such addition to, improvement to, alteration of or replacement of such Existing Facility are deemed to be the separate property of the Tenant until expiry or early termination of this Lease;
- (c) the Landlord's absolute right of property in all New Facilities and in any addition to, improvement to, alteration of or replacement of any Existing Facility which will arise upon the expiry or early termination of this Lease takes priority over any other interest in any New Facility and in the addition to, improvement to, alteration of or replacement of any Existing Facility which may now or hereafter be created by the Tenant on the Lands or in the New Facilities or in the addition to, improvement to, alteration of or replacement of Existing Facilities, and that all dealings by the Tenant with the New Facilities and the addition to, improvement to, alteration of or replacement of Existing Facilities which in any way affect title thereto shall be made expressly subject to all the provisions of this Lease and subject to this right of the Landlord;
- (d) the Tenant shall not transfer, assign, encumber or otherwise deal with any New Facility and any addition to, improvement to, alteration of or replacement of any Existing Facility separately from any permitted dealing with the Leasehold Interest under this Lease, and
- (e) no Person shall hold or enjoy any interest in this Lease acquired from the Tenant other than as specifically permitted herein.

3.10.02 In addition to any common law rights in favour of the Landlord, the title to and ownership of all New Facilities and all additions to, improvements to, alterations

of or replacement of Existing Facilities pass to and become the absolute property of, and are vested in the Landlord on the expiry or on early termination of this Lease, without any payment being made therefor, and free and clear of any mortgages, charges, and encumbrances whatsoever and without any compensation whatsoever accruing to or being claimable by any Person.

3.10.03 The Tenant shall:

- (a) forthwith, on request, execute any documents necessary to transfer the title to and ownership of any New Facility or any addition to, improvement to, alteration of or replacement of any Existing Facility to the Landlord effective upon the expiry or early termination of this Lease; and
- (b) ensure that any Person with whom it has had any dealings with respect to any New Facility or any addition to, improvement to, alteration of or replacement of any Existing Facility shall forthwith on request execute any documents necessary to transfer to the Landlord whatever title and ownership rights that Person may have to any New Facility or to any addition to, improvement to, alteration of or replacement of any Existing Facility effective upon the expiry or early termination of this Lease.

3.10.04 In the event the Tenant is unable or unwilling to execute any documents necessary to transfer the title to or ownership of any New Facility or any addition to, improvement to, alteration of or replacement of any Existing Facility to the Landlord, the Tenant hereby irrevocably appoints the Minister as the Tenant's attorney with full power and authority to execute and deliver, in the name of the Tenant, all documents necessary to effect any such transfer to the Landlord of the title to or ownership of any New Facility and any addition to, improvement to, alteration of or replacement of any Existing Facility.

3.10.05 Notwithstanding anything herein to the contrary, the vesting in the Landlord of ownership of a New Facility or an addition to, improvement to, alteration of or replacement of an Existing Facility shall not affect the rights of an Occupant under a Non-Disturbance Agreement.

Section 3.11 Removal of New Facilities

3.11.01 Subject to Subsection 3.11.02, and subject to any right of non-disturbance which was granted by the Landlord to an Occupant, the Landlord may, at any time during the Term or at any time up to six (6) months after the expiry or early termination of this Lease, notify the Tenant in writing that any New Facility be removed, in which event the Tenant shall, at its own cost, at any time before the expiry of the Lease, if such notice is given before the expiry or early termination of the Lease or within one (1) year of such notice if such notice is given on or after the expiry or early termination of the Lease, or within (1) year of the Occupant vacating the premises which are the subject matter of the Occupant Agreement in the case where the Landlord has entered into a Non-Disturbance Agreement, remove any such New Facility and fill up all excavations made in erecting or removing such

New Facility and replace all surface soil and sod and leave the area upon which such New Facility had stood in a neat and tidy condition. This covenant shall survive the expiry or early termination of this Lease.

- 3.11.02 Subsection 3.11.01 does not apply in respect of Airport Infrastructure which, at the expiry or early termination of this Lease, is in the state of repair to which the Tenant is required to maintain the Demised Premises pursuant to this Lease.

Section 3.12 Overholding

- 3.12.01 If the Tenant remains in possession of all or any part of the Demised Premises after the expiry of the Term, whether with or without the consent of the Landlord, there shall be no tacit renewal or extension of this Lease. In this event, despite any present or future statutory provision or legal presumption to the contrary unless the Tenant is prohibited by a statute from agreeing not to be subject to such statutory provision or legal presumption, the Tenant shall be deemed to be occupying the Demised Premises as a monthly tenant at will, in either case on the same terms as set forth in this Lease (including the payment of Rent) so far as such terms would be applicable to a monthly tenancy, except that the monthly Airport Rent shall, for each month (in this Subsection 3.12.01 called “**that month**”) of the period after the Landlord has delivered to the Tenant a notice to vacate, be an amount equal to:

- (a) if that month is within the first twelve months after the expiry of the Term, two hundred percent (200%) of the Airport Rent for the last month of the Term;
- (b) if that month is a month from and including the thirteenth calendar month after the expiry of the Term to and including the twenty-fourth calendar month after the expiry of the Term, three hundred percent (300%) of the Airport Rent for the last month of the Term; and
- (c) if that month is a month from and including the twenty-fifth calendar month after the expiry of the Term, four hundred percent (400%) of the Airport Rent for the last month of the Term.

- 3.12.02 The Tenant shall promptly indemnify and hold harmless the Landlord from and against any and all Costs incurred by the Landlord as a result of the Tenant remaining in possession of all or any part of the Demised Premises after the ‘expiry of the Term. The Tenant shall not make any counterclaim in any summary or other proceeding based on overholding by the Tenant.

Section 3.13 Purchase of Land by Tenant

- 3.13.01 Where, on or after the Date of Commencement, the Tenant purchases or enters into an agreement to purchase any land adjacent to or in the vicinity of the Airport

for the purposes of the Airport Undertaking, the Authority shall, forthwith after acquiring such land, transfer good and marketable title to such land to the Landlord free and clear of all mortgages, charges, liens and other like encumbrances for a nominal price and such land shall, for the then balance of the Term, become a part of the Demised Premises.

- 3.13.02 The Tenant shall, on request, reimburse the Landlord for any reasonable costs and expenses incurred by the Landlord in carrying out the intent of this Section 3.13.
- 3.13.03 The parties further agree that, notwithstanding Articles 16 and 37, any land transferred to the Landlord pursuant to this Section 3.13 shall, for all purposes of Articles 16 and 37, be deemed not to contain any Hazardous Substances whatsoever on the date title to such land is transferred to Her Majesty and on the date such land is demised to the Tenant, and immediately prior to the Date of Commencement.
- 3.13.04 The Landlord and the Tenant agree to execute any documents required to effect the intent of this Section 3.13 with respect to such land.

ARTICLE 4 – RENT

[NTD: First amended in Am#1 then replaced in Am#4 by this version of Article 4.]

Section 4.01 Covenant To Pay The Rent And Understanding In Respect Of Airport Revenue

- 4.01.01 The Tenant hereby covenants with the Landlord that the Tenant shall, during the Term, pay to the Landlord the Rent hereby reserved, in the manner herein provided.
- 4.01.02 For the purposes of calculating Airport Rent under this Lease, revenue shall not be included in more than one category of Airport Revenue.

Section 4.02 Definitions and Interpretation

4.02.01 In this Lease:

“2020 Lease Year” means the Lease Year which corresponds to the calendar year 2020; **[NTD: Added by Am. #12.]**

“2021 Lease Year” means the Lease Year which corresponds to the calendar year 2021; **[NTD: Added by Am. #12.]**

“2022 Lease Year” means the Lease Year which corresponds to the calendar year 2022. **[NTD: Added by Am. #12.]**

“Additional Rent” means any sum of money or charge required to be paid by the Tenant to the Landlord under this Lease, other than Airport Rent, whether or not designated as “Additional Rent”;

“Airport Rent” means, for each Lease Year, starting with the Lease Year which corresponds to calendar year 2010, an amount, not less than ZERO, which is the aggregate of

- (a) ZERO PER CENT (0%) on the first five million dollars (\$5,000,000.00) of Airport Revenue;
- (b) ONE PER CENT (1%) of that portion of Airport Revenue that is in excess of five million dollars (\$5,000,000.00) but equal to or less than ten million dollars (\$10,000,000.00);
- (c) FIVE PER CENT (5%) of that portion of Airport Revenue that is in excess of ten million dollars (\$10,000,000.00) but equal to or less than twenty-five million dollars (\$25,000,000.00);
- (d) EIGHT PER CENT (8%) of that portion of Airport Revenue that is in excess of twenty-five million dollars (\$25,000,000.00) but equal to or less than one hundred million dollars (\$100,000,000.00);
- (e) TEN PER CENT (10%) of that portion of Airport Revenue that is in excess of one hundred million dollars (\$100,000,000.00) but equal to or less than two hundred and fifty million dollars (\$250,000,000.00); and
- (f) TWELVE PER CENT (12%) on that portion of Airport Revenue that is in excess of two hundred and fifty million dollars (\$250,000,000.00);

“Airport Revenue” means, for each Lease Year, the aggregate of:

- (a) all Gross Revenue derived by the Tenant from any Person for
 - (i) the use or occupancy of, or
 - (ii) the right or privilege to carry on directly or indirectly any business or other activity within or on

any part of the Demised Premises, including but not necessarily limited to any reimbursement of common area expenses and capital expenses which are recovered from any Person and all rents, fees, charges, amounts and consideration of any nature whatsoever, but excluding any rents or fees that are not received by the Tenant, as a result of an Event of Bankruptcy, from any Person who is an air carrier in respect of whom such Event of Bankruptcy has occurred;

- (b) all Gross Revenue derived by the Tenant from any business which is carried on in whole or in part directly or indirectly by the Tenant and which

uses, occupies or is carried on within or on any part of the Demised Premises;

- (c) all amounts receivable by the Tenant, whether the amount is received or not, from Occupants or from the Tenant's permitted assigns for maintaining, repairing, improving, rebuilding, restoring, equipping, insuring, managing, supervising, administering or operating all or any part of the Demised Premises where, under Generally Accepted Accounting Principles, such amount, when received, may be treated as either revenue or a recovery of expenses, but for greater certainty does not include any taxes or levies that do not form part of Gross Revenue;
- (d) all Airport Improvement Fees, excluding any taxes that do not form part of Gross Revenue, collected by
 - (i) the Tenant or
 - (ii) any Person on behalf of the Tenant, except where an Event of Bankruptcy has occurred with respect to a Person who has collected such Airport Improvement Fees on behalf of the Tenant to the extent that such Airport Improvement Fees have not been received by the Tenant as a result of the Event of Bankruptcy;
- (e) all proceeds of business interruption insurance related to lost revenue receivable by the Tenant, whether received or not, for that Lease Year to cover loss of revenue, as contemplated by Subsection 10.04.05, but for greater certainty does not include insurance proceeds related to the loss of capital infrastructure and reimbursement of additional expenses;
- (f) all Gross Revenue derived by
 - (i) the Tenant or
 - (ii) any Person who is not at Arm's Length with the Tenant or
 - (iii) any Person in whom the Tenant has an investment of any kindfrom any activity that forms part of or is related to the Airport Undertaking of the Tenant regardless of where such activity is carried out, but excluding
 - (iv) any amounts paid by the Tenant, in respect of such activity, to a Person who is described in subparagraphs (ii) and (iii) above and who derives the Gross Revenue from such activity; and
 - (v) any Gross Revenue from any use or occupancy of the whole or any part of the Commercial and Industrial Area derived by a Person in whom the Tenant has an investment of any kind where the financial terms and conditions applicable to such use and occupancy are consistent with financial terms and conditions that would apply to

such use and occupancy had such use and occupancy been undertaken by a Person who was at Arm's Length with the Tenant or in whom the Tenant did not have an investment of any kind;

- (g) all Gross Revenue derived by the Tenant or any Person in whom the Tenant has an investment of any kind from any business that forms part of or is related to the Airport Undertaking of the Tenant and that is carried on outside of the Demised Premises directly by the Tenant or by a Person in whom the Tenant has an investment of any kind;
- (h) all Gross Revenue derived by the Tenant from any business that does not form part of the Airport Undertaking of the Tenant and that is carried on in whole or in part directly by the Tenant outside of the Demised Premises;
- (i) all dividends or other forms of compensation receivable by the Tenant, whether such dividends or other compensation are received or not, from investments in other Persons where such dividends or other forms of compensation are in respect of activities that do not form part of or are not related to the Airport Undertaking of the Tenant, regardless of where those activities are carried out;
- (j) all gains from any disposition of assets as may be recognized by Generally Accepted Accounting Principles and which are
 - (i) derived by the Tenant and whether or not attributable to any part of the Demised Premises, or
 - (ii) derived by any business carried on in whole or in part directly or indirectly by the Tenant, regardless of where such business is carried onbut which do not include
 - (iii) any gains as may be recognized by Generally Accepted Accounting Principles and which are attributable to any airports owned and/or operated by the Tenant other than the Airport;
 - (iv) any taxes that do not form part of Gross Revenue;
 - (v) currency or interest rate hedging gains; or
 - (vi) gains within a pension plan.
- (k) all Gross Revenue derived by the Tenant or by any Person who is not at Arm's Length with the Tenant from any Competing Business carried on in whole or in part directly or indirectly by the Tenant or any Person who is not at Arm's Length with the Tenant;

- (l) all Gross Revenue derived by the Tenant or any Person who is not at Arm's Length with the Tenant from any lands and premises which are the subject matter of any Separate Lease; and
- (m) all amounts received by the Tenant, in respect of any previous Lease Year, where an Event of Bankruptcy has occurred in respect of
 - (i) an air carrier as contemplated in Paragraph (a) of Airport Revenue, or
 - (ii) a Person who has collected Airport Improvement Fees on behalf of the Tenant as contemplated in Paragraph (d) of Airport Revenue;

"Arm's Length" has the meaning ascribed thereto in the *Income Tax Act*, R.S.C. 1985, (5th Supplement), c.1, as amended;

"Auditor" means a qualified professional accountant who is at Arm's Length with the Tenant, licensed to practise public accountancy in the Jurisdiction, and who is authorized by the law of the Jurisdiction to express the opinions required in the Tenant's Auditor's Report;

"Basic Interest Rate" means, for any Quarterly Period, a rate per annum equal to the Chartered Bank Prime Business Rate published for the Wednesday before the first (1st) day of that Quarterly Period plus TWO PERCENT (2%) rounded to the nearest ONE-QUARTER PERCENT (1/4%). Where the expressions **"TWO PERCENT (2%)"** AND **"ONE-QUARTER PERCENT (1/4%)"** are used in this definition, such reference is to percentage points such that, for example, if the Chartered Bank Prime Business Rate published for the Wednesday before the Quarterly Period commencing the first (1st) day of January of a calendar year is SIX AND THIRTY-SEVEN ONE HUNDREDTHS PERCENT (6.37%), the Basic Interest Rate during that Quarterly Period would be EIGHT AND ONE-QUARTER PERCENT (8 1/4%);

"Caused Statement" has the meaning ascribed thereto in Subsection 4.10.03;

"Chartered Bank Prime Business Rate" means a rate per annum being the chartered bank administered interest rate for prime business loans as published by the Bank of Canada Review Table F1 and identified as V121796, or if the Bank of Canada Review Table F1 is no longer published, the review table published in substitution for the Bank of Canada Review Table F1 or any replacement table designated by the Minister;

"CICA Handbook" means, the handbook of the Canadian Institute of Chartered Accountants including all revisions thereto and any replacement thereof and which is commonly known as the CICA Handbook;

"Commercial and Industrial Area" means:

- (a) Any part of the Demised Premises including the airspace above it and the ground beneath it, other than
 - (i) Airside;
 - (ii) Any Terminal Building;
 - (iii) Any Parking Facility;
 - (iv) The Ground Transportation Reserve;
 - (v) The Airport Reserve; and,
- (b) Until December 31, 2033, that part of the Demised Premises including the airspace above it and the ground beneath it designated as "Interim Commercial" on the Approved Land Use Plan. **[NTD: Added by Am. #10.]**

"Generally Accepted Accounting Principles" means the generally accepted accounting principles in Canada as they exist and are applicable at the relevant time;

"Generally Accepted Auditing Standards" means the generally accepted auditing standards in Canada as they exist and are applicable at the relevant time;

"Gross Revenue" means the aggregate of all revenue, recognized as such by Generally Accepted Accounting Principles, but excludes,

- (a) sales taxes and goods and services taxes, and any other taxes or levies of a similar nature which airport users or Occupants are required by law to pay to a taxing authority, whether such authority is federal, provincial or municipal, and which the Tenant is required by law to collect from such customers, passengers or Occupants on behalf of, for and to remit to such taxing authority, whether such law is in existence on the Date of Commencement or not;
- (b) any amount or value which, in accordance with Generally Accepted Accounting Principles, is considered to be assistance from the federal government, including federal agencies and federal Crown corporations and their successors, or a provincial, regional or municipal government; and
- (c) any revenues derived by the Tenant from the management or operation or both from an airport that is owned and/or operated by the Tenant, other than the Airport, with the exception of management fees and other forms of compensation for services rendered that are receivable by the Tenant for services provided by the Tenant in relation to that other airport;

"Interest Rate" means, for any Quarterly Period, a rate per annum equal to the Chartered Bank Prime Business Rate published for the Wednesday before the first

(1st) day of that Quarterly Period plus FIVE percent (5%) rounded to the nearest ONE-QUARTER PERCENT (1/4%). Where the expressions “**FIVE PERCENT (5%)**” and “**ONE-QUARTER PERCENT (1/4%)**” are used in this definition, such reference is to percentage points such that, for example, if the Chartered Bank Prime Business Rate published for the Wednesday before the Quarterly Period commencing on the first (1st) day of January of a calendar year is SIX AND THIRTY- EIGHT ONE HUNDREDTHS PERCENT (6.38%), the Interest Rate during that Quarterly Period would be ELEVEN AND ONE-HALF PERCENT (11 1/2%) per annum;

“**Landlord’s Auditor**” has the meaning ascribed thereto in Subsection 4.09.02;

“**Lease Year**” means that period of time from the Date of Commencement to the last day of December next following, and thereafter each consecutive twelve (12) month period commencing on the first day of January in each calendar year and the balance, if any, of the Term being less than twelve (12) months following the end of the last full twelve (12) month period of the Term, provided that, in the event this Lease is terminated for any reason whatsoever prior to the expiry of the Term, the last Lease Year shall be the period from and including the first (1st) day of January of the calendar year in which the date of such termination occurs to and including the date of such termination;

“**Notice Of Arm’s Length Amount**” has the meaning ascribed thereto in Subsection 4.06.02;

“**Notice Of Landlord’s Auditor**” has the meaning ascribed thereto in Subsection 4.09.02;

“**Notice To Select Landlord’s Auditor**” has the meaning ascribed thereto in Subsection 4.09.02;

“**Notional Airport Rent**” means, for any Lease Year, the Airport Rent calculated in accordance with the definition in Subsection 4.02.01 of this Lease, whether that Airport Rent is payable or not; **[NTD: Added by Am. #12.]**

“**Quarterly Period**” means any one or more of,

- (a) that part of a Lease Year which occurs during the period from and including the first (1st) day of January of a calendar year to and including the last day of March of the same calendar year;
- (b) that part of a Lease Year which occurs during the period from and including the first (1st) day of April of a calendar year to and including the last day of June of the same calendar year;
- (c) that part of a Lease Year which occurs during the period from and including the first day of July of a calendar year to and including the last day of September of the same calendar year; and

- (d) that part of a Lease Year which occurs during the period from and including the first day of October of a calendar year to and including the last day of December of the same calendar year;

“Rent” means all Airport Rent and all Additional Rent;

“Reported Airport Rent” means, for any Lease Year, the amount of Airport Rent due and payable for that Lease Year as set out in the Tenant’s Annual Statement for that Lease Year on which the Tenant’s Auditor expressed an opinion in the Tenant’s Auditor’s Report for that Lease Year;

“Tenant’s Annual Financial Statements” has the meaning ascribed thereto in Subsection 4.07.06;

“Tenant’s Annual Statement” has the meaning ascribed thereto in Subsection 4.07.04;

“Tenant’s Auditor’s Report” has the meaning ascribed thereto in Subsection 4.07.05; and

“Tenant’s Auditor’s Report On Tenant’s Annual Financial Statements” has the meaning ascribed thereto in Subsection 4.07.06.

4.02.02 All accounting and financial terms used in this Lease shall, except where otherwise provided either expressly or by necessary implication in this Lease, be interpreted and applied in accordance with Generally Accepted Accounting Principles applied on the accrual basis of accounting.

4.02.03 In the event the date of publication of the Chartered Bank Prime Business Rate is changed, the definitions of Basic Interest Rate and Interest Rate shall be amended accordingly.

Section 4.03 Airport Rent and the Payment of it by the Tenant

4.03.01 For each Lease Year the Tenant shall pay to the Landlord a rent equal to the Airport Rent for that Lease Year.

4.03.02 The Tenant shall pay all Rent to be paid by the Tenant to the Landlord hereunder,

- (a) in lawful money of Canada, when due, without any prior demand therefor and without any deduction, abatement or set-off whatsoever, and the Tenant hereby waives the benefit of any statutory or other rights in respect of any deduction, abatement or set-off in its favour at the Date of Commencement or at any future time; and
- (b) at such address in Canada as the Landlord may from time to time designate.

- 4.03.03 The Airport Rent shall be computed separately for each Lease Year, and shall, subject to Subsection 4.03.05 and subject to adjustments both during and after the end of that Lease Year as contemplated herein, be paid by the Tenant to the Landlord in twelve (12) monthly payments during each Lease Year, with each monthly payment being not less than one-twelfth (1/12th) of Reported Airport Rent for the Lease Year immediately preceding the Lease Year for which the monthly payments are being made. The Tenant may, at its option, make payments in addition to the monthly payments for Airport Rent in each Lease Year [such payments being, in this Section 4.03 and in Section 4.05, called “**additional payments**”]. Any such additional payments may be made by the Tenant at any time during a Lease Year or during the two (2) months following the end of such Lease Year, in which latter case they will be deemed, for the purposes of Subsection 4.03.07, to have been made during such Lease Year.
- 4.03.04 Each monthly payment of Airport Rent shall become due and payable on the first (1st) day of each calendar month until the expiry of the Term.
- 4.03.05 For each Lease Year [each such Lease Year being, in this Subsection 4.03.05, called “**the then current Lease Year**”] the amount of the monthly payment of Airport Rent payable by the Tenant to the Landlord on the first (1st) day of each of the first (1st) four (4) calendar months of the then current Lease Year shall be not less than the amount of the monthly payment of Airport Rent, as determined pursuant to Subsection 4.03.03, payable by the Tenant to the Landlord on the first (1st) day of the last calendar month of the Lease Year immediately preceding the then current Lease Year.
- 4.03.06 For each Lease Year [each such Lease Year being, in this Subsection 4.03.06, called “**the then current Lease Year**”] the Tenant shall, not later than the last day of April of the then current Lease Year, pay to the Landlord the amount by which one-third (1/3) of Airport Rent for the Lease Year immediately preceding the then current Lease Year, as set out in the Tenant’s Annual Statement for that Lease Year on which the Tenant’s Auditor expressed an opinion in the Tenant’s Auditor’s Report for that Lease Year, exceeds the aggregate of the monthly payments and any additional payments for Airport Rent payable by the Tenant to the Landlord for the then current Lease Year during the period of time from and including the first (1st) day of January of the then current Lease Year to and including the first (1st) day of April of the then current Lease Year, together with interest at the Basic Interest Rate on such amount such interest being calculated from and including the first (1st) day of March of the then current Lease Year to and including the earlier of
- (a) the date such amount is paid by the Tenant to the Landlord, and
 - (b) the last day of April of the then current Lease Year.
- 4.03.07 In addition, for each Lease Year, the Tenant shall, not later than the earlier of
- (a) the date the Tenant’s Auditor’s Report for that Lease Year is delivered to the Landlord and

(b) one hundred and twenty (120) days following the end of that Lease Year,

pay to the Landlord the amount by which Reported Airport Rent for that Lease Year exceeds the aggregate of the monthly payments and any additional payments of Airport Rent payable by the Tenant to the Landlord during that Lease Year, together with interest at the Basic Interest Rate on such amount such interest being calculated from and including, for each Lease Year, the first (1st) day of July of that Lease Year to and including the earlier of,

(c) the date the Tenant's Auditor's Report for that Lease Year is delivered to the Landlord, and

(d) one hundred and twenty (120) days following the end of that Lease Year.

4.03.08 No payment by the Tenant or receipt by the Landlord of,

(a) any Airport Rent,

(b) any Additional Rent, or

(c) an amount less than the monthly payment of Airport Rent, is deemed to be other than on account of the earliest payable Airport Rent or Additional Rent.

4.03.09 No endorsement or statement on any cheque or receipt or use of any letter or statement accompanying or referring to any cheque or payment of any Airport Rent or Additional Rent is deemed an acknowledgement of full payment or an acceptance, accord and satisfaction by the Landlord of such endorsement, statement or letter, notwithstanding the terms of the endorsement, statement or letter, and the Landlord may accept and cash such cheque or payment and, at the option of the Landlord, apply such payment on account of the earliest stipulated Airport Rent or Additional Rent without prejudice to the Landlord's right, having so applied such payment, to recover the balance of Airport 'Rent or Additional Rent or pursue any other right or remedy provided in this Lease or at law.

4.03.10 No receipt of money by the Landlord from the Tenant after any termination of this Lease shall reinstate, continue or extend the Term, or affect any notice previously given to the Tenant, or operate as a waiver of the right of the Landlord to enforce the payment of Airport Rent or Additional Rent then due or thereafter falling due, or operate as a waiver of the right of the Landlord to recover possession of the Demised Premises, it being agreed that, after the service of a Notice of Termination of this Lease the Landlord may demand, receive and collect any money due or thereafter falling due without in any manner affecting such notice and any such money so collected shall be deemed a payment on account of the use and occupation of the Demised Premises or, at the election of the Landlord, on account of the Tenant's liability hereunder.

Section 4.04 Interest

4.04.01 In the event the Tenant fails to pay to the Landlord,

- (a) any amount or any portion of any amount of Airport Rent, or
- (b) any amount or any portion of any amount of Additional Rent

on the date on which it becomes due and payable, the Tenant shall pay to the Landlord interest at the Interest Rate on any such amount such interest being calculated from and including the date such amount was due and payable to and including the date such amount and all interest thereon is paid to the Landlord.

4.04.02 If, with respect to any Lease Year, the Landlord, pursuant to Subsection 4.05.01 or 4.05.02, is required to remit any amount to the Tenant and such amount is not remitted, or pursuant to Subsection 4.05.03 a rent credit for such amount is not issued, within the forty-five (45) day period referred to in Subsection 4.05.01 then the Landlord will remit to the Tenant interest at the Basic Interest Rate on the amount owing to the Tenant such interest being calculated from and including the first (1st) day following the last day of such forty-five (45) day period to and including the day such amount is paid to the Tenant or a rent credit for such amount is issued by the Landlord to the Tenant, as the case may be.

4.04.03 The Basic Interest Rate and the Interest Rate, as the case may be, applicable to any amount on which interest is payable by the Tenant to the Landlord shall be adjusted on the first (1st) day of each Quarterly Period such that the Basic Interest Rate or Interest Rate, as the case may be, at which the interest payable during that Quarterly Period is calculated is the Basic Interest Rate or Interest Rate, as the case may be, for that Quarterly Period.

4.04.04 The Basic Interest Rate applicable to any amount on which interest is payable by the Landlord to the Tenant shall be adjusted on the first (1st) day of each Quarterly Period such that the Basic Interest Rate at which the interest payable during that Quarterly Period is calculated is the Basic Interest Rate for that Quarterly Period.

4.04.05 All interest shall be compounded monthly.

Section 4.05 Amounts Due Tenant From Landlord

4.05.01 For each Lease Year [each such Lease Year being, in this Subsection 4.05.01, called "**the then current Lease Year**"], for which the aggregate of the monthly payments and any additional payments of Airport Rent for the then current Lease Year paid by the Tenant to the Landlord during the period from and including the first (1st) day of the then current Lease Year to and including the first (1st) day of April of the then current Lease Year are greater than one-third (1/3rd) of Reported Airport Rent for the Lease Year immediately preceding the then current Lease Year, the Landlord, provided the Tenant is not otherwise in default, will, within forty-five (45) days of receipt by the Landlord of both the Tenant's Annual Statement for the Lease Year immediately preceding the then current Lease Year

and the Tenant's Auditor's Report for the Lease Year immediately preceding the then current Lease Year, remit to the Tenant, the amount by which the aggregate of the monthly payments and any additional payments of Airport Rent for the then current Lease Year paid by the Tenant to the Landlord during the period from and including the first (1st) day of the then current Lease Year to and including the first (1st) day of April of the then current Lease Year exceeds one-third (1/3rd) of Reported Airport Rent for the Lease Year immediately preceding the then current Lease Year.

- 4.05.02 For each Lease Year for which the aggregate of the monthly payments and any additional payments of Airport Rent paid by the Tenant to the Landlord during that Lease Year is greater than Reported Airport Rent for that Lease Year, the Landlord, provided the Tenant is not otherwise in default, will, within forty-five (45) days receipt by the Landlord of both the Tenant's Annual Statement for that Lease Year and the Tenant's Auditor's Report for that Lease Year, remit to the Tenant the amount by which the aggregate of the monthly payments and any additional payments of Airport Rent paid by the Tenant to the Landlord during that Lease Year exceeds Reported Airport Rent for that Lease Year.
- 4.05.03 If, with respect to a Lease Year, the Landlord is required to remit any amount to the Tenant, the Landlord at its option shall have the right to either,
- (a) pay such amount to the Tenant, or
 - (b) give the Tenant a rent credit against a future obligation to pay any Rent [such future obligation being within the Lease Year during which the Landlord is required to make a remittance to the Tenant pursuant to Subsection 4.05.01 or Subsection 4.05.02], which, to the extent the Tenant is subsequently unable to use such rent credit, will then be remitted to the Tenant.
- 4.05.04 Notwithstanding any provision in this Lease, if and for so long as the Tenant has not paid any amount which in the opinion of the Landlord is owing by the Tenant to the Landlord, or, if an Event of Default exists for any non-monetary default, then,
- (a) the Landlord shall not be obliged to remit any amount to the Tenant or give the Tenant any rent credit, and
 - (b) no interest shall accrue to the account of the Tenant on any amount to be remitted by the Landlord to the Tenant.
- 4.05.05 The Landlord may set off as against any amount owing by the Landlord to the Tenant any amount which in the opinion of the Landlord is owing by the Tenant to the Landlord.
- 4.05.06 The Landlord shall give the Tenant, in any Lease Year, a credit against Rent payable for that Lease Year equal to the amount of rent paid by the Tenant to the Landlord during that Lease Year under any Separate Lease provided that the Tenant has included in Airport Revenue the amount of any Gross Revenue derived

by the Tenant or any Person who is not at Arm's Length with the Tenant during that Lease Year from the land and premises which are the subject matter of the Separate Lease.

Section 4.06 Non Arm's Length Arrangements

- 4.06.01 The Tenant shall not permit any Occupant, Transferee or airport user who is not at Arm's Length with the Tenant or in whom the Tenant has an investment of any kind to occupy or use any part of the Demised Premises without having obtained the prior consent of the Minister, which consent may be unreasonably withheld, if the financial terms and conditions of each such intended use or occupancy would not produce for the Tenant such sum or sums, including percentage participation, as would reasonably have been derived from such use or occupancy had such use or occupancy been granted to a Person who is at Arm's Length with the Tenant or in whom the Tenant does not have an investment of any kind having regard to the revenue at the applicable time or times in respect of other similar use or occupancy in similar markets.
- 4.06.02 In order to obtain the Minister's consent contemplated in Subsection 4.06.01 and before any Occupant, Transferee or airport user who is not at Arm's Length with the Tenant or in whom the Tenant has an investment of any kind is permitted to occupy or use any part of the Demised Premises, the Tenant shall declare, by notice [**"Notice Of Arm's Length Amount"**] in writing to the Landlord, at the place then fixed for the payment of Rent, the financial terms and conditions of such occupancy or use, describe the premises which are the subject of the occupancy or use, as well as declare such sum or sums, including percentage participation, which will be included in Airport Revenue in respect of such use or occupancy by the Occupant, Transferee or airport user for each Lease Year of the duration of the Occupant Agreement or the Transfer as the case may be.
- 4.06.03 The Landlord shall, within ninety (90) days of receipt of the Notice Of Arm's Length Amount, notify the Tenant whether it accepts or does not accept the sum or sums, including percentage participation, declared in the Notice Of Arm's Length Amount to be included in Airport Revenue for each Lease Year of the duration of the Occupant Agreement or the Transfer in respect of the premises described in the Notice Of Arm's Length Amount. In the event the Landlord fails to notify the Tenant within such ninety (90) day period that the Landlord does not accept the sum or sums, including percentage participation, declared in the Notice Of Arm's Length Amount to be included in Airport Revenue for any Lease Year in respect of the premises described in the Notice Of Arm's Length Amount, the Landlord shall, for that Lease Year, be deemed to have accepted the sum or sums, including percentage participation, set out in the Notice Of Arm's Length Amount as being such sum or sums, including percentage participation, which the Tenant would have derived as Gross Revenue for that Lease Year from an Occupant, Transferee or airport user of the premises described in the Notice Of Arm's Length Amount who is a Person who is at Arm's Length with the Tenant or in whom the Tenant does not have an investment of any kind. In the event the Landlord accepts or is deemed to have accepted the sum or sums, including percentage participation, set out in the Notice Of Arm's Length Amount, then any such sum or sums, including

percentage participation, shall be included in Airport Revenue for each Lease Year for the duration of the Occupant Agreement or the Transfer as the case may be, unless an Event of Bankruptcy has occurred with respect to the Occupant, Transferee or airport user who is not at Arm's Length with the Tenant or in whom the Tenant has an investment of any kind, in which case such sum or sums, including percentage participation, will be excluded from Airport Revenue except to the extent that they are received by the Tenant.

Section 4.07 Information to be Provided to the Landlord

4.07.01 For each Lease Year, the Tenant shall, within thirty (30) days of confirmation by the Tenant's Auditor of the terms of engagement to audit the Tenant's Annual Financial Statements and the Tenant's Annual Statement to the Landlord, deliver to the Landlord a copy of such terms of engagement.

4.07.02 For each Lease Year, the Tenant shall, within sixty (60) days following the commencement of that Lease Year, deliver to the Landlord at the place then fixed for the payment of Rent, a written statement which shall,

- (a) be signed by a responsible signing officer authorized by the Board and made to the best of that officer's knowledge and belief and after due inquiry, in his or her capacity as an officer of the Tenant and not in his or her personal capacity;
- (b) be in such detail, form and scope as the Landlord requests; and
- (c) without limiting the previous requirements, set out the amount of Airport Revenue,

and which shall certify that all such estimates are calculated in accordance with both sound business practices and this Lease.

4.07.03 For the first three (3) Quarterly Periods of each Lease Year [each such Lease Year being, in this Subsection 4.07.03, called "**the then current Lease Year**"], the Tenant shall, within sixty (60) days following the end of that Quarterly Period, deliver to the Landlord, at the place then fixed for payment of Rent, a copy of

- (a) the non-consolidated financial statements of the Tenant, and
- (b) the consolidated financial statements of the Tenant where consolidated financial statements are prepared or should be prepared,

as, at and for that portion of the Tenant's fiscal year to the end of that Quarterly Period which shall include but not be limited to a balance sheet, a statement of operations, a statement of changes in net assets, a statement of cashflows and notes to the financial statements, together with a written statement from the Tenant which shall be signed by a responsible signing officer authorized by the Board and made to the best of that officer's knowledge and belief and after due inquiry, in his or her capacity as an officer of the Tenant and not in his or her personal

capacity, and which shall certify that such consolidated and non-consolidated financial statements are complete, true and correct.

4.07.04

For each Lease Year, the Tenant shall, within one hundred and twenty (120) days following the end of that Lease Year deliver to the Landlord, at the place then fixed for the payment of Rent, a written statement [**"Tenant's Annual Statement"**] which shall

- (a) be signed by a responsible signing officer authorized by the Board and made to the best of that officer's knowledge and belief and after due inquiry, in his or her capacity as an officer of the Authority and not in his or her personal capacity;
- (b) be in such detail, form and scope as the Landlord requests;

and which shall set out for that Lease Year,

- (c) the amount of Airport Revenue;
- (d) the amount of Airport Rent payable to the Landlord whether the amount is paid or not,
- (e) separately, the amount of interest at each of,
 - (i) the Basic Interest Rate, and
 - (ii) the Interest Rate

payable to the Landlord whether paid or not including the breakdown of the calculation of each category of interest referred to in Subparagraphs 4.07.04(e)(i) and 4.07.04(e)(ii);

- (f) a list of all contracts, and the values thereof, entered into by the Tenant pursuant to which any member of the Board may obtain a benefit of a financial nature either directly or indirectly;
- (g) a list of all transactions entered into by the Tenant with a Person who is not at Arm's Length with the Tenant together with all the particulars thereof including the names of all parties and the financial terms and conditions of such transactions;
- (h) any advantage to a Person who is not at Arm's Length with the Tenant which results in a disadvantage to the Landlord as a result of any transaction entered into by the Tenant with a Person who is not at Arm's Length with the Tenant;
- (i) any advantage to any member of the Board under any contract between the Tenant and a member of the Board which results in a disadvantage to the Landlord; and

(j) any Additional Rent.

4.07.05

For each Lease Year, the Tenant shall, together with and at the same time as the Tenant delivers to the Landlord the Tenant's Annual Statement for that Lease Year, also deliver to the Landlord, at the place then fixed for the payment of Rent, a report [**"Tenant's Auditor's Report"**] comprised of

(a) an auditor's report addressed to the Landlord setting out:

- (i) with respect to the amounts set out in the Tenant's Annual Statement for that Lease Year for each individual item set out in Paragraphs 4.07.04(c), 4.07.04(d) and 4.07.04(j) the Tenant's Auditor's opinion as to whether or not such amounts have been calculated in accordance with this Lease; and
- (ii) with respect to the amounts set out in the Tenant's Annual Statement for that Lease Year for each individual item listed in Paragraph 4.07.04(e), the Tenant's Auditor's opinion as to whether or not such amounts of each category of interest therein, including the breakdown of the calculation of that category of such interest, has been calculated in accordance with this Lease;

and

(b) a review engagement report addressed to the Landlord setting out with respect to Paragraphs 4.07.04(f), 4.07.04(g), 4.07.04(h) and 4.07.04(i)

- (i) that he has carried out a review in accordance with the requirements set out in Section 8500 of the CICA Handbook; and
- (ii) whether anything has come to the Tenant's Auditor's attention which causes him to believe that the information being reported on is not, in all material respects, complete, true and correct.

4.07.06

The Tenant shall, for each Lease Year, forthwith upon publication, deliver to the Landlord, at the place then fixed for the payment of Rent, a copy of

(a) the annual audited financial statements of the Tenant, or

(b) the annual audited consolidated financial statements of the Tenant where consolidated financial statements are prepared or should be prepared together with the annual audited non-consolidated financial statements of the Tenant,

[**"Tenant's Annual Financial Statements"**] which shall include but not be limited to a balance sheet, a statement of operations, a statement of changes in net assets, a statement of cashflows and notes to the financial statements, together

with the Tenant's Auditor's report [**"Tenant's Auditor's Report On Tenant's Annual Financial Statements"**] on that Tenant's Annual Financial Statements.

- 4.07.07 The Tenant shall, forthwith upon request, deliver to the Landlord, at the place then fixed for the payment of Rent,
- (a) copies of annual financial statements for the last six (6) years of any Person who is not at Arm's Length with the Tenant whose operations and businesses are related in any way to the Demised Premises or the Airport Undertaking together with the accompanying Auditor's reports;
 - (b) any other information respecting the financial position of the Tenant and the results of its operations which the Tenant is required by its by-laws to maintain; and
 - (c) a written explanation of how the amounts paid as Airport Rent are recovered by the Tenant through its fees and charges to airport users.
- 4.07.08 All Tenant's Annual Financial Statements and all Tenant's Annual Statements shall be audited by the Tenant's Auditor.
- 4.07.09 All Tenant's Auditor's Reports On Tenant's Annual Financial Statements and all Tenant's Auditor's Reports shall be prepared by the Tenant's Auditor in accordance with the reporting standards contained in the CICA Handbook and shall be signed by the Tenant's Auditor.

Section 4.08 Records

- 4.08.01 For the purposes of this Lease, including the purpose of calculating the amount of Airport Rent or Additional Rent, the Tenant shall keep, or cause to be kept, on the Demised Premises or in the City of Winnipeg, for the periods set out in Subsection 4.08.04, original detailed accounting, financial and other business records and documents concerning the business operation of the Tenant relating to the Demised Premises. Such records and documents shall include, but shall not be limited to, those which would normally be examined and required by the Tenant's Auditor in his audit of the Tenant's Annual Financial Statements and the Tenant's Annual Statement and in his preparation of the Tenant's Auditor's Report On Tenant's Annual Financial Statements and the Tenant's Auditor's Report.
- 4.08.02 In the event that the Tenant or any other Person or both derives any Gross Revenue from any end user or Occupant of any part of the Demised Premises which is based on revenue or quantity or performance, the Tenant shall, subject to the provisions of any Existing Revenue Agreement, ensure that any such end user or Occupant,
- (a) during the currency of the user's or Occupant's agreement [such agreement being, in this Subsection 4.08.02, called **"that agreement"**], keeps or causes to be kept a record of revenues and expenses or the appropriate records of any other quantity or performance all in accordance

with Generally Accepted Accounting Principles in respect of all activities on the part of the Demised Premises which is the subject of that agreement;

- (b) on or before the fifteenth (15th) day of each month during the term of that agreement, submits to the Tenant an itemized statement, signed by an authorized signing officer of the end user or Occupant, of the revenue or of such other quantity or performance as appropriate for the preceding month, upon which the Gross Revenue which the Tenant or any other Person or both derives under that agreement is determined;
- (c) within ninety (90) days of the end of each Lease Year, submits to the Tenant an annual statement, of the revenue or of such other quantity or performance as appropriate, relating to the operation of the end user or Occupant, upon which the Gross Revenue which the Tenant or any other Person or both derives under that agreement is determined; and
- (d) upon written request of the Tenant, submit to the Tenant within six (6) months following the last day of the user's or Occupant's fiscal year, a statement of revenues, audited by an Auditor, for the operations under that agreement for that fiscal year.

4.08.03 In the event that any Person other than

- (a) the Tenant, or
- (b) any end user or Occupant

derives any Gross Revenue from any end user or Occupant of any part of the concession area of any Air Terminal Building or any part of the general terminal area of any Air Terminal Building, the Tenant shall ensure that such Person shall, for each Lease Year for which such Person derives any such Gross Revenue, deliver to the Tenant a statement audited by an Auditor setting out in detail the precise amount of such Gross Revenue which was derived by such Person.

4.08.04 The Tenant shall preserve and safely retain,

- (a) all Tenant's Annual Financial Statements and all Tenant's Auditor's Reports on Tenant's Annual Financial Statements for the entire Term hereof, and
- (b) all other original detailed accounting, financial and other business records and documents including any records and documents referred to in Subsections 4.08.02 and 4.08.03 for a period expiring on the later of:
 - (i) the last day of the sixth (6th) Lease Year following the end of the Lease Year to which such document or record relates, and

- (ii) in the event a claim for readjustment is made pursuant to Subsection 4.09.10, the date such claim for readjustment is resolved.

Section 4.09 Landlord's Right To Audit

- 4.09.01 In addition to the rights of audit contained in Section 25.02, for any of the purposes of this Lease including the purpose of calculating the amount of Airport Rent or Additional Rent or for the purpose of recalculating the Tenant's calculations of the amount of Airport Rent or Additional Rent, the Landlord may at any time and from time to time cause a complete audit by Her authorized representatives or by an independent Auditor engaged by the Landlord to be made of the Tenant's entire business affairs, accounting, financial and other business records and documents and any related procedures.
- 4.09.02 When the Landlord intends to have an audit carried out by an independent Auditor the Landlord shall submit to the Tenant a list [**Notice to Select Landlord's Auditor**] containing the names of three (3) Auditors and the Tenant shall, within ten (10) days of receipt by the Tenant of that Notice to Select Landlord's Auditor,
- (a) select an Auditor [**Landlord's Auditor**] from the list of three Auditors named therein and notify the Landlord of the Landlord's Auditor [**Notice of Landlord's Auditor**] at the place then fixed for the payment of Rent, or
 - (b) notify the Landlord in writing at the place then fixed for the payment of Rent of the reasons why it rejects each one of the three (3) Auditors listed on the Notice to Select Landlord's Auditor individually.
- 4.09.03 In the event that the Tenant
- (a) fails to notify the Landlord of the name of the Landlord's Auditor within the ten (10) day period referred to in Subsection 4.09.02, or
 - (b) does not, within the ten (10) day period referred to in Subsection 4.09.02, provide the reasons why it rejects each one of the three (3) Auditors listed on the Notice to Select Landlord's Auditor individually,
- the Landlord may select the Landlord's Auditor. If the Tenant notifies the Landlord within such ten (10) day period referred to in Subsection 4.09.02 that it rejects each one of the three (3) of the Auditors listed on the Notice to Select Landlord's Auditor individually together with the reasons for such rejection the Landlord shall request that the Auditor General of Canada select the Landlord's Auditor who may be any one of the three Auditors listed on the Notice to Select Landlord's Auditor or any other person who is an Auditor. The Auditor General's selection of Landlord's Auditor for this purpose shall be binding on both the Tenant and the Landlord.
- 4.09.04 The Tenant shall,

- (a) provide to the Landlord, the Landlord's authorized representative, the Landlord's Auditor or to any other Person performing any right of the Landlord contemplated in this Section 4.09,
 - (i) appropriate space on the Demised Premises satisfactory to and at no cost to, and
 - (ii) access to any accounting, financial and other business records and documents and any related procedures as may be required by and at no cost to

the Landlord, the Landlord's authorized representative, the Landlord's Auditor or any other Person or Persons performing any right of the Landlord contemplated in this Section 4.09, and

- (b) authorize and require the Tenant's Auditor to provide to the Landlord's Auditor reasonable access to the Tenant's Auditor's working papers relating to the audit of the Tenant's Annual Financial Statements and the Tenant's Annual Statement and to the preparation of Tenant's Auditor's Report On Tenant's Annual Financial Statements and the Tenant's Auditor's Report, such access to be provided at no cost to the Landlord and the Landlord's Auditor and shall include the right to take extracts from the Tenant's Auditor's working papers as such working papers are described and defined in the CICA Handbook.

4.09.05 For any of the purposes of this Section 4.09, the Landlord, the authorized representatives of the Landlord and the Landlord's Auditor shall have the right without cost,

- (a) to examine the Tenant's entire accounting, financial and other business records and documents and any related procedures during regular business hours and to take extracts from such records and documents; and
- (b) to have a Person or Persons on the Demised Premises to,
 - (i) check, verify and tabulate the amount of any Airport Revenue or any other amount, monetary or otherwise, or any other factor impacting on or relevant to the determination of the amount of Airport Rent or Additional Rent;
 - (ii) examine any accounting, financial or other business records and documents or any related procedures including control features affecting the determination of the amount of any Airport Revenue or any other amount, monetary or otherwise, or any other factor impacting on or relevant to the determination of the amount of Airport Rent or Additional Rent; and
 - (iii) obtain and use such other information as the Landlord, the authorized representatives of the Landlord, the Landlord's Auditor,

or such Person or Persons considers relevant in order to establish the amount of any Airport Revenue or any other amount, monetary or otherwise, or any other factor impacting on or relevant to the determination of the amount of Airport Rent or Additional Rent.

4.09.06 Any audit carried out by the Landlord's Auditor shall be carried out in accordance with Generally Accepted Auditing Standards and the Landlord will, not less than thirty (30) days prior to the issuing of the Landlord's Auditor's report on such audit, provide the Tenant with an opportunity to comment on the Landlord's Auditor's findings.

4.09.07 Any audit carried out by the Landlord's Auditor shall be final and binding on both the Tenant and the Landlord.

4.09.08 If any audit carried out by the Landlord's Auditor establishes for any Lease Year, that

- (a) Airport Rent for that Lease Year is greater than Airport Rent for that Lease Year as set out in the Tenant's Annual Statement for that Lease Year, or
- (b) Additional Rent for that Lease Year is greater than Additional Rent for that Lease Year as set out in the Tenant's Annual Statement for that Lease Year,

the Tenant shall forthwith pay to the Landlord an amount [in this Subsection 4.09.08 called "**such amount**"] equal to the aggregate of,

- (c) the amount by which Airport Rent for that Lease Year as established by that audit exceeds Airport Rent for that Lease Year as set out in the Tenant's Annual Statement for that Lease Year, and
- (d) the amount by which Additional Rent for that Lease Year as established by that audit exceeds Additional Rent for that Lease Year as set out in the Tenant's Annual Statement for that Lease Year

together with interest at the Interest Rate on such amount, such interest being calculated from and including the one hundred and twentieth (120th) day following the end of the Lease Year for which that audit was carried out, to and including the date of payment.

4.09.09 If an audit carried out by the Landlord's Auditor establishes for a Lease Year, that

- (a) Airport Rent for that Lease Year is less than Airport Rent for that Lease Year as set out in the Tenant's Annual Statement for that Lease Year, or
- (b) Additional Rent for that Lease Year is less than Additional Rent for that Lease Year as set out in the Tenant's Annual Statement for that Lease Year,

the Landlord will, provided the Tenant is not otherwise in default, remit to the Tenant an amount equal to the aggregate of

- (c) the amount by which Airport Rent for that Lease Year as set out in the Tenant's Annual Statement for that Lease Year exceeds Airport Rent for that Lease Year as established by such audit, and
- (d) the amount by which Additional Rent for that Lease Year as set out in the Tenant's Annual Statement for that Lease Year exceeds Additional Rent for that Lease Year as established by such audit.

4.09.10 Except in the case of fraud, and subject to this Section 4.09, neither party shall have any right to claim any adjustment or change to Airport Rent or Additional Rent unless the party making such claim has given a notice of such claim to the other party on or before the last day of the sixth (6th) Lease Year after the Lease Year in respect to which the claim is being made.

Section 4.10 Non-Delivery of Statements

4.10.01 In the event that,

- (a) the Tenant fails to have submitted or fails to submit any of the statements or reports referred to in Section 4.07 within the time stipulated; or
- (b) the Tenant's detailed accounting, financial and other business records and documents are insufficient to permit a determination of the amount of any Airport Revenue or any other amount, monetary or otherwise, or any other factor impacting on or relevant to the determination of the amount of Airport Rent or Additional Rent

then, in addition to any other rights the Landlord may have, the Landlord may, at the Landlord's option,

- (c) with or without the assistance of an independent public accountant, estimate the amount of any Airport Revenue or any other amount, monetary or otherwise, or any other factor impacting on or relevant to the determination of the amount of Airport Rent or Additional Rent; or
- (d) choose and employ an independent public accountant or an Auditor to examine the Tenant's accounting, financial and other business records and documents and any related procedures during regular business hours and to take extracts from such records and documents;

and, in any case, the Landlord or the independent public accountant or Auditor contemplated in Paragraph 4.10.01(d) shall have the right to have a Person or Persons on the Demised Premises to,

- (e) check, verify and tabulate the amount of any Airport Revenue or any other amount, monetary or otherwise, or any other factor impacting on or relevant to the determination of the amount of Airport Rent or Additional Rent;
- (f) examine any accounting, financial or other business records and documents or any related procedures including control features affecting the determination of the amount of any Airport Revenue or any other amount, monetary or otherwise, or any other factor impacting on or relevant to the determination of the amount of Airport Rent or Additional Rent; and
- (g) obtain and use such other information as the Landlord, the independent public accountant, the Auditor, or such Person or Persons considers relevant in order to establish the amount of any Airport Revenue or any other amount, monetary or otherwise, or any other factor impacting on or relevant to the determination of the amount of Airport Rent or Additional Rent.

4.10.02 The Tenant shall provide to the Landlord, the public accountant, the Auditor or to any other Person or Persons performing any function pursuant to Subsection 4.10.01,

- (a) appropriate space on the Demised Premises satisfactory to and at no cost to, and
- (b) access to any accounting, financial and other business records and documents and any related procedures as may be required by and at no cost to

the Landlord, the public accountant, the Auditor or any other Person or Persons performing any work contemplated in this Section 4.10.

4.10.03 Any estimate or statement of Airport Rent or Additional Rent so prepared shall be referred to as a "**Caused Statement**".

4.10.04 Upon delivery of any Caused Statement, the Tenant shall forthwith pay to the Landlord,

- (a) any amount payable by the Tenant to the Landlord based upon such Caused Statement, together with interest at the Interest Rate on that amount such interest being calculated from and including the first (1st) day of the period for which the Caused Statement is prepared to and including the date of payment;
- (b) all amounts to reimburse the Landlord for all costs and expenses of the Landlord in having such Caused Statement prepared; and
- (c) all additional amounts for administration and overhead charges as the Landlord may from time to time determine and which are related to any Caused Statement.

4.10.05 If the Auditor or independent public accountant in attempting to prepare any Caused Statement reports to the Landlord that, in his opinion, the Tenant's accounting, financial and other business records and documents or related procedures are insufficient to permit a determination of the amount of any Airport Revenue or any other amount, monetary or otherwise, or any other factor impacting on or relevant to the determination of the amount of Airport Rent or Additional Rent for any Lease Year or part thereof, or if the Tenant is not complying with each and every one of the provisions of Article 4, the Tenant shall forthwith after notice from the Landlord take all such steps as are necessary to remedy any such default. In the event the Tenant fails to forthwith take all steps as are necessary to remedy such default, the Landlord may, notwithstanding any other provisions of this Lease, terminate this Lease without further notice.

Section 4.11 Repayment of Adjustment Amount

4.11.01 The Tenant shall pay as Additional Rent, together with the monthly payment of Airport Rent, an amount equal to one-twelfth (1/12th) of the amount listed in the following chart that corresponds to the appropriate Lease Year.

LEASE YEAR	Amount
2010	\$76,249.20
2011	\$76,249.20
2012	\$76,249.20
2013	\$76,249.20
2014	\$76,249.20
2015	\$76,249.20

Section 4.12 2020 Airport Rent and Future Rent Credits [NTD: Added by Am. #12.]

4.12.01 Notwithstanding the provisions of Section 4.03, the Tenant is required to pay to the Landlord only two-twelfths (2/12th) of Airport Rent for the 2020 Lease Year. For clarity, the parties acknowledge and agree that the remaining ten-twelfths of Airport Rent for the 2020 Lease Year is irrevocably waived.

4.12.02 Notwithstanding any other provision of the Ground Lease, Airport Rent for the 2020 Lease Year shall be computed separately for that Lease Year and shall be paid by the Tenant to the Landlord in two (2) monthly payments and shall become due and payable on the first (1st) day of each of January and February 2020 with each monthly payment being not less than one twelfth (1/12th) of Reported Airport Rent for the Lease Year immediately preceding the 2020 Lease Year. The Tenant may, at its option, make payments in addition to the monthly payments for Airport Rent payable for the 2020 Lease Year [such payments being, for the purposes of Section 4.03 and Section 4.05, called "additional payments"]. Any such additional payments may be made by the Tenant at any time during the 2020 Lease Year or

during the two (2) months following the end of the 2020 Lease Year, in which latter case they will be deemed, for the purposes of Subsection 4.03.07, to have been made during such Lease Year. Subsections 4.03.03, 4.03.04, 4.03.05, 4.03.06 and Section 4.04 do not apply to the calculation of Airport Rent in respect of the 2020 Lease Year.

4.12.03 For the 2020 Lease Year, if the aggregate of the monthly payments and any additional payments on account of Airport Rent paid by the Tenant to the Landlord during the 2020 Lease Year, including within the two (2) months following the end of the 2020 Lease Year, is greater than Reported Airport Rent for that Lease Year (which, for greater clarity, shall have taken into account the reductions contemplated in Section 4.12.01), the Landlord, provided the Tenant is not otherwise in default, will, within forty-five (45) days of receipt by the Landlord of both the Tenant's Annual Statement for the 2020 Lease Year and the Tenant's Auditor's Report for the 2020 Lease Year, remit to the Tenant the amount by which the aggregate of the monthly payments and any additional payments on account of Airport Rent paid by the Tenant to the Landlord during the 2020 Lease Year, including within the two (2) months following the end of the 2020 Lease Year, exceeds Reported Airport Rent for the 2020 Lease Year.

4.12.04 Subsections 4.05.01, 4.05.02 and 4.05.03 do not apply to the 2020 Lease Year. No interest is due to the Tenant from the Landlord on account of any overpayment of Airport Rent by the Tenant in 2020 or any credits owing as referenced in Subsection 4.12.03.

4.13 2021 and 2022 Airport Rent [NTD: Added by Am. #12.]

4.13.01 Notwithstanding the provisions of Section 4.03, the Tenant has no obligation to pay Airport Rent for the 2021 Lease Year.

4.13.02 For each of the 2020 and 2021 Lease Years the Tenant shall include:

- (a) in the Tenant's Annual Statement delivered to the Landlord pursuant to Subsection 4.07.04, the amount of Notional Airport Rent for that Lease Year; and
- (b) in the Tenant's Auditor's Report delivered to the Landlord pursuant to Subsection 4.07.05, the Tenant's Auditor's opinion as to whether the Notional Airport Rent amount in respect of that Lease Year has been calculated in accordance with this Lease.

4.13.03 Subsection 4.03.03 does not apply to the 2022 Lease Year. For the 2022 Lease Year, Airport Rent shall be computed separately for the 2022 Lease Year, and shall, subject to Subsection 4.13.04 and subject to adjustments both during and after the end of the 2022 Lease Year as contemplated herein, be paid by the Tenant to the Landlord in twelve (12) monthly payments during the 2022 Lease

Year, with each monthly payment being not less than one-twelfth (1/12th) of Notional Airport Rent for the 2021 Lease Year. The Tenant may, at its option, make payments in addition to the monthly payments for Airport Rent in the 2022 Lease Year [such payments being, in Section 4.03 and in Section 4.05, and in this Subsection 4.13.03, called "additional payments"]. Any such additional payments may be made by the Tenant at any time during the 2022 Lease Year or during the two (2) months following the end of the 2022 Lease Year, in which latter case they will be deemed, for the purposes of Subsection 4.03.07, to have been made during the 2022 Lease Year.

4.13.04 Subsection 4.03.05 does not apply to the 2022 Lease Year. For the 2022 Lease Year the amount of the monthly payment of Airport Rent payable by the Tenant to the Landlord on the first (1st) day of each of the first (1st) four (4) calendar months of the 2022 Lease Year shall be not less than one twelfth (1/12th) of Notional Airport Rent for the 2020 Lease Year.

4.13.05 Subsection 4.03.06 does not apply to the 2022 Lease Year. For the 2022 Lease Year, the Tenant shall, not later than the last day of April, pay to the Landlord the amount by which one-third (1/3rd) of Notional Airport Rent for the 2021 Lease Year, exceeds the aggregate of the monthly payment and any additional payment for Airport Rent payable by the Tenant to the Landlord for the 2022 Lease Year during the period of time from and including the first (1st) day of January of the 2022 Lease Year to and including the first (1st) day of April of the 2022 Lease Year, together with interest at the Basic Interest Rate on such amount such interest being calculated from and including the first (1st) day of March of the 2022 Lease Year to and including the earlier of

(c) The date such amount is paid by the Tenant to the Landlord, and

(d) The last day of April of the 2022 Lease Year.

4.13.06 Subsection 4.05.01 does not apply to the 2022 Lease Year. For the 2022 Lease Year, if the aggregate of the monthly payments and any additional payments of Airport Rent for the 2022 Lease Year paid by the Tenant to the Landlord during the period from and including the first (1st) day of the 2022 Lease Year to and including the (1st) day of April of the 2022 Lease Year are greater than one-third (1/3rd) of Notional Airport Rent for the 2021 Lease Year, the Landlord, provided the Tenant is not otherwise in default, will, within forty-five (45) days of receipt by the Landlord of both the Tenant's Annual Statement for the 2021 Lease Year and the Tenant's Auditor's Report for the 2021 Lease Year, remit to the Tenant, the amount by which the aggregate of the monthly payments and any additional payments of Airport Rent for the 2022 Lease Year paid by the Tenant to the Landlord during the period from and including the first (1st) day of the 2022 Lease Year to and including the first (1st) day of April of the 2022 Lease Year exceeds one-third (1/3rd) of Notional Airport Rent for the 2021 Lease Year.

ARTICLE 5 - TAXES

Section 5.01 Definition

5.01.01 In this Lease:

“Real Property Taxes” means, with respect to the Demised Premises, all taxes, rates, duties and assessments (including local improvement, frontage, water, snow and sewer taxes and rates), impost charges or levies, and development charges, whether general or special, ordinary or extraordinary, foreseen or unforeseen, of every nature or kind whatsoever and whether in existence on the Date of Commencement or not and any fines, penalties, interest and costs relating thereto that are lawfully levied, imposed, rated, charged or assessed (collectively **“Imposed”**) against or in respect of the Demised Premises or any part thereof from time to time by any taxing authority, whether federal, provincial, municipal, school or otherwise and includes:

- (a) any taxes or other amounts which are Imposed instead of, or in addition to, any such Real Property Taxes (whether of the foregoing character or not and whether in existence at the Date of Commencement or not),
- (b) any Real Property Taxes Imposed against the Landlord on account of Her ownership of, or interest in, the Demised Premises or any part thereof, and
- (c) any Real Property Taxes which are Imposed against the Tenant or any other Person as a holder or occupier of the whole or any part of the Demised Premises.

Section 5.02 Real Property Taxes Payable By Tenant

5.02.01 The Tenant shall, promptly, on or before their due date, pay or cause to be paid all Real Property Taxes the payment for which the Landlord may be liable or the nonpayment of which would create a lien or charge against the Lands or any building, improvement or structure thereon or against the Leasehold Interest and any fine, penalty, interest and cost relating thereto.

Section 5.03 Business Taxes and Other Taxes

5.03.01 The Tenant shall, promptly, on or before their due dates, pay or cause to be paid to the lawful taxing authorities, and shall discharge or cause to be discharged in each Lease Year when the same becomes due and payable:

- (a) any tax, rate, duty, assessment and other charge including any fine, penalty, interest and costs related thereto which is Imposed against or in respect of any Leasehold Improvement, equipment, fixture, personal property or facility on or in the Demised Premises or any part thereof;

- (b) any tax and licence fee including any fine, penalty, interest and costs related thereto which are Imposed against or in respect of any business or undertaking carried on anywhere in or on the Demised Premises, or in respect of any use or occupancy thereof by the Tenant or by any Transferee or Occupant; and
- (c) any tax which is Imposed against the Landlord on account of Her ownership of the Demised Premises or any interest therein;

all of the foregoing being collectively referred to in this Lease as “**Business Taxes**” the payment for which the Landlord may be liable or the nonpayment of which would create a lien or charge against the Lands or any building, improvement or structure thereon or against the Leasehold Interest and whether, in any case, any such tax, rate, duty, assessment, charge or licence fee is Imposed by any federal, provincial, municipal, school or other body.

Section 5.04 Grants in Lieu of Taxes

5.04.01 Subject to any agreement entered into between Her Majesty, represented by the Minister of Government Services and Public Works, and the Tenant relating to the subject matters referred to in Subparagraphs (a) and (b) of this Subsection 5.04.01, the Tenant shall forthwith, on demand, advance to the Landlord, as Additional Rent, any amount required by the Minister of Government Services and Public Works in order to:

- (a) enable the Minister of Government Services and Public Works to make any grants in lieu of Real Property Taxes pursuant to the ***Municipal Grants Act***, R.S.C. 1985, c. M-13 in respect of any part of the Demised Premises which is not occupied by Her Majesty; and
- (b) cover any reasonable overhead and administration cost of the Department of Public Works and Government Services Canada.

5.04.02 The Tenant covenants to fully comply with all the terms and conditions of any agreement contemplated in Subsection 5.04.01.

Section 5.05 Transfer Tax

5.05.01 The Tenant shall forthwith, on demand, pay any business transfer tax, value added tax, multi-stage sales tax, sales tax, goods and services tax or any other tax and any fine, penalty, interest and costs relating thereto Imposed on any Rent receivable or received by the Landlord hereunder that may be Imposed by any government or other applicable taxing authority against the Landlord whether known as business transfer tax, value added tax, goods and services tax, or by any other name and whether or not in existence on the Date of Commencement.

5.05.02 The Landlord shall, together with the demand referred to in Subsection 5.05.01, provide the Tenant with copies of documents in Her possession relating to the demand.

Section 5.06 Landlord's Right to Pay

5.06.01 If and so often as the Tenant neglects or omits to pay or cause to be paid any Real Property Taxes, Business Taxes or any of the taxes which the Tenant is required to pay or cause to be paid under Section 5.05, the Landlord may, after giving the Tenant fifteen (15) days prior notice, but shall not be obliged to, pay the same or pay a grant in lieu of the same, and the amount so paid shall forthwith, on demand, be payable by the Tenant to the Landlord together with interest thereon at the Interest Rate calculated from the date the Landlord has paid such amount to the date it is reimbursed by the Tenant to the Landlord and shall be recoverable by the Landlord as Additional Rent.

Section 5.07 Tenant's Responsibility

5.07.01 The Tenant shall, except where the Tenant is lawfully exempt from Real Property Taxes or Business Taxes:

- (a) upon request of the Minister promptly:
 - (i) deliver to the Landlord receipts for payment of any Real Property Taxes and any Business Taxes;
 - (ii) deliver to the Landlord notices of any assessment of any Real Property Tax and any Business Tax received by the Tenant;
 - (iii) furnish to the Landlord such other information in connection with any Real Property Taxes and any Business Taxes as the Minister may reasonably require from time to time; and
- (b) deliver to the Landlord notice of any appeal or contestation (collectively "**Appeal**") which the Tenant, at the Tenant's expense, intends to institute with respect to any Real Property Taxes or any Business Taxes.

Section 5.08 Right to Appeal

5.08.01 The Tenant shall have the right and privilege if acting in good faith, of contesting or appealing, at its own expense, any assessment of or applying for a reduction of the amount of any Real Property Taxes and any Business Taxes, provided that no part of or interest in the Demised Premises shall thereby become liable to forfeiture or sale. If permitted by law, pending the final determination of the tax payable, the Tenant may abstain from payment of the amount in respect of which

such Appeal or application is made and such abstention shall not be a breach of Article 5 if the Tenant:

- (a) has first furnished to the Landlord satisfactory security for the payment in total of any of the aforementioned Real Property Taxes and any Business Taxes by bond, irrevocable bank Letter of Credit or bank guarantee, or otherwise, in the event of failure of such Appeal or application;
- (b) diligently prosecutes any such Appeal to a speedy resolution; and
- (c) keeps the Landlord fully informed in writing of its progress in that regard from time to time, or immediately, upon the Minister's request.

5.08.02 The Landlord may, but shall not be obliged to, exercise a corresponding right, upon notification to the Tenant. The Landlord will keep the Tenant informed in writing of its progress in that regard.

ARTICLE 6 - UTILITIES

Section 6.01 Assumption by Tenant

6.01.01 The Tenant hereby assumes as of the Date of Commencement any obligation of the Landlord with respect to the availability, continuity, supply, existence or non-existence of any utility, service or system serving any part of the Demised Premises and the Tenant hereby agrees to discharge as its own obligation any such responsibility relating to any utility, service or system serving any part of the Demised Premises. The Tenant hereby covenants with the Landlord to observe and perform during the entire Term any obligation of the Landlord as landlord or owner relating to any utility, service or system serving any part of the Demised Premises and to indemnify and hold the Landlord harmless with respect thereto.

Section 6.02 Covenant to Pay

6.02.01 The Tenant shall be solely responsible for, and shall promptly pay, or cause to be paid, to the appropriate utility supplier, all charges (including any fines, penalties, interest and costs relating thereto) in relation to any utility consumed or used during the Term on any part of the Demised Premises including chilled water, electric current, water, gas, steam, oil, fuel, power, sanitary sewer, water sewer, telephone, telecommunications and any other utilities charged in respect of any part of the Demised Premises the payment for which the Landlord may be liable or the nonpayment of which would create a lien or charge against the Lands or any building, improvement or structure thereon or against the Leasehold Interest and shall indemnify and keep indemnified the Landlord

from and against any Claims occasioned by or arising from any use or consumption of any utility and any utility charges relating to the Demised Premises.

Section 6.03 Evidence of Payment

6.03.01 The Tenant shall, from time to time, at the request of the Minister, deliver or cause to be delivered to the Landlord receipts or other reasonable evidence of payment of amounts required to be paid pursuant to Section 6.02.

Section 6.04 The Landlord's Right to Pay for Utilities

6.04.01 If and so often as the Tenant neglects or omits to pay or cause to be paid any amount required to be paid pursuant to Section 6.02, the Landlord may, after giving the Tenant fifteen (15) days prior notice, but shall not be obliged to, pay the same, and the amount so paid shall forthwith be payable by the Tenant to the Landlord together with interest thereon at the Interest Rate calculated from the date the Landlord has paid such amount to the date it is reimbursed by the Tenant to the Landlord and shall be recoverable by the Landlord as Additional Rent.

Section 6.05 Landlord not Responsible

6.05.01 The Tenant acknowledges and agrees that the Landlord shall not be liable or responsible in any way to the Tenant for any Claims resulting from any interruption or any cessation or unavailability of, or a failure in, the supply of any utility, service or system serving the Demised Premises or any part thereof, whether supplied by the Landlord or others.

6.05.02 In particular, without limiting the generality of the foregoing, the Tenant shall, as between the Landlord and the Tenant, be solely responsible for any construction, relocation, replacement, removal, alteration, repair and maintenance of .and any adjustment to any service, system and utility line and any related works and for any extensions of such services, systems and utilities into or on the Demised Premises or any part thereof as well as any utility connections not in place immediately prior to the Date of Commencement.

ARTICLE 7 - PLANS

Section 7.01 Airport Master Plan

7.01.01 The Tenant shall, through consultations with any interest group as it deems appropriate:

- (a) forthwith, after the Date of Commencement, commence and proceed in an expeditious manner to prepare an Airport Master Plan; and

- (b) on or before the third (3rd) anniversary of the Date of Commencement, complete, adopt and make public a Tenant's Airport Master Plan which shall provide the strategy for the long-term development of the Airport other than that part of the Airport under the exclusive possession of the Department of National Defence and which shall address the following:
- (i) socio-economic profiles: local, community, region; (This section of an Airport Master Plan places the Airport within the context of the local or regional economy in which it is located.)
 - (ii) airport activity: role, classification and history; (This section of an Airport Master Plan describes the types of aviation activity the Airport is intended to serve throughout the planning horizon, the airport classification, the development of aviation in the local community and the construction history at the site.)
 - (iii) airport environment and environmental impact; (This section of an Airport Master Plan analyses the existing Airport environment and identifies the present and future environmental impact on both the Airport and the area in its immediate vicinity.)
 - (iv) airfield; (This section of an Airport Master Plan studies all components of Airside and Aprons, analyses their capacity, identifies the severity of Airside congestion and identifies precisely the nature of any problems presently occurring or expected in the future.)
 - (v) Airport Terminal Building (Passenger, Cargo and Charter); (This section of an Airport Master Plan examines terminal facilities and analyses current requirements and ensures present and future viability and compatibility with other facets of Airport activity and facilities. The planning methodology is the same for all types of terminal buildings.)
 - (vi) ground transportation system; (This section of an Airport Master Plan describes the location and capacity of all access, service and special purpose roads on the Airport property.)
 - (vii) airport commercial services and facilities; (This section of an Airport Master Plan analyses future space requirements for general aviation activities and facilities, aviation support activities such as aircraft maintenance, overhaul and servicing, and commercial land development, and specialized facilities such as cargo, charter, mail and airline facilities, if these do not warrant a separate section.)
 - (viii) airport operational support services; (This section of an Airport Master Plan analyses emergency response service requirements,

administration and operational activity, utilities, power, water supply and Airport maintenance facilities.)

- (ix) noise management plan; (This section of an Airport Master Plan describes noise envelopes including forecasts, and proposed solutions to noise impact problems, such as aircraft procedures, monitoring, etc.)
- (x) land use; (This section of an Airport Master Plan divides the Airport site as a whole into sections with particular land uses and provides a development strategy for the Airport and all Airport subsystems. It is in this study that all Airport facilities are integrated into a compatible, rational plan for future development for the planning horizon. A number of development alternatives may be included. One of the main purposes is to identify the space requirements for aviation activities during the planning horizon and to avoid the intrusion of incompatible land uses into areas specifically designated for a particular type of activity.)

7.01.02 The Tenant's Airport Master Plan shall be updated and such update adopted no earlier than the tenth (10th) anniversary of the Date of Commencement and no later than the eleventh (11th) anniversary of the Date of Commencement and every ten (10) years thereafter. The Tenant shall forthwith, on adoption, deliver to the Landlord three (3) original copies of any Tenant's Airport Master Plan and any amendment thereto.

Section 7.02 Land Use Plan

7.02.01 The Land Use Plan referred to as "**recommended**" in the Schedule "C" attached hereto is hereby adopted as the Approved Land Use Plan.

7.02.02 Any Approved Land Use Plan may, subject to the approval of the Minister, be amended or replaced at the initiative of the Tenant. Prior to seeking the approval of the Minister to any amendment to or replacement of any Approved Land Use Plan, the Tenant shall engage in timely and meaningful consultations with the City of Winnipeg, for that portion of the Lands which are located in the City of Winnipeg, with the Rural Municipality of Rosser for that portion of the Lands which are located in the Rural Municipality of Rosser, and with appropriate federal government departments. In addition and at the same time, the Tenant shall engage in timely and meaningful consultations as it deems appropriate with the Province of Manitoba, other interest groups and the municipalities adjoining the City of Winnipeg or the Rural Municipality of Rosser. Once approved by the Minister, any replacement Land Use Plan shall become the Approved Land Use Plan in the place of the Land Use Plan attached hereto as Schedule "C" or any prior replacement thereof. Any amendment to any Approved Land Use Plan (whether the Land Use Plan in Schedule "C" or any replacement Land Use Plan), once approved by the Minister, shall be a part of the Approved Land Use Plan.

7.02.03 In proposing any amendment to or replacement of any Approved Land Use Plan, the Tenant shall:

- (a) give due consideration to any consultations it has had with any municipality, the Province of Manitoba, any interest group and any federal government department; and
- (b) describe, with sufficient detail, the proposed uses and development of every part of the Demised Premises over the planning horizon.

7.02.04 Any replacement of or amendment to any Approved Land Use Plan shall be subject to the approval of the Minister which approval may not, subject to Subsection 7.02.08, be unreasonably withheld.

7.02.05 Subject to Subsection 7.02.06, the Minister shall, within ninety (90) days of receipt by the Minister of:

- (a) a complete copy of any proposed replacement plan of any Approved Land Use Plan or any amendment to any Approved Land Use Plan; and
- (b) all material and information which the Minister in his discretion requires in order to make an informed decision,

notify the Tenant whether the Minister approves or does not approve the proposed replacement of any Approved Land Use Plan or any such amendment. For greater certainty, the ninety (90) day period referred to in this Subsection shall not commence to run until the Minister has received all documents, material and information set out in Paragraphs (a) and (b) above.

7.02.06 In the event the Minister does not have all material and information which he requires to make an informed decision of whether or not to approve the replacement of or amendment to the Approved Land Use Plan, the Minister shall notify the Tenant within forty-five (45) days of receipt of the proposed amendment to or replacement of any Approved Land Use Plan that he requires further, other or better information. In the event that the Minister fails to notify the Tenant within such forty-five (45) day period that he requires further, other or better information, then the Minister shall be deemed to have received all information required for purposes of this Section.

7.02.07 In the event the Minister does not approve the proposed replacement of or amendment to any Approved Land Use Plan, he will notify the Tenant of the reason for such refusal to approve. In the event the Minister fails to notify the Tenant within the ninety (90) day period referred to in Subsection 7.02.05 that he does or does not approve the proposed replacement of or amendment to any Approved Land Use Plan, then such proposed replacement of or amendment to any Approved Land Use Plan, as the case may be, shall be deemed to be approved by the Minister.

- 7.02.08 Any refusal to approve any proposed replacement of any Approved Land Use Plan or any amendment to any Approved Land Use Plan because it proposes an alteration to the use of any land included in or on which there exists any Airport Infrastructure, shall be deemed to be a reasonable withholding of consent by the Minister. The Tenant acknowledges that no approval will be given to any replacement of or any amendment to any Approved Land Use Plan which would detrimentally affect Airside operations.
- 7.02.09 The Tenant shall not use and the Tenant shall not permit the use of any part of the Demised Premises in a manner that is inconsistent with any Approved Land Use Plan.
- 7.02.10 No Approved Land Use Plan or any amendment thereto or replacement thereof shall prevent the use of any part of the Demised Premises as prohibited by the Approved Land Use Plan or amendment thereto or replacement thereof if such part of the Demised Premises was lawfully used for such purpose on the day before the Approved Land Use Plan or amendment thereto or replacement thereof, as the case may be, was in effect so long as the whole of any such part of the Demised Premises continues to be used for that purpose.

ARTICLE 8 - USE AND OPERATION

Section 8.01 Use of Demised Lands

- 8.01.01 The Tenant shall use the Demised Premises as a Major International Airport and for uses that are compatible with the management, operation and maintenance of the Demised Premises as a Major International Airport. The Tenant shall ensure that all Occupants and Transferees will use the Demised Premises for uses that are compatible with the management, operation and maintenance of the Airport. The Tenant further covenants that it shall not use or permit the use of the Demised Premises or any part thereof for any business or undertaking or purpose except as a Major International Airport or for uses that are incompatible with the management, operation and maintenance of the Demised Premises as a Major International Airport and, in either case, in accordance with this Lease and the Approved Land Use Plan.

Section 8.02 Operation of Airport

- 8.02.01 The Tenant shall, alone and not in partnership with any other Person, at all times throughout the Term, continuously, actively, diligently and carefully, manage, operate, and maintain the Demised Premises, on its own behalf and at its own cost and expense, in accordance with this Lease, in an up-to-date and reputable manner befitting a First Class Facility and a Major International Airport, as those standards are understood from time to time, and in a Condition and at a level of service to meet the capacity demands from time to time for airport services from users within seventy-five [75] kilometers from any point on the perimeter of the

Lands to the extent practicable under Her Majesty's policies, procedures and practices which pertain to:

- (a) the Civil Air Navigation Services described in the Aviation Services and Facilities Agreement,
- (b) the services described in the Canadian Inspection Services Agreement, and
- (c) the services described in the Memorandum of Agreement on Police and Security, to the extent that they affect the Tenant's ability to meet capacity demands.

For greater certainty, the fact that the Tenant enters into a Management Agreement pursuant to Subsection 18.01.02 shall not constitute a default under this Subsection 8.02.01.

8.02.02 The parties hereto acknowledge that the Existing Facilities meet the standards of a First Class Facility and a Major International Airport as those standards are understood on the Date of Commencement.

8.02.03 Without limiting the generality of Subsection 8.02.01, the Tenant shall, at its cost, in particular

- (a) provide all capital improvements in order to ensure that the Demised Premises have the ability and the facilities required to accommodate the capacity demands for airport services from users within the seventy-five (75) kilometers from any point on the perimeter of the Lands;
- (b) provide or ensure the provision of an adequate number of competent personnel required to manage, operate, and maintain the Demised Premises in accordance with this Lease and the Instruments;
- (c) provide or ensure the provision of all chattels and buildings, structures and improvements required to manage, operate, and maintain the Demised Premises in accordance with this Lease and the Instruments;
- (d) provide or ensure the provision of all utilities, systems and services required to manage, operate, and maintain the Demised Premises in accordance with this Lease and the Instruments;
- (e) make available any land within the Airport Reserve for the purposes of expansion of Airport Infrastructure, as and when needed, in a state that such land will be capable of being developed and used as Airport

Infrastructure; [NTD: Revised in Am. #10 to substitute "Airport Reserve" for "Original Airport Reserve".]

- (f) obtain and maintain, in the name of the Tenant, an Airport Certificate in respect of the Demised Premises and adhere to all the terms and conditions thereof;
- (g) comply with all the mandatory terms of the Airport Operations Manual, as amended or replaced from time to time;
- (h) provide or ensure the provision of emergency response services that meet "Transport Canada Emergency Response Services Policy" (TP 3660), as amended or replaced from time to time or as may be agreed upon between the Minister and the Tenant;
- (i) develop and adopt emergency plans and procedures to Department of Transport standards which shall be subject to approval of the Minister and shall be consistent with:
 - (A) TP 1801, Airports Emergency Planning Manual, as amended or replaced from time to time;
 - (B) TP 140, Policy and Standards on Airport Isolation Areas, as amended or replaced from time to time;
 - (C) TP 2601, Policy, Standards and Guidelines for Airport Emergency Coordination Centres, as amended or replaced from time to time; and
 - (D) TP 3826, Policy, Standards and Guidelines for the Establishment of a Mobile Command Unit to Deal with Disaster/Emergency Situations at Transport Canada Airports, as amended and replaced from time to time;

and when any policy referred to in subparagraphs (A), (B), (C) or (D) of this Paragraph 8.02.03(i) is amended or replaced the Tenant shall forthwith develop and adopt new emergency plans and procedures which meet the requirements of this Paragraph 8.02.030). Each emergency plan and procedure shall, in respect of each area covered by that emergency plan and procedure, be and remain in effect until Her Majesty enacts regulations regulating all airport operators in respect of that particular area covered by that emergency plan and procedure respectively;

- (j) ensure the security and protection of the Demised Premises as a

prudent owner would;

- (k) cooperate with the Minister in responding to any and all questions, complaints and comments received by the Landlord or the Minister from the general public in respect of the Demised Premises;
- (l) not do, nor permit to be done, any act in, on or about the Demised Premises which:
 - (i) could interfere with or interrupt the normal functions of the Demised Premises as a Major International Airport; or
 - (ii) could interfere with or interrupt the normal functioning of any Air Terminal Building as an air passenger terminal,

unless such interference or interruption is temporary or is the demolition of an Air Terminal Building and in either case is made by the Tenant in conformity with Section 49.01, or is the result of use by aircraft pursuant to Subsection 39.01.01.

8.02.04 The Tenant shall keep, perform or observe all of the covenants, agreements, provisions, conditions, or provisos in any of the other Instruments, in any sublease, or in any sub-sublease contemplated by Subparagraph 8.01.02(b)(ii) on the part of the Tenant to be kept, performed or observed.

Section 8.03 International Agreements

8.03.01 The parties hereto acknowledge that the Government of Canada has the right to enter into any international agreement, convention or arrangement with a foreign state relating to aeronautics as it applies to the Airport.

8.03.02 The parties hereto acknowledge that the Tenant may contribute to the preparation for negotiations by the Government of Canada of any international agreement, convention or arrangement with a foreign state relating to aeronautics as it applies to the Airport by making representations or providing views to the Government of Canada but shall not

- (a) enter into;
- (b) participate with the Government of Canada in any negotiations of; or
- (c) negotiate on its own behalf

any international agreement, convention or arrangement with a foreign state relating to aeronautics as it applies to the Airport.

8.03.03 The Tenant shall, at no cost to the Landlord, keep, perform and observe any covenant, agreement, provision, condition, or proviso, as the same is interpreted and directed by the Minister, on the part of the Government of Canada to be kept, performed or observed under any international agreement, convention or arrangement between the Government of Canada and a foreign state relating to aeronautics as it applies to the Demised Premises, whether such international agreement, convention or arrangement was entered into before or after the Date of Commencement, including any covenant, agreement, provision, condition, or proviso respecting access by foreign air carriers to Canadian airports and conditions pertaining thereto and those provisions relating to making adequate space available for the United States of America Federal Inspection Services and agencies with respect to the operation of pre-clearance facilities.

Section 8.04 Use of Demised Premises by the Tenant and Occupants

8.04.01 The Tenant shall not do or permit upon or under the Demised Premises any act, over which it may have any degree of control, and which act constitutes a nuisance to any occupant of lands or premises adjoining or in the vicinity of the Demised Premises, to the public generally, to the Landlord or to any other Occupant or Transferee of any part of the Demised Premises. The development and use of the Demised Premises as an airport shall not itself be construed to be a nuisance, provided that the Tenant is developing, operating and using the Demised Premises in accordance with this Lease.

Section 8.05 Airport Zoning Regulations

8.05.01 The Tenant shall, except to the extent that an Existing Facility may not conform on the Date of Commencement, fully comply and shall ensure that all Occupants and Transferees fully comply with any zoning regulations enacted pursuant to the ***Aeronautics Act***, R.S.C. 1985, c. A-2 including the Winnipeg International Airport Zoning Regulations, as amended or replaced from time to time, as if the Demised Premises were not a part of the "airport" within the meaning of the ***Aeronautics Act*** and the ***Winnipeg International Airport Zoning Regulations***, as amended or replaced from time to time.

Section 8.06 Observance of Law

8.06.01 The Tenant shall observe and comply with all applicable laws now or hereafter in force.

Section 8.07 Compliance by Occupant and Transferee

8.07.01 The Tenant shall ensure that all Occupants and Transferees:

- (a) observe and comply with all applicable laws now or hereafter in force, and,
- (b) do all things necessary to comply with, and to enable compliance by the Tenant, with this Lease and all of the other Instruments.

Section 8.08 Notices of Non-Compliance

8.08.01 The Tenant shall deliver forthwith to the Landlord a copy of any written notice of non-compliance by the Tenant with any applicable law received by the Tenant, unless the Tenant promptly commences to remedy such noncompliance forthwith upon the Tenants receipt of such notice and thereafter with due diligence continuously prosecutes the remedying of the noncompliance to completion within a reasonable period of time.

8.08.02 The Tenant shall ensure that any Occupant or Transferee delivers forthwith to the Landlord a copy of any written notice of non-compliance by the Occupant or Transferee with any applicable law received by the Occupant or Transferee, unless the Occupant or Transferee promptly commences to remedy such non-compliance forthwith upon receipt of notice and thereafter with due diligence continuously prosecutes the remedying of the noncompliance to completion within a reasonable period of time.

Section 8.09 Competition

8.09.01 The Tenant acknowledges that the success of the Tenant on the Demised Premises and income of the Landlord from the Demised Premises are dependent upon the generation of Airport Revenue.

8.09.02 The Tenant covenants and agrees that throughout the Term the Tenant shall not:

- (a) engage directly or indirectly in any business or undertaking;
- (b) permit any Person who is not at Arm's Length with the Tenant to engage directly or indirectly in any business or undertaking;

which is carried on outside of the Demised Premises within a radius of six (6) kilometres from any point on the perimeter of the Lands and which business or undertaking is the same as, similar to, or in competition with, the Tenant's business or undertaking or any other business or undertaking carried on, or which could be carried on, in or on the whole or any part of the Demised Premises (in this Section 8.09 called "**Competing Business**"), without the prior written consent of the Minister which consent shall specifically refer to this Section 8.09 and be subject to any condition which the Minister may impose.

8.09.03 The Tenant covenants and agrees that throughout the Term the Tenant shall not:

- (a) hold any interest in any land; or
- (b) permit any Person who is not at Arm's Length with the Tenant to hold any interest in any land

which is situated outside of the Lands within a radius of six (6) kilometres from any point on the perimeter of the Lands and which land is used either directly or indirectly for the purposes of any part of the Tenant's business or undertaking or for the purposes of any Competing Business, without the prior written consent of the Minister which consent shall specifically refer to this Section 8.09 and be subject to any condition which the Minister may impose.

8.09.04 Where the Tenant contravenes the provisions of Subsections 8.09.02 or 8.09.03, then, in addition to any other right or remedy available to the Landlord under this Lease or at law, the Landlord may, at Her option, do any one or more of the following:

- (a) require that all Gross Revenue from and in respect of any such Competing Business be included in the computation of Airport Revenue hereunder, as though the Gross Revenue from such Competing Business had actually been derived by the Tenant from the Demised Premises and all relevant provisions of this Lease shall be applicable thereto; for greater certainty the Landlord shall have the same rights of inspection and audit with respect to the Gross Revenue of any such Competing Business as She has pursuant to this Lease; or
- (b) apply for an injunction from any court of competent jurisdiction restraining the Tenant from breaching the provisions of Subsection 8.09.02 or Subsection 8.09.03, as the case may be.

8.09.05 In the event the Landlord applies for an injunction restraining the Tenant from breaching the provisions of Subsection 8.09.02 or Subsection 8.09.03, the Tenant hereby consents to any such application for injunctive relief.

Section 8.10 Traffic Diversion

8.10.01 The Tenant acknowledges that the success of the Airport, and income of the Landlord therefrom are dependent upon the actual volume of Airport Passengers and the actual volume of air cargo traffic at the Airport. **[NTD: Revised by Am#4.]**

8.10.02 The Tenant covenants and agrees that, throughout the Term, the Tenant shall not cause or contribute to the diversion of Airport Passengers or air cargo traffic from the Airport to any other airport unless such diversion is required due to adverse weather conditions or emergency conditions at the Airport. **[NTD: Revised by Am#4.]**

8.10.03 Where the Tenant contravenes the provision of Subsection 8.10.02 then, in addition to any other right of remedy available to the Landlord under this Lease or at law, the Landlord may, at Her option, do one of more of the following:

- (a) require all the revenue that would have been derived had such diversion not occurred to be added to Gross Revenue for the purposes of computing Airport Revenue as though such foregone revenue had

actually been derived from the use of the Demised Premises and all relevant provisions of this Lease shall be applicable thereto; for greater certainty the Landlord shall have the same rights of inspection and audit with respect to the above foregone revenue;

- (b) apply for an injunction from any court of competent jurisdiction restraining the Tenant from breaching the provisions of Subsection 8.10.02.

8.10.04 In the event the Landlord applies for an injunction restraining the Tenant from breaching the provisions of Subsection 8.10.02, the Tenant hereby consents to any such application for injunctive relief.

Section 8.11 Noise Management

8.11.01 The Tenant shall adopt as its own the preferential runway policies and noise abatement flight procedures in use at the Demised Premises immediately prior to the Date of Commencement. The Tenant shall not change any preferential runway policy or noise abatement flight procedure in respect of the Demised Premises without obtaining the prior written approval of the Minister.

Section 8.12 Noise Management Procedures

8.12.01 The Tenant shall adopt as its own the noise mitigation procedures which are in use at the Demised Premises immediately prior to the Date of Commencement and shall include such noise mitigation procedures in any on-Airport noise mitigation program. The Tenant shall not change any noise mitigation procedures in respect of the Demised Premises without obtaining the prior written approval of the Minister. The Tenant shall provide to the Minister any plans for the management of noise on the Demised Premises prior to releasing same to the public.

8.12.02 The Tenant shall ensure that mitigation of noise emanating from aircraft in the takeoff, ascent, descent, approach and terminal phases of flight is a part of the mandate of a noise management committee which the Tenant shall establish and which shall include at a minimum, the Tenant, the Minister or his designate, aviation industry representatives and appropriate provincial and municipal government representatives.

8.12.03 The Tenant shall be responsible for dealing with and shall, in accordance with its powers, deal with any noise complaints and for determining the need for and undertaking noise monitoring related to aircraft operations within a distance of ten (10) nautical miles from any point on the perimeter of the Demised Premises, except where such noise is related to aircraft en-route operations.

8.12.04 The Tenant shall forthwith report to the Minister any violation of any regulation or order respecting noise made under the ***Aeronautics Act***.

Section 8.13 Land Use in the Vicinity of the Airport

8.13.01 The Tenant shall be responsible for local consultation in respect of existing or proposed land uses in the vicinity of the Airport which are incompatible with the operation of an airport or aircraft, and, for this purpose the Tenant shall, in particular, liaise with the appropriate provincial and municipal governments.

8.13.02 The Tenant shall pay for all costs respecting the preparation, publication, implementation and registration of any regulation or other document prepared by or on behalf of the Landlord for the purpose of ensuring that land adjacent to or in the vicinity of the Airport is not used or developed in a manner that is incompatible with the safe operation of an airport or aircraft.

Section 8.14 Expropriation

8.14.01 If any use made or to be made of the Demised Premises or any part thereof by the Tenant or by any Person permitted to use any part of the Demised Premises by the Tenant requires the expropriation of any interest in land for which Her Majesty is required to pay compensation, the Tenant shall:

- (a) indemnify Her Majesty and hold Her Majesty harmless of any resulting claims for compensation including all interest and costs made by or payable to any Person pursuant to the **Expropriations Act**, R.S.C. 1985, c. E-21, and
- (b) pay to Her Majesty all costs of Her Majesty in respect of implementing such expropriation and defending any action for or settling compensation including all interest and costs made by or payable to any Person pursuant to the **Expropriations Act**, R.S.C. 1985, c. E21.

Section 8.15 Airport Improvement Fee [NTD: Added by Am#4.]

8.15.01 The Tenant shall ensure that,

- (a) any Airport Improvement Fee is clearly identified as a charge or fee made by the Winnipeg Airports Authority Inc. in the nature of an Airport Improvement Fee which is remitted or to be remitted to the Winnipeg Airports Authority Inc. and is not a tax imposed by any taxing authority, and
- (b) a notice to passengers incorporating all the terms and conditions relating to any Airport Improvement Fee is prominently displayed in any Air Terminal Building in sufficient locations and in adequate size to ensure that all passengers are notified as soon as possible upon entering the Air Terminal Building.

8.15.02 In the event that the Tenant fails to comply with any provision of Subsection 8.15.01, then, notwithstanding anything, else contained herein, the Landlord may, at its option and without notice to the Tenant

(a) obtain a mandatory injunction or an order for specific performance requiring the Tenant to comply with any provision of Subsection 8.15.01, or

(b) require the Tenant to install signs on the Demised Premises.

In the event the Landlord chooses to pursue an order for mandatory injunction or an order for specific performance, the Tenant hereby acknowledges and agrees that the covenants and agreements on the part of the Tenant contained in Subsection 8.15.01 are unique and of such extraordinary character; and value to the Landlord and that a breach thereof would cause the Landlord irreparable harm for which damages are not easily calculated or which would not, or might not, be compensable in damages. Furthermore, the Tenant: acknowledges that a continuing breach of any provision of Subsection 8.15.01 would cause continuing damages to the Landlord. The Tenant, therefore, hereby consents to a mandatory injunction or order for specific performance being granted against it and in favour of the Landlord in respect of Subsection 8.15.01. In the event the Landlord chooses to require the Tenant to install signs on the Demised Premises the Landlord will prepare or cause to be prepared appropriate signs which the Tenant will forthwith install at its own costs in locations on the Demised Premises where the Landlord requests that such signs be installed. The Tenant will thereafter leave such signs where located on the Demised Premises without hindrance or molestation and without blocking the line of sight or view of such signs by the travelling public and the Tenant will thereafter maintain and repair such signs at its own costs. The Tenant shall forthwith reimburse the Landlord for all costs of the Landlord in preparing or causing to be prepared such signs and delivering such signs plus an amount for overhead and administrative charges.

ARTICLE 9 - CORPORATE MATTERS

Section 9.01 Corporate Matters

9.01.01 The Tenant shall ensure, in so far as it may be practicable to do so, that the Board as a whole is representative of the local community and will consist of individuals who collectively have experience and have shown capability in such disciplines as air transportation, industry, aviation, business, commerce, .finance, administration, law, government, engineering, the organization of workers, or the representation of the interests of consumers, and who have the business acumen to manage the affairs of the Tenant as an ongoing, viable commercial enterprise.

9.01.02 The Tenant shall ensure:

- (a) that there are during the entire Term in effect by-laws requiring a code of conduct ("**Code of Conduct**") for directors of the Board and officers and employees of the Tenant designed to prevent real and perceived conflicts of interest;
- (b) that the by-laws forming the Code of Conduct shall be no less stringent than the rules respecting conflict of interest applicable to a director of a company incorporated under the **Canada Business Corporations Act**, R.S.C. 1985 c. C-44;
- (c) that at least thirty (30) days prior to the first annual general meeting the Code of Conduct will be provided to the Nominators and the Minister and will be published in two local newspapers together with an invitation to the public for written and oral comments about the Code of Conduct;
- (d) that the Code of Conduct as then amended and any proposed amendments to such Code of Conduct shall be provided to the Minister and to the Nominators at least thirty (30) days prior to the second and each subsequent annual general meeting; and
- (e) that each and every member of its Board who fails to comply with such Code of Conduct will forthwith be removed from its Board.

9.01.03 The Tenant shall not modify, alter or change any constating document or by- law in any manner which would affect or change its objects, its not-for-profit status, the composition of the Board or the process for nomination, appointment or revocation of its Board, or which would deviate in any manner from the public accountability of the Board as expressed in the "**Public Accountability Principles For Canadian Airport Authorities**" dated July, 1994, without the prior written approval of the Minister, which approval may be unreasonably withheld.

9.01.04 The Tenant shall not undertake any activity which is not authorized by its constating documents or by-laws or which is inconsistent with the policy of the Landlord set out in the "**Public Accountability Principles For Canadian Airport Authorities**" dated July, 1994.

9.01.05 The Tenant shall, within One Hundred and Thirty-Five (135) days of the end of each Lease Year (in this Subsection 9.01.05 and in Subsection 9.01.06 called "**that Lease Year**"), hold a public meeting relating to the management, operation and maintenance of the Airport, at a location on or near the Demised Premises and in premises that are adequate for the size of audience that may reasonably be anticipated.

9.01.06 The Tenant shall:

- (a) give at least thirty (30) days' prior notice of each public meeting by publishing a notice in at least four reasonably spaced issues of a daily newspaper or newspapers in general circulation within the area in which the Airport is situated within sixty (60) days prior to the date of the public meeting provided that the Tenant may, in addition publish any additional notices of the public meeting closer to the date of such meeting it deems advisable;
- (b) afford a reasonable opportunity to the public for the asking of questions and the expressing of views in light of the fact that any Person is entitled to attend each public meeting;
- (c) ensure that at least a majority of the members of its Board including the Chairperson (or in the event of his or her inability to attend or act, the vice chairperson) and the chief executive officer, are present at each public meeting;
- (d) present to the public meeting copies of its annual report contemplated in Subsection 9.01.07 for that Lease Year, including its audited annual financial statements for that Lease Year approved by the Board together with the Tenant's Auditor's report on such audited annual financial statements. The Board's approval of such audited annual financial statements shall be evidenced by the signatures of two (2) or more directors on the statements; and
- (e) provide the annual report contemplated in Subsection 9.01.07 to each of the Nominators and to the Minister prior to the public meeting and, on request, to any member of the public.

9.01.07 The Tenant shall, prior to each public meeting to be held pursuant to Subsection 9.01.05, publish an annual report in respect of the Lease Year (in this Subsection 9.01.07 called "**that Lease Year**") immediately preceding the Lease Year in which the public meeting is held which shall, as a minimum:

- (a) include the audited annual financial statements of the Tenant for that Lease Year, the Tenant's Auditor's report on such Tenant's audited annual financial statements, and a summary of the Tenant's affairs for that Lease Year;
- (b) contain a report on the Tenant's performance relating to the Tenant's business plan and objectives established for that Lease Year, and as applicable for the previous five Lease Years;

- (c) include an explanation by the Tenant of all variances and corrective actions taken with respect to the Tenant's performance described in Paragraph 9.01.07(b);
- (d) present a summary of the Tenant's business plan for the then current Lease Year and the Tenant's business plan containing a forecast for the next five Lease Years, including specific objectives, (measurable where feasible), for such summary and forecast and relating to the approved objects of the Tenant;
- (e) contain a report on the remuneration provided to each Board member and on the salary of each of the senior officers of the Tenant;
- (f) contain a report on compliance or non-compliance with the Tenant's Code of Conduct; and
- (g) report on all contracts in excess of an amount obtained by multiplying seventy-five thousand (\$75,000) dollars by the C.P.I. Adjustment Factor for that Lease Year which are entered into during that Lease Year and which contracts were not awarded on the basis of a public competitive tendering process and such report shall identify the parties to the contract, the amount of the contract, the nature of the contract, the circumstances of the contract and the reasons for not awarding such contract on the basis of a public competitive tendering process.

Section 9.02 Performance Review

- 9.02.01 On the fifth (5th) anniversary of the Date of Commencement and on every fifth (5th) anniversary thereafter (it being the intent of this Section that not more than five (5) years shall have elapsed between reviews), the Tenant shall cause a review to be conducted and completed of its management, operation and financial performance since the last review or from the Date of Commencement if it is the first review.
- 9.02.02 Such review shall be conducted by a competent Person who is independent of and at Arm's Length with the Tenant and who is qualified to conduct such a review of the management, operation and financial performance of the Tenant.
- 9.02.03 The Tenant shall ensure that the Person conducting the review shall prepare a written report containing his findings.
- 9.02.04 The Tenant shall ensure that the Person conducting the review shall include in the report at least the following:
- (a) the terms of reference of the review;

- (b) statements stating the extent to which the Tenant has been and is operating
 - (i) a safe and efficient service to the public; and
 - (ii) an efficiently run undertaking in accordance with the Tenant's business plans and approved objects;
- (c) statements stating the extent to which financial and management controls, information systems and management practices have been and are maintained, including the steps taken to ensure that
 - (i) the assets of the Tenant have been safeguarded and controlled;
 - (ii) the financial, human and physical resources of the Tenant have been managed economically and efficiently; and
 - (iii) the operations of the Tenant have been carried out effectively;
- (d) any further information that is reasonably required by any Nominator or by a majority of the Board;
- (e) any concerns or qualifications that the Person conducting the review has with respect to any matter described in this Section; and
- (f) any other relevant information about the Tenant.

9.02.05 Subject to Subsection 9.02.06, the Tenant shall, within three months of the commencement of the review, provide a copy, free of charge, of any report referred to in Subsection 9.02.03 to the Landlord, and shall, within the same period, provide a copy of such report and a summary of the report, excluding commercially confidential material or private personnel information, to each Nominator.

9.02.06 If issues arise during the course of the review which prevent it being concluded within the three month period referred to in Subsection 9.02.05, the Tenant shall cause an interim report to be prepared and provided in accordance with this Section within the three (3) month period referred to in Subsection 9.02.05 and the Tenant shall provide a final report in accordance with this Section not later than six (6) months after the commencement of the review.

9.02.07 The Tenant shall, on request, provide to any member of the public a copy of the summary of any interim report or of any final report, excluding commercially confidential material or private personnel information.

9.02.08 The Tenant shall cause further reviews to be conducted pursuant to this Section when requested to do so by the Board or by a majority of the Nominators.

9.02.09 At the request of any Nominator the Tenant shall convene a meeting of its Board with the Person conducting the review and with the other Nominators in order to determine the course of action to be taken to resolve any problems disclosed by the report.

Section 9.03 Documents

9.03.01 The Tenant shall make available to any Person, on request, for examination at its head office, in the City of Winnipeg, during its usual business hours and free of charge, copies of:

- (a) the current Airport Master Plan, TP4130E, as updated by the Master Plan Update P11809;
- (b) the summary of its business plan for the then current Lease Year and the business plan containing the forecast for the next five (5) year period;
- (c) a summary of its current environmental management plan for the Demised Premises;
- (d) the most recent and the previous annual financial statements of the Tenant and of each of its subsidiaries and of each corporation whose accounts are consolidated in the Tenant's financial statements, all with the accompanying auditors' reports thereon;
- (e) its five (5) most recent annual reports each of which shall include a general summary of its undertaking and affairs during the previous fiscal year;
- (f) its constating documents and by-laws, including any amendments thereto;
- (g) a copy of this Lease and the Instruments; and
- (h) a written explanation of how the amounts paid as Airport Rent are recovered by the Tenant through its fees and charges to airport users,
[NTD: Added by Am#4.]

and that Person may make extracts therefrom.

9.03.02 The Tenant shall provide to any Person, on payment of a reasonable fee, a copy of any document referred to in Subsection 9.03.01.

Section 9.04 Community Consultative Committee

9.04.01 The Tenant shall, within one hundred and eighty (180) days of the Date of Commencement, establish a community consultative committee to provide for effective dialogue and dissemination of information on matters relating to the Demised Premises, including:

- (a) Airport planning and plans;
- (b) operational aspects of the Airport; and
- (c) municipal concerns.

9.04.02 The community consultative committee shall meet not less than twice each Lease Year, and shall be comprised of members who are generally representative of the community, including persons representing the interests of consumers, the travelling public and organized labour, aviation industry representatives and appropriate provincial and municipal government representatives.

Section 9.05 Federal Identity Program

9.05.01 The Tenant shall, to the extent practicable, acknowledge that the Landlord is the federal government of Canada, as represented by the Minister of Transport.

9.05.02 The Tenant shall, during the Term, maintain and demonstrate the role of the Landlord through the use on the Demised Premises of appropriate Canadian identity symbols such as Canadian flags and signage in both official languages of Canada and shall comply with the Federal Identity Program as set out in the Treasury Board Secretariat Administrative Policy Manual as amended from time to time.

9.05.03 The Tenant shall, from and after the Date of Commencement and for the entire Term, display at least as many Canadian flags on the Demised Premises and in at least as prominent locations as Canadian flags were displayed immediately prior to the Date of Commencement.

9.05.04 The Tenant shall, for the balance of the Term, display the Canadian flag in prominent locations on any building on the Demised Premises, including all Air Terminal Buildings which are constructed during the Term by or on behalf of the Tenant.

9.05.05 In addition to Subsections 9.05.03 and 9.05.04, the Tenant shall comply with the "**General Federal Rules**" for flying and displaying the Canadian flag, as amended from time to time and as interpreted and directed by the Minister.

Section 9.06 Foreign Dignitaries

9.06.01 The Tenant shall coordinate the necessary arrangements concerning the use of the Demised Premises during any state visit by foreign dignitaries.

- 9.06.02 The Tenant shall be responsible to provide, on a timely basis to the appropriate representatives of visiting foreign dignitaries, detailed and relevant information on access to the Demised Premises, security passes, security searches or screening on the Demised Premises and arrivals and departures of aircraft.
- 9.06.03 During private visits by foreign dignitaries the appropriate manager or officer of the Tenant may assist in greeting such dignitaries or in bidding them farewell.

Section 9.07 Diplomatic Parking

- 9.07.01 The Tenant agrees that any person who is duly accredited for the purposes of the ***Diplomatic and Consular Privileges and Immunities Act***, R.S.C. 1985, c. P-22 or who is a diplomatic agent or consular officer of a country other than Canada will not be charged any amount to park a motor vehicle or for parking services provided on the Demised Premises in an area available to the general public. The Tenant shall ensure that any Occupant of any Parking Facility complies with this covenant.

ARTICLE 10 – INSURANCE

[NTD: Original Insurance provisions replaced in Am. #3 by this version of Article 10.]

Section 10.01 General

- 10.01.01 The Tenant covenants and agrees that from the Date of Commencement and for the Term hereof, it shall purchase, provide and maintain, at its expense, the Insurance set out in this Lease.
- 10.01.02 The Tenant shall cause each policy of Insurance to:
- (a) be enforceable by any named or additional insured thereunder;
 - (b) be primary to and non-contributing with any other insurance available to the Landlord;
 - (c) provide for written notice to the Landlord of any cancellation, including cancellation for non-payment of premium, suspension or adverse material change in the Insurance at least thirty (30) days prior to any such cancellation, suspension or change becoming effective, excepting, however, any coverage in respect of war and allied perils which is subject to automatic and/or seven (7) days' notice of cancellation, in which case notice of any such cancellation shall immediately be given to the Landlord and such notice shall be deemed to commence from the date such notice is given by the insurers; and
 - (d) include a "severability of interest" clause and a "cross liability" clause.

- 10.01.03 In addition to the requirements set out in Subsection 10.01.02 hereof, the Tenant shall cause each policy of airport operators liability insurance to:
- (a) provide that Her Majesty and any Minister of the Crown, all executives, directors, officers, servants, agents and employees of the Landlord or any Department of the Government of Canada, any other Person for whom the Landlord may be responsible in law, and any Person who has a right to claim a right of contribution as against the Landlord are included as additional insureds thereunder; and
 - (b) provide that the Tenant and all employees, commissioners executives, directors, officers and agents of the Tenant while acting within the scope of their duties, as such, are included as insureds.
- 10.01.04 In addition to the requirements set out in Subsection 10.01.02 hereof, the Tenant shall cause each policy of property and boiler and machinery insurance to:
- (a) provide that the Landlord with respect to all Existing Facilities and all New Facilities on any part of the Demised Premises other than an Existing Facility or a New Facility which at the relevant time is owned by a third party pursuant to an Existing Revenue Agreement or an Existing Other Agreement or an Occupant Agreement and all of the Tenant's Leasehold Improvements on the Demised Premises, is an insured as Her interest may appear;
 - (b) include a waiver of any subrogation rights that the insurers may have against the Landlord including always Her Majesty and any Minister of the Crown, all executives, directors, officers, servants, agents and employees of the Landlord or any Department of the Government of Canada and against those for whom the Landlord is responsible in law and any Person who has a right to claim a right of contribution as against the Landlord; and
 - (c) include an "agency and trustee" clause.
- 10.01.05 The Tenant shall, at no cost to the Landlord, ensure that any third party that owns facilities on the Demised Premises or that conducts activities on the Demised Premises shall provide and maintain insurance sufficient to enable the Tenant to comply with its obligations under this Lease, based on the Tenant's reasonable assessment of risk.
- 10.01.06 All Insurance shall be in terms, form and amounts from time to time acceptable to the Minister.
- 10.01.07 All Insurance shall be placed with insurers selected by the Tenant and acceptable to the Minister.

10.01.08 For the purposes of this Article 10, “**Tenant’s Gross Revenue**” means the aggregate of all revenue, recognized as such by Generally Accepted Accounting Principles, but excludes,

(a) sales taxes and goods and services taxes, and any other taxes or levies of a similar nature which customers, passengers or Occupants are required by law to pay to a taxing authority, whether such authority is federal, provincial or municipal, and which the Tenant is required by law to collect from such customers, passengers or Occupants on behalf of, for and to remit to such taxing authority, whether such law is in existence on the Date of Commencement or not; and

(b) any amount or value which, in accordance with Generally Accepted Accounting Principles, is considered to be assistance from a federal, provincial, regional or municipal government.

[NTD: Added by Am#4.]

Section 10.02 Deductibles or Share of Loss

10.02.01 In any policy of Insurance for liability, the deductible (if any) shall be for the account and at the risk of the Tenant. The deductible or the Tenant’s share of any loss, as the case may be, shall not be in excess of an amount that a prudent person engaging in the activities referred to in Article 8 would obtain or would require to be obtained, but in no event shall either the deductible or the Tenant’s share of any loss, as the case may be, be an amount in excess of the greater of two percent (2%) of the Tenant’s Gross Revenue for the previous Lease Year or One Hundred Thousand Dollars (\$100,000.00).

10.02.02 In any policy of Insurance for property (except for earthquake coverage), the deductible (if any) shall be for the account and at the risk of the Tenant. The deductible or the Tenant’s share of any loss, as the case may be, shall not be in excess of an amount that a prudent person engaging in the activities referred to in Article 8 would obtain or would require to be obtained, but in no event shall either the deductible or the Tenant’s share of any loss, as the case may be, be an amount in excess of the greater of two percent (2%) of the Tenant’s Gross Revenue for the previous Lease Year or One Hundred Thousand Dollars (\$100,000.00).

10.02.03 The deductible (if any) for earthquake coverage in any policy of Insurance for property shall be for the account and at the risk of the Tenant. The deductible or the Tenant’s share of any loss, as the case may be, shall not be in excess of a maximum of five percent (5%) of the values at risk.

Section 10.03 Liability Insurance

10.03.01 The Tenant shall, at its expense, purchase, provide and maintain airport operators liability insurance (“**Airport Operators Liability insurance**”). The liability insurance policies shall provide for coverage on a per occurrence basis, covering

the Tenant's liability as airport operator for claims resulting from bodily injury (including death), personal injury and property damage arising out of:

- (a) the ownership, occupancy, operation, maintenance or use of the Demised Premises;
- (b) any or all of the Tenant's activities at the Airport; and
- (c) any or all risks set out in paragraph 10.03.01 (d) hereof.

Such Airport Operators Liability insurance shall, as a minimum, provide for the following:

- (d) with respect to aviation risk, coverage for:
 - (i) products and completed operations,
 - (ii) hangarkeepers including in-flight and taxiing risk,
 - (iii) non-owned aircraft,
 - (iv) automatic contractual recognition,
 - (v) premises,
 - (vi) incidental medical malpractice,
 - (vii) loss or damage to baggage and cargo,
 - (viii) host liquor,
 - (ix) defence costs in excess of policy limits,
 - (x) automatic coverage for newly acquired organizations,
 - (xi) "AVN52" or equivalent, and
 - (xii) contingent employee liability,

and such coverage shall be sufficiently broad to include as a minimum the following activities:

- (i) aircraft refueling/defuelling,
- (ii) aircraft de-icing,
- (iii) owned and non-owned automobile airside,

- (iv) use of security services, including equipment, where such security services are performed by or on behalf of the Tenant,
 - (v) use or existence of emergency services including equipment,
 - (vi) emergency drills,
 - (vii) ground control of aircraft except if the ground control of aircraft is carried out by air traffic controllers who are employees of Her Majesty or of Navcan,
 - (viii) radioactive contamination resulting from an accident to testing equipment, and
 - (ix) ground control of aircraft while in a de-icing area except if such ground control of the aircraft is carried out by persons who are employees of Her Majesty or of Navcan;
- (e) with respect to non-aviation risk, coverage for:
- (i) automobile,
 - (ii) non-owned automobile including contractual, and
 - (iii) garage and/or car park, if necessary;
- (f) with respect to the ownership, occupancy or use of the Demised Premises, coverage for occupiers liability; and
- (g) with respect to special risk, coverage for:
- (i) air shows (the Tenant shall purchase or cause to be purchased such insurance prior to such risk arising), and
 - (ii) any other risk of which the Tenant becomes aware and which is not specifically covered in this subsection 10.03.01 (the Tenant shall purchase or cause to be purchased insurance for such risks either prior to such risk arising or immediately upon the Tenant becoming aware of such risk, subject to the Tenant's reasonable assessment of the risk).

10.03.02 Subject to Subsection 10.03.04, the Tenant shall, at its expense, purchase, provide and maintain Airport Operators Liability Insurance to the limits stipulated in Subsection 10.03.05, covering Her Majesty, as Landlord and owner, for liability for any Claims advanced against the Landlord for any Injury or Damages caused by or contributed to by any fault, default, negligence, act or omission of the Landlord (including any Minister of the Crown, any executive, director, officer, servant, agent or employee of the Landlord, Department of the Government of

Canada, any other Person for whom the Landlord may be responsible in law, and any Person who has a right to claim a right of contribution as against the Landlord) on or after the Date of Commencement, in, upon, at or relating to the Demised Premises or any part thereof or from the ownership, occupancy, operation, maintenance or use by the Landlord of the Demised Premises or any part thereof.

- 10.03.03 In addition, the Tenant shall, at its expense, purchase, provide and maintain Airport Operators Liability Insurance to the limits stipulated in Subsection 10.03.05 covering Her Majesty as Landlord and owner for liability for any Claims advanced against the Landlord for any Injury or Damages caused by or contributed to by any defect that affected the Demised Premises or any part thereof immediately prior to the Date of Commencement.
- 10.03.04 For greater certainty, it is hereby acknowledged and agreed that the Tenant is not required under Section 10.03 of this Lease to insure Her Majesty against any Claims advanced against Her Majesty for any Injury or Damages caused by or contributed to by any fault, default, negligence, act or omission of Her Majesty (including any Minister of the Crown, any executive, director, officer, servant, agent and employee of Her Majesty or any Department of the Government of Canada, any other Person for whom Her Majesty may be responsible in law, and any Person who has a right to claim a right of contribution as against Her Majesty) in performing any governmental function referred to in Subsection 3.01.02 of the Agreement to Transfer.
- 10.03.05 The Airport Operators Liability Insurance referred to in this Section 10.03 shall provide for coverage in the following limits:
- (a) for airports required to provide an aircraft rescue and firefighting service (“**AFF**”) at category 9 or 10,
 - (i) a combined single limit of not less than ONE BILLION DOLLARS (\$1,000,000,000) per occurrence for bodily injury (including death) and property damage; and
 - (ii) a combined single limit of not less than TWENTY-FIVE MILLION DOLLARS (\$25,000,000.00) per occurrence with respect to personal injury;
 - (b) for airports required to provide an AFF at category 7 or 8,
 - (i) a combined single limit of not less than FIVE HUNDRED MILLION DOLLARS (\$500,000,000.00) per occurrence for bodily injury (including death) and property damage; and
 - (ii) a combined single limit of not less than TWENTY-FIVE MILLION DOLLARS (\$25,000,000.00) per occurrence with respect to personal injury;
 - (c) for airports required to provide an AFF at category 4, 5 or 6,

- (i) a combined single limit of not less than TWO HUNDRED AND FIFTY MILLION DOLLARS (\$250,000,000.00) per occurrence for bodily injury (including death) and property damage; and
- (ii) a combined single limit of not less than TWENTY-FIVE MILLION DOLLARS (\$25,000,000.00) per occurrence with respect to personal injury.

or such higher amounts as the Minister may, from time to time, reasonably require in light of material changes in international industry practice for similar airports as set out in Section 10.11.

Section 10.04 Property Insurance

10.04.01 The Tenant shall, at no cost to the Landlord, purchase, provide and maintain "AD Risks" coverage in a form not more restrictive than the then most recent edition of the I.B.C. Commercial Building, Stock and Equipment Broad Form, or any replacement thereof, at the time the insurance is acquired, covering all Tenant Insured Facilities.

10.04.02 All insurance contemplated by Subsection 10.04.01 shall provide coverage in an amount not less than the Replacement Cost of all such Tenant Insured Facilities or, with supporting engineering documentation acceptable to the Landlord, the Maximum Foreseeable Loss. Such Insurance shall either not contain any co-insurance requirements or be written on a stated amount co-insurance basis and shall include, as a minimum, the following:

- (a) All Risks coverage;
- (b) coverage for loss or damage caused by flood, earth movement (including earthquake) and collapse;
- (c) extra expense coverage;
- (d) coverage for business interruption;
- (e) off-premises utilities coverage;
- (f) coverage for loss resulting from cost of demolition;
- (g) coverage for the additional costs incurred, in complying with the requirements of any by-law or statute governing the repair or replacement of any structure, including the cost to demolish and rebuild undamaged parts and debris removal, as if the by-law or statute pursuant to which the by-law was passed were applicable to the Landlord and, in addition, coverage for any additional business interruption loss resulting therefrom;
- (h) a breach of conditions clause;

- (i) a fire liberalization clause; and
- (j) coverage, in the event the insurance policy contains an exclusion for faulty workmanship, materials or design, for any resulting damage.

10.04.03 The Tenant shall, at no cost to the Landlord, purchase, provide and maintain boiler and machinery insurance of a “comprehensive form” with a limit sufficient to cover the Maximum Foreseeable Loss caused by an accident to pressure, mechanical, electrical and electronic equipment. These policies shall include, as a minimum, the following:

- (a) coverage for property damage;
- (b) coverage for expediting expenses;
- (c) extra expense coverage;
- (d) coverage for loss of rents;
- (e) coverage for business interruption;
- (f) coverage for losses caused by the interruption of services, and
- (g) coverage for the additional costs incurred, in complying with the requirements of any by-law or statute governing the repair or replacement of any structure, including the cost to demolish and rebuild undamaged parts and debris removal, as if the by-law or statute pursuant to which the by-law was passed were applicable to the Landlord and, in addition, coverage for any additional business interruption loss resulting therefrom.

10.04.04 The Tenant shall ensure that there is Property Insurance, in an amount not less than Replacement Cost, or, with supporting engineering documentation acceptable to the Landlord, the Maximum Foreseeable Loss, to cover as a minimum, all of the following used for the purposes of the Airport Undertaking:

- (a) all buildings;
- (b) all structures and underground systems;
- (c) all runways and taxiways;
- (d) all other improvements;
- (e) all mobile equipment;
- (f) all tangible personal property used by the Tenant in connection with the management, operation or maintenance of the Airport; and

- (g) all tangible personal property located in or on the Demised Premises which is owned by the Tenant or for which the Tenant is legally liable.

Provided, for greater certainty that, subject to any Existing Agreement, Instrument or sublease, the Tenant shall have no obligation to insure any Licensed Civil Air Navigation Services Asset.

- 10.04.05 The Tenant shall, at its expense, purchase, provide and maintain gross rental income insurance to cover loss of Rent payable by the Tenant to the Landlord hereunder, for all or part of the Demised Premises rendered unusable by an event covered or which ought to be covered by Insurance specified herein.

All such insurance shall cover losses sustained during a period of not less than twelve (12) months from the date of the event.

Section 10.05 Replacement Cost

- 10.05.01 For the purposes of this Article 10, "**Replacement Cost**" means,

- (a) in the case of real property, the cost of repairing, replacing or reinstating any item of property with new materials of like kind and quality on the same or a similar site without deduction for physical, accounting or any other depreciation and includes, without limitation, additional costs incurred in complying with the requirements of any by-law or statute governing the repair or replacement of the property as if the by-law or statute pursuant to which the by-law was passed were applicable to the Landlord, and
- (b) in the case of personal property, the cost of replacing any item of property with new property of like kind and quality without deduction for physical, accounting or any other depreciation.

Section 10.06 Maximum Foreseeable Loss

- 10.06.01 For the purposes of this Article 10, "**Maximum Foreseeable Loss**" means the worst possible loss, including without limitation property loss and loss of income, that could occur as a result of the insured perils under the most adverse conditions reasonably foreseeable including the failure of all protective measures.

Section 10.07 Repair and Replacement

- 10.07.01 Subject to Article 12, all Property Insurance Proceeds shall, unless the Tenant and the Landlord agree otherwise, be applied firstly to carry out Repairs of the property damaged or destroyed on that part of the Demised Premises where such damaged or destroyed property was located prior to such damage or destruction.

Section 10.08 Additional Requirements During Construction

- 10.08.01 In addition to all other Insurance required by this Article 10, the Tenant covenants and agrees with the Landlord that, in respect of any construction project on any

part of the Demised Premises that has a projected budget that is greater than the greater of two percent (2%) of the Tenant's Gross Revenue for the previous Lease Year and Two Hundred and Fifty Thousand Dollars (\$250,000.00), the Tenant shall purchase, provide and maintain the Insurance set out in this Section 10.08 from the commencement of the construction project to the date of actual completion of such construction, as follows:

- (a) in the event the construction is on or over any part of the Demised Premises other than Airside, the Tenant shall purchase, provide and maintain, at no cost to the Landlord, liability insurance written on a wrap-up basis covering the Landlord as well as the Tenant for damages because of property damage, bodily injury (including death) and personal injury arising out of:
 - (i) the existence of the Demised Premises,
 - (ii) any construction operation, or
 - (iii) the control or use of the Demised Premises by the Tenant.

The coverage provided shall be no more restrictive than the CCDC 101 liability policy (or any replacement) wording, including the CCDC 101-2 endorsement (or any replacement) subject to IBC pollution exclusion with the hostile fire exception. The policy shall contain a combined single limit of the maximum available but in no event less than Twenty-five Million Dollars (\$25,000,000.00). The policy shall provide no less than two (2) years completed operations coverage, and non-owned automobile liability insurance shall be included;

- (b) in the event any part or the whole of the construction is on or over any part of Airside, the Tenant shall purchase, provide and maintain, at no cost to the Landlord, liability insurance obtained from the aviation market covering the Landlord as well as the Tenant for damages because of property damage, bodily injury (including death) and personal injury arising out of:
 - (i) the existence of the Demised Premises,
 - (ii) construction operation, or
 - (iii) the control or use of the Demised Premises by the Tenant.

The policy shall contain a combined single limit of not less than Two Hundred and Fifty Million Dollars (\$250,000,000.00); and

- (c) in addition, for any construction project with a projected budget that is greater than the greater of two percent (2%) of the Tenant's Gross Revenue for the previous Lease Year and Two Hundred and Fifty Thousand Dollars (\$250,000.00) on any part of the Demised Premises, the Tenant shall purchase, provide and maintain, at no cost to the

Landlord, All Risks - Builders Risks Insurance in the names of the Landlord and the Tenant in an amount not less than the full cost to reproduce any building, structure, facility or improvement being constructed. The policy shall,

- (i) be no more restrictive than the CCDC 201 Builders Risk Form or any replacement thereof,
 - (ii) contain no exclusion for loss or damage caused by the perils of flood or earth movement, including earthquake,
 - (iii) provide replacement cost coverage on all property,
 - (iv) be extended to cover soft costs including delayed rents (12 months minimum), interest, advertising costs and rental commissions when the loss is caused by an insured risk, and
 - (v) be written on a wrap-up basis covering the Landlord, the Tenant, the contractor and all subcontractors.
- (d) for smaller projects where wrap up liability and builders risk policies are not purchased, the Tenant shall obtain evidence of appropriate insurance from all contractors, sufficient to enable the Tenant to comply with its obligations under this Lease, based on the Tenant's reasonable assessment of risk.

10.08.02 The Tenant shall ensure that all its contractors for any construction project with a projected cost that is greater than the greater of two percent (2%) of the Tenant's Gross Revenue for the previous Lease Year and Two Hundred and Fifty Thousand Dollars (\$250,000.00) on any part of the Demised Premises shall purchase, provide and maintain,

- (a) performance bonds being no less than fifty percent (50%) of the contract amount, or an alternative arrangement acceptable to the Minister, and
- (b) labour and material payment bonds being no less than fifty percent (50%) of the contract amount, or an alternative arrangement acceptable to the Minister.

All such bonds, or alternatives, shall be in a form acceptable to the Landlord. Evidence of the existence of such bonds shall be provided to the Landlord by the Tenant on demand. The Landlord shall be named as an obligee pursuant to such bonds, or such bonds shall, with the consent of the bonding company, be validly assigned to the Landlord.

10.08.03 In addition, whether the construction is on Airside or on Groundside, and the construction project has a projected cost that is greater than the greater of two percent (2%) of the Tenant's Gross Revenue for the previous Lease Year and

Two Hundred and Fifty Thousand Dollars (\$250,000.00), the Tenant shall cause to be purchased, provided and maintained by or on behalf of each consultant, engineer or architect, a project errors and omissions insurance policy or policies each in the amount of at least Two Million Dollars (\$2,000,000.00).

- 10.08.04 The Tenant shall ensure that all its contractor(s) and subcontractor(s) purchase, provide and maintain non-owned automobile liability insurance including contractual, contractors equipment insurance and installation floater coverage, and, if no wrap-up coverage is provided, proof of liability insurance and proof of coverage for the subcontractor's work, at limits sufficient to enable the Tenant to comply with its obligations under this Lease. The contractor's equipment coverage and installation floater coverage shall provide a waiver of subrogation in favour of the Landlord and the Tenant.

Section 10.09 Similar Coverage

- 10.09.01 Where a specific term or expression relating to insurance coverage is utilized, except where otherwise specifically mentioned, the Tenant shall be obliged to obtain insurance having, as a minimum coverage, that coverage provided by the specific insurance coverage referred to on the Date of Commencement.

Section 10.10 Coverage Not Available

- 10.10.01 Notwithstanding anything contained in this Article 10, in the event that any specific obligation contained in this Article 10 becomes obsolete or that insurance to meet such obligation is not available, then the Tenant shall obtain insurance providing for similar coverage which shall be satisfactory to the Minister acting reasonably. In the event the Tenant does not provide such other similar coverage, then the Landlord may obtain such other coverage and recover the cost thereof from the Tenant as Additional Rent. If no such similar coverage is available, then a mutually agreeable replacement for such coverage shall be effected by the Tenant. Until the replacement policy is put into effect, the Landlord may place such coverage as She deems advisable to protect Her interest and may recover the cost thereof from the Tenant as Additional Rent.

Section 10.11 Other Insurance and Increased Limit

- 10.11.01 The Tenant shall, at its own expense, purchase, provide and maintain such additional insurance or such other types of insurance, including such coverages, additional perils and activities, deductibles and increased limits, or such alternate arrangements as the Minister may, from time to time, request, accept or require, acting reasonably.
- 10.11.02 In requesting or requiring increased limits pursuant to Subsection 10.11.01, the Minister may, without limitation, consider:
- (a) the then current Replacement Cost of any property which the Tenant is required by this Lease to cover with property insurance;

- (b) the inflation since the Date of Commencement;
- (c) any judgment of any Court with respect to bodily injury (including death), personal injury and property damage;
- (d) changes in international industry practice for similar airports; and
- (e) any other matter which a prudent owner would take into consideration.

Section 10.12 Premiums

10.12.01 The Tenant shall, in accordance with the insurer's payment plan, duly and punctually pay all premiums and other sums of money payable for maintaining any Insurance as aforesaid. If and so often as the Tenant neglects or omits to pay any premiums or other sums of money payable for maintaining any Insurance, the Landlord may, but shall not be obliged to, pay the same, and the amount so paid together with interest thereon calculated at the Interest Rate from the day the Landlord pays the same to the date the Tenant reimburses the Landlord such amount shall be payable by the Tenant to the Landlord and shall be recoverable by the Landlord as Additional Rent.

Section 10.13 Acts of the Tenant

10.13.01 The Tenant covenants not to do anything, omit to do anything, or permit anything to be done, or omitted to be done, which will invalidate, adversely affect or limit any Insurance policy referred to herein.

10.13.02 The Tenant covenants to ensure that no Occupant or Transferee does anything, omits to do anything or permits anything to be done or omitted to be done which will invalidate, adversely affect or limit any Insurance policy referred to herein.

Section 10.14 Evidence of Insurance

10.14.01 The Tenant shall, prior to the effective date of each insurance policy, or as soon after as is practicable, and on each renewal, deliver to the Landlord certificates of insurance, signed by or on behalf of the insurer, evidencing the Insurance as required by this lease. The certificates shall indicate the Landlord's interest therein.

10.14.02 The Tenant will, on request of the Landlord deliver certified copies of all insurance policies in force to the Landlord.

10.14.03 Delivery to and examination by the Landlord of any policy of insurance or certificate thereof or other evidence of insurance in no way shall relieve the Tenant of any of its obligations to insure in strict compliance with the provisions of this Article 10, and in no way shall operate as a waiver by the Landlord of any of Her rights.

10.14.04 In addition, the Tenant shall, within seven (7) days of the renewal of each liability and property insurance policy, deliver to the Landlord a certificate signed by an officer of the Tenant authorized to bind the Tenant, certifying that the insurance policy which has been put in place for the next policy year provides coverage in accordance with the requirements of this Lease.

Section 10.15 Extra Coverage

10.15.01 Nothing herein contained shall be construed so as to prevent the Tenant, at its sole cost and expense, from taking out insurance for greater amounts or against additional perils than may be required under this Lease.

Section 10.16 Liabilities of the Tenant

10.16.01 The Tenant's liabilities and obligations shall not be restricted to any sums mentioned as minimums in any of the insurance clauses contained herein or by an approval of the Landlord. Furthermore, the unavailability of any Insurance required herein or the approval by the Landlord of the terms, form or amount of any Insurance or the approval of the Landlord of any insurer shall not reduce or waive any of the Tenant's obligations to indemnify the Landlord as required by this Lease.

Section 10.17 Landlord's Right to Insure

10.17.01 If any Insurance policy shall be cancelled or shall be threatened by the insurer to be cancelled or refused to be renewed, or if the coverage thereunder is reduced in any way by the insurer by reason of the use, occupation, operation or maintenance of the Demised Premises or any part thereof by the Tenant or by any Occupant, Transferee or anyone permitted by the Tenant to be upon the Demised Premises, and if the Tenant fails to remedy the condition giving rise to cancellation, threatened cancellation or reduction in coverage within forty-eight (48) hours after notice thereof from the insurer or if the Tenant is unable or unwilling to purchase, provide or maintain any Insurance it is required to maintain in amounts, form, terms, and with an insurer acceptable to the Landlord, the Landlord, in addition to and without prejudice to any other rights or remedies, may, at Her option:

- (a) enter upon the Demised Premises and remedy the condition giving rise to such cancellation, threatened cancellation or reduction in coverage and the Tenant shall forthwith pay the costs thereof to the Landlord; and
- (b) without assuming any obligation in connection therewith and without prejudice to any other rights and remedies of the Landlord, effect such of the Insurance at the sole cost of the Tenant, and all outlays and expenses incurred by the Landlord shall be immediately paid by the Tenant to the Landlord as Additional Rent.

ARTICLE 11 - INSURANCE TRUSTEE

Section 11.01 Appointment of Insurance Trustee

11.01.01 The Tenant shall, either at the same time as the execution and delivery of this Lease or forthwith after execution and delivery of this Lease, designate, subject to the Landlord's approval, an Insurance Trustee by notice to the Landlord, and the Landlord shall either approve or disapprove of the Insurance Trustee so designated within fifteen (15) days after receipt of such notice from the Tenant. In the event that the Landlord shall not give notice to the Tenant disapproving an Insurance Trustee as designated by the Tenant within such period of fifteen (15) days, the Landlord shall be deemed to have approved such Insurance Trustee. In the event the Tenant has not designated an Insurance Trustee or the Landlord gives notice to the Tenant disapproving the Insurance Trustee designated by the Tenant, the Landlord may provide the Tenant with a list of three (3) acceptable insurance trustees from which the Tenant shall, within fifteen (15) days, choose the Insurance Trustee to be designated as Insurance Trustee hereunder and notify the Landlord of its choice. In the event the Tenant does not choose the Insurance Trustee and notify the Landlord of its choice within such fifteen (15) day period, the Landlord may choose the Person to be designated as Insurance Trustee hereunder.

Section 11.02 Insurance Trust Agreement

11.02.01 The parties thereto shall execute and deliver the Insurance Trust Agreement concurrently with the execution and delivery of this Lease or at such other time as the Landlord and the Tenant agree upon. The Tenant shall ensure that any Leasehold Mortgagee which has a charge on any Tenant Insured Facility becomes a party to and shall execute and deliver the Insurance Trust Agreement concurrently with the execution and delivery of its Leasehold Mortgage.

11.02.02 The Tenant shall ensure that, upon designation of an Insurance Trustee, the Insurance Trustee shall become a party to and shall execute and deliver the Insurance Trust Agreement.

ARTICLE 12 - PROCEEDS OF INSURANCE

Section 12.01 Insurance Trustee

12.01.01 The Landlord and the Tenant agree:

- (a) to cause any Property Insurance Proceeds to be made payable to the Insurance Trustee, or

- (b) to deal with such policies in such a manner as to enable any Property Insurance Proceeds to be collected by the Insurance Trustee (or the Landlord if there is no Insurance Trustee)

and shall from time to time do all things necessary for the purpose aforesaid.

Section 12.02 Proceeds

- 12.02.01 The Property Insurance Proceeds shall be payable to the Insurance Trustee, as trustee for the Landlord, the Tenant and any Leasehold Mortgagee which has a charge on a Tenant Insured Facility, as their respective interests may appear and shall be held and disbursed by the Insurance Trustee as provided herein and in the Insurance Trust Agreement. If there is no Insurance Trustee, any Property Insurance Proceeds shall be payable to the Landlord, as trustee for the Landlord, the Tenant and any Leasehold Mortgagee which has a charge on a Tenant Insured Facility, as their respective interests may appear.

Section 12.03 Disbursement of Property Insurance Proceeds

- 12.03.01 All Property Insurance Proceeds which are paid to or received by the Tenant shall be used by the Tenant to effect the Repairs.
- 12.03.02 The Tenant shall promptly proceed to effect the Repairs in accordance with the provisions of this Lease notwithstanding any limitation on or deficiency in the amount of the Property Insurance Proceeds or any delay in receipt of the Property Insurance Proceeds in respect of an occurrence.
- 12.03.03 If the Property Insurance Proceeds in respect of an occurrence are insufficient to pay the cost of effecting any Repairs in respect of that occurrence, the Tenant shall pay the deficiency, or the entire cost of effecting the Repairs in respect of that occurrence, as the case may be, it being understood that the Tenant shall pay any deficiency prior to the disbursement by the Insurance Trustee to the Tenant of any Property Insurance Proceeds.

ARTICLE 13 - MAINTENANCE AND REPAIRS

Section 13.01 Landlord Not Obligated to Maintain or Repair

- 13.01.01 Subject to this Lease and any of the other Instruments, the Landlord shall not be obliged to furnish any services or facilities to or to make repairs or alterations or perform any maintenance in or to the Demised Premises, and the Tenant hereby assumes the full and sole responsibility for the condition, operation, repair, replacement, maintenance and management of the Demised Premises during the Term.

Section 13.02 No Representation Concerning Demised Premises

13.02.01 The Tenant acknowledges and agrees that, subject to Subsections 3.02.14 and 16.03.02, and the Landlord's obligation under Article 37:

- (a) it has fully inspected and is familiar with the physical attributes and condition of the Demised Premises and the Tenant accepts the Demised Premises "as is", knowing its condition,
- (b) the Landlord and any Person for whom the Landlord might be responsible in law have not made any representation or given any warranty of any kind respecting the Demised Premises including any representation or warranty relating to the physical conditions of the Demised Premises, soil conditions, utilities, services, the development of or the ability to develop the whole or any part of the Demised Premises, and
- (c) the Landlord is not liable for any defects in the Demised Premises (either latent or patent) or for the existence of any other circumstances or condition not expressly represented or warranted by the Landlord in this Lease, and in particular for any want of repair of the Existing Facilities.

Section 13.03 Maintenance and Repairs

13.03.01 Subject to Subsection 13.03.02, the Tenant shall, at its own expense, continuously put and keep or cause to be put and kept the Demised Premises during the Term in a state of order, condition, maintenance and repair consistent with that of a First Class Facility and as a Major International Airport, as those standards are understood from time to time, (collectively referred to as the "**Maintenance and Repair Obligation**") and shall make or cause to be made any and all necessary maintenance and repair, ordinary and extraordinary, foreseen and unforeseen, structural or non-structural in order to keep the Demised Premises as a First Class Facility and as a Major International Airport, as those standards are understood from time to time, and as a prudent owner would do.

13.03.02 It is agreed that, with respect to an Existing Facility, the Tenant shall not be in default of Subsection 13.03.01 unless

- (a) such Existing Facility requires maintenance or repair;
- (b) the condition of such Existing Facility or any part thereof deteriorates from the condition in which it was on the Date of Commencement;
- (c) the standard of a First Class Facility as that standard was understood on the Date of Commencement changes; or

- (d) the standard of a Major International Airport as that standard was understood on the Date of Commencement changes;

provided that:

- (e) any maintenance or repair, made to any part of any Existing Facility shall meet the standards of a First Class Facility and Major International Airport as those standards are understood at the time when such repair is completed;
- (f) any addition to, improvement to, alteration of or replacement of the whole or any part of any Existing Facility constructed or installed on or after the Date of Commencement shall be constructed or installed so that it meets the standards of a First Class Facility and Major International Airport as those standards are understood when such addition, improvement, alteration or replacement is constructed or installed;
- (g) the Tenant shall upgrade such Existing Facility if the standard of a First Class Facility or the standard of a Major International Airport changes from the way either of those standards were understood on the Date of Commencement, so that such Existing Facility shall always meet the standards of a First Class Facility and a Major International Airport as those standards are understood.

ARTICLE 14 - CONSTRUCTION OF NEW FACILITIES OR ALTERATION OF EXISTING FACILITIES

Section 14.01 Not to Commit Waste

- 14.01.01 Subject to Subsection 14.01.02, the Tenant covenants that the Tenant shall not permit any waste or injury to the Demised Premises or any part thereof over which the Tenant may have any degree of control.

- 14.01.02 The Tenant shall not, without the prior written consent of the Landlord, demolish, in whole or in part, any building, improvement or structure unless
 - (a) in the case of an Existing Facility, such building, improvement or structure is
 - (i) obsolete and the purpose for which such Existing Facility was used is no longer an activity performed on the Demised Premises, or

- (ii) replaced with a building, structure or improvement of at least an equal value

and the Tenant acts in all cases in accordance with Section 49.01; or

- (b) in the case of a New Facility, the Tenant acts in accordance with Section 49.01.

Section 14.02 Agreement with Municipalities

14.02.01 The Tenant shall negotiate in good faith with the municipalities in which the Airport is located with a view to concluding, with each municipality in which a part of the Airport is located, no later than eighteen (18) months after the Date of Commencement, an agreement, arrangement or understanding intended to ensure that any development on that part of the Demised Premises which is within such municipality will be in harmony with the overall planning of such municipality and not inconsistent with the Approved Land Use Plan [herein referred to as a **"Municipal-Authority Agreement"**].

14.02.02 The Tenant shall make public each agreement, arrangement or understanding referred to in Subsection 14.02.01 within a period of thirty (30) days after it has been entered into.

14.02.03 Each of the agreements, arrangements or understandings referred to in Subsection 14.02.01 shall, with respect to that part of the Demised Premises which is within the municipality with which the Tenant has entered into an agreement, arrangement or understanding, deal with the following subject matters:

- (a) the obligation of the Tenant to comply with and to ensure compliance by all Occupants and Transferees with certain specified restrictions on use of land, buildings and structures that are not inconsistent with the Approved Land Use Plan;
- (b) the obligation of the Tenant and the municipality to follow and the obligation of the Tenant to ensure that all Occupants and Transferees follow the planning processes and procedures of general application agreed upon, as if the part of the Demised Premises within such municipality is a property other than a federal public property;
- (c) the obligation of the municipality to provide municipal services or to cause them to be provided in order to service any development on the part of the Demised Premises within such municipality;
- (d) the obligation of the Tenant to pay for such municipal services;

- (e) the obligation of the Tenant to comply with and to ensure compliance by all Occupants and Transferees with such agreed upon provincial and municipal construction and other codes, regulations and by-laws of general application designed to secure the health, safety, convenience and welfare of the inhabitants or occupiers of buildings and structures as if the part of the Demised Premises within such municipality is a property other than a federal public property;
- (f) the obligation of the municipality to administer and apply the provincial and municipal construction and other codes, regulations and by-laws referred to in Paragraph 14.02.03(e) as if the part of the Demised Premises within such municipality is a property other than a federal public property; and
- (g) a dispute resolution mechanism, to the extent practicable.

14.02.04 If no agreement, arrangement or understanding is entered into with a municipality in which a part of the Demised Premises is located within eighteen (18) months from the Date of Commencement, the Tenant shall issue a public statement on its intentions, in the absence of any agreement, arrangement or understanding, to clearly show its intent that the development on the part of the Demised Premises within such municipality will be in harmony with the overall planning of such municipality, and not inconsistent with the Approved Land Use Plan. The public statement will set out the Tenant's policy intentions on each matter or part thereof referred to in Paragraphs 14.02.03 (a) to (g) inclusive which are within the control of the Tenant.

14.02.05 The public statement shall also confirm the Tenant's willingness to negotiate in good faith with any municipality in which any part of the Airport is located with a view to concluding an agreement, arrangement or understanding with that municipality intended to ensure that any development on the Demised Premises will be in harmony with the overall planning of the municipalities in which the Airport is located and not inconsistent with the Approved Land Use Plan and which agreement, arrangement or understanding shall deal with all subject matters referred to in Paragraphs 14.02.03 (a) to (g) inclusive.

14.02.06 This Lease does not and shall not be deemed to create any obligation on the Landlord to apply to, co-apply to or participate with the Tenant in any provincial or municipal process whatsoever including any process relating to use or zoning of the Demised Premises. The Tenant hereby acknowledges that the Landlord will not be bound by any provincial or municipal process or any decision or order resulting from any provincial or municipal process.

Section 14.03 Construction of New Facilities and Alteration of Existing Facilities

14.03.01 The Tenant shall not alter any Existing Facility or construct any New Facility except with due consideration to local community standards and in accordance

with plans and specifications for such New Facility or for such alteration of an Existing Facility which are in conformity with all applicable laws and building and construction standards. The construction of any New Facility and the alteration of any Existing Facility shall:

- (a) be consistent with the standards of a First Class Facility and a Major International Airport;
- (b) not be inconsistent with the provisions of this Lease and the Approved Land Use Plan;
- (c) not reduce the value or detrimentally change the then character of the Demised Premises;
- (d) not impair the structural safety of any building, facility, improvement or structure; and
- (e) not be detrimental to the use of the Demised Premises.

14.03.02 The Tenant shall at its own risk and expense:

- (a) construct any New Facility and alter any Existing Facility in a good and workmanlike manner in compliance with this Lease and with the plans and specifications therefor;
- (b) make itself fully acquainted with all applicable laws and construction standards relating to the construction of any New Facility and any alteration of any Existing Facility; and
- (c) obtain any inspections as contemplated in this Article.

14.03.03 Where the Tenant and the municipality in which a part of the Airport is located have entered into a Municipal-Authority Agreement, and such Municipal-Authority Agreement establishes standards with respect to all building and construction standards dealt with in the National Building Code and the National Fire Code of Canada, no New Facility shall be constructed on such part of the Airport and no Existing Facility on such part of the Airport shall be altered in a way that does not fully conform with the building and construction standards contained in any such Municipal-Authority Agreement.

14.03.04 Where the Tenant and the municipality in which a part of the Airport is located have not entered into a Municipal-Authority Agreement, no New Facility shall be constructed on such part of the Airport and no Existing Facility on such part of the Airport shall be altered in a way that is not in full compliance with the National Building Code and the National Fire Code of Canada which, in such

circumstances, shall be deemed to be the applicable building and construction standards for purposes of this Lease.

- 14.03.05 Where the Tenant and the municipality in which a part of the Airport is located have entered into a Municipal-Authority Agreement, and such Municipal-Authority Agreement establishes standards with respect to some, but not all, building and construction standards dealt with in the National Building Code and the National Fire Code of Canada, then no New Facility shall be constructed on such part of the Airport and no Existing Facility on such part of the Airport shall be altered in a way that is not in full compliance with such Municipal-Authority Agreement with respect to any standards dealt with therein and with the National Building Code and the National Fire Code of Canada with respect to and to the extent that such Municipal-Authority Agreement does not establish a standard for a particular matter addressed in either such code.
- 14.03.06 The Tenant covenants that all construction shall comply with all applicable laws and shall meet or exceed all applicable building and construction standards.
- 14.03.07 The Tenant shall ensure that the Architect or Engineer properly supervises the construction of any New Facility and any alteration of any Existing Facility.
- 14.03.08 If requested by the Landlord, the Tenant shall, at the Tenant's own expense, submit, at reasonable intervals, certificates of the Architect or Engineer who is supervising the construction, setting out the status of such construction, the existence and extent of any faults or defects, the value of the work completed to date and the value of work remaining to be done under any contract, the amount owing to any contractor, the amounts paid and the amounts retained by the Tenant on any contract, and the Tenant shall also, whenever requested by the Minister, deliver to the Landlord copies of any certificate furnished to it by contractors or by the Architect or Engineer who is supervising the construction in connection with any such construction.
- 14.03.09 The Tenant shall ensure that the Architect or Engineer who is supervising the construction certifies that the construction of any New Facility and the alteration of any Existing Facility has been constructed substantially in compliance with the plans and specifications therefor and the Tenant shall deliver to the Landlord a copy of any such certificate on request.
- 14.03.10 The Tenant shall, at its expense, if it has not entered into a Municipal-Authority Agreement with a municipality in which a part of the Airport is located, obtain the services of a professional Architect or Engineer who is independent of the Tenant and who is independent of the Occupant of any New Facility who shall be able to and who shall certify that any New Facility which has been constructed on such part of the Airport and any Existing Facility on such part of the Airport which has been constructed or altered, as the case may be, has been constructed or altered substantially in accordance with the standards contained in the National Building Code and the National Fire Code of Canada, and is substantially in accordance with the standards contained in the National Building Code and the National Fire Code of Canada.

- 14.03.11 Any certificate with respect to construction or building standards for the construction of any New Facility or any alteration of any Existing Facility shall be retained by the Tenant until such New Facility or Existing Facility is entirely demolished and any such certificate shall be delivered to the Landlord forthwith upon request.
- 14.03.12 The Tenant shall, forthwith, perform any Work required to permit it to obtain either:
- (a) a certificate referred to in Subsection 14.03.10 if it has not entered into a Municipal-Authority Agreement, or
 - (b) a Certificate from the building inspectors of the municipality in which part of the Airport is located that any New Facility on such part of the Airport or any alteration of any Existing Facility on such part of the Airport has been constructed or altered substantially in accordance with the applicable building and construction standards and is substantially in accordance with the applicable building and construction standards, if it has entered into a Municipal-Authority Agreement.
- 14.03.13 It is acknowledged that the Tenant is not required to seek the Landlord's approval of plans, drawings and specifications for the construction of a New Facility or the alteration of an Existing Facility.

Section 14.04 Drawings, Plans and Specifications

- 14.04.01 The Tenant shall, at the end of each Lease Year, deliver to the Landlord two (2) sets of reproducible "as-built" drawings, plans and specifications of
- (a) any New Facility, and
 - (b) any alteration to any Existing Facility,
- constructed during that Lease Year.
- 14.04.02 In addition, the Tenant shall, at the end of each Lease Year, deliver to the Landlord two (2) sets of reproducible "as built" drawings, plans and specifications for any utilities, services and roads constructed or installed by or on behalf of the Tenant in, under, on, over or through any part of the Demised Premises during that Lease Year.
- 14.04.03 The expression, "**as-built**" drawings, plans and specifications shall include copies of any computer program embodying such drawings, plans or specifications.

Section 14.05 Licence to Use Plans and Specifications

14.05.01 The Tenant shall, prior to the commencement of any construction of any New Facility or alteration of any Existing Facility or the installation of any utility, service or road, (such New Facility, Existing Facility, utility, service or road being known as the “**Project**”) provide the Landlord with satisfactory evidence that the Tenant has obtained in favour of the Landlord and for the purpose of that Project an assignment and irrevocable licence of the copyright of the drawings, plans and specifications for the Project from the Architect or Engineer creating such drawings, plans and specifications and the agreement providing such assignment to and licence in favour of the Landlord shall expressly state that the Architect or Engineer shall not hold the Landlord responsible for any costs or expenses incurred or to be incurred in connection with the preparation of such drawings, plans and specifications or their subsequent use by the Landlord, and that the Landlord is entitled to use such drawings, plans and specifications for any purposes related to the Project whatsoever at any time without any further consent and without any further payment.

14.05.02 In the event of expiry or early termination of this Lease, any contract between the Tenant and a third party for any construction on any part of the Demised Premises in respect of which bonding or an alternative arrangement acceptable to the Minister is mandatory and which contract has not then expired or been early terminated shall, upon expiry or early termination of this Lease, if Her Majesty in Her sole and absolute discretion so requires, be deemed to be automatically assigned to the Landlord, and the Tenant shall forthwith execute any assignments, assurances or notices which are required to effect any such assignment of any contract to the Landlord. In the event the Tenant is unable or unwilling to execute any such assignment, assurance or notice, the Tenant hereby irrevocably appoints the Minister as the Tenant’s attorney with full power and authority to execute and deliver, in the name of the Tenant, all documents required to effect any such assignments, assurance or notice. The Tenant agrees that this provision shall be included in all such contracts.

Section 14.06 Waiver

14.06.01 The fact that the Landlord or the Minister has received, commented on or approved any drawings, plans, specifications, information or documentation or has inspected the construction work as it progresses, shall not impose any obligation or responsibility on the Landlord or the Minister, and shall not operate as a waiver of any rights of the Landlord or operate as an estoppel against the Landlord with respect to any matter.

ARTICLE 15 - DAMAGE OR DESTRUCTION

Section 15.01 Tenant Obligated to Reconstruct

- 15.01.01 In the event any Tenant Insured Facility is wholly or partially damaged or destroyed, the Tenant shall give the Landlord prompt notice thereof. Subject to Subsection 15.03.01, the Tenant shall, unless the Tenant and the Landlord agree otherwise, promptly, continuously and diligently, at its own expense, repair, replace, restore or reconstruct any such Tenant Insured Facility to a standard and quality consistent with that of a First Class Facility and a Major International Airport. All repairs, replacements, restorations and reconstruction shall be substantially in accordance with the standards of all applicable laws and with all applicable building and construction codes in accordance with Article 14.
- 15.01.02 In the event of any damage or destruction of any Third Party Insured Facility, the Tenant shall promptly, continuously and diligently, at no expense to the Landlord, either do the following or ensure that the Occupant does the following
- (a) repair, replace, restore or reconstruct that Third Party Insured Facility to a standard and quality consistent with that of a First Class Facility and a Major International Airport; or
 - (b) demolish such Third Party Insured Facility and remove any such Third Party Insured Facility and fill up all excavations made in erecting or removing such Third Party Insured Facility and replace all surface soil and sod and leave the area upon which such Third Party Insured Facility had stood in a neat and tidy condition.

Section 15.02 No Surrender or Abatement

- 15.02.01 Subject to Section 15.03, the partial destruction or damage or complete destruction of the Demised Premises or any part thereof shall not terminate this Lease or entitle the Tenant to surrender the Demised Premises in whole or in part or to demand any abatement or reduction of the Rent or other charges payable under this Lease, notwithstanding any present or future statutory provision or legal presumption to the contrary unless the Tenant is prohibited by law from agreeing not to be subject to such statutory provision or legal presumption.

Section 15.03 Termination by Tenant in Certain Events

- 15.03.01 If any Air Terminal Building that is both a Tenant Insured Facility and represents sixty percent (60%) or more of the passenger processing capacity of the Airport is destroyed or damaged (herein called the "**Event**"), and in the opinion of the Architect, as certified to the Landlord, the time required for the repair, replacement, restoration or reconstruction with due diligence of the destroyed or damaged portion of such Air Terminal Building exceeds six (6) months and the estimated cost of repairing, replacing, restoring or reconstruction of the destroyed

or damaged portion of such Air Terminal Building as certified by the Architect exceeds the amount obtained by multiplying the Airport Rent payable for the Lease Year immediately prior to the Lease Year in which the Event occurred by the number of Lease Years left until the end of the Term from and including the Lease Year after the Lease Year in which the Event occurred, then provided:

- (a) the Event occurs within the last five (5) years of the Term,
- (b) the Tenant is entitled to terminate and does terminate all existing Occupant Agreements in such Air Terminal Building,
- (c) the Tenant is not in default under this Lease,
- (d) the Tenant has obtained the prior written consent of any Leasehold Mortgagee who has advised the Landlord of its name and address for service, and
- (e) the Tenant has not commenced the repairing, replacing, or restoring or reconstruction of the damaged or destroyed portion of such Air Terminal Building,

the Tenant shall have the right to terminate this Lease (the "**Termination Option**") on the following terms and conditions:

- (f) the Termination Option shall only be exercisable if;
 - (i) there is then in force and payable a policy or policies of insurance providing for the payment of the Replacement Cost of such Air Terminal Building, and that the proceeds thereof shall be equivalent to a payment being made on a Replacement Cost basis insurance policy whether or not an insured shall rebuild such Air Terminal Building so damaged or destroyed,
 - (ii) the Property Insurance Proceeds shall be paid whether or not the insured rebuilds such Air Terminal Building, and
 - (iii) Occupants or former Occupants of such Air Terminal Building shall not have any claim against the Landlord resulting from termination of their possession of part of such Air Terminal Building and shall have no right of re-entry upon reconstruction or any replacement of such Air Terminal Building or any part thereof;
- (g) the Tenant shall have the right to exercise the Termination Option within a period of one hundred and eighty (180) days following the Event;

- (h) in the event that the Tenant shall exercise the Termination Option, the Tenant shall assign to the Landlord upon the exercise of the Termination Option all of the Property Insurance Proceeds in respect of the Event other than the proceeds payable in respect of the coverage specified in Paragraph 10.04.03(f) if the Minister requests that the Tenant demolish the damaged improvements pursuant to Paragraph 15.03.01(k);
- (i) the Tenant shall deliver vacant possession of the Demised Premises free and clear of all Leasehold Mortgages and encumbrances of any nature or kind whatsoever except those which are in existence on the Date of Commencement and those granted by the Tenant to the Landlord pursuant to Subsections 3.04.02, 3.06.02 and 3.07.01;
- (j) this Lease shall be terminated on the exercise of the Termination Option by the Tenant as provided above, provided that all the provisions of this Section 15.03 shall have been complied with, on or before such date, by the Tenant;
- (k) prior to termination, the Tenant, if requested by the Minister, shall have demolished the damaged improvements and returned the land on which the damaged improvements stood to a vacant condition and shall have reinstated the turf; and
- (l) prior to termination, the Tenant shall pay to the Landlord all Rent due and payable to the date of termination in addition to the Property Insurance Proceeds.

ARTICLE 16 - LIABILITY, RELEASE AND INDEMNITY

Section 16.01 Landlord Not Responsible

16.01.01 The Tenant acknowledges and agrees that the Landlord shall not be liable or responsible for any Injury to any Person or for any Damage of any nature whatsoever to the Tenant or any other Person in respect of any occurrence on or after the Date of Commencement, arising from any act or omission in, upon, at or relating to the Demised Premises or any part thereof or from the ownership, occupancy or use of the Demised Premises or any part thereof including, without limitation:

- (a) any Damage to any property (including loss of use thereof) of the Tenant or of any other Person

- (i) from any cause whatsoever if such property is located in or on the Demised Premises or any part thereof; and
 - (ii) if such Damage is caused by or results from any use of or any operation, occurrence or omission on the Demised Premises, if such property is not located on the Demised Premises;
- (b) any Damage suffered by the Demised Premises or the contents thereof;
- (c) any Damages caused or contributed to by reason of the condition of or any interruption, cessation, unavailability or failure in any utility, service, system or road;
- (d) any Injury or Damage insured against or required to be insured against by the Tenant except, subject to Paragraphs 16.01.01(e) and (f), any Injury or Damage arising out of or in connection with any fault, default, negligence, act or omission of the Landlord, or Her agent, servant, employee, contractor or any other Person for whom the Landlord is in law responsible;
- (e) any Injury or Damage caused by, resulting from, arising out of or in connection with any fault, default, negligence, act or omission of the Landlord, or Her agent, servant, employee, contractor or any other Person for whom the Landlord is in law responsible not insured against but required to be insured against by the Tenant; and
- (f) any Injury or Damage caused by, resulting from, arising out of or in connection with the ownership, occupancy or use of the Demised Premises or any part thereof including any Claims against the Landlord or the Tenant resulting from occupiers liability.

Section 16.02 Release and Indemnity

16.02.01 The Tenant hereby expressly releases the Landlord from any Claims whatsoever which the Tenant would be entitled to advance but for this release, and covenants and agrees to indemnify and hold the Landlord harmless from and against any Claims whatsoever advanced or asserted by any Person against the Landlord for any Injury or Damage of any nature whatsoever which is caused by, results from, arises out of, is connected with or is contributed to by reason of, under or pursuant to:

- (a) the ownership, occupancy or use of the Demised Premises or any part thereof including any Claims against the Landlord or the Tenant resulting from occupiers liability;

- (b) any inability to develop any part of the Demised Premises for any reason whatsoever;
- (c) the condition of the Demised Premises or any part thereof;
- (d) the condition of or any interruption, cessation, unavailability or failure in any utility, service, system or road;
- (e) any substance (other than a Hazardous Substance):
 - (i) which is present on the Demised Premises at any time during the Term or after the expiry or termination of this Lease, or
 - (ii) which was released, spilled, leaked or flowed from the Lands at any time during the Term or after the expiry or termination of this Lease provided it was present on the Lands prior to the expiry or termination of this Lease,

and which causes or contributes to an adverse environmental condition;
and
- (f) any matter for which the Landlord is not responsible referred to in Subsection 16.01.01

howsoever caused.

Section 16.03 Application of Subsections 16.01 and 16.02

16.03.01 Notwithstanding Sections 16.01 and 16.02 except for Paragraphs 16.01.01(f) and 16.02.01(a), the Tenant's release and, subject to Subsections 16.03.02 and 37.03.04, the Tenant's agreement to indemnify and hold harmless thereunder shall not apply with respect to any Injury or Damage to the extent that such Injury or Damage

- (a) occurred before the Date of Commencement, or
- (b) occurred on or after the Date of Commencement if and to the extent such Injury or Damage is caused by or contributed to by any fault, default, negligence, act or omission of,
 - (i) the Landlord, or Her agent, servant, employee, contractor or any other Person for whom the Landlord is in law responsible, or

- (ii) Her Majesty in performing any governmental function referred to in Subsection 3.01.02 of the Agreement to Transfer including, without limitation, the Civil Air Navigation Services while Her Majesty is performing such governmental function.

16.03.02 Notwithstanding Sections 16.01 and 16.02, the Tenant's agreement to indemnify and hold harmless hereunder shall not apply with respect to any Claims whatsoever advanced or asserted by any Person, other than the Tenant, against the Landlord for any Injury or Damage which results from a defect that affected the Demised Premises or any part thereof immediately prior to the Date of Commencement and that could not have been discovered by a reasonable inspection made by or on behalf of the Tenant at any time before the Date of Commencement, if it has been judicially determined that the Tenant has no liability whatsoever for such Injury or Damage.

16.03.03 Subject to the provisions of Article 37, the Tenant hereby expressly releases the Landlord from any Claim whatsoever for any Injury or Damage which the Tenant would be entitled to advance but for this Release as a consequence of a defect that affected the Demised Premises or any part thereof immediately prior to the Date of Commencement, whether or not it could have been discovered by a reasonable inspection made by or on behalf of the Tenant at any time before the Date of Commencement.

16.03.04 The Tenant hereby expressly releases the Landlord from any Claim for any Damage whatsoever which the Tenant would be entitled to advance but for this Release as a consequence of or by reason of the Landlord or the Minister having withheld consent or approval in any case requiring the Landlord's or the Minister's consent or approval,

- (a) for which the Landlord or the Minister originally withheld consent or approval and subsequently gives Her or his consent or approval, or

- (b) for which a court of competent jurisdiction determines that such consent or approval should have been given

notwithstanding any negligence on the part of the Landlord or the Minister or those for whom in law it is responsible but excluding bad faith or gross negligence on the part of the Landlord or the Minister or those for whom in law it is responsible.

Section 16.04 Obligations Survive Termination

16.04.01 The obligations of the Tenant to indemnify and hold the Landlord harmless with respect to liability by reason of any matter arising prior to the expiry or early termination of this Lease shall, notwithstanding any other provision of this Lease or any present or future statutory provision or legal presumption to the contrary unless the Tenant is prohibited by law from agreeing not to be subject to such

statutory provision or legal presumption, continue in full force and effect until discharged whether before or after the end of the Term.

Section 16.05 Tenant to Defend Action

16.05.01 The foregoing obligation of indemnification in Section 16.02 shall be subject to the requirement that the Tenant shall in respect of any Claim made by a third party, be notified of all material particulars thereof as soon as practicable and be permitted an opportunity at its sole expense to resist, defend and compromise the same provided that the Tenant shall not be obligated to do so; and further provided that if the Tenant does not assume the defence of that Claim the Landlord may defend against the Claim in a manner it deems appropriate and may take such action as may be reasonably prudent in the circumstances to settle the Claim.

Section 16.06 Landlord to Indemnify

16.06.01 The Landlord shall indemnify and save the Tenant harmless from and against any direct damages which the Tenant may be legally obligated to pay to any other Person and which

- (a) results from Remedial Work provided that, if such Remedial Work is performed by the Tenant or its agent, servant, employee, contractor or any other Person for whom the Tenant is in law responsible, the Tenant has done every thing it could to mitigate such damages and the damages are the necessary and unavoidable result of such Remedial Work; or
- (b) results from a Hazardous Substance.

except for damages caused by or contributed to by any fault, default, negligence, or omission of the Tenant or its agent, servant, employee, contractor or any other Person for whom the Tenant is in law responsible.

16.06.02 The Landlord shall indemnify and save the Tenant harmless from and against any Claims whatsoever advanced or asserted by any Person, other than the Tenant, against the Tenant for any Injury or Damage in respect of any occurrence arising from any act or omission in, upon, at or relating to the Demised Premises or any part thereof,

- (a) which occurred before the Date of Commencement, or
- (b) which occurred on or after the Date of Commencement

if and to the extent that such Injury or Damage is caused by or contributed to by any fault, default, negligence, act or omission of the Landlord or the Landlord's

agent; servant, employee, contractor or any other Person for whom the Landlord is in law responsible.

16.06.03 The foregoing obligation of indemnification in Subsections 16.06.01 and 16.06.02 shall be subject to the requirement that the Landlord shall in respect of any Claim made by a third party, be notified of all material particulars thereof and be permitted an opportunity at Her sole expense to resist, defend and compromise the same provided that the Landlord shall not be obligated to do so; and further provided that if the Landlord does not assume the defence of that Claim the Tenant may defend against the Claim in a manner it deems appropriate and may take such action as may be reasonably prudent in the circumstances to settle the Claim.

16.06.04 The obligations of the Landlord to indemnify and hold the Tenant harmless in Subsections 16.06.01 and 16.06.02 with respect to liability by reason of any matter arising prior to the expiry or early termination of this Lease shall, notwithstanding any other provision of this Lease or any present or future statutory provision or legal presumption to the contrary, unless the Landlord is prohibited by law from agreeing not to be subject to such statutory provision or legal presumption, continue in full force and effect until discharged whether before or after the end of the Term.

Section 16.07 Tenant's Employees to Assist Landlord

16.07.01 The Tenant agrees that it shall at all times after the Date of Commencement, make available to Her Majesty, without cost to Her Majesty, employees of the Tenant to assist Her Majesty,

- (a) in defending any Claim in respect of the Demised Premises advanced or made against Her Majesty, or
- (b) in prosecuting or advancing any Claim in respect of the Demised Premises made by Her Majesty

whether in respect of events that occurred prior to the Date of Commencement or in respect of events occurring on or after the Date of Commencement. All such employees shall be made available for all purposes required by counsel, including assisting counsel in the preparation of court documents, and in preparation for examinations, for discovery and trial. In addition, such employees will attend for purposes of trial, discoveries and other examinations as required without the requirement of a subpoena and without cost to Her Majesty.

ARTICLE 17 - LIENS AND CLAIMS

Section 17.01 Builders Liens

- 17.01.01 Notwithstanding anything herein contained, the Landlord hereby expressly denies that ***The Builders' Liens Act***, R.S.M. 1987, c. B91, has any application to or jurisdiction over the Landlord or the Landlord's interest in the Demised Premises.
- 17.01.02 The Tenant covenants that it shall not permit any construction or builders liens to be, or to remain registered against the title to the Demised Premises or the Leasehold Interest therein by reason of work, labour, services or material supplied to the Tenant or to any Person excluding Her Majesty holding any interest in the Demised Premises or any part thereof through or under the Tenant, during the Term, and that it will take all steps necessary to cause and shall cause any such liens to be discharged or vacated, as the case may be, within sixty (60) days of receiving notice that any such liens have been registered. The foregoing shall not prevent the Tenant or anyone holding any such interest from contesting any liability to a third party for any claim for lien or the validity of any lien so discharged or vacated.
- 17.01.03 The Tenant acknowledges that the Landlord is not, nor should be held to be, accountable as owner (as that term is defined in ***The Builders' Liens Act***), with respect to the construction of any New Facility or any alteration of any Existing Facility. Without limiting the generality of the foregoing, the parties acknowledge and agree that any alteration made to the Demised Premises shall never be deemed to have been made and will not be made at the request of the Landlord, but rather at the request of the Tenant or the Occupant or Transferee, as the case may be.
- 17.01.04 The Tenant covenants to indemnify and save harmless the Landlord and each Person for whom the Landlord may, in law, have responsibility of and from any Claims and Costs incurred by the Landlord or such Person as a result of any construction or builders liens being filed against the title to the Demised Premises or the Leasehold Interest therein by or on behalf of any worker, supplier of material, supplier of services, contractor or subcontractor of the Tenant or of anyone holding any interest in the Demised Premises or any part thereof through or under the Tenant.
- 17.01.05 In the event that, in the judgment of the Minister acting reasonably, the Demised Premises or any part thereof or the Tenant's interest therein may become liable to any forfeiture or sale or is otherwise in jeopardy, the Landlord May, but shall not be obliged to, secure the removal of any lien filed or registered at any such time. For purposes of securing such removal the Landlord may
- (a) if permitted by the law of the Jurisdiction, pay into court any amount required to secure such removal, or
 - (b) in any other case, pay any amount required to secure such removal to any Person for that purpose.

Any amount paid or costs incurred by the Landlord for this purpose, together with all Costs of the Landlord, shall be forthwith paid as Additional Rent to the Landlord by the Tenant with interest at the Interest Rate calculated from the date such amount is paid or incurred by the Landlord until the date it is repaid to the Landlord.

- 17.01.06 Nothing herein contained shall authorize the Tenant, or imply any consent or agreement or request on the part of the Landlord, to subject the Landlord's estate or interest in the Demised Premises or the Leasehold Interest to any construction or builders lien or other lien of any nature or kind whatsoever. The Landlord hereby expressly refuses and denies any consent, agreement or request to permit the Landlord's estate or interest in the Demised Premises or the Leasehold Interest to be subject to any construction or builders lien or other lien of any nature or kind whatsoever without the express written agreement of the Landlord to that effect.

Section 17.02 Other Claims

- 17.02.01 The Tenant covenants that any New Facility and any alteration of any Existing Facility, once begun, will be continued to completion with reasonable diligence, free and clear of any workers' compensation levies, claims, liens and encumbrances whatsoever against the Landlord's estate or interest in the Demised Premises or the Leasehold Interest, and will be performed in all respects in accordance with all applicable laws and in a good and workmanlike manner.

Section 17.03 Application

- 17.03.01 The provisions of this Article 17 shall apply to any construction or alteration, on the whole or any part of the Demised Premises including Leasehold Improvements.

**ARTICLE 18 TRANSFERS, OCCUPANT AGREEMENT
AND LEASEHOLD MORTGAGES**

Section 18.01 Prohibition

- 18.01.01 The Tenant shall not, without the prior written consent of the Minister, which consent may be unreasonably withheld,
- (a) enter into a Transfer,
 - (b) enter into an Occupant Agreement, except as permitted in Section 18.02, or
 - (c) enter into a Leasehold Mortgage, except as permitted in Section 18.03.

- 18.01.02 Nothing in Subsection 18.01.01 precludes the Tenant from entering into
- (a) a Management Agreement provided that such Management Agreement does not constitute a Transfer or an Occupant Agreement;
 - (b) a transaction which consists of both:
 - (i) a sublease of any part of the Demised Premises reasonably required for the construction of a building thereon to a Person for the purpose of constructing such building; and
 - (ii) a sub-sublease back of that same part of the Demised Premises together with the building erected thereon to the Tenant for the same term less one day as the term of that sublease.
- 18.01.03 For greater certainty, the parties hereto agree that all the provisions of this Lease apply to a part of the Demised Premises under any sub-sublease referred to in Subparagraph 18.01.02(b)(ii) as if the transaction contemplated in Paragraph 18.01.02(b) had not been entered into and the Tenant held that part of the Demised Premises under this Lease.
- 18.01.04 Any transfer of the whole or any part of this Lease by operation of law shall be deemed to be a Transfer without the Tenant having obtained the required consent of the Minister and shall be an Event of Default.

Section 18.02 Occupant Agreement in the Ordinary Course of Operations

- 18.02.01 Subject to the Tenant remaining liable on this Lease, the Tenant may, without the consent of the Minister, enter into an Occupant Agreement in respect of a part of the Demised Premises, provided that:
- (a) the land or space which is the subject matter of the Occupant Agreement is not
 - (i) all or substantially all of Airside;
 - (ii) any part of Airside except if such part is used only for the purpose of agriculture, aircraft parking, aircraft servicing or aircraft refueling or any other use permitted under the Approved Land Use Plan;
[NTD: Revised by Am#5 and again by Am#10.]
 - (iii) the whole or any part of the Ground Transportation Reserve;
 - (iv) more than:

- (A) ten (10) hectares of any part of the Lands, (excluding the Ground Transportation Reserve) if the whole of such part is used for aircraft maintenance, or
- (B) five (5) hectares of any part of the Lands, if the whole such part is used for agriculture, aircraft parking, aircraft servicing or aircraft fuelling or for any other use permitted under the Approved Land Use Plan for such part;
- (v) all or substantially all of the concession area of any Air Terminal Building; or **[NTD: Revised by Am#4.]**
- (vi) all or substantially all of the general terminal area of any Air Terminal Building; **[NTD: Revised by Am#4.]**
- (b) the Occupant Agreement contains a covenant whereby the parties thereto covenant that the land or space which is the subject matter of the Occupant Agreement shall not be used or occupied for the purpose of constructing or operating any Air Terminal Building;
- (c) the Occupant Agreement contains a covenant whereby the parties thereto covenant that the land or space which is the subject matter of the Occupant Agreement will not be used or occupied
 - (i) for any purpose other than a permitted use as set out in the Approved Land Use Plan and in the case of Airside for any purpose other than agriculture, aircraft parking, aircraft servicing or aircraft fuelling, or for any other use permitted under the Approved Land Use Plan for such part, or
 - (ii) for a use that is inconsistent with the use clause herein;
- (d) the Occupant Agreement is for less than the then total remainder of the Term;
- (e) the Occupant Agreement does not create any privity of estate or privity of contract between the Occupant and the Landlord;
- (f) the Occupant Agreement contains an agreement by the Occupant whereby, subject to any rights of non-disturbance granted by the Landlord, the Occupant acknowledges and agrees that, upon the default hereunder of the Tenant and early termination of this Lease and re-entry by the Landlord, the Landlord has the option, in Her sole unfettered

discretion, to require the Occupant to attorn to the Landlord in which event the Occupant shall forthwith attorn to the Landlord;

- (g) the Occupant Agreement contains covenants, obligations and agreements by the Occupant in terms which are no less stringent than the provisions of this Lease so as to enable the Tenant to comply with its obligations under this Lease and to ensure a covenant or obligation of an Occupant or Transferee of any part of the Demised Premises;
- (h) the Occupant Agreement is not inconsistent with any of the terms of this Lease;
- (i) the Occupant Agreement contains a covenant whereby the Occupant irrevocably appoints the Minister as the Occupant's attorney with full power and authority to execute and deliver in the name of the Occupant, all documents necessary to effect the transfer to the Landlord of the title to or the ownership of any New Facility or any addition to, improvement to, alteration of or replacement of any Existing Facility on the land or in the space which is the subject matter of the Occupant Agreement effective upon expiry or early termination of this Lease as contemplated in Paragraph 3.10.03(b); and
- (j) the Occupant Agreement contains a covenant which prohibits any further assigning, subletting or sharing of possession by the Occupant unless such assigning, subletting or sharing of possession:
 - (i) meets all the requirements of this Subsection 18.02.01, or
 - (ii) is approved by the Minister.

18.02.02 The Tenant shall, upon entering into any Occupant Agreement, give written notice to the Landlord of any relevant details of such Occupant Agreement and shall, upon request made by or on behalf of the Landlord, deliver to the Landlord a copy of such Occupant Agreement (or in the case of a verbal Occupant Agreement, a detailed written description of such Occupant Agreement) within five (5) Business Days of the request.

18.02.03 An Occupant Agreement which meets all of the requirements set out in Section 18.02.01 is an Occupant Agreement in the Ordinary Course of Operations. The Landlord and the Tenant agree that

- (a) a renewal of the lease dated the 19th day of July, 1976, between Her Majesty and Aero Trades (Western) Ltd. assigned to Perimeter Aviation Ltd. by an assignment of lease effective the 21st day of May, 1991;

- (b) a renewal of the lease dated the 11th day of July, 1989, between Her Majesty and Esso Petroleum Canada; and
- (c) a renewal of the lease dated the 29th day of June, 1990, between Her Majesty and Kelly Western Services Ltd.

will each be deemed to be an Occupant Agreement in the Ordinary Course of Operations.

- 18.02.04 An Occupant Agreement which does not meet all of the requirements set out in Subsection 18.02.01 is not an Occupant Agreement in the Ordinary Course of Operations and shall be an Occupant Agreement Requiring Consent.
- 18.02.05 Nothing herein contained shall authorize the Tenant, or imply any consent or agreement on the part of the Landlord, to subject the Landlord's estate or interest in the Demised Premises or any part thereof to any Occupant or Occupant Agreement.

Section 18.03 Leasehold Mortgage in the Ordinary Course of Operations

- 18.03.01 Subject to the Tenant remaining liable under this Lease, the Tenant may, without the consent of the Minister, enter into a Leasehold Mortgage in respect of a part of the Demised Premises, provided that:
 - (a) all the requirements of Paragraphs 18.02.01 (a), (d), (e), and (h) are met;
 - (b) it is a mortgage by way of sublease and not by way of assignment; and
 - (c) it contains, for the benefit of the Landlord, covenants [herein called the "**Leasehold Mortgagee's Covenants**"] by the Leasehold Mortgagee that, in consideration of the provisions of Sections 20.03 and 20.06, the Leasehold Mortgagee covenants with the Landlord that:
 - (i) it acknowledges and agrees that there is no partnership, joint venture or principal and agent relationship between the Landlord and the Tenant under the provisions of this Lease or otherwise and that it will neither advance nor authorize to be advanced and shall consent to being estopped from advancing any claim based upon or that would in law be predicated on the existence of any of such relationships;
 - (ii) it accepts and agrees that the Landlord has no obligations whatsoever toward the Leasehold Mortgagee under the Leasehold

Mortgage or otherwise, to be in any way responsible for any of the Tenant's obligations under such Leasehold Mortgage, and that the Landlord is not under any obligation to remedy any default of the Tenant under such Leasehold Mortgage or otherwise;

- (iii) without waiver of any rights the Leasehold Mortgagee may have as a mortgagee in possession and without waiving or derogating from any obligations of the Landlord to the Tenant which may exist under this Lease, the Leasehold Mortgagee has no right and will make no claim that the Landlord is or may be liable whether under this Lease, the Leasehold Mortgage, or any other agreement between the Tenant and the Leasehold Mortgagee, whether in contract, tort, or in any other way either at law or in equity, to pay or make any contribution in respect of the Tenant's obligations under this Lease, the Leasehold Mortgage or any other agreement between the Tenant and the Leasehold Mortgagee or any default of the Tenant in respect thereto;
- (iv) it acknowledges and agrees that the Landlord's interest in any part of the Demised Premises occupied by the Landlord pursuant to any Instrument or sublease at any time during the Term shall take priority over the interest of such Leasehold Mortgagee in such part of the Demised Premises whether such Instrument or sublease is executed and delivered before or after the Leasehold Mortgage; and
- (v) it agrees to enter into the Insurance Trust Agreement, and that any interest at law or in equity of the Leasehold Mortgagee in Property Insurance Proceeds shall be postponed, subordinated and rank after, and take effect in all respects after the interests of the Insurance Trustee, and the Leasehold Mortgage shall be subject to the provisions of the Insurance Trust Agreement respecting the payment and distribution of all Property Insurance Proceeds.

- 18.03.02 A Leasehold Mortgage which meets all of the requirements set out in Subsection 18.03.01 is a Leasehold Mortgage in the Ordinary Course of Operations.
- 18.03.03 A Leasehold Mortgage which does not meet all of the requirements set out in Subsection 18.03.01 is not a Leasehold Mortgage in the Ordinary Course of Operations and shall unless it meets all the requirements of Subsection 18.03.04, be a Leasehold Mortgage Requiring Consent.
- 18.03.04 In addition to a Leasehold Mortgage in the Ordinary Course of Operations, subject to the Tenant remaining liable on this Lease, the Tenant may, without the consent of the Minister, enter into a Leasehold Mortgage in respect of the whole or any part of the Demised Premises, provided that:

- (a) it is made to secure the payment of any indebtedness of the Tenant to an Airport Infrastructure Lender or other lender for the purposes of the Airport Undertaking;
- (b) it is a mortgage by way of sublease and not by way of assignment; and
- (c) it contains, for the benefit of the Landlord, the Leasehold Mortgagee's Covenants.

A Leasehold Mortgage that meets all the requirements set out in this Subsection 18.03.04 is a Leasehold Mortgage for Airport Purposes.

18.03.05 Nothing herein contained shall authorize the Tenant, or imply any consent or agreement on the part of the Landlord, to subject the Landlord's estate or interest in the Demised Premises to any Leasehold Mortgagee or Leasehold Mortgage.

Section 18.04 Transfer, Occupant Agreement Requiring Consent and Leasehold Mortgage Requiring Consent

18.04.01 If the Tenant intends to enter into a Transfer, Occupant Agreement Requiring Consent or Leasehold Mortgage Requiring Consent, then and so often as such event shall occur, the Tenant shall give prior written notice to the Landlord of such intent together with an executed copy of any such Transfer, Occupant Agreement Requiring Consent or Leasehold Mortgage Requiring Consent, and shall, together with such notice, provide the Minister with such credit, financial and business information relating to any such Transfer, Occupant Agreement Requiring Consent or Leasehold Mortgage Requiring Consent and relating to the Person with whom it intends to enter into such Transfer, Occupant Agreement Requiring Consent or Leasehold Mortgage Requiring Consent and such other information, material and documentation with respect to such intended Transfer, Occupant Agreement Requiring Consent or Leasehold Mortgage Requiring Consent as the Minister requires.

18.04.02 Any Transfer, Occupant Agreement Requiring Consent or Leasehold Mortgage Requiring Consent shall be subject to the consent of the Minister, whose consent may be unreasonably withheld.

18.04.03 The application for consent to a Transfer, Occupant Agreement Requiring Consent or Leasehold Mortgage Requiring Consent shall be made by the Tenant to the Minister in writing and shall set out the proposed effective date of the Transfer, Occupant Agreement Requiring Consent or Leasehold Mortgage Requiring Consent. The Minister shall have no obligation to consider any Transfer, Occupant Agreement Requiring Consent or Leasehold Mortgage Requiring Consent unless and until he shall have received all of the information set out in Subsection 18.04.01.

18.04.04

The Minister shall not be obliged to consider consenting to a Transfer, an Occupant Agreement Requiring Consent or Leasehold Mortgage Requiring Consent, as the case may be, unless,

- (a) at the time the application for consent is made, there shall not be in existence an Event of Default;
- (b) in the case of a Transfer, the Transferee shall enter into an agreement directly with the Landlord agreeing to be bound by all the terms, covenants and conditions contained in this Lease as if the Transferee had executed this Lease as tenant;
- (c) in the case of a Leasehold Mortgage Requiring Consent which is a Leasehold Mortgage by way of assignment, the Leasehold Mortgagee shall enter into an agreement directly with the Landlord and such executed agreement shall contain, for the benefit of the Landlord:
 - (i) the Leasehold Mortgagee's Covenants; and
 - (ii) a covenant by the Leasehold Mortgagee that, in consideration of the provisions of Sections 20.03 and 20.06, the Leasehold Mortgagee covenants with the Landlord that:
 - (A) in the event the Leasehold Mortgagee becomes a mortgagee in possession or takes action to realize upon its security (including without limitation the appointment of a receiver), the Leasehold Mortgagee, or anyone claiming by, through or under the Leasehold Mortgagee, shall be liable for the performance of all of the Tenant's obligations under this Lease other than the obligations set out in Subsections 9.01.01, 9.01.02, 9.01.03 and 9.01.04 and Paragraph 9.01.06(c) whenever arising and shall perform and be bound by each and every one of the Tenant's covenants and agreements set out and contained in this Lease unless, until and to the extent released in accordance with Clause (B) hereof;
 - (B) if after having taken possession of the Demised Premises or taken action to realize upon its security, the Leasehold Mortgagee goes out of possession, the Leasehold Mortgagee shall be relieved from any further obligation towards the Landlord arising after the Leasehold Mortgagee goes out of possession or a Transfer has been

completed, provided that the Transfer is in accordance with this Lease,

it being understood that while in possession the Leasehold Mortgagee shall comply with the Tenant's obligations in Article 9 in respect of the Airport Undertaking as opposed to the business of the Leasehold Mortgagee, and all statements shall be signed by the receiver or manager appointed by the Leasehold Mortgagee;

- (d) in the case of a Leasehold Mortgage Requiring Consent which is a Leasehold Mortgage by way of sublease, the Leasehold Mortgagee shall enter into an agreement directly with the Landlord and such executed agreement shall contain, for the benefit of the Landlord, the Leasehold Mortgagee's Covenants; and
- (e) notwithstanding the Minister's consent to a Transfer, Occupant Agreement Requiring Consent or a Leasehold Mortgage Requiring Consent and the entering into of the Transfer, Occupant Agreement Requiring Consent or Leasehold Mortgage Requiring Consent, the Tenant shall be and remain liable for all the obligations of the Tenant under this Lease and shall not be released from any liability by the said Transfer, Occupant Agreement Requiring Consent or Leasehold Mortgage Requiring Consent or the Minister's consent to any of them.

18.04.05 No Transfer, Occupant Agreement Requiring Consent or Leasehold Mortgage Requiring Consent shall be entered into by the Tenant, unless previously consented to by the Minister in accordance with this Lease.

18.04.06 In the case of an application for consent to a Transfer, Occupant Agreement Requiring Consent or Leasehold Mortgage Requiring Consent, the Minister will

- (a) within forty-five (45) days of receipt by the Minister of the application for such consent and all the information and documents set out in Subsection 18.04.01, indicate to the Tenant, without prejudice to his right to change his decision, whether or not he is, at that time, inclined to consent to such Transfer, Occupant Agreement Requiring Consent or Leasehold Mortgage Requiring Consent, and
- (b) within ninety (90) days of receipt by the Minister of the application for such consent and all the information and documents set out in Subsection 18.04.01, notify the Tenant whether he will or will not consent to such Transfer, Occupant Agreement Requiring Consent or Leasehold Mortgage Requiring Consent and if the Minister decides, in his sole and unfettered discretion, not to consent to such Transfer,

Occupant Agreement Requiring Consent or Leasehold Mortgage Requiring Consent, the Minister will, together with such notice advise the Tenant of the reason for his decision.

Section 18.05 Consent Document and Disbursements

18.05.01 Any

- (a) consent to a:
 - (i) Transfer,
 - (ii) Occupant Agreement Requiring Consent, or
 - (iii) Leasehold Mortgage Requiring Consent,
- (b) Landlord Acknowledgment Agreement referred to in Subsection 18.08.02, or
- (c) Non Disturbance Agreement referred to in Subsection 19.01.07, shall be prepared by the Landlord's solicitors.

18.05.02 All reasonable costs or expenses necessarily incurred by the Minister in

- (a) determining whether to give his consent to a Transfer, Occupant Agreement Requiring Consent, or Leasehold Mortgage Requiring Consent,
- (b) determining whether or not to enter into a Landlord Acknowledgment Agreement,
- (c) determining whether or not to grant a Non-Disturbance Agreement including formulating the opinions contemplated in Paragraphs 19.01.01(d) and 19.01.03(e), and
- (d) executing the consent document, the Landlord Acknowledgment Agreement or the Non-Disturbance Agreement (including the cost of examination, preparation, processing, negotiation, completion and administration thereof, as the case may be)

shall be paid in full by the Tenant to the Landlord as Additional Rent on demand, but in any event prior to the Minister executing such document.

Section 18.06 Additional Conditions

- 18.06.01 Any consent shall be only a consent to the extent required by this Lease and not as to any of the terms and conditions of the Transfer, Occupant Agreement Requiring Consent or Leasehold Mortgage Requiring Consent as between the Tenant and the Transferee or the Occupant or the Leasehold Mortgagee and shall not be construed so as to release or relieve the Tenant of any of its obligations under this Lease. Such consent shall be subject to any additional conditions which the Minister considers advisable ("**Special Conditions**"). These Special Conditions which shall be set out in the consent document may include, without limitation, further restrictions on the purposes for which the Demised Premises or any part thereof affected by the Transfer, Occupant Agreement or Leasehold Mortgage may be used, or any other special rights granted to the Tenant being rescinded.
- 18.06.02 Subject to Subsection 18.06.03, the Tenant shall comply with any Special Conditions.
- 18.06.03 If the Tenant is not willing to comply with any Special Conditions, the Tenant shall, within thirty (30) days of receipt of the Special Conditions, notify the Landlord that it withdraws its request for consent. For greater certainty, if the Tenant fails to notify the Landlord within such thirty (30) day period that it withdraws its request for consent, the Tenant shall be deemed to have accepted the Special Conditions.

Section 18.07 Consent Not Valid for Subsequent Transfer, Occupant Agreement Requiring Consent, or Leasehold Mortgage Requiring Consent

- 18.07.01 The consent by the Minister to a Transfer, Occupant Agreement Requiring Consent or leasehold Mortgage Requiring Consent shall not constitute a permission to enter into a further Transfer, Occupant Agreement or Leasehold Mortgage with respect to the property which is the subject matter of the Transfer, Occupant Agreement or Leasehold Mortgage which has been consented to, nor shall such consent constitute a waiver of the requirement of the Minister's consent to a subsequent Transfer, Occupant Agreement Requiring Consent or Leasehold Mortgage Requiring Consent of the same or any other property.

Section 18.08 Landlord Acknowledgment Agreement

- 18.08.01 The Landlord shall, at the request of the Tenant, execute and deliver, in respect of any Leasehold Mortgage, other than a Leasehold Mortgage Requiring Consent, that is given by the Tenant as security for a loan, a Landlord Acknowledgement Agreement substantially in the form attached hereto as Schedule "N".
- 18.08.02 It is understood and agreed that in the case of a Leasehold Mortgage Requiring Consent the Landlord may, upon request made by the Tenant and the Leasehold Mortgagee, enter into a Landlord Acknowledgment Agreement if the Minister in his sole and unfettered discretion considers it advisable, and upon such terms and conditions as the Minister, in his sole and unfettered discretion deems advisable.

Section 18.09 Certificates

- 18.09.01 The Landlord shall, when reasonably required by the Tenant, execute and deliver to the Tenant or any Leasehold Mortgagee, at no cost to the Tenant or the Leasehold Mortgagee, a certificate substantially in the form attached hereto as Schedule "O" within thirty (30) Business Days of receipt by the Landlord of such written request by the Tenant.
- 18.09.02 The Tenant shall, when reasonably required by the Landlord, execute and deliver to the Landlord, at no cost to the Landlord, a certificate substantially in the form attached hereto as Schedule "P" within thirty (30) Business Days of receipt by the Tenant of a written request by the Landlord.
- 18.09.03 The Tenant shall ensure that any Leasehold Mortgagee shall, where reasonably required by the Landlord, execute and deliver to the Landlord a certificate substantially in the form attached hereto as Schedule "O" within thirty (30) Business Days of receipt by the Tenant of a written request by the Landlord.

ARTICLE 19 - NON-DISTURBANCE AND SEPARATE LEASE

Section 19.01 Non-Disturbance

- 19.01.01 Subject to Subsections 19.01.02 and 19.01.03, if the Tenant is not in default, the Landlord, represented by the Minister, shall, upon request made by the Tenant to the Minister, enter into a Non-Disturbance Agreement with any Occupant of any part of the Demised Premises, provided such part of the Demised Premises is the subject matter of an Occupant Agreement in the Ordinary Course of Operations which,
- (a) in the case of a Major Air Carrier, is for a term not exceeding thirty (30) years including any renewals, and
 - (b) in all other cases, is for a term not exceeding fifteen (15) years including any renewals.
- Any such Non-Disturbance Agreement shall, subject to Subsections 19.01.04 and 19.01.05, be substantially in the form attached hereto as Schedule "H".
- 19.01.02 The Landlord shall have no obligation to enter into any Non-Disturbance Agreement unless,
- (a) at that time there shall not be in existence an Event of Default;
 - (b) the Landlord shall have received an executed copy of the Occupant Agreement between the Tenant and the Person who desires the Non-Disturbance Agreement and copies of all other documents entered into

between the Tenant and such Person which, in any way, relates to the Demised Premises;

- (c) such Occupant Agreement shall be an Occupant Agreement in the Ordinary Course of Operations;
- (d) the terms and conditions of such Occupant Agreement in the Ordinary Course of Operations shall, in the opinion of the Minister acting reasonably, be consistent with good business practices exercised by prudent landlords in similar circumstances at the time of the execution and delivery of such Occupant Agreement;
- (e) the entering into a Non-Disturbance Agreement in respect of such Occupant Agreement shall, in the opinion of the Minister acting reasonably, be consistent with good business practices exercised by prudent head landlords in similar circumstances at the time of the execution and delivery of such Non-Disturbance Agreement;
- (f) the Landlord shall have received a certificate of the Occupant in a form satisfactory to the Minister stating that such Occupant Agreement in the Ordinary Course of Operations constitutes the whole of the legal relationship between the Tenant and the Occupant in relation to the premises occupied under such Occupant Agreement in the Ordinary Course of Operations, that the Occupant Agreement in the Ordinary Course of Operations is in good standing and that there exists no outstanding claims in respect of such Occupant Agreement in the Ordinary Course of Operations;
- (g) the Occupant is a Person who is dealing at Arm's Length with the Tenant;
- (h) the rent or any consideration payable under the Occupant Agreement shall be payable in even, equal, monthly or quarterly instalments during the full term of the Occupant Agreement provided there may be one (1) payment of a greater amount at the end of the term of the Occupant Agreement;

19.01.03 Where the Occupant is not a Major Air Carrier, the Occupant Agreement shall contain provisions satisfactory to the Minister, acting reasonably, that set out that any improvements constructed by the Occupant on the premises demised by the Occupant Agreement will, during the whole term of such Occupant Agreement, be under the exclusive possession of the Occupant.

19.01.04 Where the Occupant is not a Major Air Carrier, the Non-Disturbance Agreement shall, in addition to Schedule "H",

- (a) set out the estimated cost to the Occupant of constructing the improvement referred to in Subsection 19.01.03;
- (b) require that the Occupant deliver to the Landlord, forthwith upon substantial completion of the improvement referred to in Paragraph 19.01.04(a), a statement of the cost to the Occupant to construct such improvement;
- (c) contain provisions satisfactory to the Minister, acting reasonably, permitting the Landlord at any time to cause a complete audit by Her Majesty's authorized representatives to be made of the costs to the Occupant, of such improvement and will permit Her Majesty's representatives to have access to and make copies of all accounting, financial and other business records and documents as may be required for such purpose at no cost to Her Majesty or Her Majesty's representatives;
- (d) provide for the automatic assignment to the Landlord of any security provided by the Occupant at any time to secure the performance by the Occupant of its obligations under the Occupant Agreement;
- (e) contain provisions satisfactory to the Minister, acting reasonably, that enable the Landlord to terminate the Occupant Agreement and the Non-Disturbance Agreement in the event that the Landlord requires possession of the premises demised under the Occupant Agreement for the purposes of:
 - (i) demolition of the building which includes the premises which are the subject-matter of the Occupant Agreement,
 - (ii) obtaining vacant possession of the building which includes the premises which are the subject-matter of the Occupant Agreement,
 - (iii) repairs or renovation to all or substantially all of the portion of the building in which the premises which are the subject-matter of the Occupant Agreement are located,
 - (iv) a public work or other public purpose (as such concept has been interpreted pursuant to the ***Expropriations Act (Canada)***, R.S.C. 1985, c. E-21, relating to all or any part of the premises demised to the Occupant provided that the Landlord at such time is Her Majesty; or

- (v) an operational requirement in the case where the premises which are the subject-matter of the Occupant Agreement is part of Airside.

The provisions referred to in this Paragraph 19.01.04(e) in respect of the termination of the Occupant Agreement and the Non-Disturbance Agreement shall further provide, on terms satisfactory to the Minister, that

- (vi) if the improvement referred to in Subsection 19.01.03 is, during the entire term of the Occupant Agreement which is the subject matter of the Non-Disturbance Agreement, fully owned by the Occupant and in the exclusive possession of the Occupant, the Landlord will, upon termination of the Occupant Agreement and the Non-Disturbance Agreement, pay to the Occupant the undepreciated balance of the cost to the Occupant of the improvement referred to in Subsection 19.01.03, provided that such cost shall be:

- (A) the lesser of:

1. the cost as set out in the Occupant's statement of such cost for such improvement, and
2. the cost as set out in an audit of such costs which Her Majesty causes to be performed, and

- (B) depreciated in accordance with Generally Accepted Accounting Principles, and

- (vii) if the improvement referred to in Subsection 19.01.03 is not, during the entire term of the Occupant Agreement which is the subject matter for the Non-Disturbance Agreement, fully owned by the Occupant and in the exclusive possession of the Occupant, the Occupant Agreement and the Non-Disturbance Agreement may be terminated without any compensation whatsoever from the Landlord to any Person.

- (f) contain provisions satisfactory to the Minister, acting reasonably, that enable the Landlord to relocate the Occupant to a location on the Demised Premises with similar capacity. In this event, provided the Occupant Agreement contains an obligation on the part of the Tenant to pay at least the amount hereafter provided for, the Landlord will pay for the out-of-pocket labour and equipment cost to carry out the physical move of

the Occupant from the location which is the subject matter of the Occupant Agreement to such other location.

- 19.01.05 Where the Occupant is a Major Air Carrier, the Non-Disturbance Agreement shall, in addition to Schedule "H", contain provisions satisfactory to the Minister, acting reasonably,
- (a) that enable the Landlord to relocate the Occupant to a location on the Demised Premises with similar capacity. In this event, provided the Occupant Agreement contains an obligation on the part of the Tenant to pay at least the amount hereafter provided for, the Landlord will pay for the out-of-pocket labour and equipment cost to carry out the physical move of the Occupant from the location which is the subject matter of the Occupant Agreement to such other location, and
 - (b) that provide for the automatic assignment to the Landlord of any security provided by the Occupant at any time to secure the performance by the Occupant of its obligations under the Occupant Agreement.
- 19.01.06 Paragraphs 19.01.02 (d) and (e) shall not apply in respect of any Occupant Agreement, the term of which is five (5) years or less.
- 19.01.07 The Landlord, represented by the Minister, may, upon request made by the Tenant to the Minister, enter into a Non-Disturbance Agreement in cases not provided for under Subsection 19.01.01 if the Minister in his sole and unfettered discretion considers it advisable, and upon such terms and conditions as the Minister in his sole and unfettered discretion deems advisable.
- 19.01.08 If the Tenant requests that the Landlord, represented by the Minister enter into a Non-Disturbance Agreement, pursuant to Subsection 19.01.07, the Tenant shall, together with such request provide the Minister with such credit, financial and business information relating to the Occupant and such other information, material and documentation with respect to the Occupant Agreement as the Minister requires, as well as a copy of the Occupant Agreement and any other documents entered into between the Tenant and such Person which, in any way, relates to the Demised Premises.
- 19.01.09 The Minister shall have no obligation to consider granting any Non-Disturbance Agreement pursuant to Subsection 19.01.07 unless and until he shall have received all of the information and documents set out in Subsection 19.01.08.
- 19.01.10 The Minister shall not be obliged to consider granting any Non-Disturbance Agreement pursuant to Subsection 19.01.07 and the computation of time periods referred to in Subsection 19.01.11 shall not commence to run until the Minister has received all of the information and documents set out in Subsection 19.01.08 unless, at the time the application for such Non-Disturbance Agreement is made, there shall not be in existence an Event of Default.

- 19.01.11 In the case of a request for the granting of a Non-Disturbance Agreement pursuant to Section 19.01, the Minister will
- (a) within forty-five(45) days of receipt by the Minister of the request for Such Non-Disturbance Agreement and all the information and documents set out in Subsections 19.01.02 or 19.01.08, as applicable, indicate to the Tenant, without prejudice to his right to change his decision, whether or not he is, at that time, inclined to enter into the Non-Disturbance Agreement and
 - (b) with respect to a request made pursuant to Subsection 19.01.07, within ninety (90) days of receipt by the Minister of the request for such Non-Disturbance Agreement and all the information and documents set out in Subsection 19.01.08 notify the Tenant whether he will or will not enter into a Non-Disturbance Agreement, and if the Minister decides, in his sole and unfettered discretion, not to enter into such Non-Disturbance Agreement, the Minister will, together with such notice advise the Tenant of the reason for his decision; and
 - (c) with respect to a request made pursuant to Subsection 19.01.01, within ninety (90) days of receipt by the Minister of the request for such Non-Disturbance Agreement and all the information and documents set out in Subsections 19.01.02 notify the Tenant whether he will or will not enter into a Non-Disturbance Agreement, and if the Minister decides not to enter into such Non-Disturbance Agreement, the Minister will, together with such notice advise the Tenant of the reason for his decision.

Section 19.02 Separate Lease

- 19.02.01 Provided there is no Event of Default in existence, where the Tenant intends to enter into a sublease for land other than Airside or the Ground Transportation Reserve and the proposed sublease meets all the requirements of an Occupant Agreement in the Ordinary Course of Operations, and all the requirements of this Section 19.02 and is entered into for purposes of permitting an Occupant to construct an improvement on such land for the exclusive use and possession of such Occupant during the term of its sublease, the Tenant may request that the Landlord enter into a Separate Lease with the Tenant in respect of the land which is proposed to be the subject matter of such sublease.
- 19.02.02 The Tenant shall, together with such request, deliver to the Landlord
- (a) a registerable description of the land which is proposed to be the subject matter of the sublease [the “**Separate Lease Lands**”],
 - (b) a survey of the Separate Lease Lands,

- (c) a survey of the balance of the Lands which comprise the unsevered portion of the Lands if required for registration or notice purposes,
- (d) the name and address of the proposed assignee or subtenant, if applicable,
- (e) details of the proposed use for the Separate Lease Lands, and
- (f) an executed agreement to assign or an agreement to sublease between the Tenant and a third party respecting the Separate Lease Lands, if applicable.

19.02.03 Subject to this Section 19.02, in the case of land referred to in Subsection 19.02.01, where the Tenant fulfils all of the requirements necessary to be an Occupant Agreement in the Ordinary Course of Operations, provided the Separate Lease Lands will not be used for purposes of constructing or operating thereon any Air Terminal Building or Parking Facility, then

- (a) if the Tenant has obtained the prior written consent of all Leasehold Mortgagees, and
- (b) if all the requirements of this Section 19.02 are fulfilled,

the Landlord shall sever the Separate Lease Lands and grant a separate lease (the “**Separate Lease**”) to the Tenant of the Separate Lease Lands on the same terms and conditions as set out in this Lease except Articles 4 and 19.

19.02.04 It is understood and agreed that in the case of an Occupant Agreement which is not an Occupant Agreement in the Ordinary Course of Operations or where all the terms and conditions set out in this Section 19.02 have not been fulfilled then the granting of a Separate Lease shall be subject to the Landlord’s consent, which consent may be unreasonably withheld.

19.02.05 The tenant under any Separate Lease shall be the Tenant.

19.02.06 The term under any Separate Lease shall be the remaining portion of the Term.

19.02.07 The annual rent under any Separate Lease shall be an amount equal to an amount calculated by multiplying the then fair market value of the Separate Lease Lands by a percentage equal to the Chartered Bank Prime Business Rate published for the Wednesday before

- (a) the date of commencement of the Separate Lease, or
- (b) the first day of each subsequent five (5) year period

as the case may be, plus two percent (2%) provided that in no event shall rent payable under the Separate Lease be greater than the Rent payable under Article 4.

19.02.08 For purposes of determining the rent payable under the Separate Lease pursuant to Subsection 19.02.07 the property for which a fair market value is being determined shall be:

- (a) the Separate Lease Lands as serviced and together with all easements, rights of way, common areas or other rights to the use and enjoyment of any property associated with the Separate Lease Lands, and
- (b) all buildings, structures and improvements existing on the Separate Lease Lands except the buildings, structures and improvements constructed thereon by and at the cost of the Occupant;

The fair market value of the property for the first five (5) year period shall be established as at the date of commencement of the Separate Lease and shall, for each subsequent five (5) year period be re-established as at the commencement of each such five (5) year period until the end of the term of the Separate Lease.

19.02.09 The rent or any consideration payable under the Separate Lease, shall be payable in even, equal, monthly or quarterly instalments during the full term of the Separate Lease.

19.02.10 In the event that construction of any project which is intended or required to be constructed on the Separate Lease Lands does not commence within three (3) years of the granting of such Separate Lease and is not thereafter continued diligently to completion, the Tenant shall forthwith upon request of the Landlord surrender such Separate Lease.

19.02.11 Contemporaneously with and as a condition to the granting of each Separate Lease, the Tenant shall surrender to the Landlord its interest under this Lease in the Separate Lease Lands for the term of the Separate Lease, free of all subleases, Occupant Agreements and encumbrances except any encumbrances created by the Tenant pursuant to Subsections 3.04.03, 3.06.02 and 3.07.01. The unsevered portion of the Demised Premises shall continue to be demised pursuant to this Lease subject to portions thereof subsequently becoming severed portions and being demised pursuant to other Separate Leases under the terms and conditions hereof

19.02.12 If any Separate Lease expires or terminates or is surrendered prior to the expiry or early termination of this Lease, the Separate Lease Lands shall be incorporated back into the Demised Premises and the Landlord and the Tenant shall execute and deliver all documents necessary to effect the same.

- 19.02.13 It is the intention of the parties that, notwithstanding the surrender of this Lease, with respect to the Separate Lease Lands, all obligations of the Tenant and all rights of the Landlord which accrued prior to, or with respect to any event which occurred prior to, the surrender of the Separate Lease Lands shall continue in full force and effect and survive the surrender of this Lease in respect of the Separate Lease Lands and the Landlord and the Tenant shall execute and deliver all documents necessary to effect the same.
- 19.02.14 The Separate Lease shall contain provisions satisfactory to the Minister, acting reasonably, that provides:
- (a) for the automatic assignment of the Separate Lease to the Landlord contemporaneously with the early termination of this Lease, and
 - (b) that for the balance of the term of the Separate Lease, the assignee or subtenant of the Separate Lease shall pay to the Landlord an annual rent equal to the greater of
 - (i) the rent payable to the Tenant pursuant to the assignment or sublease of the Separate Lease to the assignee or subtenant, and
 - (ii) the rent calculated pursuant to Subsections 19.02.07 and 19.02.08.
- 19.02.15 In the case of a request for the granting of a Separate Lease pursuant to Subsection 19.02.01, the Minister will
- (a) within forty-five (45) days of receipt by the Minister of the request for such Separate Lease and all the information and documents set out in Subsection 19.02.02, indicate to the Tenant, without prejudice to his right to change his decision, whether or not he is, at that time, inclined to enter into the Separate Lease, and
 - (b) within ninety (90) days of receipt by the Minister of the request for such Separate Lease and all the information and documents set out in Subsection 19.02.02, notify the Tenant whether he will or will not enter into a Separate Lease and if the Minister decides, in his sole and unfettered discretion, not to enter into such Separate Lease, the Minister will, together with such notice advise the Tenant of the reason for his decision.

ARTICLE 20 - DEFAULT

Section 20.01 Tenants Default

20.01.01 Notwithstanding any present or future statutory provision or legal presumption to the contrary, unless the Tenant is prohibited by a statute from agreeing not to be subject to such statutory provision or legal presumption, each of the following shall at all times constitute an event of default in relation to this Lease ("**Event of Default**"):

- (a) the Tenant defaults in the payment of any Rent and such default continues for fifteen (15) days after the Landlord gives to the Tenant a notice of such default;
- (b) the Tenant fails to keep, perform or observe any of the covenants, agreements, provisions, conditions or provisos contained in this Lease on the part of the Tenant to be kept, performed or observed (other than the payment of Rent) and such failure continues, subject to Subsection 20.04.01, for a period of fifteen (15) days (or such shorter period as may be specified for a particular default in this Lease) after the Landlord gives to the Tenant a written notice of such failure

(the notices provided for in Paragraphs 20.01.01(a) and (b) herein called "**Notice of Non-Performance**");

- (c) an Event of Bankruptcy has occurred with respect to the Tenant;
- (d) the Tenant is wound up, the Tenant's constating documents or bylaws are forfeited or surrendered or the corporate existence of the Tenant is otherwise terminated;
- (e) the Tenant ceases to operate as a corporation;
- (f) the Tenant ceases to operate in accordance with its objects as stated in its constating documents or by-laws;
- (g) the constating documents or by-laws of the Tenant are modified, altered or changed in any manner which would affect the not-for-profit status of the Tenant, the composition of the Board or the process for nomination, appointment or revocation of appointment of the Board of the Tenant, without the written approval of the Minister which approval may be unreasonably withheld;

- (h) the Tenant defaults under any Leasehold Mortgage other than a Leasehold Mortgage in the Ordinary Course of Operations and the Leasehold Mortgagee:
1. obtains an order of foreclosure or sells the Leasehold Interest in whole or in part through the exercise of a power of sale, or
 2. exercises any rights to possession or takes possession of the Leasehold Interest or the Demised Premises in whole or in part, either directly or by appointing a receiver or a receiver and manager, and such possession lasts for more than
 - (A) the period of time necessary to pay the outstanding balance under the Leasehold Mortgage, any interest accruing thereon which is not paid by the receiver or receiver and manager and the amount of any borrowings made by the receiver or receiver and manager for the purpose of paying for the management, operation, maintenance, protection, preservation or repair of the Demised Premises, for the purpose of complying with the terms and conditions of this Lease, as well as for the purpose of completing any construction undertaken by the Tenant prior to the appointment of the receiver or receiver and manager, in the case where the Leasehold Mortgagee is a Leasehold Mortgagee for Airport Purposes; or
 - (B) a period of five (5) years or such greater length of time as the Minister in his sole discretion may, in writing, agree, in any other case;
- (i) the Tenant defaults under any loan agreement other than a Leasehold Mortgage in favour of an Airport Infrastructure Lender or other lender and an Airport Infrastructure Lender or other lender:
1. converts the assignment or transfer of any interest, including an undivided interest, in all or substantially all of the Airport Undertaking by way of security into an absolute interest; or
 2. exercises any rights to possession or takes possession of all or substantially all of the Airport Undertaking, the Leasehold Interest or the Demised Premises in whole or in part, or appoints a receiver or a receiver and manager whose possession lasts for more than

- (A) the period of time necessary to pay the outstanding balance under the loan agreement, any interest accruing thereon which is not paid by the receiver or receiver and manager and the amount of any borrowings made by the receiver or receiver and manager for the purpose of paying for the management, operation, maintenance, protection, preservation or repair of the Demised Premises, for the purpose of complying with the terms and conditions of this Lease, as well as for the purpose of completing any construction undertaken by the Tenant prior to the appointment of the receiver or receiver and manager, in the case where the lender is a Leasehold Mortgagee for Airport Purposes; or
 - (B) a period of five (5) years or such greater length of time as the Minister in his sole discretion may, in writing, agree, in any other case;
- (j) the Leasehold Interest or any part thereof is taken and sold under any writ of execution or other like process;
 - (k) the Tenant:
 - 1. enters into a Transfer,
 - 2. enters into an Occupant Agreement Requiring Consent, or
 - 3. enters into a Leasehold Mortgage Requiring Consent,without the prior written consent of the Minister;
 - (l) a Person who is the holder of any elected public office or who is an employee of the federal, provincial, regional or municipal government, is elected or appointed to the Board and fails to resign within thirty (30) days following notice by the Landlord to the Tenant requesting such resignation;
 - (m) there has been a transfer by operation of law contemplated in Subsection 18.01.04;
 - (n) if for a period of one hundred and twenty (120) days, the total number of members of the Tenant's Board is seventy-five per cent (75%) or less than the total number of possible members of the Tenant's Board, excluding

any members nominated by Her Majesty the Queen in right of Canada or Her Majesty the Queen in right of any province.

- 20.01.02 The effect of the occurrence of an Event of Default shall, in addition to any rights of the Landlord in accordance with any of the other Instruments, be to give rise to the rights and obligations in relation thereto set out in Sections 20.02 to 20.06 inclusive.
- 20.01.03 Notwithstanding any other provision of this Lease, the Landlord may have access to the Demised Premises in order to deal with any emergency or danger, at any time after having given to the Tenant a Notice of Non-Performance where, in the Minister's judgement there is a real or apprehended emergency or danger to persons or property or where any delay by the Landlord in dealing with such emergency or danger would or might prejudice airport safety, the Landlord or Her interest in the Airport.
- 20.01.04 Notwithstanding anything in this Lease, the Landlord shall not exercise any of its remedies contained in Paragraph 20.02.01(a) unless and until
- (a) an Event of Default has occurred and where applicable a Notice of Non-Performance has been delivered to the Tenant with a copy to the Leasehold Mortgagee;
 - (b) the Landlord has given to the Tenant, with a copy to the Leasehold Mortgagee, a notice of such Event of Default ("**Notice of Intention to Terminate**") and
 - (i) in the case of an Event of Default referred to in Paragraph 20.01.01(a), the Event of Default continues to exist for thirty (30) days after the Landlord has given to the Tenant, with a copy to the Leasehold Mortgagee, the Notice of Intention to Terminate in respect of such Event of Default,
 - (ii) in the case of an Event of Default referred to in Paragraph 20.01.01(b), the Event of Default continues to exist for thirty (30) days after the Landlord has given to the Tenant, with a copy to the Leasehold Mortgagee, the Notice of Intention to Terminate in respect of such Event of Default, or
 - (iii) in any other case, the Event of Default continues to exist for forty-five (45) days after the Landlord has given to the Tenant, with a copy to the Leasehold Mortgagee, the Notice of Intention to Terminate in respect of such Event of Default.

Notwithstanding anything in this Subsection 20.01.04, whenever and to the extent that a Leasehold Mortgagee is prevented by law from curing any default of the Tenant to keep, perform, or observe any of the covenants, agreements, provisions, conditions or provisos on the part of the Tenant to be kept, performed or observed (other than the payment of Rent) or to appoint a receiver or receiver-manager, then the computation of the time periods referred to in Subparagraphs 20.01.04(b) (ii) and (iii) shall be suspended during such period in which the Leasehold Mortgagee was so prevented by law provided that, in the event the Landlord has delivered a Notice of Intention to Terminate, the Leasehold Mortgagee notifies the Landlord forthwith after becoming aware that it is prevented by law from curing any default of the Tenant to keep, perform, or observe any of the covenants, agreements, provisions, conditions or provisos on the part of the Tenant to be kept, performed or observed (other than the payment of Rent) or to appoint a receiver or receiver-manager.

20.01.05 The Notice of Intention to Terminate shall set forth in reasonable detail the nature of the Event of Default, state specifically to which paragraph of Subsection 20.01.01 it relates and identify the date upon which the Landlord may exercise its remedies under Paragraph 20.02.01(a).

Section 20.02 Landlord's Rights With Respect to an Event of Default

20.02.01 This Lease and the Term and estate hereby granted are subject to the limitation that, where there is an Event of Default, then, and in each of such cases and so often as such Event of Default happens, it shall be lawful for the Landlord at any time thereafter, at Her option:

- (a) subject to Subsections 20.01.04, 20.02.02, 20.03.01 and 20.06.01, to enter into and upon the Demised Premises or any part thereof in the name of the whole without any legal process whatsoever, and this Lease and the Term hereof shall, by notice, (herein called "**Notice of Termination**"), to the Tenant at the option of the Landlord and with or without entry, terminate, and all the rights of the Tenant with respect to the Demised Premises shall terminate and expire upon the date of delivery to the Tenant of the Notice of Termination as fully and completely as if the date of delivery to the Tenant of the Notice of Termination were the date herein fixed for the expiry of the Term of this Lease, but the Tenant shall notwithstanding remain liable for any arrears of Rent, and for any loss or damage suffered by the Landlord due to the default. The Landlord shall provide, for information purposes, a copy of the Notice of Termination to each Leasehold Mortgagee who has advised the Landlord of its name and address for service.

For greater certainty, notwithstanding any such termination, the Landlord may recover from the Tenant arrears of Rent and damages for loss of Rent suffered by reason of this Lease having been prematurely determined, and the Landlord may recover from the Tenant all other loss or damages the Landlord may suffer due to the default, including the cost of recovering the Demised Premises and including the worth, at the time of such termination, of the excess, if any, of the amount of Rent likely to become payable hereunder for the remainder of the Term over the amount of rent of the Demised Premises likely to be obtainable by the Landlord for the remainder of the Term, all of which loss and damages shall be immediately due and payable from the Tenant to the Landlord as soon as they are ascertained;

- (b) to enter the Demised Premises for the purpose of curing any default of the Tenant including the making of maintenance or repairs required to be made by the Tenant and no such entry for such purpose shall be deemed a re-entry by the Landlord or a forfeiture or termination of this Lease, and the Tenant shall permit such entry and shall ensure that all Occupants and Transferees permit such entry. Except as herein provided, the Landlord shall give not less than seven (7) days' notice to the Tenant of Her intention to enter for such purpose. The Tenant shall forthwith pay to the Landlord, as Additional Rent, all costs of the Landlord in curing any default, together with interest thereon at the Interest Rate calculated from the date the Landlord has paid such costs to the date it is reimbursed by the Tenant to the Landlord. The Landlord shall be under no obligation to cure any default of the Tenant or to continue to cure any default after having commenced to cure or attempted to cure such default. The Landlord may enter the Demised Premises upon a period of notice shorter than the seven (7) day period of notice or without notice where, in the Minister's judgement there is a real or apprehended emergency or danger to persons or property or where any delay by the Landlord in curing such default would or might prejudice airport safety, the Landlord or Her interest in the Airport;
- (c) to pay on behalf of the Tenant when due any and all moneys which the Tenant has covenanted to pay under this Lease other than a sum payable to the Landlord, and the Tenant shall forthwith reimburse the Landlord for any amount so paid together with interest thereon at the Interest Rate calculated from the date the Landlord has paid such amount to the date it is reimbursed by the Tenant to the Landlord;
- (d) to appoint in writing a receiver or manager or receiver and manager of the Demised Premises or any part or parts thereof and the businesses or undertakings carried on by the Tenant thereon or therein and of the rents

and revenues thereof with or without entry into possession of the Demised Premises or any part or parts thereof or such businesses or undertakings, and with or without security (herein called a “**Receiver**”). Before making such appointment, the Landlord shall give to the Tenant a reasonable notice of its intention to make such appointment (herein called a “**Notice of Intention to Appoint a Receiver**”), except where any delay by the Landlord in making such appointment would or might, in the opinion of the Minister acting reasonably, prejudice the rights of the Landlord in which case the Landlord may appoint such Receiver without any notice to the Tenant of its intention. In making any such appointment, the Landlord shall be deemed to be acting as the agent or attorney for the Tenant, with irrevocable authority. Upon the appointment of any such Receiver or Receivers from time to time, the following provisions shall apply:

- (i) Every such Receiver shall be the irrevocable agent or attorney of the Tenant for the collection of all rents or revenues falling due in respect of the Demised Premises or any part or parts thereof;
- (ii) Every such Receiver may, in the discretion of the Landlord and by writing, be vested with all or any of the powers and discretion of the Landlord;
- (iii) Every such Receiver shall have the full power and authority to manage and carry on the businesses or undertakings of the Tenant on behalf of the Tenant and as agent or attorney of the Tenant;
- (iv) The Landlord may from time to time by writing fix the reasonable remuneration of every such Receiver who shall be entitled to deduct the same out of the rents or revenues derived from the Demised Premises or the proceeds thereof;
- (v) Every such Receiver shall, so far as concerns the responsibility for acts or omissions, be deemed the agent or attorney of the Tenant and not the agent or attorney of the Landlord unless specifically otherwise provided in the instrument appointing the Receiver;
- (vi) Such appointment or anything which may be done by any such Receiver or the removal of any such Receiver or the termination of any such receivership shall not have the effect of constituting the Landlord a landlord in possession in respect of the Demised Premises or any part or parts thereof;

- (vii) Every such Receiver shall from time to time have the power to rent any portion of the Demised Premises which is not then subject to an Occupant Agreement for such term and subject to such provisions as the Receiver may deem advisable or expedient, and in so doing every such Receiver shall act as the attorney or agent of the Tenant and shall have irrevocable authority, subject to the terms of this Lease, to execute under seal any Occupant Agreement of the whole of the Demised Premises or any part thereof in the name of and on behalf of the Tenant, and the Tenant hereby undertakes to ratify and confirm whatever any such Receiver may do in the Demised Premises, pursuant to its powers referred to herein;
- (viii) Every such Receiver shall have full power to manage, operate, maintain, protect, preserve and repair the Demised Premises or any part thereof in the name of the Tenant for the purpose of securing the payment of rent or deriving revenues from the Demised Premises or any part thereof, provided that the Receiver shall do so as a prudent receiver would do;
- (ix) Every such Receiver shall, only as permitted by this Lease, have the irrevocable authority to borrow or raise money on behalf of the Tenant on the security of the Tenant's Leasehold Interest in the Demised Premises, for the purpose of paying for the management, operation, maintenance, protection, preservation or repair of the Demised Premises;
- (x) No such Receiver shall be liable to the Tenant to account for moneys or damages other than cash received by such Receiver in respect of the Demised Premises or any parts thereof and out of such cash so received, every such Receiver shall in the following order pay:
 - (A) his commission or remuneration as Receiver;
 - (B) all expenses made or incurred by such Receiver in connection with the management, operation, maintenance, protection, preservation or repair of the Demised Premises or any part thereof;
 - (C) all Rent due to the Landlord;

(D) all Real Property Taxes, Business Taxes, all other taxes and all Insurance premiums payable by the Tenant in respect to the Demised Premises or any part thereof; and

(E) all payments required to be made with respect to all utilities;

and any surplus remaining in the hands of the Receiver after payments made as aforesaid shall be accounted for by the Receiver to the Tenant and paid to the Tenant or Leasehold Mortgagee entitled thereto;

(xi) The Landlord may, at any time and from time to time:

(A) terminate any such receivership, or

(B) replace any such Receiver

by notice in writing to the Tenant and to any such Receiver. Notwithstanding the foregoing, the Landlord agrees to terminate any such receivership if a Leasehold Mortgagee tenders to the Landlord the correct amount to cure any monetary default; and

(C) in the case of non-monetary default (other than a non-monetary default referred to in Subsection 20.02.02),

1. where such non-monetary default is a default in the payment for any Insurance or any obligation to pay money (other than Rent), forthwith provides evidence to the Landlord of the payment of any such amount and any interest or penalties, and

2. in the case of any other non-monetary default, undertakes in writing to the Landlord to promptly commence the curing of any such non-monetary default on behalf of the Tenant and with due diligence thereafter prosecutes the curing of such non-monetary default to completion on behalf of the Tenant within a reasonable period of time, and provided that the Leasehold Mortgagee keeps the Landlord fully informed at all times of its progress in curing such non-monetary default and does in fact complete such curing within such time, or

- (D) in the case of a non-monetary default referred to in Subsection 20.02.02, appoints a receiver or receiver and manager, who shall go into possession pursuant to the provisions of Article 18;

and provided further that the Leasehold Mortgagee pays all of the Landlord's costs and expenses up to that time, including all costs and expenses of such receivership.

It is understood that while in possession the Leasehold Mortgagee shall comply with the Tenant's obligations in Article 9 in respect of the Airport Undertaking as opposed to the business of the Leasehold Mortgagee, and all statements shall be signed by the receiver-manager appointed by the Leasehold Mortgagee.

For greater certainty, the expression "**monetary default**" refers to the default in the payment of any Rent and "**non-monetary default**" refers to the default to keep, perform, or observe any of the covenants, agreements, provisions, conditions or provisos contained in this Lease on the part of the Tenant to be kept, performed or observed (other than the payment of Rent); and

- (xii) Save as to claims for accounting under Subparagraph 20.02.01(d)(x), the Tenant hereby releases and discharges and agrees to indemnify and save harmless:

- (A) the Landlord; and

- (B) every such Receiver, unless the claim be the direct and proximate result of dishonesty or negligence of such Receiver;

from every claim of every nature, whether in damages (including consequential or indirect damages) or not, which may arise or be caused to the Tenant or any Person claiming through or under it by reason or as a result of anything lawfully done by the Landlord or any successor or assign claiming through or under the Landlord, or by reason or as a result of anything done by any such Receiver under the provisions of this Section;

- (e) to claim damages from the Tenant, including consequential and indirect damages;
- (f) to restrain by prohibitive injunction or to obtain a mandatory injunction or an order for specific performance as the case may be of any failure of the Tenant to keep, perform or observe any of the covenants, conditions or provisos on the part of the Tenant to be kept, performed or observed under Section 8.09, Section 8.10, Article 9 or Article 28. The Tenant hereby acknowledges and agrees that the covenants and agreements on the part of the Tenant contained in Section 8.09, Section 8.10, Article 9 and Article 28 are unique and of such extraordinary character and value to the Landlord that a breach thereof would cause the Landlord irreparable harm for which damages are not easily calculated or which would not, or might not, be compensable in damages. Furthermore, the Tenant acknowledges that a continuing breach of any of such covenants, conditions or provisos would cause continuing damages to the Landlord.

20.02.02 Notwithstanding anything in Paragraph 20.02.01(a), if the Landlord elects to terminate this Lease pursuant to Paragraph 20.02.01(a) by reason of any Event of Default referred to in Subsection 18.01.04 or Paragraphs 20.01.01(c), (d), (e), (f), (g), (h), (i), (j),(k) (l), (m) and (n) or for failure of the Tenant to keep, perform, or observe any of the covenants, agreements, provisions, conditions or provisos on the part of the Tenant to be kept, performed or observed (other than the payment of Rent) under Subsections 4.06.02, 4.08.01, 4.08.02, 4.08.03, 4.08.04, 15.01.01 or 18.02.02 or under Section 14.03 or under Article 9 or any other provision of this Lease where the Event of Default cannot reasonably be cured by a Leasehold Mortgagee or other lender and where, at the time of the Notice of Intention to Terminate, there is a balance outstanding on any loan made by a Leasehold Mortgagee or any other lender which is secured by a Leasehold Mortgage and which remains unpaid, then the Notice of Termination shall not be effective to terminate this Lease:

- (a) so long as such balance outstanding to such Leasehold Mortgagee at the time of the Notice of Intention to Terminate and the other amounts referred to in Clause 20.01.01(h)(2)(A) remains unpaid; or
- (b) so long as such balance outstanding to such other lender at the time of the Notice of Intention to Terminate and the other amounts referred to in Clause 20.01.01(h)(2)(A) remains unpaid or a period of five (5) years (or such greater length of time as the Minister in his sole discretion may, in writing, agree) from the Notice of Intention to Terminate whichever comes first,

provided that the Leasehold Mortgagee or other lender, as the case may be, appoints a receiver or receiver and manager who goes into possession of the Demised Premises within thirty (30) days of the date of receipt by the Leasehold Mortgagee or other lender of a copy of the Notice of Intention to Terminate and, further provided that, in the case of an Event of Default referred to in Paragraphs 20.01.01(h),(i) or (j), such Event of Default is not caused by any act of that Leasehold Mortgagee or other lender, and further provided that,

- (c) in the event the Leasehold Mortgagee becomes a mortgagee in possession (including without limitation the appointment of a receiver or a receiver and manager), the Leasehold Mortgagee, or anyone claiming by, through or under the Leasehold Mortgagee, shall be liable for the performance of all of the Tenant's obligations under this Lease (other than Subsections 9.01.01, 9.01.02, 9.01.03 and 9.01.04 and Paragraph 9.01.06(c)) whenever arising and shall perform and be bound by each and every one of the Tenant's covenants and agreements set out and contained in this Lease (other than Subsections 9.01.01, 9.01.02, 9.01.03 and 9.01.04 and Paragraph 9.01.06(c)) unless, until and to the extent released in accordance with Paragraph (d) hereof; and
- (d) if after having taken possession of the Demised Premises, the Leasehold Mortgagee goes out of possession, the Leasehold Mortgagee shall be relieved from any further obligation towards the Landlord arising after the Leasehold Mortgagee goes out of possession, it being understood that while in possession the Leasehold Mortgagee shall comply with the Tenant's obligations in Article 9 in respect of the Airport Undertaking as opposed to the business of the Leasehold Mortgagee, and all statements shall be signed by the receiver or manager appointed by the Leasehold Mortgagee.

Section 20.03 Copy of Notice to Leasehold Mortgagee

- 20.03.01 No Notice of Non-Performance, Notice of Intention to Terminate, Notice of Termination or Notice of Intention to Appoint a Receiver, if any, shall be valid and effective and the time periods referred to in Paragraphs 20.01.01(a) and (b) and 20.01.04(b) shall not begin to run unless and until a copy of such Notice is delivered to each Leasehold Mortgagee who has advised the Landlord of its name and address for service.
- 20.03.02 Notwithstanding any other provisions of this Lease, no amendment to Subsection 20.03.01 shall be valid unless the Tenant has obtained the prior written consent of any Leasehold Mortgagee who has advised the Landlord of its name and address for service.

20.03.03 The Landlord shall provide to the Tenant, upon request, a list of all the Leasehold Mortgagees who have advised the Landlord of their respective name and address for service.

Section 20.04 Extension of Period to Cure Default

20.04.01 Notwithstanding Paragraph 20.01.01(b) and Subparagraph 20.01.04(b)(ii), in the case of a default to which Paragraph 20.01.01(b) and Subparagraph 20.01.04(b)(ii) refers, if the default reasonably requires more time to cure than the time period specified therein, the Tenant shall not be in default, provided that the curing of the default is promptly commenced upon the giving of the said notice, and with due diligence is thereafter continuously prosecuted to completion and is completed within a reasonable period of time, and provided that the Tenant keeps the Landlord informed at all times of its progress in curing the default.

Section 20.05 Remedies not Exclusive

20.05.01 The remedies of the Landlord specified in this Lease are cumulative and are in addition to any remedies of the Landlord at law or in equity. The specification in this Lease of any particular right or remedy of the Landlord in respect of a default by the Tenant shall not preclude the Landlord from any other right or remedy in respect thereof, whether available at law or in equity or by statute or expressly provided for in this Lease. No right or remedy shall be exclusive or dependent upon any other right or remedy, but the Landlord may, from time to time, have recourse to one or more or all of the rights and remedies specified herein or at law or in equity or by statute, independently or in combination, such rights and remedies being cumulative and not alternative. The right of the Landlord to claim arrears of Rent and loss or damages against the Tenant shall survive the expiry or early termination of this Lease.

Section 20.06 Leasehold Mortgagee's Right to Cure

20.06.01 Subject to this Article 20, any Leasehold Mortgagee shall have the right to cure any' default of the Tenant on behalf of the Tenant and to keep this Lease in good standing on behalf of the Tenant provided that the Leasehold Mortgagee cures any such default within the time periods permitted hereunder.

Section 20.07 Landlord's Default

20.07.01 The Landlord shall not be in default hereunder with respect to keeping, performing or observing any of Her covenants, agreements, provisions, conditions or provisos on the part of the Landlord to be kept, performed or observed under this Lease unless any such default by the Landlord continues for a thirty (30) day period following receipt by the Landlord from the Tenant of a written notice of such default (hereinafter called "**Notice of Default to Landlord**").

20.07.02 Notwithstanding Subsection 20.07.01, if the default by the Landlord reasonably requires more time to cure than such thirty (30) day period, the Landlord shall not be in default, provided that the curing of the default is promptly commenced upon

receipt by the Landlord of the Notice of Default to Landlord, and with due diligence is thereafter continuously prosecuted to completion and is completed within a reasonable period of time, and provided that the Landlord keeps the Tenant informed at all times of Her progress in curing the default by the Landlord.

20.07.03 The Tenant shall have no recourse against the Landlord until the Landlord has been provided with the appropriate time required to rectify any default.

ARTICLE 21 - LANDLORD'S OPTIONS ON TERMINATION

Section 21.01 Chattels

21.01.01 The Tenant hereby grants to the Landlord an option whereby the Landlord may, upon expiry or early termination of this Lease, acquire free and clear of all encumbrances, any or all tangible personal property used by the Tenant in connection with the management, operation or maintenance of the Airport at a price equal to the amount by which the then net carrying amount, as determined in accordance with Generally Accepted Accounting Principles thereof exceeds any amount set out in Subsection 4.11.01 which has not, as of such expiry or early termination, been paid by the Tenant to the Landlord. Such price shall be payable to the Tenant or to any other Person including any Leasehold Mortgagee or its receiver claiming under or through the Tenant as their interest may appear.

21.01.02 In order to ensure the efficacy of the option granted in Subsection 21.01.01 and to provide the Landlord with a security interest in the tangible personal property referred to in Subsection 21.01.01 and to secure the performance by the Tenant of its obligations under that Subsection, the parties hereto shall, contemporaneously with the execution and delivery of this Lease, enter into the agreement specified in Subsection 3.02.01(k) of the Agreement to Transfer. The Tenant undertakes not to grant any other security interest in the tangible personal property referred to in Subsection 21.01.01 in priority to the interest of the Landlord in such tangible personal property except as provided under such agreement.

ARTICLE 22 - FINANCIAL ADMINISTRATION ACT

Section 22.01 Appropriation

22.01.01 The payment of any money by the Landlord pursuant to this Lease is subject to there being an appropriation for such payment by the Parliament of Canada for the fiscal year in which such payment becomes due.

22.01.02 It is agreed between the parties hereto that the performance by the Landlord of any of the Landlord's obligations under Article 37 including, for greater certainty, the payment of a contribution to the Tenant of a portion of the contract price referred to in Paragraph 37.03.01(b) shall be subject to there being an

appropriation to cover the costs of the performance of any such obligations in the fiscal year in which such costs become due.

ARTICLE 23 - ASSIGNMENT, SUCCESSORS AND ASSIGNS

Section 23.01 Successors and Assigns

- 23.01.01 This Lease and all the covenants, agreements, terms, conditions, provisions and undertakings contained in this Lease, shall extend to, be binding upon and enure to the benefit of the Landlord and Her successors and assigns and the Tenant and, subject to Article 18, any permitted Occupant, Leasehold Mortgagee and Transferee of the Tenant.
- 23.01.02 All covenants, agreements, terms, conditions, provisions and undertakings contained in this Lease shall be construed as covenants running with the land.

ARTICLE 24 - WAIVER

Section 24.01 Waiver

- 24.01.01 The failure of any party hereto to insist, in any one instance, upon the strict performance by the other party hereto of Her or its obligations hereunder, or the failure of any party hereto to exercise any right, option or remedy, shall not constitute a waiver or relinquishment for the future of any such obligation, right, option or remedy nor shall it constitute a waiver of a subsequent breach thereof.
- 24.01.02 No covenant or condition of this Lease may be waived by any party hereto except by the written consent of that party, and forbearance or indulgence by that party in any regard whatsoever and no matter how long shall not constitute a waiver of the covenant or condition and until performed or waived in writing that party shall be entitled to invoke any remedy available to that party under this Lease or by law, despite the forbearance or indulgence.
- 24.01.03 The Minister may, subject to any conditions the Minister deems advisable, waive, on behalf of the Landlord, the strict performance for a specified period of time of any provision of this Lease except Article 4, Subsection 19.02.07 and Subsection 19.02.08. Any such waiver shall be in writing signed by the Minister and shall specify the obligation waived and the period of waiver and any terms and conditions of any such waiver.
- 24.01.04 The waiver by any of the parties hereto of any breach of any term, covenant or condition herein contained is not deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or of any other term, covenant or condition herein contained.
- 24.01.05 The consent by the Minister to or the approval by the Minister of any act by the Tenant requiring the Landlord's consent or approval shall not be construed to

waive or render unnecessary the requirement for the Minister's or the Landlord's consent to or approval of any subsequent similar act.

24.01.06 The subsequent acceptance of Rent hereunder by the Landlord is not deemed to be a waiver of any preceding breach by the Tenant of any term, covenant or condition of this Lease, regardless of the Landlord's knowledge of such preceding breach at the time of acceptance of any such Rent.

Section 24.02 Waiver of Compliance by Occupants and Transferees

24.02.01 If the Tenant requests that the Landlord waive the requirement of the Tenant to comply with its obligations set out in Subsection 8.07.01 with respect to a particular Occupant or Transferee in respect of a particular law at a particular time and the Tenant has provided the Landlord with all material and information related to such request, the Minister may, pursuant to Section 24.01, waive such obligations. In the event the Minister fails to notify the Tenant within thirty (30) days of receipt by the Landlord of the request and all relevant material and information that he does not waive such obligations, then the Minister shall be deemed, subject to Subsections 24.01.04 and 24.01.05, to have waived such obligations.

ARTICLE 25 - INSPECTION AND AUDIT

Section 25.01 Inspection

25.01.01 The Tenant covenants with the Landlord to permit the Landlord, Her servants, officers, employees, agents and persons authorized by the Minister at all reasonable times during the Term hereof to enter, inspect and view the Demised Premises or any part thereof, and to obtain any information and any document wherever located and to take extracts therefrom in order to determine the extent of compliance:

(a) by the Tenant and all Occupants and Transferees with all applicable laws;
and

(b) by the Tenant with this Lease;

and the Tenant shall permit access for any such purpose and shall ensure access for any such purpose and shall also ensure that the Person who has control of such information and documents permits access thereto all at no cost to the Landlord, Her servants, officers, employees, agents or persons authorized by the Minister.

Section 25.02 Audit

25.02.01 The Landlord may, at any time, and from time to time cause a complete audit to be made of any of the practices and procedures of the Tenant and any records of

the Tenant and any other matter relating in any way to this Lease, the Demised Premises, the Leasehold Interest or to the Tenant's business affairs or the Airport Undertaking.

- 25.02.02 For the purpose of any audit the Landlord shall have the right, without cost,
- (a) to have a Person or Persons on the Demised Premises to,
 - (i) examine, any records of the Tenant relating in any way to this Lease, the Demised Premises, the Leasehold Interest or to the Tenant's business affairs or the Airport Undertaking;
 - (ii) examine any practices and procedures relating in any way to this Lease, the Demised Premises, the Leasehold Interest or to the Tenant's business affairs or the Airport Undertaking;
 - (iii) obtain and use such other information as the Landlord or such Person considers relevant to the subject matter of the audit and the Tenant shall provide access thereto without hindrance, and
 - (b) to carry out tests, inspections and investigations on, in or under the Demised Premises or any part thereof.
- 25.02.03 For the purposes of this Section 25.02, the Landlord may enter into the Demised Premises Herself or by Her agents, servants, employees, contractors and subcontractors and with or without machinery or equipment and the Tenant shall ensure that all Occupants and Transferees shall permit such entry for such purposes.
- 25.02.04 The Tenant shall provide to the Landlord and to any Person conducting such audit appropriate space on the Demised Premises satisfactory to and at no cost to the Landlord or to such Person.

ARTICLE 26 - FORCE MAJEURE

Section 26.01 Force Majeure

- 26.01.01 Subject to Subsection 26.01.02 and Subsection 26.01.03, whenever and to the extent that either party is bona fide unable to fulfil or is delayed or restricted in fulfilling any of its obligations under this Lease by an event of Force Majeure, such party shall be relieved from the fulfilment of the part of its obligations affected by Force Majeure during the period of Force Majeure.
- 26.01.02 Notwithstanding an event of Force Majeure, the party affected shall proceed with the performance of its obligations not thereby affected.

26.01.03 The provisions of this Article shall not operate to excuse the Tenant from the payment of any Rent, the provision of or payment for any Insurance or any other obligation to pay money or from obtaining any Letter of Credit.

ARTICLE 27 - NOTICES

Section 27.01 Notice

27.01.01 All notices or other communications necessary for the purposes of this Lease shall be in writing and shall be delivered personally or by courier, or shall be sent by registered mail, prepaid post or sent by facsimile, addressed,

(a) in the case of Her Majesty, to:

MINISTER OF TRANSPORT
Tower "C", 330 Sparks Street
Ottawa, Ontario
K1A 0N5

Attention: Assistant Deputy Minister, Programs and
Divestiture

Telephone: (613) 990-3001

Facsimile: (613) 998-5008

or to such other address or facsimile number or addressed to such other person as the Minister may, from time to time, designate in writing to the Tenant;

(b) in the case of the Tenant, to:

Chairperson
Winnipeg Airports Authority Inc.
Administration Building
2000 Wellington Avenue
Winnipeg, Manitoba
R3H 1C1

Telephone: (204) 987-2022

Facsimile: (204) 774-1199

or to such other address or facsimile number or addressed to such other person as the Tenant may, from time to time, designate in writing to the Minister; and

(c) in the case of a Leasehold Mortgagee, to such address as the Leasehold Mortgagee may, from time to time, designate in writing to the Landlord.

27.01.02 If at any time during the Term there is more than one Person constituting the Tenant hereunder, any Notice given to any one of them shall be deemed to have been given to all of them.

27.01.03 Any notice or communication will be considered to have been received:

(a) in the case of facsimile, on actual receipt, and

(b) in all other cases, on the date of delivery.

If the postal service is interrupted, or threatened to be interrupted, or is substantially delayed, any notice shall be delivered personally or by facsimile.

ARTICLE 28 - LIMITED ASSETS

Section 28.01 Limitation

28.01.01 Subject to Section 30 of the ***Crown Liability and Proceedings Act***, R.S.C. 1985, c. C-50, if the Tenant at any time obtains any judgment or other judicial process (requiring the payment of any moneys) against the Landlord, only the interest of the Landlord in the Demised Premises shall be available for the satisfaction of any such judgment or process, and the Tenant shall look solely to the interest of the Landlord in the Demised Premises and not to any other assets of the Landlord.

ARTICLE 29 - AMENDMENTS AND ADDENDA

Section 29.01 Amendment

29.01.01 No amendment, variation, addition, deletion (which term includes "lining out"), rider or other change to this Lease shall have any force or effect unless it is in writing and unless it is signed by both the Minister and the Tenant.

29.01.02 This Lease may be amended by a written agreement signed by both the Minister and the Tenant at any time during the Term.

[NTD: Revised by Am. #11 to delete requirement for T-Board & GIC approvals.]

ARTICLE 30 - NO PARTNERSHIP, JOINT VENTURE OR AGENCY

Section 30.01 No Partnership, Joint Venture or Agency

- 30.01.01 The Landlord and Tenant expressly disclaim any intention to create a partnership, joint venture or joint enterprise. It is understood, acknowledged and agreed that nothing contained in this Lease nor any acts of the Landlord or the Tenant shall constitute or be deemed to constitute the Landlord and the Tenant as partners, joint venturers or principal and agent in any way or for any purpose, nor shall it create any relationship between the parties hereto other than the relationship of landlord and tenant. The Tenant shall not represent or hold itself out to be an agent of the Landlord. No party hereto shall have any authority to act for or to assume any obligation or responsibility on behalf of the other party hereto. The provisions of this Lease relating to Airport Base Rent and Airport Participation Rent are included solely for the purpose of providing a method whereby Rent is to be determined.
- 30.01.02 The Tenant shall, in all agreements in which the Tenant undertakes obligations of a financial nature and in all significant contractual and occupancy or lease relationships entered into by the Tenant with third parties relating to all or any part of the Demised Premises, ensure that the relevant agreement or lease contains a written acknowledgement whereby the third party acknowledges that it will not assert that a joint venture, partnership or principal-and-agent relationship exists between the Tenant and the Landlord.
- 30.01.03 The Tenant hereby agrees to indemnify the Landlord for any liability that the Landlord incurs towards a third party with respect to any obligation of the Tenant towards the third party by virtue of being found, in respect of the management, operation or maintenance of the Airport to be a partner or joint venturer with the Tenant or a principal of the Tenant.

ARTICLE 31 - MEMBERS OF HOUSE OF COMMONS NOT TO BENEFIT

Section 31.01 Members of House of Commons

- 31.01.01 As required by the *Parliament of Canada Act*, R.S.C. 1985, c. P-1, it is an express condition of this Lease that no member of the House of Commons shall be admitted to any share or part of this Lease or to any benefit to arise therefrom.

ARTICLE 32 - NAME

Section 32.01 Airport Name

- 32.01.01 In connection with the use to be made of the Demised Premises, the Tenant shall not change the name of the Airport without the prior written consent of the Minister

which consent may not be unreasonably withheld. In this regard, it is acknowledged that the current standards require that the name of an airport reflect the principal geographic area which the Airport serves. Any change in the name of the Airport shall be in accordance with any policy on names of airports of the federal Department of Transport.

ARTICLE 33 - PURPOSE OF APPROVALS OF PLANS, DRAWINGS AND SPECIFICATIONS AND INSPECTIONS BY THE LANDLORD

Section 33.01 Approval of Plans, Drawings and Specifications

33.01.01 It is understood and agreed that the Landlord's or the Minister's receipt, review, comments on or approval or non-approval for purposes of this Lease of any plan, drawing or specification is not for any professional, technical or regulatory purpose but is only to protect the Landlord's interest as owner and landlord. The Landlord or the Minister, in receiving, reviewing, commenting on, approving or not approving any plan, drawing or specification, is not making any representations nor is the Landlord or the Minister undertaking any responsibility whatsoever of a planning or of an engineering or architectural nature, the Tenant hereby assuming all such responsibility, liability and risk. Receipt by the Landlord of any plans, drawings or specifications shall not be construed to imply that the Landlord has examined or be deemed to have examined any such plan, drawing or specification.

Section 33.02 Inspections

33.02.01 It is understood and agreed that, whenever for the purposes of this Lease the Landlord or the Minister may inspect, any such inspection by the Landlord or the Minister is not for any professional, technical or regulatory purpose but is only to protect the Landlord's interest as owner and landlord. The Landlord, by inspecting and taking any subsequent action or by inaction, is not making any representations nor is the Landlord undertaking any responsibility of any nature whatsoever, the Tenant hereby assuming all such responsibility, liability and risk.

ARTICLE 34 - FURTHER ASSURANCES

Section 34.01 Further Assurance

34.01.01 The parties shall execute such further assurances as may reasonably be required to give effect to any provision of this Lease.

ARTICLE 35 - EMERGENCY PREPAREDNESS

Section 35.01 Emergency Preparedness

- 35.01.01 The Tenant shall provide to the Minister all support required by the Minister or by the member of the Queen's Privy Council for Canada accountable to the Parliament of Canada for transportation in Canada to fulfil his or her responsibilities under the **Emergency Preparedness Act**, R.S.C. 1985, c .E4.6 all at no cost to the Minister or such member.

ARTICLE 36 - PARAMOUNTCY OF FEDERAL AUTHORITY

Section 36.01 Paramountcy

- 36.01.01 Notwithstanding anything contained in this Lease relating to any provincial or municipal law, statute, by-law, regulation, code or other enactment, the Landlord hereby declares that no such reference shall be interpreted, construed or implied as a recognition by the Landlord that the Jurisdiction, any municipality, or any provincial or municipal law, statute, by-law, regulation, code or other enactment, has any jurisdiction over the Landlord or the Demised Premises.

ARTICLE 37 - ENVIRONMENT

Section 37.01 Environmental Baseline Study Report

- 37.01.01 The Landlord has commissioned at its cost an environmental site assessment and the preparation of an environmental report (the "**Environmental Baseline Study Report**") of the Lands and Existing Facilities by an independent consultant. The Environmental Baseline Study Report shall be effective as of the effective date indicated in the Environmental Baseline Study Report.
- 37.01.02 The Landlord shall furnish to the Tenant a copy of the Environmental Baseline Study Report forthwith upon receipt of the said report by the Landlord.
- 37.01.03 The Environmental Baseline Study Report shall be *prima fade* evidence between the parties hereto as to the existence of any substances affecting the soil of or the water in, on, over or under the Lands and the quantity thereof immediately prior to the Date of Commencement notwithstanding the effective date of the Environmental Baseline Study Report.

Section 37.02 Definitions

- 37.02.01 In this Lease:

“Applicable Environmental Laws” means all applicable laws from time to time in force respecting environmental matters and the protection of the environment generally;

“Applicable Federal Environmental Laws” means all applicable federal laws respecting environmental matters and the protection of the environment generally as those laws apply to the Tenant, but excludes Part II of the **Canada Labour Code**, as amended;

“Applicable Provincial Environmental Laws” means all applicable laws of the Province of Manitoba respecting environmental matters and the protection of the environment generally as those laws apply to the Tenant;

“Hazardous Substance” means any substance which causes an adverse environmental condition, and which

(a) was released, spilled, leaked or flowed from the Lands at any time before the Date of Commencement and was present in the soil of or the water in, on, over or under any adjacent land, or

(b) was present in the soil of or the water in, on, over or under the Lands, immediately prior to the Date of Commencement;

“Remedial Work” means any work required under:

(a) the Applicable Federal Environmental Laws, as amended or

(b) the Applicable Provincial Environmental Laws, as they existed immediately prior to the day on which the Agreement to Transfer was executed and delivered,

to remedy an adverse environmental condition caused by the existence of a Hazardous Substance.

37.02.02 For greater certainty, any substance referred to in Subsections 37.08.03, 37.08.05, 37.11.01, and 37.13.01 does not include a Hazardous Substance.

Section 37.03 Landlord’s Obligations

37.03.01 If and to the extent that a written notice, direction or order from any governmental body or authority or any regulatory agency, body or tribunal having jurisdiction to issue such order requires the performance of any Remedial Work (the **“Order”**), the Landlord shall, subject to Article 22 and Subsections 37.03.02 and 37.05.01,

- (a) at its own cost and expense, perform or cause to be performed such Remedial Work, or
- (b) subject to Section 37.06, contribute to the Tenant the portion of the contract price of any contract entered into by the Tenant which portion relates solely to the performance of such Remedial Work for which the Landlord is responsible.

37.03.02 The parties agree that, notwithstanding any other provision except Subsection 37.03.03, the obligation of the Landlord to perform Remedial Work or contribute to the Tenant a portion of a contract price under Subsection 37.03.01 does not include responsibility or liability for any work with respect to any substance:

- (a) to the extent that such substance was added to or put in, on or over or Under the Demised Premises or any soil of or water in, on, over or under the Demised Premises on or after the Date of Commencement;
- (b) to the extent that any action of any Person on or after the Date of Commencement contributed to the requirement for Remedial Work; or
- (c) which, on or after the Date of Commencement, is released, spilled, leaked or flowed from any container, tank, pipe, conduit, tube or any related or other equipment in which any such substance is contained or by or through which any substance is transmitted or transported.

37.03.03 Notwithstanding the provisions of Paragraph 37.03.02(c), in the case of any substance which, on the Date of Commencement, is releasing, spilling, leaking or flowing from any container, tank, pipe, conduit, tube or any related or other equipment in which any such substance is contained or by or through which any such substance is transmitted or transported, if the Tenant does not have actual knowledge thereof on the Date of Commencement, then the Landlord shall be responsible or liable for Remedial Work relating to such substance released, spilled, leaked or flowed after the Date of Commencement until the time when the Tenant acquires actual knowledge thereof as if such substance were a Hazardous Substance. Notwithstanding the definition "Hazardous Substance", such substance released, spilled, leaked or flowed after the Date of Commencement until such time when the Tenant acquires knowledge shall be deemed to be a Hazardous Substance for the purposes of any provision of this Article 37 or Article 16. The parties hereto agree that in such case there shall be an allocation of responsibility between the Landlord and the Tenant in proportion to the respective amounts of such substances released, spilled, leaked or flowed before and after the time when the Tenant acquired actual knowledge thereof.

37.03.04 The Landlord's obligations herein are for the exclusive benefit of the Tenant and successors and permitted assigns and shall not be for the benefit of any other Person. The Tenant may assign its rights under Article 37 provided that it complies

with the requirements of the *Financial Administration Act*, R.S.C. 1985, c. F-11.

Section 37.04 Notice of Hazardous Substance

37.04.01 In the event that, at any time during the Term, the Tenant receives an Order, the Tenant shall provide the Landlord with a copy of such Order, an estimate from a qualified, independent engineering consultant of the cost of performing the said Remedial Work and a notice requesting performance of such Remedial Work (**"Notice to Perform Remedial Work"**).

Section 37.05 Landlord's Obligation Concerning Remedial Work

37.05.01 The Landlord shall, subject to Subsection 37.05.03, have a period of ninety (90) days from the receipt of the Notice to Perform Remedial Work in which to determine whether

- (a) at its own cost and expense, to perform or cause to be performed any Remedial Work for which it is responsible; or
- (b) subject to Section 37.06, to contribute to the Tenant the portion of the contract price of any contract entered into by the Tenant which portion relates solely to the performance of the Remedial Work for which the Landlord is responsible.

37.05.02 In the event that the Landlord has not made an election permitted by Subsection 37.05.01 within ninety (90) days from receipt by the Landlord of the Notice to Perform Remedial Work with respect to Remedial Work for which the Landlord is responsible, the Landlord shall be deemed to have chosen the option referred to in Paragraph 37.05.01(b).

37.05.03 In the event that the Order requires the commencement of the Remedial Work within the ninety (90) days referred to in Subsection 37.05.01, the Tenant may request in the Notice to Perform Remedial Work that the Landlord make the election permitted by Subsection 37.05.01 within a period of five (5) Business Days and in such case the provisions of Subsection 37.05.01 and 37.05.02 shall apply as if the references to ninety (90) days were five (5) Business Days.

37.05.04 In the event that the Landlord makes an election under Section 37.05.01 to perform or cause to be performed any Remedial Work for which it is responsible, it shall at its own cost and expense

- (a) consult with the Tenant in advance and give the Tenant regular written reports regarding the detailed steps planned or taken to perform or cause to be performed the Remedial Work;

- (b) take all reasonable measures to minimize any disruption to the operations of the Tenant or the Occupants; and
- (c) if requested by the Tenant, obtain a certificate from an independent consultant designated or approved by the Tenant verifying the complete and proper performance of the Remedial Work or, if such is not the case, reporting as to the extent and nature of any failure to perform.

Section 37.06 Contract

- 37.06.01 The Tenant shall not perform any Remedial Work or enter into any contract to perform any Remedial Work for which it will claim any contribution from the Landlord without the prior written consent of the Minister, which consent may not be unreasonably withheld.
- 37.06.02 The Minister shall have a period of sixty (60) days from the receipt of a written request made by the Tenant to make a decision as to whether or not to give the consent referred to in Subsection 37.06.01. In the event that the Minister has not made the decision within sixty (60) days from receipt of a written request made by the Tenant, the Minister shall be deemed to have consented.
- 37.06.03 In the event that an Order requires the commencement of the Remedial Work referred to in such Order within the sixty (60) days referred to in Subsection 37.06.02, the Tenant may request in the Notice to Perform Remedial Work that the Landlord make the decision referred to in Subsection 37.06.02 within a period of five (5) Business Days of the end of the period referred to in Subsection 37.05.01 and in such case the provisions of Subsection 37.06.02 shall apply as if the references to sixty (60) days were five (5) Business Days.
- 37.06.04 In the event the contract to perform Remedial Work includes the performance of any other Work, then the contract shall identify and separate the portion of the contract price related solely to the Remedial Work for which the Landlord is responsible from all other Work being performed pursuant to that contract and the balance of the contract price. The Landlord's liability shall be limited to the portion of the contract price solely related to the Remedial Work for which the Landlord is responsible.
- 37.06.05 If the contract entered into by the Tenant is to perform more than the Remedial Work for which the Landlord is responsible, then the Landlord's obligation to contribute any portion of the contract price shall be conditional upon the identification and separation by the contractor in the contract, on a fair and accurate basis, of the portion of the contract price which is solely related to the Remedial Work for which the Landlord is responsible from all other Work being performed pursuant to that contract and the balance of the contract price.

Section 37.07 Landlord's Access to Perform Work

37.07.01 If the Landlord elects, pursuant to Subsection 37.05.01, to perform or to cause to be performed the Remedial Work for which the Landlord is responsible, the Landlord and Her officers, servants, employees, agents, contractors, subcontractors and consultants shall, subject to Subsection 37.05.04, have unrestricted and unimpeded access to the Demised Premises and may enter the Demised Premises with machinery and equipment at all reasonable times and without charge by the Tenant or any Occupant or Transferee in order to perform any such Remedial Work for which the Landlord is responsible.

Section 37.08 Compliance with Laws

37.08.01 Without limiting the generality of any other covenant herein, the Tenant shall, during the Term, at its own cost and expense, comply with, and shall ensure that all Occupants and Transferees comply with all Applicable Environmental Laws.

37.08.02 The Tenant shall, as soon as practicable, give written notice to the Landlord of the occurrence of any event during the Term in or on the Demised Premises which constitutes a contravention of or non-compliance with any Applicable Environmental Law ("**Event**").

37.08.03 If the Tenant shall, either alone or with others, cause during the Term the happening of any Event, the Tenant shall, at its own expense:

- (a) as soon as practicable, give the Landlord notice to that effect and thereafter give the Landlord from time to time written notice of the extent and nature of the Tenant's compliance with the following provisions of this Subsection;
- (b) as soon as practicable, perform any Work to rectify the contravention or non-compliance, which will result in conformity and compliance with all Applicable Environmental Laws;
- (c) if requested by the Landlord, obtain a certificate from an independent consultant designated or approved by the Landlord verifying the complete and proper compliance with the requirements of Applicable Environmental Laws or, if such is not the case, reporting as to the extent and nature of any failure to comply with Applicable Environmental Laws;
- (d) as soon as practicable, cease any activity which constitutes an Event and which causes or permits any substance to be released, spilled, leaked or to flow onto or into the Demised Premises or any adjacent land, air or water or results in any substance being released into the environment; and

- (e) if requested by the Landlord, obtain a certificate from an independent consultant designated or approved by the Landlord verifying that any activity referred to in Paragraph (d) above has ceased.

37.08.04 Subject to Subsection 37.03.03, the Tenant shall, at its own cost and expense, remedy any damage to the Demised Premises or adjacent land, air or water caused on or after the Date of Commencement by the occurrence of any Event or caused by the performance of any Work to rectify the contravention or non-compliance with any Applicable Environmental Law.

37.08.05 If any governmental authority having jurisdiction shall require the clean-up of any substance held, released, spilled, leaked, abandoned, flowing onto or into or placed upon the Demised Premises or any adjacent land, air or water or released into the environment during the Term, as a result of any use or occupancy of the whole or any part of the Demised Premises during the Term, then the Tenant shall, at its own cost and expense, prepare all necessary studies, plans and proposals and submit the same to the Landlord for approval, provide all bonds and other security required by governmental authorities having jurisdiction and carry out the Work required, and shall keep the Landlord fully informed and provide to the Landlord full information with respect to proposed plans and comply with the Minister's reasonable requirements with respect to such plans.

Section 37.09 Inquiries by Landlord

37.09.01 The Tenant hereby authorizes the Landlord to make enquiries from time to time of any government or governmental agency with respect to the Tenant's compliance with any Applicable Environmental Law pertaining to the Tenant, any Occupant or any Transferee, the Demised Premises and any business conducted on or from the Demised Premises, including any law pertaining to an adverse environmental condition and the protection of the environment; and the Tenant covenants and agrees that the Tenant will from time to time forthwith on demand provide to the Landlord such written authorization as the Minister may reasonably require in order to facilitate the obtaining by the Landlord of such information.

Section 37.10 Landlord's Right to have Environmental Audit Performed

37.10.01 The Landlord may, at any time, and from time to time, enter on the Demised Premises to determine the existence of any substance in or on any part of the Demised Premises which causes or contributes to an adverse environmental condition, and for such purpose the Landlord may, without limitation, carry out soils, water, air, environmental or other tests, measurements or surveys in, on or below the Demised Premises or any part thereof.

Section 37.11 Tenant to Perform

37.11.01 Subject to Subsection 37.03.03, the Tenant shall, forthwith on Notice, at its own cost and expense, carry out

- (a) any Work requested by the Landlord

(i) to remedy any adverse environmental condition caused or contributed to by:

1. the existence of any substance on the Demised Premises, or
2. any act or omission of any Person on or after the Date of Commencement

to the extent that such adverse environmental condition,

3. constitutes a contravention of or non-compliance with any Applicable Environmental Law, or
4. may significantly adversely affect the value of the Demised Premises; or

(ii) to remove any substance which causes any adverse environmental condition to the extent that any such substance may significantly adversely affect the value of the Demised Premises.

37.11.02 The Tenant shall, at its own cost, cause an environmental audit of the Demised Premises to be undertaken and an environmental audit report to be prepared and completed, on the earlier of

- (a) at least three (3) years before the expiry of the Term or of the renewal Term if the Tenant has exercised its option to renew the Term, or
- (b) forthwith upon early termination of this Lease.

The Tenant shall submit a copy of such report to the Landlord within thirty (30) days of receipt by the Tenant of such report. Subject to Subsection 37.03.03, the Tenant shall, at its own cost, remedy any adverse environmental condition revealed by such environmental audit report to the extent that such adverse environmental condition,

(c) constitutes a contravention of or non-compliance with any Applicable Environmental Law, or

(d) may significantly adversely affect the value of the Demised Premises,

before the expiry of the Term or the renewal Term, or early termination, as the case may be, provided that nothing herein requires the Tenant to take any action in respect of a Hazardous Substance. The Tenant shall, at its own cost and expense, prepare all

plans, consult with the Landlord in advance and give the Landlord regular written reports regarding the detailed steps planned or taken to perform or cause to be performed the Work to remedy such adverse environmental condition and, if requested by the Landlord, obtain a certificate addressed to the Landlord from an independent consultant designated or approved by the Landlord verifying as to the complete and proper performance of the Work to remedy such adverse environmental condition and shall deliver to the Landlord such report.

Section 37.12 Landlord May Perform

37.12.01 In the event that the Tenant fails to promptly commence and diligently complete any Work it is required to perform pursuant to Section 37.08 or Section 37.11, the Landlord may enter onto the Demised Premises Herself or by Her agents, servants, employees, contractors and subcontractors with machinery and equipment and may perform any such Work at the cost and expense of the Tenant, but having commenced such Work, the Landlord shall have no obligation to the Tenant to complete such Work.

Section 37.13 Ownership of Substances

37.13.01 If, after the Date of Commencement, the Tenant shall bring, permit, suffer or create any substance in, on or under the whole or any part of the Demised Premises

- (a) which causes or contributes to any adverse environmental condition, or
- (b) which the Tenant is required to remove under Subsection 37.11.01,

then, notwithstanding any present or future statutory provision or legal presumption to the contrary unless the Tenant is prohibited by a statute from agreeing not to be subject to such statutory provision or legal presumption, such substance shall be and remain the sole and exclusive property of the Tenant and shall not become the property of the Landlord notwithstanding the degree of affixation of the substance or the goods containing such substance to the Demised Premises and notwithstanding the expiry or early termination of this Lease.

Section 37.14 Survival of Covenants

37.14.01 The rights and obligations of the Landlord and the rights and obligations of the Tenant in this Article 37 shall survive the expiry or early termination of this Lease save only that, to the extent that the performance of those obligations requires access to or entry upon the Demised Premises or any part thereof after the expiry or early termination of this Lease, the Tenant shall have such entry and access only at such times and upon such terms and conditions as the Minister may from time to time specify, acting reasonably.

Section 37.15 Transitional Relief

37.15.01 Notwithstanding any of the provisions of this Article 37, the Tenant shall not, for a period of four (4) years from the Date of Commencement or for such longer period as the Minister may in his discretion authorize, be in default of this Lease by reason of a failure to comply with any of its obligations under this Article 37 by continuing a practice or by allowing a condition to exist if

- (a) such practice was a practice generally followed by the Landlord, or
- (b) such condition existed

immediately prior to the Date of Commencement.

Section 37. 16 Environmental Management Plan

37.16.01 The Tenant shall prepare, establish and adopt an environmental management plan for the Demised Premises as soon as practicable after the Date of Commencement and, from time to time thereafter, shall revise and update such plan as may be necessary.

37.16.02 The Tenant shall, from time to time, at the request of the Minister, provide to the Landlord free of charge,

- (a) a copy of the then current environmental management plan for the Demised Premises together with any supporting or related information as the Minister may reasonably require to satisfy himself that the activities of the Tenant and those of all Occupants on or at the Airport are conducted in an environmentally responsible manner, and
- (b) any information, documents and supporting material which the Minister may reasonably require for the Landlord to comply with any statutory obligation.

ARTICLE 38 - ENTRY BY LANDLORD

Section 38.01 Entry by the Landlord

38.01.01 Except where the Landlord intends to terminate this Lease, no entry by or on behalf of the Landlord and no act on the Demised Premises by or on behalf of the Landlord shall be deemed to be a forfeiture or termination of this Lease, and the Tenant shall permit such entry and any such act and shall ensure that all Occupants and Transferees permit any such entry and any such act.

ARTICLE 39 - USE BY STATE AIRCRAFT

Section 39.01 Use by State Aircraft

- 39.01.01 The Tenant covenants and agrees that all civil aircraft owned by and exclusively used in the service of a foreign state or Her Majesty in right of Canada or in right of any Province and all military and defence aircraft used in the service of Her Majesty shall be permitted access on the Demised Premises, the right to land on and take-off from and park on the Demised Premises without hindrance and at no cost whatsoever. The Tenant specifically agrees not to attempt to collect any fees or charges in this regard whatsoever.
- 39.01.02 For greater certainty, the Tenant agrees that any aircraft used for any service provided by the Landlord shall be permitted:
- (a) access to the Demised Premises,
 - (b) the right to land,
 - (c) the right to take-off, and
- without hindrance and at no cost whatsoever.

ARTICLE 40 - RIGHT TO LEGISLATE

Section 40.01 Right to Legislate

- 40.01.01 Nothing in this Lease shall prohibit, restrict or affect the right or power of the Parliament of Canada to enact any laws whatsoever with respect to any area of law for which the Parliament of Canada has legislative jurisdiction, including aeronautics, the Airport or any part thereof, the operation or use of the Airport or any part thereof, and laws relating to any economic regulation of airports, even if the enactment of any such law affects this Lease, its interpretation or the rights of either party.

ARTICLE 41 - RIGHT TO CHARGE

Section 41.01 Right to Charge

- 41.01.01 Nothing in this Lease shall prohibit, restrict, or affect the right of Her Majesty to assess or impose on the Tenant or on any other Person:
- (a) any charge or fee which Her Majesty has the power under any law to assess or impose;

- (b) any charge or fee with respect to any service provided by Her Majesty; and
- (c) any charge or fee with respect to or related to Her Majesty's position as a regulator.

41.01.02 Nothing in this Lease precludes the Tenant and its successors and permitted assigns from charging and taking whatever lawful action the Tenant deems appropriate in order to charge and collect any landing fees, general terminal fees and other user charges, including an Airport Improvement Fee. [NTD: Revised by Am#4 to replace "Passenger Facility Charge" with "Airport Improvement Fee".]

ARTICLE 42 - SEVERABILITY

Section 42.01 Severability

42.01.01 Subject to Subsection 42.01.02, if, for any reason whatsoever, any provision of this Lease, or the application thereof to any Person or circumstance, is, to any extent, held or rendered invalid, void, illegal or unenforceable for any reason whatsoever, then the particular provision:

- (a) shall be deemed to be independent of and severed from the remainder of this Lease and all the other provisions of this Lease shall nevertheless continue in full force and effect; and
- (b) continues to be applicable and enforceable to the fullest extent permitted by law against any Persons and in any circumstances other than those as to which it has been held or rendered invalid, void, illegal or unenforceable.

42.01.02 Notwithstanding Subsection 42.01.01, if any such holding shall result in the Landlord deriving a Rent from the Demised Premises less than that contemplated herein, then this Lease shall be amended as frequently as necessary so as to ensure that for each Lease Year a sum equal to the Rent for that Lease Year as provided herein is paid by the Tenant to the Landlord for that Lease Year.

ARTICLE 43 - CONFIDENTIALITY

Section 43.01 Confidentiality

43.01.01 The Tenant acknowledges that the Landlord is subject to the **Access to Information Act**, R.S.C. 1985, c. A-1 and may be required to release this Lease

and any other information or documents in Her possession or control relating to this Lease pursuant to the ***Access to Information Act***.

ARTICLE 44 - DIRECT COMPETITION BY LANDLORD

Section 44.01 Direct Competition by Landlord

- 44.01.01 If the Tenant is continuously and actively meeting on the Demised Premises any capacity and demand requirements for airport and aviation services, the Landlord will not construct and operate, during the Term, an airport as a Major International Airport within seventy-five (75) kilometres from any point on the perimeter of the Lands.
- 44.01.02 Nothing in this Article 44 shall prohibit, restrict, affect or reduce:
- (a) the right or power of the Parliament of Canada to enact laws;
 - (b) the Landlord's right to construct or operate the St. Andrews airport in any manner it deems appropriate and
 - (c) **[intentionally deleted]**
 - (d) the Landlord's right to levy and collect (subject to any of the other Instruments) taxes, fees and charges related to any governmental function, including any:
 - (i) air transportation tax,
 - (ii) ticket tax,
 - (iii) regulatory fees,
 - (iv) local air navigation service fees,
 - (v) en route fees, and
 - (vi) charge or fee to recover any direct and indirect cost to the Landlord of providing any service on the Demised Premises.

ARTICLE 45 - ENTIRE AGREEMENT

Section 45.01 Entire Agreement

45.01.01 The Agreement to Transfer, this Lease and the other Instruments set forth the entire agreement and all the covenants, promises, assurances, agreements, representations, conditions, warranties, statements and understandings (collectively "**Representations**") between the Landlord and the Tenant concerning the subject matter hereof. No covenants promises, assurances, agreements, representations, conditions, warranties, statements or understandings expressed, implied or otherwise are made by the Landlord to the Tenant or by the Tenant to the Landlord except as expressly set out in the Agreement to Transfer, this Lease and the other Instruments.

ARTICLE 46 - AGREEMENT TO SUPERSEDE

Section 46.01 Agreement to Supersede

46.01.01 The Agreement to Transfer, this Lease and the other Instruments supersede and revoke all negotiations, arrangements, letters of intent, offers to lease, lease proposals, brochures and information conveyed, whether oral or in writing, between the parties hereto or their respective representatives or any other Person purporting to represent the Landlord or the Tenant. The Tenant agrees that:

- (a) it has not been induced to enter into the Agreement to Transfer, this Lease, or the other Instruments by any agreements, representations, conditions, warranties, statements or understanding not set forth in the Agreement to Transfer, this Lease or the other Instruments;
- (b) it has not relied on any covenants, promises, assurances, agreements, representations, conditions, warranties, statements or understandings, save and except Representations;
- (c) it has conducted its own due diligence examinations in order to satisfy itself of the full, true and plain disclosure of the facts;
- (d) no covenants, promises, assurances, agreements, representations, conditions, warranties, statements or understandings, save and except Representations shall be used in the interpretation or construction of the Agreement to Transfer, this Lease or the other Instruments; and
- (e) no Claims arising as a result of, or from, any covenants, promises, assurances, agreements, representations, conditions, warranties, statements or understanding, save and except Representations shall

accrue to or be pursued by the Tenant and the Landlord shall have no liability for any such Claims.

ARTICLE 47 - TIME OF THE ESSENCE

Section 47.01 Time of the Essence

47.1.01 Time shall in all respects be of the essence of this Lease, except as otherwise expressly provided herein.

ARTICLE 48 - ABORIGINAL CLAIMS

Section 48.01 Aboriginal Claims

48.01.01 The Tenant shall not be liable for or called upon to contribute to any amount paid by the Landlord in settlement of an Aboriginal Claim.

ARTICLE 49 - GOOD FAITH

Section 49.01 Good Faith

49.01.01 The Tenant shall at all times exercise all its rights hereunder in a manner consistent with good business practices as would a reasonable and prudent owner, shall act in good faith and in conformity with its constating documents and by-laws, and shall use its best efforts to generate optimum revenues and Rent.

ARTICLE 50 - PERPETUITIES

Section 50.01 Perpetuities

50.01.01 Notwithstanding anything to the contrary contained in this Lease, any right of any party to acquire any interest in property or to extend the Term in circumstances where such acquisition or extension would be subject to the rule of law known as the rule against perpetuities shall cease, determine, and be at an end not later than the expiration of twenty-one (21) years after the death of the last surviving lineal descendant of Her Majesty Queen Elizabeth II living on the date hereof.

ARTICLE 51 - ARBITRATION

Section 51.01 Arbitration

- 51.01.01 Any dispute or difference between the parties hereto arising,
- (a) under this Lease (other than Paragraphs 19.01.02(d) or 19.01.02(e)) or any of the Instruments which involves only a question of fact, or
 - (b) under Paragraph 19.01.02(d) as to whether or not the terms and conditions of an Occupant Agreement in the Ordinary Course of Operations are consistent with good business practices exercised by prudent landlords in similar circumstances at the time of execution and delivery of such Occupant Agreement, or
 - (c) under Paragraph 19.01.02(e) as to whether or not the entering into a Non-Disturbance Agreement in respect of an Occupant Agreement is consistent with good business practices exercised by prudent head landlords in similar circumstances at the time of execution and delivery of a Non-Disturbance Agreement
- may be referred to an arbitration tribunal for an award and determination by written submission signed by either the Minister or the Tenant.
- 51.01.02 The parties hereto agree that the award and determination of the arbitration tribunal shall be final and binding on both parties hereto.
- 51.01.03 The arbitration tribunal shall be governed by the Commercial Arbitration Code referred to in the **Commercial Arbitration Act**, R.S.C. 1985, c. C34.6.

Section 51.02 Arbitration Tribunal

- 51.02.01 The arbitration tribunal shall consist of three (3) arbitrators, one (1) appointed by each of the parties hereto and the third appointed by the first two (2) arbitrators.
- 51.02.02 The arbitration tribunal shall decide the dispute or difference in accordance with the laws in force in the Jurisdiction. The arbitration tribunal shall not be authorized to decide *ex aequo et bono* or as *amiable compositeur*.

Section 51.03 Proceedings

- 51.03.01 The proceedings shall take place in the Jurisdiction, unless the parties hereto agree otherwise.
- 51.03.02 The language to be used in the proceedings is English unless the parties hereto agree otherwise.

51.03.03 All written communication shall be delivered to the parties hereto in the manner provided for in Subsection 27.01.01.

Section 51.04 Obligations During Arbitration

51.04.01 During the progress of arbitration, the parties hereto shall continue to perform their obligations under this Lease and all of the Instruments.

ARTICLE 52 - ASSIGNMENT OF AIR NAVIGATION SERVICES

Section 52.01 Assignment of Air Navigation Services

52.01.01 If, after the Date of Commencement, Her Majesty reassumes the operation of the Licensed Civil Air Navigation Services Assets and the management, operation, maintenance and development of such Assets and the Air Navigation System Services at the Airport, this Lease shall be amended as follows:

(a) The definition "**Licensed Civil Air Navigation Services Assets**" shall be amended by deleting the reference to NAVCAN therein and replacing it with "**Her Majesty**".

(b) Section 3.04 shall be amended by adding a new Subsection thereto to read as follows:

3.04.02 "In addition Her Majesty shall have the right and the licence required by the Landlord for purposes of providing the Civil Air Navigation Services."

(c) Subsection 3.03.01 shall be amended by adding a new paragraph to read as follows:

"3.03.01 (g) a right and licence for Licensed Civil Air Navigation Services Assets in favour of the Landlord;"

(d) Subsection 3.04.02 shall be renumbered as 3.04.03 and shall be amended by adding the words and numbers

"or Subsection 3.04.02" after the numbers "3.04.01",

(e) Subsection 3.07.01 shall be amended by inserting the words:

"or to any Licensed Civil Air Navigation Services Asset",

after the words

“occupied or used by the Landlord”,

(f) add Subsection 16.06.05 after Subsection 16.06.04 as follows:

“16.06.05 Her Majesty shall contribute to the Tenant in respect of the cost to the Tenant to remedy any adverse environmental condition on land which is, on the Date of Commencement, the subject matter of a sublease to Navcan up to an amount calculated by multiplying the amount received by Her Majesty from Navcan pursuant to Article 22 of the Aviation Services and Facilities Agreement by the numerical value obtained by dividing the C.F.I. for the calendar month prior to the calendar month in which the Tenant first expends money in respect of such cost to remedy such adverse environmental condition by the C.F.I. for the calendar month after the calendar month in which Her Majesty receives the amount from Navcan pursuant to Article 22 of the Aviation Services and Facilities Agreement.”,

ARTICLE 53 - REGISTRATION

Section 53.01 Registration

53.01.01 The Tenant may register either this whole Lease or a notice or short form thereof (**“Notice or Short Form of Lease”**). In the event the Tenant elects to register a Notice or Short Form of Lease, both the Notice or Short Form of Lease and the application to register such Notice or Short Form of Lease shall:

- (a) be subject to the prior written approval of the Landlord or Her solicitors at the Tenant’s expense; and
- (b) as a minimum, name the parties, describe the Demised Premises, state the Date of Commencement, state the expiry date of the Term and set out in full Sections 3.04, 3.05 and 3.06 and Article 18 and any other provision required by the Landlord.

53.01.02 All costs, expenses and taxes necessary to identify the Lands, register, file or record this Lease, or to prepare, register, file or record the Notice or Short Form of Lease or the application to register the Notice or Short Form of Lease shall be the sole responsibility of the Tenant, and the Tenant shall complete any necessary affidavits required for registration purposes and immediately provide the Landlord

with a complete certified copy of the Lease or the Notice or Short Form of Lease containing the details of registration. Upon the expiry or early termination of this Lease, the Tenant shall, at its cost and expense, forthwith remove and discharge this Lease and any such Notice or Short Form of Lease from the title of the Demised Premises. This obligation shall survive the expiry or early termination of this Lease.

53.01.03 The Tenant undertakes not to grant any Leasehold Mortgage or other security interest in priority to any of the Instruments or any sublease or other interest or right in favour of Her Majesty required under or contained in any of the Instruments.

53.01.04 The Landlord and the Tenant hereby agree that notwithstanding that a Short Form of Lease is entered into and registered, this Lease and not any Short Form of Lease shall, for all purposes, be and contain all the terms and conditions of the agreement between the Landlord and the Tenant with respect to the subject matter hereof. The Landlord and the Tenant further agree that, in the event of any conflict between this Lease and any Short Form of Lease, this Lease shall prevail.

ARTICLE 54 - RIGHT OF FIRST REFUSAL

Section 54.01 Transfer by Landlord

54.01.01 Subject to Subsection 54.01.02, the Landlord shall not sell, transfer, or otherwise dispose of the whole or any part of its reversionary interest in the Demised Premises or any of its right, title and interest in this Lease without first complying with the terms of Subsection 54.01.04.

54.01.02 Notwithstanding the provisions of Subsection 54.01.01, the Landlord may sell, transfer or otherwise dispose of the whole or any part of its reversionary interest in the Demised Premises or any of its right, title and interest in this Lease to any Crown Corporation or to any agent of Her Majesty in right of Canada, or Her Majesty in right of the Province of Manitoba or to any crown corporation or agent thereof, or to any municipality or regional municipality or any agent thereof, or to any similar governmental authority, provided that the Landlord has informed the Tenant before proceeding to sell, transfer or otherwise dispose of the whole or any part of its reversionary interest in the Demised Premises or its right, title and interest in this Lease and the terms of Subsection 54.01.03 have been complied with.

54.01.03 Any transferee referred to in Subsection 54.01.02 shall agree as part of the terms and conditions of the transfer

(a) where such transferee is a Crown Corporation

(i) to assume the obligation of the Landlord under Subsection 54.01.01, or,

(ii) where the Crown Corporation is privatized, to transfer to the Landlord its reversionary interest in that part of the Demised Premises in which it has an interest or to reassign to the Landlord its right, title and interest in this Lease; and

(b) where the transferee is not a Crown Corporation to assume the obligation of the Landlord under Subsection 54.01.01.

54.01.04 If the Landlord receives during the Term a bona fide offer (the “**Third Party Offer**”) to purchase or otherwise acquire the whole or any part of its reversionary interest in the Demised Premises or its right, title and interest in this Lease from a third party (the “**Third Party**”) who is

(a) dealing at arm’s length with the Landlord, and

(b) other than a third party described in Subsection 54.01.02,

and the Landlord is prepared to accept such offer, the Landlord shall, before accepting the Third Party Offer, deliver to the Tenant a true copy of the Third Party Offer and the Tenant shall be allowed thirty (30) Business Days from the date of delivery thereof in which to deliver to the Landlord an offer to purchase the interest which is the subject matter of the Third Party Offer at the same price and upon the same terms and conditions as contained in the Third Party Offer (the “**Matching Offer**”).

54.01.05 If the Tenant delivers a Matching Offer to the Landlord within the thirty (30) Business Day period referred to in Subsection 54.01.04, then the Landlord shall reject the Third Party Offer and shall either

(a) proceed to convey to the Tenant pursuant to the Matching Offer, the interest which is the subject of the Third Party Offer, or

(b) reject the Matching Offer.

The decision to accept the Matching Offer would be subject to the approval of the Treasury Board and the Governor in Council at that time. If the Landlord rejects the Matching Offer, then, except for a sale, transfer or disposition contemplated in Subsection 54.01.02, the Landlord may not agree thereafter during the Term to sell, transfer or otherwise dispose of the interest which is the subject of the Third Party Offer without compliance with the provisions of Subsection 54.01.04.

54.01.06 If the Tenant fails to submit a Matching Offer within the 30 Business Day Period, then the Landlord shall be free to accept the Third Party Offer.

ARTICLE 55 - ACCEPTANCE

Section 55.01 Acceptance

- 55.01.01 The Tenant hereby accepts this Lease of the Demised Premises to be held by it as tenant and subject to the conditions, restrictions and covenants herein set forth.
- 55.01.02 The Tenant hereby declares that it is authorized to execute this Lease by resolution (attached hereto as Schedule "M") of its Board passed on the ___ day of _____ 1996.

ARTICLE 56 - QUIET ENJOYMENT

Section 56.01 Quiet Enjoyment

- 56.01.01 Subject to the other provisions of this Lease, if the Tenant pays the Rent and other sums herein provided when due, and punctually observes and performs all of the terms, covenants and conditions on the Tenant's part to be observed and performed hereunder, the Tenant shall peaceably and quietly hold and enjoy the Demised Premises for the Term without hindrance or interruption by the Landlord or any other Person lawfully claiming under the Landlord, subject, nevertheless, to the terms, covenants and conditions of this Lease and any of the other Instruments.

SCHEDULE "A"

Legal Description

Winnipeg James Armstrong Richardson International Airport

FIRSTLY: PARCELS "A", "V2", "V3", "W1", "Z19", "Z20" AND "Z22" PLAN 34260 WLTO IN NW 1/4 11 AND SW 1/4 14-11-2 EPM, IN OTM LOTS 12 TO 32 AND LOTS 14"A" AND 15"A", IN PARK LOTS "D", "E", "F", "G", "H", "I" AND "J", IN RL 12 TO 32, AND IN GOVERNMENT ROAD ALLOWANCES, AND IN TWO MILE ROAD (NOW CLOSED), PARISH OF ST JAMES.

SECONDLY: PARCELS ~~B AND E~~ PLAN 34260 WLTO IN NW 1/4 11 AND SW 1/4 14-11-2 EPM AND IN OTM LOTS 12 TO 32 AND LOTS 14A AND 15A AND PARK LOTS D, E, F, G, H, I AND J AND IN RL 12 TO 32 AND GOVERNMENT ROAD ALLOWANCES AND TWO MILE ROAD (NOW CLOSED) PARISH OF ST JAMES

[NTD: Revised by Am#9 to remove Parcel B, aka, the Moray Lands.]

THIRDLY: PARCELS Z11, Z12, Z14, Z15, Z16 AND Z17 PLAN 34260 WLTO IN NW 1/4 11 AND SW 1/4 14-11-2 EPM AND IN OTM LOTS 12 TO 32 AND LOTS 14A AND 15A AND PARK LOTS D, E, F, G, H, I AND J AND IN RL 12 TO 32 AND GOVERNMENT ROAD ALLOWANCES AND TWO MILE ROAD (NOW CLOSED) PARISH OF ST JAMES

FOURTHLY: PARCELS A, B, C, E AND F PLAN 34261 WLTO IN E 1/2 15, SE 1/4 21 AND S 1/2 22-11-2 EPM AND IN OTM LOTS 12, 13, 14A, 15A AND 16 TO 19 AND GOVERNMENT ROAD ALLOWANCE (NOW CLOSED) PARISH OF ST JAMES

FIFTHLY: PARCEL "Z18" PLAN 33905 WLTO IN OTM LOTS 31 AND 32 PARISH OF ST JAMES

[NTD: Revised by Am#6 to add 5th parcel, aka, the "Ryan Lands".]

SIXTHLY: PARCEL 1: ALL THAT PORTION OF LOT 7 PLAN 450 WLTO WHICH LIES SOUTH AND EAST OF THE SOUTHEASTERN LIMIT OF THE CANADIAN PACIFIC RAILWAY PLAN 4626 WLTO IN RL 12 PARISH OF ST. JAMES.

PARCEL 2: ALL THAT PORTION OF THE GOVERNMENT ROAD ALLOWANCE BETWEEN THE INNER AND OUTER TWO MILES OF THE PARISH OF ST. JAMES NOW CLOSED AND SHEWN COLOURED GREEN ON PLAN 2818 WLTO BOUNDED AS FOLLOWS: ON THE NORTH AND SOUTH BY THE NORTHERN AND SOUTHERN LIMITS OF SAID CLOSED GOVERNMENT

ROAD ALLOWANCE ON THE WEST AND EAST BY THE STRAIGHT PRODUCTIONS SLY OF 2 LINES DRAWN EAST OF PARALLEL WITH THE PERP DISTANT 67.6 FEET AND 127.6 FEET RESPECTIVELY FROM THE WESTERN LIMIT OF LOT 7 PLAN 450 WLTO

PARCEL 3: ALL THAT PORTION OF PARK LOT "C" PARISH OF ST. JAMES LYING TO THE SOUTHEAST OF THE SOUTHEASTERN LIMIT OF RAILWAY PLAN 4626 WLTO WHICH LIES TO THE EAST OF A LINE DRAWN WEST OF, PARALLEL WITH AND PERP DISTANT 302.6 FEET FROM EASTERN LIMIT OF SAID LOT.

[NTD: Revised by Am#9 to add 6th parcel, aka, the "MacDon Lands".]

THIS IS SCHEDULE "B" TO THE GROUND LEASE BETWEEN HER MAJESTY THE QUEEN IN RIGHT OF CANADA AND THE WINNIPEG AIRPORTS AUTHORITY INC.

PLAN

[The Minister of Transport will attach hereto, on the Closing Date, the plan of the Airport more fully described in Schedule "A"]

[NTD: Available on request]

THIS IS SCHEDULE "C" TO THE GROUND LEASE BETWEEN HER MAJESTY THE QUEEN IN RIGHT OF CANADA AND THE WINNIPEG AIRPORTS AUTHORITY INC.

LAND USE PLAN

[NTD: Available on request]

**THIS IS SCHEDULE "D" TO THE GROUND LEASE BETWEEN HER MAJESTY THE
QUEEN IN RIGHT OF CANADA AND THE WINNIPEG AIRPORTS AUTHORITY INC.**

LETTER OF CREDIT FORMAT

Letter of Credit

WHEREAS Her Majesty the Queen in right of Canada ("Her Majesty") as represented by the Minister of Transport has entered into a lease with the Winnipeg Airports Authority Inc. ("Applicant") which lease was executed on the _____ day of _____ and is registered in the Legal Registry of the Department of Transport as instrument # _____ ("Lease");

AND WHEREAS a Letter of Credit is required pursuant to Section 5.08 of the Lease.

1. We, the undersigned, (name and address of financial institution)

(herein called the "financial institution", hereby issue this irrevocable Letter of Credit in favour of Her Majesty (the "beneficiary") in the amount of (\$ _____) which may be drawn upon by the Minister representing the beneficiary by presentation of a written demand for payment signed by the Minister, to the extent required for the performance by the Winnipeg Airports Authority Inc. (herein called the "Applicant") (insert address of Applicant) of Section 5.08 of the Lease.

2. The amount of this Letter of Credit may be reduced from time to time as advised by the Minister giving notice in writing to the financial institution.
3. Upon presentation of a written demand for payment at the above address, signed by the Minister, the financial institution will make payment hereunder to the Receiver General for Canada by way of the financial institution's draft without:
 - (a) inquiring about the validity or sufficiency of the demand or the right of Her Majesty to such payment,
 - (b) recognizing a claim by any person, and
 - (c) any reference to the state of accounts as between the financial institution and the Applicant.

In its written demand for payment, the Minister shall certify that Her Majesty is entitled to receive payment under this Letter of Credit by virtue of the terms and conditions of the Lease.

4. This irrevocable Letter of Credit expires on the _____ day of _____ 19____, subject to the following. This irrevocable Letter of Credit shall be deemed to be automatically extended without any formal amendment for one year from the present or any future expiration date unless, not less than sixty (60) days prior to any such date, the financial institution notifies the Minister in writing that the financial institution elects not to extend this irrevocable Letter of Credit for any further period, in which event the financial institution shall, after presentation to the financial institution at the above address of a written demand for payment, signed by the Minister, pay Her Majesty with such written notice of election a draft in the amount of the Letter of Credit less the amount of any previous drawings.
5. Partial drawings are permitted under this Letter of Credit where written demand for payment is presented by the Minister, signed by the Minister certifying that Her Majesty is entitled to receive partial payment under this Letter of Credit by virtue of the terms and conditions of the Lease. The amount so drawn under this clause shall be subtracted from the face amount of the Letter of Credit and shall be endorsed on the reverse side of this Letter of Credit.
6. This irrevocable Letter of Credit bears the following reference number of the financial institution. The number and date of this Letter of Credit and the name of the financial institution must be quoted on all documents presented.
7. This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1983 Revision, International Chamber of Commerce, Paris, France, as revised from time to time) and engages us in accordance with the terms thereof.

For (name of financial institution):

Signed

(Authorized Signature)

Countersigned

(Authorized Signature)

Date:

THIS IS SCHEDULE "E" TO THE GROUND LEASE BETWEEN HER MAJESTY
THE QUEEN IN RIGHT OF CANADA AND THE WINNIPEG AIRPORTS
AUTHORITY INC.

LIST OF EXISTING REVENUE AGREEMENTS

[The Minister of Transport will list herein, on the Closing Date, the Existing
Revenue Agreements]

[NTD: Available on request]

THIS IS SCHEDULE "F" TO THE GROUND LEASE BETWEEN HER MAJESTY THE QUEEN IN RIGHT OF CANADA AND THE WINNIPEG AIRPORTS AUTHORITY INC.

LIST OF EXISTING EXPENDITURE AGREEMENTS

[The Minister of Transport will list herein, on the Closing Date, the Existing Expenditure Agreements]

[NTD: Available on request]

**THIS IS SCHEDULE "G" TO THE GROUND LEASE BETWEEN HER MAJESTY THE
QUEEN IN RIGHT OF CANADA AND THE WINNIPEG AIRPORTS AUTHORITY INC.**

LIST OF EXISTING OTHER AGREEMENTS

LIST OF EXISTING OTHER AGREEMENTS

- 1. Aviation Services and Facilities Agreement between Her Majesty and Nav Canada**
- 2. Memorandum of Agreement between Her Majesty and Nav Canada dated December 10, 1996 (re: area of 35 metres by 68 metres for storage and marshalling area)**
- 3. Off-Airport Civil Air Navigation Services Assets Agreement between Her Majesty and Nav Canada**
- 4. Lease for Space between Her Majesty and Nav Canada (Facility Number C146A0201)**
- 5. Lease for Land between Her Majesty and Nav Canada (Facility Number C146A0401)**

**THIS IS SCHEDULE "H" TO THE GROUND LEASE BETWEEN HER MAJESTY THE
QUEEN IN RIGHT OF CANADA AND THE WINNIPEG AIRPORTS AUTHORITY INC.**

FORM OF NON-DISTURBANCE AGREEMENT

NON-DISTURBANCE AGREEMENT

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA
(hereinafter called the "**Landlord**"),
represented by the Minister of Transport
(hereinafter called the "**Minister**"),

OF THE FIRST PART

AND:

[INSERT NAME OF OCCUPANT]
(hereinafter called the "**Occupant**"),

OF THE SECOND PART

AND:

WINNIPEG AIRPORTS AUTHORITY INC.
(hereinafter called the "**Authority**"),

OF THE THIRD PART

WHEREAS:

- A By a lease made as of _____, 199_ between the Landlord, as landlord, and the Authority, as tenant, and registered in the _____ Office on _____ 199_ under No. _____, (the "Ground Lease"), the Landlord leased to the Authority the lands and premises (the "Demised Premises") more particularly described in the Ground Lease, upon the terms and conditions set forth in the Ground Lease;
- B. By sublease dated the day of 199 , as modified and amended to the date of execution of this Non-Disturbance Agreement (hereinafter collectively called the "Lease") a true copy of which is attached hereto as Schedule "A", the Authority subleased to the Occupant certain premises more particularly described in the Lease (the "Premises");

- C. The Ground Lease contains certain provisions allowing the Landlord to re-enter and take possession of the Premises; and
- D. This Agreement is entered into at the request of the Authority and the Occupant.

NOW THEREFORE, in consideration of the sum of *****Dollars (\$*****) now paid by the Occupant to the Landlord, the receipt and sufficiency of which is hereby acknowledged, the parties covenant and agree as follows:

1. Upon the Landlord terminating the Ground Lease, the Occupant will attorn to the Landlord as landlord under the Lease subject to the terms and conditions specified herein.
2. Upon the Landlord terminating the Ground Lease, but subject to the Occupant complying with its obligations pursuant to Section 1 hereof, and provided, subject to any modification or amendment referred to in Section 6, the representations and warranties set out in Section 4 are true and correct at and as of the date of termination of the Ground Lease and with the same effect as if made at and as of the date of termination of the Ground Lease, so long as the Occupant is observing and performing all of its covenants and obligations under the Lease including the covenant or obligation to pay rent and other monies, subject to all the other provisions of this Non-Disturbance Agreement, the Landlord will accept and acknowledge the attornment of the Occupant under the Lease and permit the Occupant to continue in quiet possession of the Premises under the Lease throughout the remainder of the term of the Lease without interruption or disturbance from the Landlord or any person claiming by, through or under the Landlord subject to the following:
 - (a) the Landlord shall not be or become liable to remedy any default of the landlord (the Authority) under the Lease predicated on an event which occurs or commences prior to the termination of the Ground Lease;
 - (b) from and including the date of termination of the Ground Lease the Landlord shall not be or become liable for any terms or conditions in the Lease other than the covenant for quiet enjoyment;
 - (c) the Landlord shall not be or become liable for any representation or warranty of the landlord (the Authority) given to the Occupant in respect of the Premises;
 - (d) subject to Paragraph 2(b), the attornment of the Occupant shall be in respect of the Lease attached hereto as Schedule "A" and,

notwithstanding Section 6, the Landlord shall not be required to acknowledge any modifications or amendments to the Lease made between the date of execution of this Non-Disturbance Agreement and the date of termination of the Ground Lease, except such modifications or amendments which the Landlord, in Her sole and absolute discretion, chooses to acknowledge; and

- (e) the Landlord shall not be required to acknowledge any deposit of the Occupant in respect of any obligation of the Occupant arising during the period of time after the attornment of the Occupant to the Landlord as landlord under the Lease except to the extent that such deposit shall have been paid to the Landlord prior to the attornment of the Occupant to the Landlord as landlord under the Lease.

3. From and including the date the Occupant attorns to the Landlord as landlord under the Lease, the Landlord will,

- (a) provide access to the Premises, and
- (b) leave in place to the property line of the Premises or replace in another location to the property line of the Premises the utility lines or any one or more of such utility lines providing hydro, water, gas or storm and sanitary sewers if any such utility lines have been provided by the landlord under the terms of the Lease prior to termination of the Ground Lease.

Note:* In the case of a sublease of space delete (a) and (b) above and replace with:

- (a) provide access to the Premises
- (b) continue the provision of the utility lines or replace in another location the utility lines or any one or more of such utility lines providing hydro, heat or air conditioning to the Premises if any such utility lines have been provided by the landlord under the terms of the Leases prior to the termination of the Ground Lease, and
- (c) maintain to the Landlord's requirements the common areas and the structure of the building of which the Premises form a part.

[NTD: * Presumed typo in original, which says "te" rather than "Note"]

4. The Occupant represents and warrants that,
 - (a) the Lease has been duly executed and delivered between the parties thereto;
 - (b) the Lease constitutes the whole of the legal relationship between the Occupant and the Authority in relation to the subject matter thereof and there are no other agreements in relation to the Premises except those listed on Schedule B attached hereto;
 - (c) the Lease and the other documents listed on Schedule B attached hereto have not been modified or amended except for those modifications and amendments which are attached hereto as and which comprise a part of Schedule A;
 - (d) there exist no outstanding claims in respect of the Lease;
 - (e) the Occupant has not prepaid and will not, during the entire term of the Lease, prepay any rent or other amounts payable to the landlord (the Authority) pursuant to the Lease;
 - (f) except for a deposit of a maximum of three (3) months' rent under the Lease, there have been no deposits of any amount payable to the landlord (the Authority) pursuant to the Lease; and
 - (g) the improvements referred to in Section 7 will be, during the entire term of the Occupant Agreement until the Occupant attorns to the Landlord as landlord under the Lease, under the exclusive possession of the Occupant.
5. The Occupant acknowledges that the Landlord is relying upon the Occupant's representations and warranties set out in Section 4.
6. Upon the Landlord terminating the Ground Lease, and the attornment of the Occupant to the Landlord as landlord under the Lease, the Occupant shall deliver to the Landlord fully executed copies of all modifications or amendments to the Lease made between the date of execution of this Non-Disturbance Agreement and the date of termination of the Ground Lease. The Occupant acknowledges however, that, in accordance with Paragraph 2(d), the Landlord shall not be required to acknowledge any modifications or amendments to the Lease made between the date of execution of this Non-Disturbance Agreement and the date of termination of the Ground Lease, except such modifications or amendments which the Landlord, in Her sole and absolute discretion, chooses to acknowledge.

7. The Occupant represents and warrants that the estimated cost to the Occupant to construct all improvements on the Premises to be owned by the Occupant and to be in the exclusive possession of the Occupant is _____ Dollars (\$ _____).
8. The Occupant shall deliver to the Landlord, forthwith upon substantial completion of the improvements referred to in Section 7, a statement of the cost to the Occupant to construct such improvements.
9. The Landlord may at any time cause a complete audit by the Landlord's authorized representatives to be made of the cost to the Occupant to construct all improvements on the Premises referred to in Section 7.
10. The Occupant shall:
 - (a) provide to the Landlord's representative appropriate space on the Premises satisfactory to the Landlord or the Landlord's representative, and
 - (b) permit the Landlord's representatives to have access to all accounting, financial and other business records and documents as may be required by such representative to perform any audit contemplated in Section 9all of which shall be at no cost to the Landlord or the Landlord's representative.
11. From the date the Landlord terminates the Ground Lease, and the Occupant attorns to the Landlord as landlord under the Lease, the Landlord may relocate the Occupant from the Premises to other premises on the Airport with similar capacity as determined by the Landlord. The Occupant shall relocate from the Premises to such other premises upon the request of the Landlord. In this event, provided the Lease contains an obligation on the part of the landlord (the Authority) to pay at least the amount hereafter provided for in the event the landlord (the Authority) relocates the Occupant prior to termination of the Ground Lease, the Landlord will pay for the out-of-pocket labour and equipment cost to carry out the physical move of the Occupant from the Premises to such other premises.
12. From the date the Landlord terminates the Ground Lease, and the Occupant attorns to the Landlord as landlord under the Lease, where the Landlord requires possession of the Premises for:
 - (a) the demolition of the building of which the Premises form a part;

- (b) obtaining vacant possession of the entire building of which the Premises form a part;
- (c) repairs or renovation to all or substantially all of the portion of the building in which the Premises are located;
- (d) an operational requirement, where the Premises comprise part of Airside; or
- (e) where the Landlord is Her Majesty, a public work or other public purpose (as such concept has been interpreted pursuant to the **Expropriations Act**, R.S.C. 1985, c. E-21;

the Landlord may terminate the Occupant Agreement without payment of any compensation to the Occupant whatsoever, unless the Occupant has complied with the provisions of Sections 8 and 10, and the improvement referred to in Section 7, is, during the entire term of the Occupant Agreement, fully owned by the Occupant, and in the exclusive possession of the Occupant, in which event the Landlord may terminate the Occupant Agreement upon payment to the Occupant of the then net carrying amount of the lesser of the cost of the improvements:

- (f) as set out in the statement referred to in Section 8, and
- (g) as set out in an audit which the Landlord causes to be performed;

provided that the improvements shall be depreciated in accordance with Generally Accepted Accounting Principles.

Note: Section 12 to be deleted if Occupant is Major Air Carrier.

13. The Authority and the Occupant shall assign to the Landlord the benefit of any security which was provided by the Occupant at any time to secure the performance by the Occupant of its obligations under the Lease and the Authority and the Occupant shall, forthwith upon termination of the Ground Lease, execute and deliver all documents necessary to effect such assignment. In the event the Authority is unwilling or unable to execute or deliver any such document the Occupant shall, forthwith deliver to the Landlord equivalent security with the Landlord being the beneficiary.

14. The rights of the Occupant under this agreement shall not, in any way, alter, affect or prejudice any of the rights or remedies available to the Landlord against the Authority.
15. The Occupant agrees that it will not assign this Agreement in whole or in part except to the assignee or sublessee of the Lease. The Occupant agrees that it will not assign the Lease in whole or in part or sublet the Premises in whole or in part without assigning this Agreement to such assignee or sublessee and without requiring such assignee or sublessee of the whole or any part of the Occupant's interest in the Premises to agree to assume and to perform all of the Occupant's covenants, obligations and agreements under this Agreement in the same manner and to the same extent as if originally named as a party to this Agreement. The Occupant shall forthwith provide to the Landlord an executed copy of any assignment or sublease of the Lease and of any assignment of this Agreement. The Occupant shall not otherwise assign this Agreement under any circumstances and any such purported assignment of this Agreement by the Occupant shall be void.
16. The Occupant hereby irrevocably appoints the Minister of Transport as its, his or her attorney with full power and authority to execute and deliver on or at any time after termination of the Ground Lease in his, her or its name, all documents necessary to effect the transfer to the Landlord of the title to and the ownership of all improvements referred to in Section 7 or any addition to, improvement to, alteration of or replacement of any and all improvements referred to in Section 7.
17. This Agreement shall extend to, and be binding upon and enure to the benefit of the Landlord and its successors and assigns, the Authority and its successors and permitted assigns and the Occupant and its successors and permitted assigns'.

IN WITNESS WHEREOF the parties hereto have executed this Non-Disturbance Agreement as of the day and year first above written.

**HER MAJESTY THE QUEEN IN
RIGHT OF CANADA**

Witness

Minister of Transport

[INSERT NAME OF "OCCUPANT"]

Print Name of Officer

Signature of Authorized Signing
Officer

Print Title of Officer

Print Name of Officer

Signature of Authorized Signing
Officer

Print Title of Officer

WINNIPEG AIRPORTS AUTHORITY INC.

Print Name of Officer

Signature of Authorized Signing
Officer

Print Title of Officer

Print Name of Officer

Signature of Authorized Signing
Officer

Print Title of Officer

SCHEDULE "A"

This is Schedule "A" to the Non -Disturbance Agreement between Her Majesty the Queen in right of Canada, ***[insert name of Occupant]***, and Winnipeg Airports Authority Inc. dated the _____ day of _____, 19 ____.

[ATTACH LEASE BETWEEN OCCUPANT AND AUTHORITY AND ALL AMENDMENTS THERETO TO THE DATE OF EXECUTION OF THIS NON-DISTURBANCE AGREEMENT]

SCHEDULE "B"

This is Schedule "B" to the Non-Disturbance Agreement between Her Majesty the Queen in right of Canada, ***[insert name of Occupant]***, and Winnipeg Airports Authority Inc. dated the day of _____, 19 .

[ATTACH ALL OTHER DOCUMENTS COMPRISING THE TRANSACTION BETWEEN [INSERT NAME OF OCCUPANT AND [INSERT NAME OF CANADIAN AIRPORT AUTHORITY] IN RESPECT OF THE PREMISES]

**THIS IS SCHEDULE "I" TO THE GROUND LEASE BETWEEN HER MAJESTY THE
QUEEN IN RIGHT OF CANADA AND THE WINNIPEG AIRPORTS AUTHORITY INC.**

I.A.O. COMMERCIAL BUILDING, STOCK AND EQUIPMENT BROAD FORM

[The Minister of Transport will attach this form on the Closing Date]

[NTD: Available on request]

**THIS IS SCHEDULE "J" TO THE GROUND LEASE BETWEEN HER MAJESTY THE
QUEEN IN RIGHT OF CANADA AND THE WINNIPEG AIRPORTS AUTHORITY INC.**

CCDC 101 LIABILITY POLICY

[The Minister of Transport will attach this form on the Closing Date]

[NTD: Available on request]

**THIS IS SCHEDULE "K" TO THE GROUND LEASE BETWEEN HER MAJESTY THE
QUEEN IN RIGHT OF CANADA AND THE WINNIPEG AIRPORTS AUTHORITY INC.**

CCDC 101-2 ENDORSEMENT

[The Minister of Transport will attach this form on the Closing Date]

[NTD: Available on request]

**THIS IS SCHEDULE "L" TO THE GROUND LEASE BETWEEN HER MAJESTY THE
QUEEN IN RIGHT OF CANADA AND THE WINNIPEG AIRPORTS AUTHORITY INC.**

CCDC 201 BUILDERS RISK FORM

[The Minister of Transport will attach this form on the Closing Date]

[NTD: Available on request]

**THIS IS SCHEDULE "M" TO THE GROUND LEASE BETWEEN HER MAJESTY THE
QUEEN IN RIGHT OF CANADA AND THE WINNIPEG AIRPORTS AUTHORITY INC.**

RESOLUTION

[NTD: Available on request]

**THIS IS SCHEDULE "N" TO THE GROUND LEASE BETWEEN HER MAJESTY THE
QUEEN IN RIGHT OF CANADA AND THE WINNIPEG AIRPORTS AUTHORITY INC.**

FORM OF LANDLORD ACKNOWLEDGEMENT AGREEMENT

[NTD: Available on request]

**THIS IS SCHEDULE "O" TO THE GROUND LEASE BETWEEN HER MAJESTY THE
QUEEN IN RIGHT OF CANADA AND THE WINNIPEG AIRPORTS AUTHORITY INC.**

FORM OF LANDLORD'S CERTIFICATE

CERTIFICATE

TO: [INSERT NAME OF CANADIAN AIRPORT AUTHORITY]

AND TO: [LEASEHOLD MORTGAGEE]

RE: LEASE NO. XXX dated XXX between Her Majesty the Queen represented by the Minister of Transport (the "Landlord") and the [INSERT NAME OF CANADIAN AIRPORT AUTHORITY] (the "Tenant") XXX (the "Lease") in respect of certain premises described in the Lease;

AND RE: Insurance Trust Agreement dated XXX between the Landlord, the Tenant and XXX entered into pursuant to the Lease (the "Insurance Trust Agreement")

WHEREAS the Tenant has requested by letter dated XXX pursuant to Subsection 18.09.01 of the Lease that the Landlord deliver this certificate (the "Request");

AND WHEREAS terms used in this certificate have the same meanings as ascribed thereto in the Lease, unless otherwise defined herein;

THE UNDERSIGNED, as the Landlord under the Lease, hereby certifies to the [Tenant or Leasehold Mortgagee] and acknowledges that the [Tenant or Leasehold Mortgagee] is relying upon the following:

1. The Lease and the Insurance Trust Agreement are in full force and effect, unamended (other than as set out herein) as of the date hereof.
2. The Lease commenced on XXX for the term of sixty (60) years.
3. All rent and other monies due for the current Lease Year up to and including the date of the Request have been received. Airport Base Rent, Additional Rent and Airport Participation Rent are subject to adjustment and audit pursuant to the Lease, and, therefore, may be adjusted, notwithstanding the delivery of this certificate, and it is an express condition of this certificate that the Landlord shall not be estopped from performing or causing to be performed any audit or from claiming any adjustment which it deems necessary in respect of rent.
4. The Landlord has not issued a Notice of Non Performance pursuant to subsection 20.01.01 the Lease or a notice of default under the Insurance Trust Agreement as of the date of this certificate.

Dated at the City of _____ this XXX day of XXXX, 19XX

**HER MAJESTY THE QUEEN,
represented by the MINISTER OF TRANSPORT**

Name:

Title:

**THIS IS SCHEDULE "P" TO THE GROUND LEASE BETWEEN HER MAJESTY THE
QUEEN IN RIGHT OF CANADA AND THE WINNIPEG AIRPORTS AUTHORITY INC.**

FORM OF TENANT'S CERTIFICATE

CERTIFICATE

TO: Her Majesty the Queen in Right of Canada as represented by the Minister of Transport

RE: LEASE NO. XXX dated XXX between Her Majesty the Queen represented by the Minister of Transport (the "Landlord") and the [INSERT NAME OF CANADIAN AIRPORT AUTHORITY] (the "Tenant") XXX (the "Lease") in respect of certain premises described in the Lease;

AND RE: Insurance Trust Agreement dated XXX between the Landlord, the Tenant and XXX entered into pursuant to the Lease (the "Insurance Trust Agreement")

WHEREAS the Landlord has requested by letter dated XXX pursuant to subsection 18.09.02 of the Lease that the Leasehold Mortgagee Tenant deliver this certificate (the "Request");

AND WHEREAS terms used in this certificate have the same meanings as ascribed thereto in the Lease, unless otherwise defined herein;

THE UNDERSIGNED, as the Tenant under the Lease, hereby certifies to the Landlord and acknowledges that the Landlord is relying upon the following:

1. The Lease and the Insurance Trust Agreement are in full force and effect, unamended (other than as set out herein) as of the date hereof.
2. The Lease commenced on XXX for a term of sixty (60) years.
3. All rent and other monies due for the current Lease Year up to and including the date of the Request have been paid to the Landlord. Airport Base Rent, Additional Rent and Airport Participation Rent are subject to adjustment and audit pursuant to the Lease, and, therefore, may be adjusted by the Landlord as it deems necessary.
4. The Tenant has not received a Notice of Non Performance pursuant to subsection 20.01.01 of the Lease or a notice of default under the Insurance Trust Agreement as of the date of this certificate.

5. The Tenant has not received a notice of default in respect of any Leasehold Mortgage, and no default or event of default has occurred on the part of the Tenant under any Leasehold Mortgage which entitles the Leasehold Mortgagee to accelerate the indebtedness.

Dated at the City of

this XIX day of XXXX, 19XX.

**[INSERT NAME OF CANADIAN
AIRPORT AUTHORITY]**

I have the authority to bind the

Tenant

Name:

Title:

**THIS IS SCHEDULE "Q" TO THE GROUND LEASE BETWEEN HER MAJESTY THE
QUEEN IN RIGHT OF CANADA AND THE WINNIPEG AIRPORTS AUTHORITY INC.**

FORM OF LEASEHOLD MORTGAGEE'S CERTIFICATE

CERTIFICATE

TO: Her Majesty the Queen in Right of Canada as represented by the Minister of Transport

RE: LEASE NO. XIX dated XIX between Her Majesty the Queen represented by the Minister of Transport (the "Landlord") and the [INSERT NAME OF CANADIAN AIRPORT AUTHORITY] (the "Tenant") XIX (the "Lease") in respect of certain premises described in the Lease;

AND RE: Insurance Trust Agreement dated XIX between the Landlord, the Tenant and XIX entered into pursuant to the Lease (the "Insurance Trust Agreement")

AND RE: [Leasehold Mortgage] dated XIX between XIX (the "Leasehold Mortgagee") and the Tenant, XIX (the "Mortgage")

WHEREAS the Landlord has requested by letter dated XIX pursuant to Subsection 18.09.03 of the Lease that the Leasehold Mortgagee deliver this certificate (the "Request");

AND WHEREAS terms used in this certificate have the same meanings as ascribed thereto in the Lease, unless otherwise defined herein;

THE UNDERSIGNED, as the Leasehold Mortgagee under the Mortgage, hereby certifies to the Landlord and acknowledges that the Landlord is relying upon the following:

1. The Mortgage and the Insurance Trust Agreement are in full force and effect, unamended (other than as set out herein) as of the date hereof.
2. The Mortgage commenced on XXX for the term of XXX years.
3. The Mortgage is in good standing as of the date hereof.
4. The Leasehold Mortgagee has not issued a notice of default pursuant to section XXX of the Mortgage or a notice of default under the Insurance Trust Agreement as of the date of this certificate, and no default or event of default has occurred on the part of the Tenant under the Mortgage which entitles the Leasehold Mortgagee to accelerate the indebtedness.

Dated at the City of

this XXX day of XXXX, 19XX

[Leasehold Mortgagee]

Name:

Title:

**THIS IS SCHEDULE "R" TO THE GROUND LEASE BETWEEN HER MAJESTY THE
QUEEN IN RIGHT OF CANADA AND THE WINNIPEG AIRPORTS AUTHORITY INC.**

**LIST OF BUILDINGS, STRUCTURES OR
IMPROVEMENTS TO BE TRANSFERRED
TO NAVCAN**

**LIST OF BUILDINGS, STRUCTURES OR
IMPROVEMENTS TO BE TRANSFERRED TO NAVCAN**

Facility	Item	Description
C146A0401	A0401	Flight Service Station

**THIS IS SCHEDULE "S" TO THE GROUND LEASE BETWEEN HER MAJESTY THE
QUEEN IN RIGHT OF CANADA AND THE WINNIPEG AIRPORTS AUTHORITY INC.**

LOCATION OF ADMINISTRATION BUILDING AND POWER PLANT

A. Location of Administration Building

Building identified as T54 on the Winnipeg Airport Site Plan attached hereto located at 2000 Wellington Avenue, Winnipeg, Manitoba.

B. Location of Power Plant

Building identified as T55 on the Winnipeg Airport Site Plan attached hereto located at 800 Powerhouse Road, Winnipeg, Manitoba.