

This is the 1st Affidavit of
Cristine Bosma in this case and
was made on January 13, 2017

No. S-169079
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,

R.S.C. 1982, c. C36, AS AMENDED

**AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED
STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS
WITH RESPECT TO THE COMPANIES LISTED ON SCHEDULE "A" HERETO**

AFFIDAVIT

I, Cristine Bosma, of 1200 – 200 Burrard Street, Vancouver, British Columbia, MAKE OATH
AND SAY AS FOLLOWS:

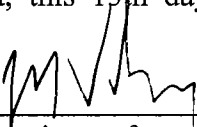
1. I am a Practice Assistant with Borden Ladner Gervais LLP ("BLG"), solicitors for 9021528 B.C. Ltd., ("Argo"), a creditor in this matter and as such have personal knowledge of the facts deposed to in this Affidavit, except where stated to be based on information from an informant I identify, in which case, I believe that both the information from the informant and the resulting statement are true.
2. On January 13, 2016, BLG conducted a land title search of the premises legally described as PID 003-528-472, Parcel "B", Sections 29, 30, 31 and 32 Township 3 New Westminster District Reference Plan 64938 (the "Premises"). Attached and marked as **Exhibit "A"** is a true copy of charge number BA375642 registered against the Premises, a modification of lease agreement dated December 1, 2005 between the Corporation of Delta and Alpha Aviation Inc.
3. Beginning in late November and into December 2016, BLG, as counsel for Argo exchanged various correspondences with Blakes Cassels & Graydon LLP ("Blakes") as counsel for Heli-One Canada ULC ("Heli-One"). The exchange of correspondence



began on or about November 29, 2016. The early communications were marked “without prejudice”. I am advised by Lisa Hiebert, a lawyer with BLG, and verily believe, that the early communications contained offers of settlement of compromise and accordingly are subject to privilege in favour of both Argo and Heli-One.

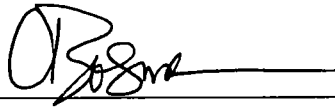
4. Attached and marked as exhibits are true copies of correspondence exchanged that is not “without prejudice” and which do not contain offers of settlement or compromise:
- (a) attached and marked as **Exhibit “B”** to this Affidavit is a true copy of a letter dated December 9, 2016 from Magnus Verbrugge of BLG to Bill Kaplan of Blakes;
 - (b) attached and marked as **Exhibit “C”** to this Affidavit is a true copy of a letter dated December 16, 2016 from Mr. Kaplan to Mr. Verbrugge;
 - (c) attached and marked as **Exhibit “D”** to this Affidavit is a true copy of a letter dated December 19, 2016 from Mr. Verbrugge to Mr. Kaplan; and
 - (d) attached and marked as **Exhibit “E”** to this Affidavit is a true copy of a letter dated December 21, 2016 from Mr. Kaplan to Mr. Verbrugge.

SWORN BEFORE ME at the City of)
Vancouver, in the Province of British)
Columbia, this 13th day of January, 2017.)



A Commissioner for taking Affidavits for)
British Columbia)

MAGNUS C. VERBRUGGE
Barrister & Solicitor
BORDEN LADNER GERVAIS LLP
1200 Waterfront Centre, 200 Burrard Street
P.O. Box 48600, Vancouver, Canada V7X 1T2
604-640-4198



CRISTINE BOSMA

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,

R.S.C. 1982, c. C36, AS AMENDED

AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT FOR
THE NORTHERN DISTRICT OF TEXAS WITH RESPECT TO THE COMPANIES LISTED ON SCHEDULE "A"
HERETO

AFFIDAVIT

Borden Ladner Gervais LLP
1200 Waterfront Centre
200 Burrard Street
P.O. Box 48600
Vancouver, BC V7X 1T2
Telephone: 604.687.5744

Attn: Magnus Verbrugge/Lisa Hiebert

THIS IS EXHIBIT "A" REFERRED TO IN THE AFFIDAVIT OF
CRISTINE BOSMA MADE BEFORE ME ON THE
13th DAY OF JANUARY, 2017

A handwritten signature in black ink, appearing to be 'M. H.', written over a horizontal line.

A COMMISSIONER FOR TAKING AFFIDAVITS FOR
BRITISH COLUMBIA

11 MAY 2006 10 09

BA375642

LAND TITLE ACT
FORM C
 (Section 233)

Province of
 British Columbia

GENERAL INSTRUMENT - PART 1

(This area for Land Title Office use)

Page 1 of 146

1. APPLICATION: (Name, address, phone number and signature of applicant, applicant's solicitor or agent)
 KORNFELD MACKOFF SILBER LLP, Barristers & Solicitors
 1100 - 505 Burrard Street, Box 11, Vancouver, B.C. V7X 1M5, Telephone (604) 331-8302
 Our File: ALP004/BOU501

West Coast
Client # 10350

LTO Client No. 010448

Carol Alter Kerfoot, Solicitor

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:*
- | | |
|-------------|--|
| PID | (LEGAL DESCRIPTION) |
| 003-528-472 | Parcel "B" Sections 29, 30, 31 and 32 Township 3 New Westminster District Reference Plan 64938 |

3. NATURE OF INTEREST:*
- | DESCRIPTION | DOCUMENT REFERENCE
(page and paragraph) | PERSON ENTITLED TO INTEREST |
|-------------|--|-----------------------------|
|-------------|--|-----------------------------|

Modification of Lease No.
 BX316871

Entire Instrument

Transferee

15 06/05/11 10:00:01 05 LM 704486
 CHARGE \$65.20

4. TERMS: Part 2 of this Instrument consists of (select one only)

(a) Filed Standard Charge Terms

☐

D.F. No.

(b) Express Charge Terms

☒

Annexed as Part 2

(c) Release

☐

There is no part 2 of this Instrument

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in Item 3 is released or discharged as a charge on the land described in Item 2.

5. TRANSFEROR(S)*

THE CORPORATION OF DELTA, 4500 Clarence Taylor Crescent, Delta, BC V4K 3E2




6. TRANSFeree(S): (INCLUDING POSTAL ADDRESS(ES) AND POSTAL CODE(S))*

ALPHA AVIATION INC. (Inc. No. 678679) 27th Floor, P.O. Box 49123, 595 Burrard Street,
 Vancouver, British Columbia, V7X 1J2

7. ADDITIONAL OR MODIFIED TERMS:*

N/A

8. EXECUTION(S): This Instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this Instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s)		Execution Date			Party(ies) Signature(s) (ALL SIGNATURES TO BE IN BLACK INK)	
		Y	M	D		
						
(Signature)		06	03	21		
	Gregory M. Vanstone				THE CORPORATION OF DELTA by its	
(Print Name)	Municipal Solicitor				authorized signatories	
	The Corporation of Delta					
(Address)	4500 Clarence Taylor Crescent				Print name -	Lois E. Jackson
	Delta, BC V4K 3E2					Mayor
(Professional Capacity)	Phone: 604-948-3213					
(as to all signatures)		06	03	21	Print name -	George V. Harvie
					CHIEF ADMINISTRATIVE OFFICER	

OFFICER CERTIFICATION::

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c. 124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

- * If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.
 ** If space insufficient, continue on additional page(s) in Form

**LAND TITLE ACT
FORM D**

EXECUTIONS CONTINUED

Officer Signature(s)

Execution Date

Y	M	D
06	03	13

Party(ies) Signature(s)
(ALL SIGNATURES TO
BE IN BLACK INK)

ALPHA AVIATION INC. by its
authorized signatory(ies)

(Signature)

(Print Name)

(Address)

(Professional Capacity)
(as to all signatures)

JAMES S. McRAE

Barrister & Solicitor

1100 One Bentall Centre

505 Burrard Street, Box 11

Vancouver, B.C. V7X 1M5

Ph# 604-331-8319

Print name - **SANDRA STODDART-HANSEN**

Print name -

OFFICER CERTIFICATION::

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c. 124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

- * If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.
- ** If space insufficient, continue on additional page(s) in Form

Terms of Instrument - Part 2
AMENDED AND RESTATED LEASE AMENDMENT AGREEMENT

THIS AMENDED AND RESTATED LEASE AMENDMENT AGREEMENT
dated for reference as of the 1st day of December, 2005,

BETWEEN:

THE CORPORATION OF DELTA 4500 Clarence Taylor
Crescent, Delta, British Columbia, V4K 3E2

(herein called the "Lessor"),

OF THE FIRST PART,

AND:

ALPHA AVIATION INC., a company duly incorporated
(Incorporation No. 678679) under the laws of the Province of
British Columbia, and having its records and registered office at
27th Floor, P.O. Box 49123, 595 Burrard Street, Vancouver,
British Columbia, V7X 1J2

(herein called the "Lessee"),

OF THE SECOND PART,

WITNESSES THAT WHEREAS:

A. By a Lease ("Original Lease") made as of the 1st day of June, 1983, Her Majesty the Queen in Right of Canada, as represented by the Minister of Transport ("Her Majesty") leased certain lands comprising a portion of the Boundary Bay Airport as more particularly described in the Original Lease to I.R. Industries Corp. for a term of 49 years ceasing and determining on April 30, 2032.

B. I.R. Industries Corp. subsequently changed its name to Boundary Bay Airport Corporation ("BBAC").

C. Ownership of the Boundary Bay Airport and all lands used and occupied in connection therewith was transferred from Her Majesty to the Lessor on December 5, 1997.

D. Pursuant to an Assignment and Assumption Agreement dated January 12, 2004, BBAC assigned the Original Lease to the Lessee.

- 2 -

E. Pursuant to a Lease Amendment Agreement dated for reference December 1, 2004 ("Lease Amendment Agreement") the Lessor and Lessee agreed to amend the Original Lease as of the Effective Date (as below defined), which Lease Amendment Agreement entirely superceded and replaced the Original Lease.

F. The Lessor and Lessee have agreed to amend the Lease Amendment Agreement as of the Amendment Effective Date (as defined below) to extend the Remaining Term and otherwise modify the Lease Amendment Agreement in accordance with this Amended and Restated Lease Amendment Agreement, so that this Amended and Restated Lease Amendment Agreement will entirely supercede and replace the Lease Amendment Agreement, which will have no further effect.

NOW THEREFORE IN CONSIDERATION OF THE PREMISES, the terms and conditions of this Lease, and other good and valuable consideration, THE PARTIES COVENANT AND AGREE as follows:

1. DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

In this Lease the following expressions shall have the following meanings, respectively:

- (a) "Airport" means a general aviation airport to provide services to aircraft and helicopters at Boundary Bay Airport in the Municipality of Delta, in the Province of British Columbia, pursuant to the terms and conditions of the licence issued to the Lessee by Transport Canada, and includes all services and facilities in relation thereto with the exception of the air traffic control tower;
- (b) "Airport Lands" means that portion of those lands legally known and described as:

Parcel Identifier: 003-528-472
Parcel "B"
Sections 29, 30, 31 and 32
Township 3
New Westminster District
Reference Plan 64938

on which are generally located, now or in the future, runways, taxiways, pavement, power lines, aeronautical ground lights and aviation equipment and improvements, and adjacent ditches, used for or in relation to the operation of the Airport, together with a surrounding buffer area measuring 250 feet from the foregoing improvements;

- (c) "Airport Certificate" means the "Canadian aviation document" as defined in the *Aeronautics Act*, R.S.C. 1985 c. A-2, as amended, or any successor legislation, by

- 3 -

which Transport Canada grants or renews accreditation to the operator of the Airport pursuant to the *Aeronautics Act*;

- (d) "Airport Improvements" means the capital improvements to the Airport described in Section 5;
- (e) "Airport Infrastructure Account" means the sum of \$410,000 held by the Landlord and to be expended in accordance with Section 5.18;
- (f) "Airport Operations Manual" means the airport operations manual prepared by Transport Canada and approved as part of the Airport Certificate;
- (g) "Amendment Effective Date" means December 1, 2005;
- (h) "Amortized Capital Expenditures Costs" means, for any Lease Year, the amortized cost of all Airport Improvements paid for by the Lessee during such Lease Year after the Amendment Effective Date, and based on a 25 year amortization on a straight-lined basis, but not including:
 - (i) the \$1,000,000 to be spent by the Lessee by November 30, 2005, pursuant to Section 5.14(a);
 - (ii) any funds provided by federal or provincial funding or subsidies or from the Airport Infrastructure Account in respect to such Airport Improvements; and
 - (iii) any portion of the cost of Airport Improvements paid for by sub-tenants or licencees from the Lessee;
- (i) "Boundary Bay Vision Statement" means the Boundary Bay Airport Advisory Committee Vision Statement for the Boundary Bay Airport attached hereto as Schedule IV, as such may be amended or replaced from time to time;
- (j) "Change of Control" means, in the case of any corporation or partnership, the transfer or issue by sale, assignment, subscription, transmission on death, mortgage, charge, security interest, operation of law, or otherwise, of any shares, voting rights or interest which would result in any change in the effective control of such corporation or partnership, unless such change occurs as the result of trading in the shares of a corporation listed on a recognized stock exchange;
- (k) "CPI Index" means the Consumer Price Index for the City of Vancouver as published by Statistics Canada from time to time or any similar replacement index if Statistics Canada no longer publishes such index;
- (l) "Defined Expenses" for any Lease Year, means and is limited to:
 - (i) Fuel Sales Costs; and

- 4 -

(ii) Amortized Capital Expenditures Costs,

both determined in accordance with generally accepted accounting principles and certified to be correct by a chartered accountant not associated with and independent of the Lessee;

- (m) "Demised Lands" means those lands outlined in heavy black ink in the reference plan to accompany this Lease prepared by Warren E. Barnard, a British Columbia Land Surveyor, and completed on the 20th day of October, 2004, a copy of which is attached as Schedule I, excluding the Road and Utility Areas;
- (n) "Effective Date" means December 1, 2004;
- (o) "Fuel Sales Costs" means, for any Lease Year, the direct cost to the Lessee of purchasing aircraft fuel for resale at the Airport together with costs paid by the Lessee to store and pump such aircraft fuel, including the amortized costs of the purchase or leasing of equipment incurred by the Lessee after the Amendment Effective Date to store or pump aircraft fuel; and the salary and benefits paid by the Lessee to employees directly involved in the pumping of aircraft fuel, but excluding any general overhead or management expense allocation to such fuel sales.
- (p) "Gross Revenue" for any applicable period means the gross cash receipts of the Lessee (including any affiliate of the Lessee as defined under the B.C. *Business Corporations Act*, accrued, accruing due, earned or derived from the operation of the Airport, the Demised Lands and the Airport Lands for such period, including without limitation, gross rents, gross percentage rents, gross fuel sales, parking fees, landing fees, receipts for services performed in, upon or about the Airport, the Demised Lands and the Airport Lands or any part thereof, receipts from telephones and other gross cash receipts or commissions received by the Lessee for any other service, operations, or transactions performed or taking place in, upon or about the Airport, the Demised Lands and the Airport Lands or any part or parts thereof whether similar or dissimilar to those permitted hereunder and Gross Revenue specifically includes all revenue derived by the Lessee from subtenants, licensees, concessionaires or occupants of the Airport or the Demised Lands or the Airport Lands, but Gross Revenue, however, does not include moneys collected from any subtenant to amortize capital leasehold improvements in accordance with the terms of that subtenant's sublease and there is also to be excluded from Gross Revenue the amount paid by subtenants as increased taxes during each year over the amount of taxes imposed during the first year of the term of the sublease, all as certified by a chartered accountant not associated with and independent of the Lessee; PROVIDED THAT if any portion of the Airport or the Demised Lands is occupied, let, sublet or licensed free of charge or at a nominal rental or rate, or at a rental or rate which is, in the opinion of the Lessor, less than the fair market rental or rate therefor, then there may be included in Gross Revenue and the Lessee then may be deemed to have received such amount

- 5 -

as would, in the opinion of the Lessor, reasonably have been yielded by such lands had they been occupied, let, sublet or licensed on a commercial basis at a fair market rental or rate;

- (q) "Hangar" means that building constructed on the Demised Lands primarily in wood during the 1940s to serve as a hangar;
- (r) "Hazardous Substances" means any substance which, when released into the Demised Lands, Airport Lands or any improvements thereon or any part of them, or into the natural environment, is likely to cause, at any time, material harm or degradation to the Demised Lands, Airport Lands or any improvements thereon or any part of them, or to the natural environment or material risk to human health, and includes, without limitation, any flammables, explosives, radioactive materials, asbestos, polychlorinated biphenyls, chlorofluorocarbons, hydro chlorofluorocarbons, urea formaldehyde foam insulation, radon gas, chemicals known to cause cancer or other toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, petroleum and petroleum products, or any substance declared to be hazardous or toxic or a pollutant, dangerous good, deleterious substance, effluent, hazardous waste or special waste, or words of similar meaning under any laws now or enacted in the future, which affect or apply to the Demised Lands, Airport Lands, any improvements thereon, the Lessor, the Lessee, any sublessees or licencees, or any of them;
- (s) "Improvements" means all buildings, structures, works, facilities, services and all site and other improvements, by whomsoever made, (including all portions thereof below, on and above ground level, all equipment, machinery, apparatus and fixtures forming part thereof, all alterations, additions and improvements thereto and all replacements and substitutions therefor), which are at any time and from time to time during the Remaining Term situated, erected or constructed in or upon or affixed or appurtenant to the Airport, Demised Lands, Airport Lands, Road and Utility Areas or any part or parts thereof;
- (t) "Lease Year" means each consecutive period of twelve (12) months commencing on June 1 of a year of the Remaining Term and ending on May 31 of the next following year;
- (u) "Lump Sum Payment" means the payment by the Lessee to the Lessor under Section 5.15;
- (v) "Municipal Taxes" means all local improvement or similar rates, duties, assessments, and charges, municipal realty taxes, water taxes, school taxes, or any other taxes, rates, duties, assessments, both general or special levied or imposed upon or in respect of the Airport, Demised Lands, Airport Lands and Road and Utility Areas and all improvements thereon, and any rates, duties, assessments, charges, or taxes levied, charged or assessed in lieu thereof;

- 6 -

- (w) "Net Revenue" means, in respect to a Lease Year, the Gross Revenue for such Lease Year less all reasonable expenses of the Lessee for such Lease Year solely in connection with the Airport calculated in accordance with generally accepted accounting principles and certified to be correct by a chartered accountant not associated with and independent of the Lessee;
- (x) "Operating Agreement" means the operating agreement between Her Majesty and the Lessor pertaining to the operation of the Airport attached hereto as Schedule V;
- (y) "Persons" includes individuals, corporations, partners and partnerships;
- (z) "Remaining Term" means the remaining term of this Lease as set out in Section 2.2 of Article 2 hereof.
- (aa) "Road and Utility Areas" means those areas identified as road area and shown hatched on the plan attached as Schedule I;
- (bb) "Taxes" means all taxes, rates, charges, assessments and levies and other governmental impositions, general or special, ordinary or extraordinary, foreseen or unforeseen, of every kind and of whatsoever nature, including Municipal Taxes, which may at any time during the term be levied in respect of or against the Airport, Demised Lands, Airport Lands and Road and Utility Areas or any part or parts thereof or in respect of any use or occupation of the Airport, Demised Lands, Airport Lands and Road and Utility Areas or any part or parts thereof by any authority of proper jurisdiction and without limiting the generality of the foregoing shall include any assessment for school, municipal or general purposes, local improvements, business machinery and equipment taxes and water taxes;
- (cc) "Tenant's Fixtures" means normal trade fixtures having regard to the use of the Demised Lands including above ground fuel tanks owned by the Lessee or its subtenants or licensees of occupation but excluding fencing and mobile building trailers;
- (dd) "Transport Canada" means the Minister of Transport or his authorized representative, including the Regional Director General, Airports Group, Pacific Region.

1.2 Interpretation

The captions and headings throughout this Lease are for convenience of reference only, and the words contained therein shall in no way be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction, or meaning of any provision of or the scope or intent of this Lease nor in any way affect this Lease.

- 7 -

1.3 Lease Amendment

This Amended and Restated Lease Amendment Agreement entirely supercedes and replaces the Lease Amendment Agreement and the Lessor and Lessee agree that as and from the Amendment Effective Date the Lease Amendment Agreement is of no further force or effect.

2. DEMISE

2.1 Grant

The Lessor hereby demises and leases to the Lessee the Demised Lands, subject to Section 2.5 hereof, subject to the reservations of rent and to the covenants and provisos herein contained, and subject to any subsisting tenancies and licences, and subject to the Airport Certificate and any renewals or replacements thereof, and to the Aeronautics Act and any successor Act or Acts and all orders and regulations (including airport zoning regulations) now or at any time hereafter made.

2.2 Remaining Term

The Lessee shall have and hold the Demised Lands for and during the Remaining Term commencing on the Effective Date and, as of the Amended Effective Date, ceasing and determining on April 30, 2050, but subject to prior termination in the events herein set forth.

2.3 Overholding after Term

If the Lessor permits the Lessee to remain in occupation of the Demised Lands, without objection by the Lessor, after the expiration of the Remaining Term, the Lessee shall be deemed to be a tenant from month to month (the tenancy being terminable by either the Lessor or the Lessee upon one full calendar month's written notice given to the other party) and at a monthly rent payable to the Lessor in advance on the first day of each and every month during such overholding period, equal to the sum of the following:

- (a) 150% of 1/12 of the amounts payable for the final 12 months of the Remaining Term on an annual basis, including without limitation percentage rent and Taxes; and
- (b) 150% of all amounts payable for the final month of the Remaining Term on a monthly basis,

and otherwise upon and subject to all the covenants and provisos of this Lease applicable to such a monthly tenancy.

2.4 Surrender of Lease

That upon the expiration of the Remaining Term or any permitted period of overholding, or if the Lessor shall become entitled to terminate and shall declare this Lease to be terminated pursuant

- 8 -

to any provision hereof, the Lessee shall surrender to the Lessor the possession of the Demised Lands, without any claim by or compensation to the Lessee, and all the rights of the Lessee under this Lease shall terminate (but the Lessee shall notwithstanding such termination, be liable to the Lessor for any loss or damage suffered by the Lessor by reason of any default of the Lessee).

2.5 Use of the Hangar

The Hangar is demised to the Lessee on and subject to the following terms and conditions:

- (a) the Hangar is used solely for aircraft servicing and storage, unless otherwise agreed to by the Lessor;
- (b) any offices, shops, or both which the Lessee may locate in the Hangar, must be incidental or related to aircraft servicing and storage, unless otherwise agreed to by the Lessor;
- (c) the total area of the Hangar to be used as office area is not to exceed 232.25 m (2,500 square feet), unless otherwise agreed to by the Lessor;
- (d) occupancy of the second level of the Hangar is prohibited, except with the advance written approval of the Lessor.

2.6 Restrictive Covenants

The Lessee will not enter into any agreement which, in the opinion of the Lessor, constitutes or purports to constitute a restrictive covenant of the leasehold interest of the Lessee.

3. ANNUAL RENT AND PERCENTAGE RENT

3.1 Annual Rent and Municipal Taxes

The annual rent payable by the Lessee for each Lease Year shall be the following:

- (a) ONE DOLLAR (\$1.00); plus
- (b) Municipal Taxes; payable by the Lessee on the later of the first business day of July of each Lease Year and the date the Municipal Taxes are payable, provided any payment of Municipal Taxes in accordance with this section does not alter or prejudice the right of the Lessee to contest the imposition of Municipal Taxes, in accordance with applicable legislation and the terms of this Lease.

3.2 Percentage Rent

In addition to the annual rent herein reserved, the Lessee agrees to pay, as additional rental, the amounts provided for herein, designated as "percentage rent", on the following basis:

- 9 -

- (a) For the period from the Effective Date to November 30, 2005 the percentage rent will be calculated as follows:
- (i) if the Gross Revenue for such period is between the sum of ONE DOLLAR (\$1.00) and ONE MILLION DOLLARS (\$1,000,000.00) in any Lease Year during such period, then the Lessee shall pay to the Lessor, as percentage rent for such Lease Year, a sum equal to one percent (1%) of that Gross Revenue;
 - (ii) if the Gross Revenue for such period is between the sum of ONE MILLION DOLLARS AND ONE CENT (\$1,000,000.01) and ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000.00) in any Lease Year during such period, then the Lessee shall pay to the Lessor, as percentage rent for such Lease Year, a sum equal to one and one-half percent (1-1/2%) of that Gross Revenue;
 - (iii) if the Gross Revenue derived from the operation of the Airport, the Demised Lands and the Airport Lands is between the sum of ONE MILLION FIVE HUNDRED THOUSAND DOLLARS AND ONE CENT (\$1,500,000.01) and TWO MILLION DOLLARS (\$2,000,000.00) in any Lease Year during such period, then the Lessee shall pay to the Lessor, as percentage rent for such Lease Year, a sum equal to two percent (2%) of that Gross Revenue;
 - (iv) if the Gross Revenue derived from the operation of the Airport, the Demised Lands and the Airport Lands exceeds the sum of TWO MILLION DOLLARS AND ONE CENT (\$2,000,000.01) in any Lease Year during such period, then the Lessee shall pay to the Lessor, as percentage rent for such Lease Year, a sum equal to two and one-half percent (2-1/2%) of that Gross Revenue;

The percentage rent for the initial 6 months of the Lease Year commencing June 1, 2005 will be based on the Gross Revenue for such period calculated in accordance with this Section 3.2(a), and the percentage rent for the last 6 months of such Lease Year commencing on the Amendment Effective Date will be calculated in accordance with Section 3.2(b).

- (b) Commencing as and from the Amendment Effective Date and throughout the Remaining Term the percentage rent for each Lease Year will be the greater of:
- (i) a minimum percentage rent of \$25,000 per Lease Year subject to an increase each Lease Year commencing on June 1, 2005 by the percentage increase in the CPI Index between the period from June 1 of the previous Lease Year to June 1 of the current Lease Year on a cumulative basis so that the increase is applied to the base amount as increased each Lease Year (the minimum percentage rent as increased by the CPI Increase is called the "Minimum Percentage Rent"); and

- 10 -

(ii) 3.5% of Gross Revenue less Defined Expenses;

provided that for the period June 1, 2005 to May 31, 2010, the total rent payable by the Lessee will be limited to the Minimum Percentage Rent.

- (c) In addition to the CPI Increase, the Minimum Percentage Rent payable under Section 3.2(b)(i) will be adjusted at the end of every fifth Lease Year after the Amendment Effective Date, the first such adjustment to occur on May 31, 2010, to the greater of the Minimum Percentage Rent then in effect and 70% of the average total rent paid by the Lessee under this Lease for the previous five Lease Years. For the purposes of the rent adjustment to be made on May 31, 2010, the parties will calculate the total average rent that would have been payable by the Lessee during the prior 5 year period as if the restriction of total rent to the Minimum Percentage Rent in Section 3.2(b)(ii) did not apply.
- (d) The adjustment of the Minimum Percentage Rent under Section 3.2(b)(i) and under Section 3.2(c) will be made as at the time that the Lessee submits its financial statements to the Lessor under this Lease and will be prorated retroactively to commence effective on June 1 of the applicable Lease Year

3.3 Accurate Records

The Lessee shall keep a full and accurate set of books and records adequately showing the amount of Gross Revenue received by the Lessee in each Lease Year and the expenditures made by the Lessee in respect of the Airport, and the Lessor, during the Remaining Term, shall have the right to inspect the Lessee's books and records and any other data and the Lessee agrees to keep such books, records and data at a convenient place and to advise the Lessor of the location of such place.

3.4 Statement of Gross Revenue and Expenditures

Within ninety (90) days after the expiration of each Lease Year, the Lessee shall deliver to the Lessor an audited statement showing the computation of the Lessee's Gross Revenue and percentage rent payable under Section 3.2 together with the expenditures made by the Lessee in respect of the Airport, verified by the Lessee and certified by a chartered accountant not associated with and independent of the Lessee and if, on the basis of such chartered accountant's audited statement, percentage rent shall be due, the Lessee covenants simultaneously with the rendition of such statement to pay to the Lessor the amount of such percentage rent and such statement shall contain, among other things, reasonable details itemizing the gross cash receipts of the Lessee accrued, accruing or earned and the sources from which derived, together with reasonable details itemizing amounts spent on repairs, maintenance and improvements at the Airport as required under Sections 5.14 and 5.15.

- 11 -

3.5 Lessee's Share of Costs

In addition to the annual rent herein reserved, the Lessee agrees to pay to the Lessor, the Lessee's share of costs which may from time to time be assessed by any competent authority against the Lessor and which are associated with the operation and maintenance of the drainage discharge pumping system at the Airport. The Lessee's share of such costs shall be that fraction or portion of the total costs of the Lessor therefor which relate to or are for the benefit of the Demised Lands, Airport Lands, and Road and Utility Areas, in the opinion of the Lessor.

3.6 Net Rent

Notwithstanding anything herein contained, it is the intention of this Lease and of the parties hereto that all expenses, payments and outgoings incurred in respect of the Demised Lands or any part or parts thereof for any matter, cause or reason whatsoever shall be borne by the Lessee and all rent to be paid (including annual rent and percentage rent) shall be net to the Lessor and clear of all such outgoings and any outgoings of any kind which may become payable out of the Demised Lands or any part or parts thereof shall not entitle the Lessee to reduce the amount of its payments of rent (including annual rent and percentage rent) to the Lessor, and the Lessor shall be entitled to recover from the Lessee as if it were rent in arrears any amount which the Lessor may pay, whether voluntarily or involuntarily, on account of any such outgoing payable by the Lessee.

4. GENERAL COVENANTS OF THE LESSOR AND LESSEE

4.1 General covenants of the Lessee

The Lessee covenants:

- (a) to pay the annual rent and percentage rent at the times and in the manner provided for in Article 3 hereof; and
- (b) that any sums, costs, expenses or other amounts from time to time due and payable by the Lessee under the provisions of this Lease, including sums payable by way of indemnity, and whether expressed to be rent or not, may at the option of the Lessor be treated as and deemed to be rent, in which event the Lessor shall have all remedies for the collection of such sums, when in arrears, as are available to the Lessor for the collection of rent in arrears; and
- (c) that when any annual rent, percentage rent or any other amount payable under this Lease by the Lessee shall be in arrears, such amount shall bear interest at the rate of prime plus three percent (3%), per annum, (prime being the declared prime rate of interest then charged by Canadian Imperial Bank of Commerce, to their best commercial borrowers), from the due date to the date of payment, and the Lessor shall have all remedies for the collection of such interest, if unpaid after demand, as in the case of rent in arrears, but this stipulation for interest shall not prejudice or affect any other remedies of the Lessor under this Lease or otherwise, or be

- 12 -

construed to relieve the Lessee from any default in making any rental payment at the time and in the manner herein specified; and

- (d) to assume and be responsible for and be liable to the Lessor for all acts and omissions on the part of any sublessee, licensee or occupant of the Demised Lands or any part or parts thereof, and any violation of any of the terms, provisos or conditions of this Lease, (whether by act or omission by any sublessee, licensee or occupant of the Demised Lands or any part or parts thereof), shall constitute a breach of this Lease by the Lessee and a default hereunder; and
- (e) to observe and perform all the covenants and provisos of this Lease on the part of the Lessee to be observed and performed;
- (f) that all its covenants in this Lease are made with the Lessor for itself and for its assigns, and that all its obligations and duties in this Lease, however expressed shall be construed as covenants; and
- (g) to adopt and comply with the goals and vision identified in the Boundary Bay Vision Statement, provided that the Boundary Bay Vision Statement does not unreasonably interfere with business operations of the Airport or the profitability of the Lessee.

4.2 General covenants of the Lessor

The Lessor covenants with the Lessee;

- (a) for quiet enjoyment; and
- (b) that the Lessor will abide by its covenants in the manner and according to the terms of this Lease.

5. OBLIGATION OF LESSEE RESPECTING THE AIRPORT AND ITS REPAIR, MAINTENANCE AND OPERATION

5.1 Repair

The Lessee shall throughout the Remaining Term, at its own cost and expense, keep in good and substantial repair and condition, as is fitting to the standard of a first class regional airport, the Demised Lands, Airport Lands, Road and Utility Areas and Improvements, and every part thereof excepting reasonable wear and tear to the extent only that such reasonable wear and tear is not inconsistent with maintenance in good order and condition generally, and "repair" shall include replacement and renewal when necessary.

- 13 -

5.2 Restoration of Improvements

The Lessee will, at its own cost and expense, in the event of damage to or destruction of the Improvements, or any of them, either in whole or in part by fire or any other cause whatsoever (including earthquake or flood) promptly restore them to the same condition as prevailed immediately prior to the damage or destruction, whether or not insurance proceeds are available or are in an amount sufficient to cover the cost of restoration.

5.3 Lessee to Operate, Maintain and Repair in Accordance with Aeronautics Act

In addition to the other repair and maintenance obligations under this Lease, the Lessee will continuously operate, manage, maintain and repair the Airport as a licensed public airport, in full compliance with the *Aeronautics Act* and any successor Act or Acts and all orders and regulations (including airport zoning regulations), now or at any time hereafter made, and will, at its sole cost and expense, operate, maintain and repair the Airport in a condition of complete operational integrity, safety and visual acceptability, as determined by the Lessor acting reasonably and without limiting the generality of the foregoing will comply with all applicable rules, regulations, requirements, recommendations, directions, policies, standards and guidelines of Transport Canada and all governmental and other authorities and Persons having jurisdiction. If the Lessee ceases to continuously operate the Airport for a period of 90 consecutive days or more, unless by reason of any event beyond the reasonable control of the Lessee other than lack of funds or any other financial reason, the Lessor may, without prejudice to its other rights and remedies, terminate this Lease.

5.4 Comply with Airport Certificate

The Lessee will continuously, throughout the Remaining Term:

- (a) maintain and comply with the Airport Certificate and the Airport Operations Manual, and will maintain the standards referred to therein as such Airport Certificate, Airport Operations Manual or standards may be amended or replaced, from time to time; and
- (b) conduct its operations at the Airport and upon the Demised Lands in a manner that complies with the terms and conditions of the Operating Agreement.

5.5 Lessee to Operate, Maintain and Repair Road and Utility Areas

The Lessee will operate, maintain and repair (which includes replace) the Road and Utility Areas.

5.6 Specific Operation, Maintenance and Repair

Without limiting the generality of Sections 5.1, 5.2, 5.3, 5.4 and 5.5 hereof, the Lessee will operate, maintain and repair (which includes replace) the Demised Lands, the Airport Lands, and Road and Utility Areas, and such operation, maintenance, repair and replacement shall include,

- 14 -

but not necessarily be limited to, regular performance of the following activities, or if specified, in accordance with the following regularity:

(a) Daily Maintenance Activities

Pick up ground litter
Runway and ramp debris clean up
Daily cleaning of the inside of the Air Terminal Building;

(b) Weekly Maintenance

Complete thorough clean up of lunchroom, washroom, office, and storage and workshop areas;

(c) Each two weeks (spring, summer and fall)

Cut grass along runway edges
Cut grass along approach lights
Cut grass around aircraft parking area
Cut grass along road edges;

(d) Monthly (during spring, summer and fall)

Clean drains
Perform test on hydrants and water valves
Attend to flower beds
Weed eat ditches
Sweep runways and apply touch up paint as required
IPU test run up (through NAV Canada)
Calibrate field lighting regulators
Rotate and change radio batteries
Apply touch up paint to taxiways as required
Perform test on all radio equipment;

(e) Each six months

Perform service on vehicles
Cut hay in perimeter areas
Apply weed deterrent to cracks on runway and taxiway
Clean out building eaves
Re-code security locks;

(f) Annually

Re-paint runway and taxiway lines
Apply crack sealant following weed removal on taxiways and runways

- 15 -

The monitoring, cleaning and maintenance of all water distribution lines, including their valves and hydrants, and the flushing and greasing of such valves and hydrants;

(g) Every second year

Repaint terminal building
Repaint or replace all signage;

Regular Performance

- (h) grass cutting, weed spraying and bird scaring; and
- (i) pavement marking; and
- (j) pavement patching; and
- (k) pavement crack filling; and
- (l) the monitoring, cleaning, fault finding and repairing of all electrical distribution and lighting systems; and
- (m) the run-up, maintenance and repair of all power generation and transfer equipment; and
- (n) the cleaning and repair of drainage systems and culverts within the Demised Lands, the Road and Utility Areas and those drainage systems and culverts within the Airport Lands designated from time to time by the Lessor associated with the drainage of the airside operational areas; and
- (o) garbage collection and disposal; and
- (p) septic tank pump-out; and
- (q) the regular painting of all buildings; and
- (r) the regular inspection and repair (including replacement) of the roofs of all Improvements including without limitation the Hangar; and
- (s) the repair and maintenance of all heating, ventilating and air conditioning systems, (including the inspecting, cleaning and adjusting thereof and all necessary filter replacement); and
- (t) all necessary electrical maintenance and bulb replacement; and
- (u) the repair and maintenance of all Airport fences; and

- 16 -

- (v) the cleaning, repair and replacement of all signs and windsocks.

PROVIDED HOWEVER, that the Lessor may set other or, further standards and give directions as regards any of the Lessee's obligations set out in this Section 5.6 and the Lessee agrees to maintain such standards and carry out such directions, provisions of this Lease to the contrary notwithstanding.

In addition, the Lessor and Lessee agree to work together, acting in good faith to develop a long term servicing plan for the Airport as an update to the existing Servicing and Planning Agreement, to incorporate the procedures for the planning, servicing and future development at the Airport. Such plan will be implemented by the Lessee in accordance with the applicable terms of this Lease.

5.7 Further Operation, Maintenance and Repair

Without limiting the generality of anything contained in this Article 5, the Lessee assumes full responsibility for the management, operation, maintenance and repair (which includes replacement) of the facilities listed in Schedule II hereof, (including any alterations, additions, repairs or replacements thereto or thereof), all as more particularly described in the as-built drawing listed in Schedule III hereof.

5.8 Consent

Prior to commencing any maintenance, repairs, replacements or restoration involving any structural or major portions of any Improvement or any other building, structure or improvement, as determined by the Lessor, or a cost in excess of FIFTY THOUSAND DOLLARS (\$50,000.00), as determined by a professional architect or engineer at the cost of the Lessee, or if the Lessee wishes to develop the Demised Lands or any part or parts thereof, (any such work constituting "Improvement Work") the Lessee shall obtain the Lessor's prior written consent, which consent may include reasonable terms and conditions but will not be unreasonably withheld, and the Lessee will, if required by the Lessor, submit plans and specifications therefor and in any event will provide the Lessor with copies of all plans and specifications prepared for the Lessee in connection with any work to be done at the Airport. All the provisions of Article 11 shall apply to any Improvement Work mutatis mutandis and the Lessor may enter and view the state of such work, and the Lessee will repair or perform any further work required according to notice from the Lessor and any failure by the Lessee to comply with such notice shall constitute a breach of this Lease and a default hereunder. In addition to the requirement to obtain the Lessor's prior written consent, the Lessee will first obtain all approvals and permits from all authorities and Persons having jurisdiction (including insurance underwriters and the Lessor as municipal authority). The Lessor shall not by reason of its consent to any work to be performed by the Lessee assume or incur any liability or responsibility whatsoever and the Lessor neither assumes nor shall it incur any liability or responsibility with respect to any plans or specifications. Except as set out above, in no event will the Lessee construct any Improvements or otherwise develop the Airport Lands except for any repairs, maintenance or replacements required in connection with their existing use as of the Effective Date.

- 17 -

5.9 Work to be done diligently

The Lessee will cause all work done in connection with any maintenance, repair, restoration or development to be done promptly and prosecuted with reasonable diligence to completion, and in a good and workmanlike manner in accordance with the consent of the Lessor and the plans and specifications (if required) approved by the Lessor, and in addition the Lessee will indemnify and save harmless the Lessor against and from all claims, damages, losses, costs and liabilities whatsoever arising out of such maintenance, repair, replacement, restoration or development.

5.10 Builders All Risk and Liability Insurance

At the option of the Lessor, the Lessee will effect or cause to be effected, prior to the commencement of any maintenance, repair, replacement, restoration, construction or other work referred to in this Article 5 and will maintain and keep in force or cause to be maintained and kept in force until the completion thereof, such insurance as the Lessor may require in connection with such work, including without limitation, insurance coverage for any contractor performing such work and will provide the Lessor with satisfactory proof of such insurance as requested by the Lessor. The proceeds of insurance which may become payable under any policy of insurance effected pursuant to the foregoing shall be payable in the manner and to the Persons as provided in Article 8 hereof. All the provisions of Article 8 hereof respecting insurance which are of general application shall apply to the insurance during construction or progress of any work referred to in this Article 5.

5.11 Inspection and Modifications by Lessor

The Lessor may from time to time visit the Demised Lands and the Airport to provide guidance and assistance to the Lessee as well as to review procedures and practices exercised by the Lessee in operating, maintaining and repairing the Demised Lands and the Airport Lands and requests for modifications to operating practices or improvements in maintenance frequencies or repair performance made by the Lessor shall be complied with by the Lessee within a reasonable time if, in the opinion of the Lessor, urgent safety is not involved, or immediately if, in the opinion of the Lessor, it is a matter of urgent safety.

5.12 Lessee to be Solely Responsible

The Lessee shall, except as in the Lease otherwise provided, at its sole cost and expense, provide all and every kind of labour, superintendence, services, tools, machinery, plant, equipment, materials, supplies, articles, utilities (including heat, power, water and gas) and other things necessary or required for or in connection with the management, operation, maintenance and repair of the Airport, the Demised Lands, the Airport Lands, and the Road and Utility Areas.

5.13 Lessee to Discharge All Liens

The Lessee will promptly pay all its contractors, subcontractors and materialmen and do all things necessary to ensure that no lien is claimed against the Demised Lands, the Airport Lands or Road and Utility Areas or any part or parts thereof and should a claim of lien be filed, the

- 18 -

Lessee will cause it to be discharged or vacated at the Lessee's expense within 7 days after it is brought to the attention of the Lessee or provide adequate security for it to the extent approved by the Lessor. The Lessor may, but it is not obligated to discharge the lien by paying the amount claimed to be due into court, or by any other means available to the Lessor, and the amount paid, plus all costs, including without limitation, professional and solicitors fees (on a solicitor and own client basis) incurred by or on behalf of the Lessor concerning the lien, plus any damages suffered by the Lessor as a result of the filing of the lien, will be forthwith paid, on demand, by the Lessee as rent. The Lessee acknowledges that the Lessor may file a notice of interest in the applicable land title office under the provisions of the *Builders Lien Act* or any legislation in amendment or substitution thereof evidencing that the Lessor is not responsible for any of the Lessee's improvements. The Lessee agrees to cooperate with the Lessor in respect of the same and, if necessary, to execute and deliver all other instruments and take any actions necessary to give effect to the same.

5.14 Financial Commitment to Improvements

- (a) In order to upgrade the Airport Facilities, the Lessee will spend no less than \$1,000,000 during the 12 month period from December 1, 2004 to November 30, 2005 on repairs, maintenance or capital improvements to or for the benefit of the Airport, the Demised Lands, the Airport Lands and/or the Road and Utility Areas, which for greater certainty may include the construction of a sewage treatment plant or replacement of underground storage tanks for fuelling facilities but which specifically excludes day to day maintenance of the Airport and its facilities not referred to in Section 5.14(d) and any required environmental remediation, all as may be first approved by the Lessor in writing, such approval not to be unreasonably withheld (collectively, the "Airport Improvements").
- (b) In addition to the commitment in Section 5.14(a) to spend \$1,000,000 on Airport Improvements, the Lessee will spend no less than a further \$10,000,000 on Airport Improvements during the period commencing on the Amendment Effective Date and ending on April 30, 2010.
- (c) The Lessee will spend a minimum of \$1,000,000 on Airport Improvements in each of the calendar years 2006 to 2010, not including funds required to be spent under Section 5.14(a).
- (d) The Lessee covenants that the Airport Improvements to be undertaken by the Lessee pursuant to Section 5.14(b) will be at the discretion of the Lessee, acting reasonably, as a prudent airport operator, but will include the following priorities:
 - (i) paving of the safety overrun area of runway 07-25 by December 1, 2006;
 - (ii) installation of a septic and sewage system to service the Airport by December 1, 2006;
 - (iii) paving of the apron;

- 19 -

- (iv) construction of a new maintenance hangar and sprinkling of the existing Hangar;
 - (v) construction of a new terminal building of approximately 40,000 square feet;
 - (vi) airfield lighting system upgrade; and
 - (vii) such additional capital projects and Airport Improvements as the Lessor, acting reasonably, may approve.
- (e) The Lessee shall deliver to the Lessor copies of invoices for completed Airport Improvements as evidence of compliance with this Section 5.14. The Lessee shall have the right to apply any funds received by the Lessee as a grant by any federal, provincial or other governmental agency towards the satisfaction of the Lessee's obligations under this Section 5.14.
- (f) An expenditure of any portion of the commitments described in Sections 5.14(a) and (b) will be deemed to be made within the required period, if the completion or payment for such Airport Improvement is delayed for a period, not to exceed 6 months, for a good and valid reason approved by the Lessor, acting reasonably, including the time required for the delivery of equipment and materials, the availability of qualified trades or the need to await appropriate weather to complete such Airport Improvement, and provided that prior to the expiry of the period in which the Lessee is required to spend such amount the Lessee has entered into bona fide arms length contracts with third parties to supply labour or materials in the amount required to be spent by the Lessee.

5.15 Lump Sum Payment to Lessor

- (a) Notwithstanding any other provision of this Lease, the Lessee shall make a lump sum rental payment to Delta of \$500,000 (the "Lump Sum Payment"). The Lump Sum Payment will be due and become rent as of the Amendment Effective Date in addition to all other rent payable under this Lease, provided that the obligation of the Lessee to pay the Lump Sum Payment will be deferred for so long as the Lessee is in compliance with its obligations under Section 5.14.
- (b) The obligation of the Lessee to pay the Lump Sum Payment will be secured by the Lessee providing the Lessor with a clean irrevocable letter of credit in the amount of \$500,000 issued by a Canadian chartered bank, or such other security as may be acceptable to the Lessor, acting reasonably. Such security will be automatically renewed on an annual basis without condition.
- (c) If the Lessee fulfills its obligations under Section 5.14 by April 30, 2010 the Lump Sum Payment will be forgiven by the Lessor and the security granted therefor under Section 5.15(b) will be promptly released by the Lessor.

- 20 -

- (d) If the Lessee fails to comply with any of its obligations under Section 5.14 or this Section 5.15, such failure will constitute a default under this Lease, and in addition to the other rights and remedies of the Lessor under this Lease, the Lump Sum Payment shall immediately become due and payable as rent under this Lease and the Lessor will be entitled to immediately draw down under the security provided by the Lessee under Section 5.15(b) for the Lump Sum Payment.
- (e) The Lessee agrees that the Lump Sum Payment is rent and is not a penalty.

5.16 Stakeholder Relations

The Lessee will hold Tenant Advisory/Operations meetings on a regular basis acceptable to the Lessor, acting reasonably, with all sublessees, licensees and occupants of the Airport, Airport Lands or Road and Utility Areas to be chaired by the Airport Manager or a director or officer of the Lessee. Minutes of these meetings will be kept by the Lessee and provided to the Lessor. The Lessee commits to respond to reasonable concerns raised by the sublessees, licensees, stakeholders and occupants at the Airport arising from these meetings or otherwise.

Appropriate representatives of the Lessee will meet from time to time at the request of the Lessor with the Delta Airport Advisory Council to obtain its views on airport issues including development. The Lessee will also advise the Lessor on community events at the Airport and will promote building strong and productive relations with the Delta community.

5.17 Assumption of Aviation Services and Facilities Agreement

Effective as and from the Amendment Effective Date, the Lessee will assume, observe and perform all obligations of the Lessor under the Aviation Services and Facilities Agreement between NavCanada and the Lessor attached as Schedule VI to this Lease. The Lessee will enter into an agreement with the Lessor in such form as they Lessor may specify, acting reasonably, to record such obligation.

5.18 Lessor to Apply Airport Infrastructure Account

The Lessor agrees to apply all of the Airport Infrastructure Account to assist in Airport Improvements by October 31, 2008, allocated to such projects as the Lessor may in its discretion determine to be suitable. The Lessor will have no obligation to advance any further funds for Airport Improvements, including any obligation to fund any portion of federal and/or provincial grant or subsidy applications which may be made by the Lessor in respect to the Airport at the request of the Lessee.

6. OWNERSHIP OF IMPROVEMENTS

6.1 Ownership of Improvements

All Improvements situated on the Demised Lands, Airport Lands and Road and Utility Areas at the commencement of the Remaining Term and any further Improvements which the Lessee may

- 21 -

construct upon the Demised Lands from time to time are and shall be fixtures to the Demised Lands and are intended to be and become the absolute property of the Lessor upon affixation.

6.2 Ownership of Tenant's Fixtures

The provisions of Section 6.1 shall not be construed to prevent the Lessee from conferring on sublessees the right to remove Tenants' Fixtures installed by such sublessees or from conferring upon utility companies the right to remove their works or facilities and the Lessee shall make good, or shall cause such sublessees or utility companies to make good, any damage to the Demised Lands or Improvements caused by any such removal.

6.3 Removal of Tenant's Fixtures

If the Lessee is not in default hereunder, the Lessee may at or immediately before the expiration of the Remaining Term of this Lease, remove Tenant's Fixtures and the Lessee may from time to time during the Remaining Term remove Tenant's Fixtures in the event of any interior renovation or in the event of any alterations or additions or demolition and replacement to or of the Improvements pursuant to Article 11 hereof; PROVIDED THAT the Lessee shall, except upon the expiration of the Remaining Term, cause such Tenant's Fixtures to be replaced with Tenant's Fixtures having a value and utility at least equal to that of those removed considering the need to replace obsolete or defective Tenant's Fixtures, and to substitute improved, or new Tenant's Fixtures for the purposes mentioned in Article 11 hereof or any of them, or necessitated by the consequences of any interior renovations or any alterations or additions or demolition and replacement to or of the Improvements, but the Lessee is not obligated to replace removed Tenant's Fixtures with Tenant's Fixtures of at least equal value and utility in any case where such are not required by the sublessee or licensee of occupation.

7. TAXES AND UTILITY CHARGES

7.1 Taxes

The Lessee will pay, when due, all Taxes levied by any competent authority in relation to the Demised Lands, the Airport Lands or the Road and Utility Areas or any part or parts and the business of the Lessee pertaining thereto throughout the Remaining Term and shall indemnify and save harmless the Lessor from and against all actions, damages, liabilities, costs, expenses, and charges resulting therefrom.

7.2 Utility charges

The Lessee will pay or cause to be paid when due all charges for gas, electricity, light, heat, power, telephone and other utilities and services used in or supplied to the Demised Lands, Airport Lands, Road and Utility Areas, or any part or parts thereof, throughout the Remaining Term, and will indemnify and save harmless the Lessor against any actions, liabilities, costs, expenses, charges or damages pertaining thereto.

- 22 -

7.3 The Lessor May Pay Taxes or Utility Charges

Notwithstanding Section 3.1, if the Lessee fails or neglects to pay the Taxes or utility charges, the Lessor may pay the same on behalf of and for the Lessee, but shall not be obliged to, and the Lessee will reimburse the Lessor, forthwith upon presentation by the Lessor of receipts for any such Taxes or utility charges paid by the Lessor, and in default of such reimbursement all sums so paid by the Lessor shall become rent due under this Lease and be deemed to be rent in arrears and bear interest at the rate provided for in clause 4.1(c) hereof from the due date until the date of payment and the Lessor will have the same remedies for non-payment of same as it has for non-payment of rent.

7.4 Contesting Taxes and Utility Charges

The Lessee shall have the right to contest the assessment of the value of the Demised Lands, Airport Lands, Road and Utility Areas or any portion thereof for the purposes of allocating Municipal Taxes or the imposition of any utility charges in accordance with applicable legislation without expense to the Lessor, provided that the Lessee first pays all amounts owing and otherwise complies with all obligations related to such Taxes and utility charges while contesting such amounts and provided that it does not subject the Lessor to any penalty, and that it does not otherwise constitute a breach of this Lease and the Lessee shall prosecute any such proceedings taken by it with due diligence, and shall indemnify and save harmless the Lessor and be responsible for all expenses and damages by reason of or arising out of any failure of the Lessee to comply with this covenant.

8. INSURANCE

8.1 Lessee's Insurance

The Lessee shall, at its own expense, from the commencement of the Remaining Term until the completion or earlier determination thereof, maintain in full force and effect with an insurance carrier licensed to conduct insurance business in the Province of British Columbia and in the names of the Lessor and the Lessee (as Insureds) the following insurance:

(a) Canadian Airport Owners/Operators Insurance Policy

- (i) insurance for Airport Operations as contained in the Canadian Airport Owners/Operators Insurance Policy; and
- (ii) this policy shall be maintained with a limit of ONE HUNDRED MILLION DOLLARS (\$100,000,000) with a TWENTY FIVE MILLION US DOLLAR (US\$25,000,000) sub-limit for personal injury; and
- (iii) the policy will also be endorsed to delete the AVN48B – War, Hi-jacking and Other Perils Exclusion Clause.

- 23 -

(b) Building and Contents "All Risks" Insurance

- (i) the policy therefor is to be written on an "All Risks" form in the names of the Lessee and the Lessor with the Lessor listed as the "Loss Payee"; and
- (ii) the limit of insurance shall be not less than 100% of the replacement cost new of the Improvements, buildings (including contents thereof) and equipment located in, on or upon the Demised Lands, Airport Lands and Road and Utility Areas. The buildings and contents shall be appraised every five years and the schedule of insured values amended annually. The Lessee will be solely responsible for any unpaid insurable losses to either the Lessor or the Lessee, resulting from the enforcement of a Co-insurance and/or Margins Clause; and
- (iii) any deductible amount will be borne by the Lessee; and
- (iv) cancellation of the policy will be subject to sixty (60) days' written notice of cancellation to be mailed to the Lessor; and
- (v) the Insurers under this policy are not to be entitled, by subrogation or transfer, to rights in respect of any claim under the Policy against any of the Insureds defined herein.

(c) Automobile Third Party Liability and Accident Benefits Insurance

- (i) on any motor vehicle, trailer or semi-trailer owned or operated by the Lessee in connection with the Airport and used on the Demised Lands, Airport Lands or Road and Utility Areas and obliged by law to carry a licence, (other than a special licence issued in respect of any motor vehicle, trailer or semi-trailer chiefly used or operated off-highways); and
- (ii) providing third party liability insurance with THREE MILLION DOLLARS (\$3,000,000.00) inclusive limit and accident benefits insurance; and
- (iii) any deductible amount will be borne by the Lessee.

(d) Pressure Vessel/Boiler Machinery Insurance

- (i) on all boilers pressure vessels, air conditioning equipment, miscellaneous mechanical and electrical, and other apparatus and pipes connected thereto owned, operated or used by the Lessee or by anyone, other than the Lessor, on behalf of the Lessee, in, on, or upon the Demised Lands or Airport, or relating thereto; and
- (ii) the coverage to be on Comprehensive basis and subject to Replacement Cost with the policy limit to be no less than THREE MILLION

- 24 -

DOLLARS (\$3,000,000.00) or such other amount as may be reasonable, based upon evidence of value provided by the Lessee of the assets exposed to risk; and

- (iii) any deductible amount will be borne by the Lessee; and
- (iv) cancellation of the policy will be subject to sixty (60) days' written notice of cancellation to be mailed to the Lessor; and
- (v) the policy is to be written in the names of the Lessee and the Lessor with loss, if any, payable to the Lessor and the Lessee; and
- (vi) the Insurers under this policy are not to be entitled, by subrogation or transfer, to rights in respect of any claim under the Policy against any of the Insureds defined herein.

8.2 General Insurance Provisions

- (a) The insurance coverage required under this Article 8 shall in no way limit the Lessee's responsibility under Article 5 hereof and any additional coverage the Lessee may deem necessary to fulfill its obligations under Article 5 hereof shall be at its own expense.
- (b) The Lessee shall provide to the Lessor, copies of all policies required hereunder.
- (c) Along with its claim for final payment under the Lease, the Lessee shall provide proof to the Lessor that it has complied with the provisions of the Workers' Compensation Act and that all its assessments thereunder have been paid to date.
- (d) The policies of insurance effected under this Article 8 shall, if the Lessee shall direct in writing, include the interest of any mortgagee of the Lessee's leasehold interest.
- (e) Copies of all policies, appraisals and losses are to be forwarded to the Lessor.
- (f) The Lessor, in addition to the Lessee, shall review all Proofs of Loss for property losses in excess of \$50,000.00.

8.3 Other Insurance

The Lessee will at its own cost and expense effect and keep in force such other insurance, and in such amounts, as may from time to time be required by the Lessor.

- 25 -

8.4 Identity of Insurers and Policy Terms

The terms of the insurance policies required to be effected by the Lessee under this Article or under any other provision of this Lease, and the insurers issuing them, shall be subject to the approval of the Lessor.

8.5 Payment of Loss Under All Risks Policy

The parties agree as follows:

- (a) where insurance proceeds under any all risks insurance policy become payable in an amount not exceeding FIFTY THOUSAND DOLLARS (\$50,000.00) they shall be paid to the Lessee, and the cost of the repairs or replacement shall be borne by the Lessee whether or not it exceeds the insurance proceeds so received;
- (b) should the Lessee fail to effect repairs or replacements in accordance with Subsection 8.5(a) and its other obligations under this Lease within a reasonable time, the Lessor shall be entitled to effect the repairs or replacement itself, and recover the costs therefor from the Lessee as rent;
- (c) when at the time of the occurrence of the damage or the completion of its repair or replacement the Lessee is in default to the Lessor under this Lease, but the Lessor has not elected to forfeit the Lease, the Lessor shall be entitled, out of any insurance moneys in its hands, or in the hands of the Lessor and any Lessee's mortgagee jointly, to obtain and retain any moneys not paid over for the cost of repair or replacement against the rectification of the Lessee's default;
- (d) where the insurance proceeds payable exceed fifty thousand dollars (\$50,000.00) they shall be paid to a trustee, (appointed by the Lessor), on behalf of the Lessor, the Lessee and any mortgagee of the Lessee's leasehold interest, work in progress shall be paid for in instalments as progress payments out of the insurance proceeds, and provision shall be made to ensure that no increase in the cost over the amount of the original estimate shall fall on the Lessor or the trustee, so that the trustee at all times shall retain in its hands sufficient of the insurance proceeds to pay for the estimated cost of repair or replacement outstanding at the date it makes any progress payment and the Lessee shall pay and be responsible for any part of the cost of repair or replacement in excess of the insurance proceeds;
- (e) before any contract is entered into by the Lessee or a Lessee's mortgagee for the carrying out of any repair work pursuant to subsection 8.5(d) copies of the estimates for any work and the contracts for the completion of the work shall be submitted to the trustee, and it shall distribute such copies to such of the Lessor, the Lessee and the Lessee's mortgagees as shall not be parties to such contracts;
- (f) any progress payments to be made under this Section 8.5 by the trustee to either the Lessee or a Lessee's mortgagee, shall not be made without the submission of a

- 26 -

statement, certified by the architect of the party to whom the payments are to be made, stating the estimated amount required to complete the work of repair or replacement at the date of the certificate, the amount claimed by individual contractors at that date, the amount owing on work already done, and the amount of any payments made at that date for work already done, and verifying the standard and quality of the work already done, and the trustee shall be required to retain in its hands at the date of any payment an amount sufficient to pay the estimated outstanding cost of completion, even though that has the effect that the payment made becomes less than the amount certified to be due;

- (g) in making any payment under this Section 8.5 the trustee shall have regard to builders' lien legislation applicable in the Province of British Columbia and shall retain with its control for the period specified in such legislation the amount of any hold-back required;
- (h) in case of dispute over the outstanding cost or the filing of any lien arising out of the work of repair or replacement the trustee shall not be under any obligation to make or authorize any progress or lump sum payment until the dispute is settled or the lien discharged as the primary duty of repair and replacement falls on the Lessee;
- (i) where at the time of the occurrence of the damage or the completion of its repair or replacement the Lessee is in default under the terms of any mortgage of its leasehold interest, the mortgagee shall be subrogated to the rights and obligations of the Lessee;
- (j) should this Lease be forfeited, for whatever cause pursuant to the terms hereof, all moneys remaining in the trustee's hands shall be payable to the Lessor;
- (k) the fees of any trustee appointed hereunder by the Lessor shall be paid by the Lessee or those subrogated to it; and
- (l) subject to subsection (j) of this Section, the proceeds of any insurance shall be utilized for the purpose of the repair or replacement of the improvement or Improvements damaged or destroyed.

8.6 The Lessor's Right to Insure

If the Lessee shall default on any of its obligations under this Lease regarding insurance (including the obligation to submit proof of insurance to the Lessor), the Lessor may, but shall not be obliged to, place any insurance at the cost and expense of the Lessee, or pay any arrears of premium, and any expense incurred by the Lessor shall be reimbursed to it by the Lessee on demand.

- 27 -

8.7 Co-Insurance - Waiver of Subrogation

If any of the aforesaid policies of insurance shall contain a co-insurance clause, the Lessee will maintain at all times a sufficient amount of insurance so as to prevent the Lessor or the Lessee from becoming a co-insurer under the terms of such policy or policies and to permit full recovery in the event of loss and the aforesaid policies of insurance shall, if possible, contain a waiver of subrogation to the effect that any release from liability entered into by the insured at any time shall not affect the right of the insured or the Lessor or any mortgagee to recover.

8.8 Release and Indemnity

The Lessee hereby releases the Lessor from any and all liability for loss or damage caused by any of the perils required to be insured against by the Lessee or caused by any other perils whether or not such loss or damage may have arisen out of the negligence of the Lessor, its officers, agents, servants or employees, and the Lessee covenants to indemnify and save harmless the Lessor against and from all losses, costs, expenses, liabilities, actions, claims and demands whatsoever relating to such loss or damage.

9. USE OF LANDS AND WASTE AND NUISANCE

9.1 Use of Demised Lands

The Demised Lands shall be used only for the operation of an airport to provide services to aircraft and helicopters, pursuant to the terms and conditions of the Airport Certificate issued to the Lessee by Transport Canada, and such use may include, subject to Section 9.7 hereof, offices, services, and other commercial, government and industrial operations and businesses which are reasonably associated with an airport, or which rely on or are involved in the use of aircraft for the performance of their services or the handling of their products or goods, or which supply services or goods to airline or aircraft companies or other authorized users of the Airport, or agricultural uses, and which pose no threat to the environment or to the safe operation of the Airport.

9.2 Use of Airport Lands

The Lessor hereby gives the Lessee permission, (in common with the Lessor and any other grantees and licensees of the Lessor), to use the Airport Lands for the purpose of operating, maintaining and repairing the Airport, in accordance with the terms and conditions of this Lease and more specifically in accordance with Article 5 hereof, together with the right by the Lessee's officers, servants, agents, employees, contractors and subcontractors to enter the Airport Lands for any or all of the purposes aforesaid and to do all such other works or things necessary for the purposes hereof.

9.3 Easement Respecting Road and Utility Areas

The Lessor hereby grants to the Lessee the right and easement (in common with the Lessor and any other grantees and licensees of the Lessor) to use the Road and Utility Areas for the purpose

- 28 -

of the provision of access, ingress, egress and regress for Persons, vehicles, machinery and equipment to and from the Airport, the Demised Lands, Airport Lands and any other lands adjacent thereto, and for the purpose of installation, construction, operation, maintenance, inspection, alteration, removal, replacement, reconstruction, use and repair of any water, power, or road system or part thereof for the operation, maintenance and repair of the Airport in accordance with this Lease and more specifically in accordance with Article 5 hereof, together with the right by the Lessee's officers, servants, agents, employees, contractors and subcontractors to enter the Road and Utility Areas for any or all of the purposes aforesaid and to do all such works or things necessary for the purposes hereof.

9.4 Other Access

Nothing herein shall preclude or prevent the Lessor and any of its grantees or licensees from the right to use the Airport Lands in any manner or way not inconsistent with this Lease.

9.5 Airshows

The Lessee may, with the consent in writing of the Lessor, (such consent not to be unreasonably withheld), use the Demised Lands and the Airport Lands for the staging or holding of airshows; PROVIDED HOWEVER that the Lessee shall indemnify and save the Lessor harmless against and from and shall be responsible for any and all claims, demands, actions, suits or other proceedings by whomsoever made or brought against the Lessor, and any losses, costs, expenses or liabilities suffered or incurred by the Lessor, by reason of or arising out of the staging or holding of any airshow; AND PROVIDED THAT the Lessee agrees to comply with the requirements set out in the "M.O.T. MANUAL OF SPECIAL AVIATION EVENTS marked as catalogue T.P.389" or any amendments thereto from time to time, and, without restricting the generality of the foregoing, airshows shall include any demonstration of aircraft both on the ground and in the air and any other activity carried on in conjunction with the airshow and designed for public entertainment; BUT the use of the Demised Lands and Airport Lands for airshows shall be subject always to any subsisting tenancies, licences, or occupation of those lands, and in no event shall the Demised Lands and Airport Lands be used for airshows for more than a total of fourteen (14) days in any Lease Year.

9.6 Nuisance

Where a nuisance exists upon the Demised Lands, the Airport Lands or the Road and Utility Areas or any part thereof, the Lessor may order the Lessee to abate the nuisance (unless caused by the Lessor and any other grantees and licensees of the Lessor) and if the Lessee or occupier shall fail to do so, the Lessor may take whatever steps it deems necessary to abate the said nuisance, and the cost thereof shall be deemed to be rent, due and forthwith payable by the Lessee to the Lessor and collectible by the Lessor together with interest thereon, at the rate of interest provided for in clause 4.1(c) of this Lease, from the date such cost is incurred to the date such cost is fully paid and satisfied by the Lessee.

- 29 -

9.7 Compliance with by-laws

The Lessee will, without cost or expense to the Lessor, comply with all laws, by-laws, regulations and requirements of all government, municipal and other authorities having jurisdiction, and the Lessee will likewise observe and comply with the requirements of insurers under any policies of insurance required under this Lease.

10. DAMAGE OR DESTRUCTION OF IMPROVEMENTS**10.1 Lease Not To Be Determined**

Any damage to or any destruction of the Improvements, or any of them, either in whole or in part by any cause whatsoever shall not cause this Lease to be determined or entitle the Lessee to surrender possession of the Demised Lands or any part thereof.

10.2 Rent Not To Abate

The Lessee's obligation to pay rent and all other sums payable by the Lessee hereunder shall not abate or be diminished, in the event of any damage to or any destruction of the Improvements, or any of them, either in whole or in part, regardless of the cause or extent thereof, and the Lessee hereby waives the provisions of any statute or rule of law to the contrary now or hereafter in effect, it being the intent of this Lease that the Improvements shall be at the risk of the Lessee.

11. CHANGES AND ALTERATIONS TO THE IMPROVEMENTS**11.1 Alterations, Additions, Demolitions and Replacements**

The Lessee shall be entitled at its own cost and expense to make alterations and additions to the Improvements or any of them, or to demolish and replace the Improvements or any of them; PROVIDED ALWAYS THAT the Lessee will at its own cost and expense and prior to such alteration or addition or demolition and replacement, seek the consent of the Lessor in accordance with Article 5 hereof and subject to Section 11.2 hereof no such work will be commenced until the Lessee has obtained the Lessor's prior written consent pursuant to Article 5, such consent not to be unreasonably withheld.

11.2 If Cost Less Than \$50,000.00

In the event the estimated cost (determined by a professional architect or engineer, at the cost of the Lessee) of any single alteration, addition or demolition and replacement does not exceed FIFTY THOUSAND DOLLARS (\$50,000.00) the Lessee need not comply with the specific application for consent requirements of Article 5 but the Lessee will first obtain the Lessor's consent in writing, (such consent not to be unreasonably withheld), to such alteration, addition, demolition or replacement and provide the Lessor with the said estimate or a true copy thereof.

- 30 -

11.3 Value of Improvements

All alterations, additions and replacements shall be of such a kind that, when completed, the quality of the Improvements or any of them shall be not less than the quality of the Improvements immediately before any such alteration, addition or replacement.

11.4 Work To Be Done Diligently

The Lessee shall cause all work done in connection with such alteration, addition or demolition and replacement to be done promptly and shall cause all work done in connection with such alteration, addition or demolition and replacement to be done in a good and workmanlike manner in accordance with the terms and conditions of the consent of the Lessor under Article 5 (if required) and the plans and specifications for the work and the National Building Code and with all applicable building and zoning ordinances and bylaws, and all applicable laws, orders, rules, regulations and requirements of all federal, provincial and municipal governments and agencies and in addition the Lessee covenants and agrees to indemnify and save harmless the Lessor against all claims, damages, losses, costs and liabilities whatsoever arising out of such alteration, addition or demolition and replacement.

12. INSPECTION BY THE LESSOR

12.1 Inspection

The Lessor or any person designated by the Lessor shall have the right at all reasonable times during the Remaining Term to enter upon the Demised Lands and Airport Lands or any part or parts thereof for the purpose of inspecting the Demised Land, Improvements or any part or parts thereof and for such other purposes as the Lessor may deem necessary.

13. RESTRICTIONS ON MORTGAGING, ASSIGNING AND SUBLEASING

13.1 Restrictions

Except as provided in Articles 14, 15 and 16 hereof, neither the Lessee, nor the Lessee's legal representatives or successors in interest, by operation of law or otherwise, shall assign, mortgage, pledge or encumber this Lease, in whole or in part, or sublet the Demised Lands or Airport or any part or parts thereof, or licence or concession of the Demised Lands or Airport Lands or any part or parts thereof, or part with the possession of those lands or any part or parts thereof, or permit those lands or any part or parts thereof to be used or occupied by any other Person.

14. MORTGAGE

14.1 Mortgage of Leasehold Interest

The Lessee may mortgage its leasehold estate and appurtenances thereto (and for which purpose the Lessee may assign or sublet by way of mortgage) for the purpose of financing (and from time

- 31 -

to time refinancing) the development of the Demised Lands but not otherwise; PROVIDED ALWAYS THAT no such mortgage (by way of assignment, sublease or otherwise) of this Lease shall be valid or binding unless and until the following conditions have been complied with:

- (a) the Lessee has obtained the written consent of the Lessor to the making of such mortgage;
- (b) the mortgagee has covenanted and agreed in writing with the Lessor to be bound by all the covenants and obligations of the Lessee hereunder as soon as such mortgagee enters into possession of the Lessee's interest, or otherwise takes steps to enforce its security which have the effect of depriving the Lessee of the ability fully to perform those covenants and obligations, and the mortgagee has covenanted and agreed that upon any exercise of any power of sale it will cause the assignee of the mortgaged rights to covenant in writing with the Lessor to perform all the Lessee's obligations under this Lease but so soon as the assignee becomes bound by the Lessee's obligations, the mortgagee shall be relieved from its covenant;
- (c) every mortgage of the Lessee's leasehold interest or any part or parts thereof shall be made expressly subject to the rights of the Lessor under this Lease, and in particular to the Lessor's right of reversion expectant upon the expiration or termination of this Lease;
- (d) every mortgage of the Lessee's leasehold interest or any part or parts thereof shall not include any property except the Lessee's leasehold interest and chattels of the Lessee situate on the Demised Lands, and every such mortgage shall be made for value and in good faith;
- (e) the proceeds of every mortgage of the Lessee's leasehold interest or any part or parts thereof shall in every case be used exclusively for the purpose of financing (and from time to time refinancing) the development of the Demised Lands in accordance with Section 5.8 hereof and so to benefit or enhance the value of the Demised Lands or to repay the principal and interest of a prior mortgage of the Lessee's leasehold interest or any part or parts thereof which complies with the requirements of this Article 14; and
- (f) every mortgage of the Lessee's leasehold interest or any part or parts thereof shall contain a covenant by the mortgagee agreeing that the proceeds of all insurance policies required to be maintained under such mortgage shall in the event of the loss or damage specified in such policies be used solely for the purposes of repairing or restoring the Demised Lands or improvements lost or damaged and not for the purpose of repaying the mortgage loan;

PROVIDED THAT nothing herein contained shall authorize the Lessee, or imply any consent or agreement on the part of the Lessor, to subject the Lessor's estate and interest in the Demised Lands or any part thereof to any mortgage; AND PROVIDED FURTHER THAT should the

- 32 -

Lessee attempt to make any mortgage except as aforesaid such action shall be deemed a breach of this Lease and a default hereunder and any consent to one mortgage shall not constitute consent to any other and the restrictions of this Article 14 shall apply to each and every mortgage hereunder and shall be severally binding upon each and every mortgagee.

14.2 The Lessor Not Required To Join In Mortgage

Nothing herein contained shall be construed as requiring the Lessor to join in the giving of any mortgage or other security of the Lessee's leasehold interest in this Lease, or any part or parts thereof.

14.3 Copies of Mortgage

The Lessee will promptly forward to the Lessor one (1) originally executed copies of the mortgage of the Lessee's leasehold interest under this Lease or any part thereof.

14.4 Acknowledgement by the Lessor

After receiving a request therefor in writing from the Lessee or any approved mortgagee, the Lessor shall furnish to the party or parties designated in the request a written statement acknowledging, to the extent true and accurate, that this Lease is unmodified and in full force and effect and, to the best of its knowledge, free from any breach or default by the Lessee, then known to the Lessor, if such is the case, or in the alternative specifying the Lessee's breaches or defaults then known to the Lessor, but no such statement shall constitute a waiver, on behalf of the Lessor, of any breach or default nor shall it create any legal relationship between the Lessor and the mortgagee.

14.5 Lessee to Remain Liable

Notwithstanding any mortgage encumbering the Lessee's leasehold interest or any part thereof, the Lessee shall be and remain liable for the payment of all rent and other moneys reserved in this Lease and the performance, observance and keeping of all the covenants, agreements, terms, conditions and provisions of this Lease.

15. RIGHT TO SUBLET

15.1 Subleases

The Lessee will not sublet all or substantially all of the Demised Lands at any time. Subject to Section 15.4 hereof, the Lessee may, from time to time, enter into subleases or licences of occupation with sublessees or licensees for parts of the Demised Lands for uses in compliance with all applicable municipal bylaws; provided always that no such sublease or licence of occupation shall be granted in respect of all or any part of the Airport Lands or the Road and Utility Areas, nor shall such sublease or licence of occupation be made by the Lessee or shall be valid and binding unless the approval in writing of the Lessor thereto has been first had and

- 33 -

obtained, (such approval not to be unreasonably withheld), and until the following conditions have been complied with:

- (a) each sublease or licence of occupation shall contain a provision requiring the sublessee, licensee or occupant to attorn to the Lessor in the event of default by the Lessee under this Lease, and shall contain a provision requiring the sublessee, licensee or occupant, upon notification of such default, to make rental or other payments under the sublease or licence of occupation to the Lessor pursuant to such notification;
- (b) no sublease or licence of occupation shall be for a period (taking into account any renewals and extensions) which shall extend beyond one day before the expiration of the Remaining Term of this Lease;
- (c) no sublease or licence of occupation shall release or impair the continuing obligations of the Lessee hereunder, or discharge the Lessee to or from any liability, whether past, present or future under this Lease, and the Lessee shall continue fully liable thereunder;
- (d) each sublease or licence of occupation shall be expressly subject and subordinate to this Lease and to the rights of the Lessor hereunder and shall terminate upon the termination of this Lease;
- (e) the Lessee shall not make any sublease or license of occupation of the Demised Lands or any part or parts thereof which in legal effect would create a total assignment of this Lease pro tanto;
- (f) each sublessee, licensee or occupant has agreed in writing with the Lessee and the Lessor to comply with and be bound by all the applicable terms, covenants, conditions, provisos and agreements of this Lease; and that in the event of conflict between the provisions of this Lease and the sublease or licence of occupation the provisions of this Lease shall govern;
- (g) no sublease or licence of occupation shall provide for prepaid rent or occupation costs, except for reasonable deposits, unless the Lessor approves of same, which approval shall be at the sole and unfettered discretion of the Lessor and may be unreasonably withheld; and
- (h) any approval by the Lessor of a prepaid sublease or licence of occupation will in no way obligate the Lessor to approve a subsequent prepaid sublease or licence of occupation.

PROVIDED THAT where Sections 15.2 and 5.8 hereof do not apply to the entering into of subleases or licences of occupation, the Lessor shall notify the Lessee of his consent or refusal to consent within fourteen (14) days of the Lessee's request for consent and compliance with this Section 15, but nothing herein contained shall authorize the Lessee, or

- 34 -

imply any consent or agreement on the part of the Lessor, to subject the Lessor's estate and interest in the Demised Lands or any part thereof to any sublease, licence of occupation or agreement for lease; AND PROVIDED FURTHER THAT should the Lessee attempt to make any sublease, agreement for lease or licence of occupation except as aforesaid, such action shall be deemed a breach of this Lease and a default hereunder and any consent to one sublease or licence of occupation shall not constitute consent to any other and the restrictions of this Article 15 shall apply to each and every sublease or licence to occupation hereunder and shall be severally binding upon each and every sublessee, licensee or occupant.

15.2 Submissions for Development by Sublessees

The provisions of Article 5 and Article 11 hereof apply to development of the Demised Lands or any part or parts thereof by any sublessee or licensee or occupant of the Lessee.

15.3 Copies of Sublease and Licence of Occupation

The Lessee will promptly forward executed copies of each sublease and licence of occupation to the Lessor at the address listed in Article 19 hereof, which documents shall include all of the terms of the transaction between the Lessee and the sublessee or licensee including all financial terms and consideration being paid by the sublessee or licensee.

15.4 Subleases and Licences of Less Than One Year

If the sublease or licence is for purposes pursuant to Section 9.1 hereof, and is for a term including all renewals and extensions which does not exceed one (1) year, or if the licence is for aircraft parking, and if the sublease or licence agreements including all revisions made thereto from time to time are approved in writing in advance as to form by the Lessor or his authorized representative and provided conditions of Section 15.1 hereof have been complied with except under subsection 15.1(f) no agreement with the Lessor is required, the Lessee may enter into such subleases or licences without obtaining the Lessor's consent thereto. In this event, the Lessee will provide the Lessor with prior written notice of such sublease or licence arrangement and Sections 15.2 and 15.3 will continue to apply.

15.5 Existing Subleases

The Lessor acknowledges and agrees that all existing subleases and licences of occupation previously approved by the Lessor, or by Transport Canada or Her Majesty the Queen in Right of Canada as represented by Transport Canada as former lessor of the Demised Lands, and such existing subleases or licences of occupation that did not require such consent, shall continue in full force and effect and all rights thereunder are hereby preserved.

15.6 Sublease of All or Substantially All of the Demised Lands

Notwithstanding any other provision of this Lease, the Lessee agrees not to sublease all or substantially all of the Demised Lands prior to April 30, 2010 under any circumstances without the prior written consent of the Lessor which consent may be arbitrarily withheld during such

- 35 -

period for any reason. If the Lessee subleases all or substantially all of the Demised Lands prior to April 30, 2015 in conjunction with a sale by the Lessee of the Airport operations, at a Net Profit to the Lessee as determined under Section 16.7, the Lessee will pay the Lessor the amount determined under Section 16.7. The provisions of Section 16.8 will apply to a sublease of all or substantially all of the Demised Lands.

16. ASSIGNMENTS AND CHANGE OF CONTROL

16.1 Assignment or Transfer

The Lessee will not, unless expressly authorized herein, assign or transfer all or any part of its interest in this Lease without the prior written approval of the Lessor (such approval not to be unreasonably withheld) and to the extent required, Transport Canada, and no such assignment or transfer shall be valid or binding without such consent and then only upon condition that:

- (a) the Lessor has, at least ninety (90) days prior to the proposed date of the assignment or transfer, been given written notice of such proposed assignment or transfer and the effective date thereof, including:
 - (i) executed copies of all applicable agreements between the Lessee and the proposed assignee;
 - (ii) particulars of the proposed assignee, including the names, backgrounds, experience and qualifications of its principals, directors, officers, shareholders and key personnel to operate and manage the Airport, in detail satisfactory to the Lessor, acting reasonably;
 - (iii) satisfactory criminal records searches of the principals, directors, officers, shareholders and key personnel of the proposed assignee;
 - (iv) a draft pro forma budget for the operations of the Airport by the proposed assignee;
 - (v) a business plan of the proposed assignee acceptable to the Lessor, acting reasonably;
 - (vi) a maintenance plan of the proposed assignee acceptable to the Lessor, acting reasonably;
 - (vii) details of the financing and equity of the proposed assignee to acquire and operate the Airport;
 - (viii) an executed copy of the form of instrument to be used to assign this Lease to the assignee or other successor in interest; and
 - (ix) such other information as the Lessor may reasonably require.

- 36 -

- (b) the Lessor has, at least ninety (90) days prior to the proposed date of the assignment or transfer, been given full details in writing of all individuals and corporations at that time occupying any portion or portions of the Demised Lands, along with details of such occupation, it being understood and agreed that such occupants and such occupations are subject to the approval of the Lessor, in accordance with the terms of this Lease, and that assignment of this Lease is not a waiver of these rights nor an approval of or consent to the occupations;
- (c) the assignee or other successor in interest shall have entered into, in form and content satisfactory to the Lessor, an Assumption Agreement under which the assignee or other successor in interest shall have agreed with the Lessee and the Lessor to assume the performance of all of the terms, covenants and conditions of this Lease on the part of the Lessee to be performed; and
- (d) the assignee of the interest of the Lessee under this Lease has received an assignment of all of the Lessee's rights relating to the Demised Lands.

PROVIDED FURTHER THAT such assignment or transfer may be made subject to such further conditions as the Lessor may prescribe.

16.2 Duplicate Original

The Lessee shall deliver to the Lessor a duplicate original of the signed instrument assigning this Lease to the assignee or other successor in interest and a duplicate original of the signed Assumption Agreement.

16.3 Default

Should the Lessee attempt to make any such assignment or transfer, except as aforesaid, such action shall be deemed a breach of this Lease and a default hereunder and the approval of one assignment or transfer shall not constitute approval of any other assignment or transfer, and the restrictions of this Article 16 shall apply to each successive assignment or transfer hereunder and shall be severally binding upon each and every assignee, transferee and other successor in interest of the Lessee.

16.4 Liability of Lessee

No assignment or transfer consented to hereunder shall be construed to release the Lessee from any liability under this Lease.

16.5 Change of Control

No Change of Control of the Lessee may occur at any time during the Remaining Term without the written approval of the Lessor, such approval not to be unreasonably withheld, and without any required approval of Transport Canada, PROVIDED HOWEVER the Lessor may, at its option, where it does not approve such change cancel this Lease and the Remaining Term hereby granted, upon giving sixty (60) days' written notice to the Lessee of its intention to cancel and

- 37 -

this Lease shall thereupon be determined. The provisions of Section 16.1, mutatis mutandis, shall apply to any request for the approval of the Lessor to a Change of Control.

16.6 Dissolution

The dissolution of the Lessee or the termination of its existence as a corporation or partnership, by any means, may, at the option of the Lessor, determine this Lease as of the date of that dissolution or termination of existence.

16.7 Additional Restrictions on Assignment

Notwithstanding any other provision of this Lease, the Lessee agrees that it will not assign this Lease, including a Change of Control of the Lessee, prior to April 30, 2010 under any circumstances without the prior written consent of the Lessor, which consent may be arbitrarily withheld during such period for any reason. If, prior to April 30, 2015, the Lessee assigns this Lease in conjunction with a sale by the Lessee of the Airport operations or a Change of Control of the Lessee occurs, and such assignment or Change of Control is approved by the Lessor in accordance with this Lease, and results in a Net Profit to the Lessee, or to the Shareholder(s) of the Lessee, as the case may be, the Lessee will pay to the Lessor on closing of the sale or of the Change of Control, by way of consideration for the grant of such approval, an amount calculated on a sliding scale based on the effective date of sale, as follows:

on or before May 31, 2011 - 10% of Net Profit realized on the sale;
thereafter until May 31, 2012 - 9% of Net Profit realized on the sale;
thereafter until May 31, 2013 - 8% of Net Profit realized on the sale;
thereafter until May 31, 2014 - 7% of Net Profit realized on the sale;
thereafter until May 31, 2015 - 6% of Net Profit realized on the sale.

"Net Profit" for this Section 16.7 will be calculated in accordance with generally accepted accounting principles based on the total gross amount accruing due to the Lessee or to the Shareholder(s) of the Lessee, as the case may be, whether in cash or by way of other consideration for the sale, less the total of the amount paid by the Lessee when it purchased the Airport, and such capital expenditures and Airport Improvements paid for by the Lessee thereafter, but will also provide for recovery of any net operating losses during the period of ownership of the Airport by the Lessee.

16.8 Rent Adjustment on Assignment

On an assignment of this Lease, including a Change of Control under Section 16.5 or a sublease of all or substantially all of the Demised Lands, the Minimum Percentage Rent payable under this Lease will be adjusted to an amount equal to the greater of the then Minimum Percentage Rent payable under Section 3.2(b) as adjusted under Section 3.2(c), and the average of the total rent payable by the Lessee under this Lease for the immediately preceding three Lease Years.

- 38 -

17. LICENCES TO UTILITIES

17.1 Licences

Subject to the terms and conditions of Article 9 hereof, the Lessee may, from time to time, enter into licences of occupation with utility companies to service any part of the Demised Lands, the Airport Lands or the Road and Utility Areas; PROVIDED ALWAYS THAT no such licence of occupation shall be made by the Lessee or shall be valid and binding unless consent in writing of the Lessor thereto has been first had and obtained and it is made subject to such conditions as the Lessor may prescribe.

18. LIABILITY AND INDEMNITY OF THE LESSOR

18.1 Exemption of the Lessor From Liability

The Lessor shall not be liable or responsible in any way for personal or consequential injury of any kind whatsoever that may be suffered or sustained by the Lessee, or any employee, contractor, subcontractor, servant, agent, licensee, sublessee, occupant or invitee of the Lessee, or any other Persons who may be upon the Demised Lands, Airport Lands or Road and Utility Areas or any part or parts thereof, or for any loss, theft, damage or injury to any property upon those lands or any part or parts thereof, however caused.

18.2 Indemnity of The Lessor by Lessee

The Lessee will at all times hereafter indemnify and keep the Lessor indemnified against and from and be responsible for all claims, demands, actions, suits and other proceedings whatsoever by whomsoever made or brought against the Lessor, and all losses, costs, expenses and liabilities whatsoever suffered or incurred by the Lessor, by reason of or arising out of the death or injury of any person or Persons or the damage or destruction of any property while in, about or near the Demised Lands, Airport Lands or Airport or any part or parts thereof whether or not such death or injury or damage or destruction was caused or contributed to by any act or omission on the part of the Lessee, its agents, contractors, servants, employees, subcontractors, invitees, sublessees, occupants or licensees or on the part of Transport Canada or the Lessor, its officers, agents, servants or employees or on the part of any other party or on the part of any, some or all of them or by any want or defect in any plan or specification or any construction, repair, maintenance or reconstruction or by any use, possession, operation or occupancy of the above-mentioned lands or any part or parts thereof or otherwise howsoever and notwithstanding that such may give rise in law to an action in negligence or for other tortious liability.

19. NOTICES

19.1 Notices to Parties

Whenever in this Lease, it is required or permitted that notice or demand be given or served by either party of this Lease to or on the other, such notice or demand will be in writing and will be

- 39 -

validly given or sufficiently communicated if forwarded by registered mail, priority post, facsimile, telegram or personally delivered as follows:

To the Lessor:

4500 Clarence Taylor Crescent
Delta, B.C.
V4K 3E2
Attention: Chief Administrative Officer
Facsimile No.: (604) 946-3864

To the Lessee:

Unit #48, 4400 – 72nd Street
Delta, B.C.
V4K 5B3
Facsimile No.: (604) 939-6321

with a copy to the registered office of the Lessee as of record, at the time at which the notice is given.

19.2 Such addresses may be changed from time to time by either party giving notice as above provided.

19.3 If any question arises as to whether any notice was or was not communicated by one party to the other, it shall be deemed to have been effectively communicated or given on the day received or on the fifth day after it was mailed, sent or delivered, whichever is the earlier; PROVIDED THAT if at the time of mailing or at any time prior to the deemed receipt of such notice the postal service shall be affected by strike, lock-out, labour disruption or other cause which might reasonably be expected to adversely affect the delivery of mail, notice hereunder shall be effective only if delivered and served personally, by facsimile or telegram.

20. DEFAULT OF LESSEE AND REMEDIES OF THE LESSOR

20.1 Bankruptcy or Insolvency of Lessee

If during the Remaining Term of this Lease, the Lessee shall make an assignment for the benefit of creditors or any arrangement or compromise, or assign in bankruptcy or take the advantage in respect of its own affairs of any statute for relief in bankruptcy, moratorium, settlement with creditors, or similar relief of bankrupt or insolvent debtors, or if a receiving order is made against the Lessee or if the Lessee is adjudged bankrupt or insolvent or if a liquidator, receiver or receiver-manager of any property of the Lessee is appointed by reason of any actual or alleged insolvency or any default of the Lessee under any mortgage or other obligation, or if the interest of the Lessee in the Demised Lands or any part or parts thereof or any of the goods or chattels of the Lessee shall become liable to be taken or sold under any writ of execution or other like process, or if proceedings are instituted by the Lessee or any other person for an order for the

- 40 -

winding up of the Lessee or other termination of the corporate existence of the Lessee, then the occurrence of any such event shall be deemed to be a breach of this Lease, and at the option of the Lessor this Lease may be terminated and shall expire as fully and completely as if the date of the happening of such default were the date herein fixed for the expiration of the Remaining Term of this Lease, and the Lessee shall quit and surrender possession of the Demised Lands to the Lessor but shall notwithstanding remain liable for any loss or damage suffered by the Lessor. The Lessee will immediately notify the Lessor if it receives from any of its secured creditors a notice under the *Bankruptcy and Insolvency Act* advising that the secured creditor intends to realize upon its security located at the Demised Lands. Unless the Lessor expressly consents thereto, which the Lessor is not obligated to do, the Lessee will not exercise any right to repudiate this Lease under the terms of a proposal filed under the *Bankruptcy and Insolvency Act*.

20.2 Termination and Re-Entry on Certain Defaults by the Lessee.

If the Lessee:

- (a) shall default in the payment of rent (including annual rent and percentage rent) or any other sum required to be paid by any provision of this Lease whether characterized as rent or not; or
- (b) shall default in performing or observing any of its other covenants, undertakings, obligations or agreements under this Lease; or
- (c) shall vacate or abandon the Demised Lands or any part or parts thereof, which vacating or abandonment shall be deemed to be a default under this Lease; or
- (d) if any contingency shall occur which by the terms of this Lease constitutes a breach hereof;

and if the Lessor shall have given to the Lessee notice of such default, or the happening of such contingency, and at the expiration of thirty (30) days after giving of such notice (if the default in question is a default mentioned in subsection (a) above) and at the expiration of sixty (60) days (in other cases) the default shall continue to exist (or in the case of a default which cannot with due diligence be cured within a period of sixty (60) days, the Lessee fails to commence to cure such a default promptly after receiving such notice and thereafter proceed with due diligence provided that in any event the default is fully cured by the Lessee within 80 days after receiving such notice) then and in every such event, or if the Lessee shall cease to continuously operate the Airport for a period of 90 consecutive days, unless by reason of any event beyond the reasonable control of the Lessee other than lack of funds or any other financial reason, the Lessor shall have the right to declare the Remaining Term ended and this Lease determined and thereupon these presents and everything herein contained and the estate of the Lessee and the Remaining Term of the Lease shall absolutely cease, determine and be void without the requirement of re-entry or any other act by the Lessor but the Lessor shall nevertheless be entitled to recover from the Lessee the rent (including annual rent and percentage rent) then accrued or accruing, and any right of action by the Lessor against the Lessee for any antecedent breach of any of the covenants of this Lease shall not be thereby prejudiced, together with all damages it incurs by reason of the

- 41 -

Lessee's default without prejudice to the Lessor's other rights and remedies and the Lessor by its authorized agents or employees may re-enter the Demised Lands or any part or parts thereof, and may repossess and enjoy the Demised Lands without such re-entry and repossession working a forfeiture or waiver of the rents to be paid and the covenants to be performed by the Lessee up to the date of such re-entry and repossession.

20.3 Notice to Mortgagee

If the Lessor consents to any mortgage of the Lessee's leasehold interest (pursuant to Article 14 hereof) it shall be a term of such consent that the mortgagee agree with the Lessor in writing and under seal that upon its taking possession of the Demised Lands, or if the mortgagee has exercised any power of sale it will cause the assignee of the mortgaged rights to covenant in writing with the Lessor that upon such assignee taking possession, it shall remedy all defaults under the Lease existing up to the time of taking such possession of which the mortgagee shall have had notice and shall perform all of the Lessee's obligations under the Lease for the balance of the Remaining Term or until it returns possession of the Demised Lands to the Lessee and if the Lessor shall have consented to any such mortgage and the mortgagee shall have entered into the agreement with the Lessor as aforesaid then:

- (a) if any default shall occur pursuant to the provisions of Section 20.2 hereof which would give rise to a right in the Lessor to terminate this Lease, then the Lessor shall not have the right to terminate this Lease unless it has given written notice to such mortgagee of such default concurrently when giving notice to the Lessee and the mortgagee may elect to remedy the default provided such is cured within the notice periods set out in Section 20.2;
- (b) if any default shall occur pursuant to the provisions of Section 20.1 hereof and the Lessor obtains the right to terminate the Lease as a result of or arising from the financial condition of the Lessee then, the Lessor shall give written notice to such mortgagee of such default, and, so long as the mortgagee immediately pays all rent and other amounts payable under the terms of this Lease and performs all of the other covenants and obligations on the part of the Lessee to be performed pursuant to the terms of this Lease as and when the same are due to be paid and performed, and remedies any pre-existing defaults in the payment of rent or other amounts and performance of covenants under the Lease, the mortgagee shall not be required to reinstate the Lessee to a sound financial condition and the Lessor shall not terminate this Lease for such reason; and
- (c) any notice to be given to such mortgagee may be served personally or may be mailed by prepaid registered post to the most recent address in Canada for such mortgagee of which the Lessor shall have notice and shall be deemed to have been given on the day of such service or the first business day after such mailing, as the case may be,

but the rights granted to the mortgagee pursuant to this Section shall in no way alter, affect or prejudice any of the rights or remedies available to the Lessor against the Lessee.

- 42 -

20.4 Remedies of the Lessor are Cumulative

The remedies of the Lessor specified in this Lease are cumulative and are in addition to any remedies of the Lessor at law or equity and no remedy shall be deemed to be exclusive and the Lessor may from time to time have recourse to one or more or all of the available remedies specified herein or at law or equity and in addition to any other remedies provided in this Lease, the Lessor shall be entitled to restrain by injunction any violation or attempted or threatened violation by the Lessee of any of the covenants hereof.

20.5 Effect of Waiver by the Lessor

The failure of the Lessor to insist upon the strict performance of any covenant of this Lease shall not waive such covenant, and the waiver by the Lessor of any breach of any covenant of this Lease shall not waive such covenant in respect of any future or other breach and the receipt and acceptance by the Lessor of rent or other moneys due hereunder with knowledge of any breach of any covenant by the Lessee shall not waive such breach and no waiver by the Lessor shall be effective unless made in writing by the Lessor.

20.6 Damages and Expenses

If the Lessor terminates this Lease by reason of default by the Lessee, then in addition to any other remedies, it may recover from the Lessee all damages it incurs by reason of the default. If the Lessor brings any proceeding hereunder against the Lessee arising from the alleged default by the Lessee of its obligations and it is established that the Lessee is in default, the Lessee will pay to the Lessor all costs and expenses incurred by the Lessor in those proceedings including without limitation legal fees on a solicitor and own client basis.

21. COMPLIANCE WITH LAWS GENERALLY

21.1 Compliance

In addition to complying with the requirements of any Section of any Article of this Lease of specific application, the Lessee will comply and cause to be complied with at its own expense, in its and its sublessees and licensees use and occupation of the Demised Lands, Airport Lands and Road and Utility Areas or any part or parts thereof, and in the conduct of its business thereon, and in the construction, reconstruction, operation, maintenance or repair thereof, and as to the condition thereof at all times, and as to all other matters or things pertaining to the Demised Lands, Airport Lands and Road and Utility Areas or any part or parts thereof, all laws, by-laws, statutes, rules, requirements, orders, directions, ordinances, regulations and standards of all governmental and other authorities and Persons having jurisdiction therefor. Any reference in this Lease to any laws, by-laws, statutes, rules, requirements, orders, directions, ordinances, regulations or standards shall be a reference to the same, as amended, substituted, replaced or re-enacted from time to time.

- 43 -

22. ENVIRONMENTAL

22.1 Environmental

- (a) The Lessee, at the Lessee's cost, will comply with the applicable requirements of all municipal, provincial, federal and other governmental authorities now in force or which may hereafter be in force, including without limitation, all laws and regulations pertaining to the use, possession, control, removal, disposal and abatement of Hazardous Substances and all other laws and regulations pertaining to the occupancy or use of the Airport, Demised Lands, Airport Lands, Road and Utility Areas, and all improvements thereon, by the Lessee, its sublessees or licensees and will observe or cause to be observed in any occupancy or use of the Airport, Demised Lands, Airport Lands, Road and Utility Areas, and all improvements thereon by any of such parties, all municipal by-laws and provincial and federal statutes and regulations now in force or which may hereafter be in force, and will comply with all regulations made by fire insurance underwriters. The provisions of this paragraph 22.1(a) will survive the expiration or earlier termination of this Lease.
- (b) The Lessor may enter the Airport, Demised Lands, Airport Lands, Road and Utility Areas, and all improvements thereon at any time or times, with as little interference to the conduct of the Lessee's business as is reasonably possible, to enable the Lessor to comply with any municipal by-law or provincial statute now or in the future applicable thereto whether or not the application of the by-law or statute results from an act or omission of the Lessor or any other person.
- (c) If the Lessee has knowledge, or has reasonable cause to believe that any Hazardous Substance has come to be located on, under or about the Airport, Demised Lands, Airport Lands, Road and Utility Areas, or any improvements thereon, the Lessee will, upon discovery of the presence or suspected presence of any Hazardous Substance, give written notice of that condition to the Lessor.
- (d) If the Lessor, in its sole discretion, believes that the Airport, Demised Lands, Airport Lands, Road and Utility Areas, or any improvements thereon have become contaminated with any Hazardous Substance, the Lessor, in addition to its other rights under this Lease, may enter upon and obtain samples from and under the Airport, Demised Lands, Airport Lands, Road and Utility Areas, or any improvements thereon for the purpose of analysing the same to determine whether and to what extent the Airport, Demised Lands, Airport Lands, Road and Utility Areas, or any improvements thereon have become so contaminated. To the extent that contamination is found and that such contamination was caused by the Lessee, the Lessee will reimburse the Lessor for the costs of such inspection, sampling and analysis.
- (e) Without limiting the above, the Lessee will indemnify and save harmless the Lessor from and against any and all claims, losses, liabilities, damages, costs and

- 44 -

expenses, including without limitation, legal fees and costs on a solicitor and own client basis, arising out of or in any way connected with the use, manufacture, storage, or disposal of Hazardous Substances by the Lessee, its agents or contractors, on, under or about the Airport, Demised Lands, Airport Lands, Road and Utility Areas, or any improvements thereon including, without limitation, the cost of any required or necessary repair, cleanup or detoxification and the preparation of any closure or other required plans in connection with this Lease. The indemnity obligations of the Lessee under this paragraph will survive any termination of this Lease.

- (f) Notwithstanding any term of this Section 22.1 to the contrary, the Lessee will have no liability related to Hazardous Substances that were brought onto, created or existing on, under or about the Airport, Demised Lands, Airport Lands, Road and Utility Areas or any improvements thereon prior to June 1, 1983.

23. LESSEE TO COMPLY WITH LEASE, MORTGAGE AND OTHER OBLIGATIONS

23.1 Lessee's Compliance

The Lessee will observe and perform all its obligations incurred in respect of assignments, subleases, licences of occupation and mortgages of its leasehold interest or any part or parts thereof and shall not suffer or allow any such obligation to be in default, and if any such default shall occur the Lessor may, but shall not be obliged to, rectify such default for the account of the Lessee, and any amount paid by the Lessor in so doing together with all reasonable costs and expenses of the Lessor, shall be reimbursed to the Lessor by the Lessee on demand together with interest at the rate set out in subsection 4.1(c) hereof from the date incurred until paid, and may be recovered as if it were rent in arrears.

24. DISTRESS

24.1 Distress

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

- 45 -

25. SIGNS**25.1 Signs**

The Lessee agrees that it will not place or erect or allow to be placed, erected or maintained signs of any kind upon the Demised Lands, Airport Lands or Road and Utility Areas by the Lessee, its subtenants, licensees or concessionaires without first obtaining the Lessee's prior written consent which consent shall not be unreasonably withheld. The Lessor may remove any signs placed, erected or maintained contrary to this Section.

26. LESSEE TO YIELD UP PREMISES IN GOOD REPAIR**26.1 Yielding Up**

Upon the expiration or sooner termination of the Remaining Term hereof, the Lessee will peaceably surrender and yield up possession of the Demised Lands to the Lessor in good and substantial repair and condition, all in accordance with the provisions for repair hereinbefore set forth, without notice from the Lessor, and the right to notice to quit or vacate is hereby expressly waived by the Lessee, any law, usage or custom to the contrary notwithstanding.

27. UNPAID RENT**27.1 Unpaid Rent**

Any termination of this Lease shall in no way prejudice the Lessor's right to recover unpaid rent (including annual and percentage rent) or any other right of action by the Lessor with respect to a breach of any covenant herein contained.

28. NO PARTNERSHIP OR JOINT VENTURE**28.1 No partnership or Joint Venture**

This Lease is not intended nor shall it be construed to create the relationship of either a partnership or a joint venture between the Lessor and the Lessee.

28.2 No agency

Neither party shall have any authority or power to act for or to undertake any obligation or responsibility on behalf of the other party.

29. NO IMPLIED COVENANT**29.1 No Implied Covenant**

No implied covenant or liability on the part of the Lessor is created by the use of the words "demise" or "lease" contained herein or any other words.

- 46 -

30. TIME OF THE ESSENCE**30.1 Time**

Time is of the essence of this Lease and all the provisions hereof.

31. NO OBLIGATION TO RENEW OR EXTEND**31.1 No Renewal**

The Lessor is under no obligation to renew this Lease or to grant an extension thereof.

32. COVENANTS BINDING ON SUCCESSORS AND ASSIGNS**32.1 Successors and Assigns**

This Lease and all the covenants, agreements, terms, conditions, provisions and undertakings contained in this Lease shall extend to, enure to the benefit of, and be binding upon the Lessor and its successors and assigns and the Lessee and its successors and permitted assigns, the same as if they were in any case named and expressed, and that the same shall be construed as covenants running with the land; and wherever in this Lease reference is made to either of the parties hereto, it shall be held to include and apply also to the successors and assigns of such party, the same as if in each and every applicable case so expressed, and in this Lease the singular or masculine or neuter includes the plural or masculine or feminine or body corporate or politic wherever the context or the parties hereto so require.

33. WAIVER BY THE LESSOR OR THE LESSEE**33.1 Waiver**

Subject to the provisions of any statute, the Lessor or the Lessee may waive any term or condition of this Lease which is solely for the benefit of the party making the waiver, but no such waiver by the Lessor is binding upon the Lessor unless it is expressed in writing by the Lessor, and no such waiver by the Lessee is binding upon the Lessee unless it is expressed in writing by the Lessee.

34. CAPTIONS AND MARGINAL TITLES**34.1 Captions and Headings**

The captions and marginal titles in this Lease are for convenience of reference only, and shall not affect the scope, intent, or interpretation of any provision.

- 47 -

35. EFFECTIVE DATE**35.1 Date**

Notwithstanding the actual date of execution and delivery of this Lease, it shall be deemed to have effect from the 1st day of December, 2005.

36. TRANSFER OF THE LESSOR'S INTEREST

36.1 Upon the transfer or assignment of the Lessor's interest in the Demised Lands, or any part thereof by any means whatsoever, the Lessee covenants and agrees to attorn to such transferee or assignee as the Lessor under this Lease to make rental or any other payments required to be made to the Lessor pursuant to this Lease to such transferee or assignee.

37. ENTIRE AGREEMENT

37.1 Except as specifically provided herein, this Lease contains all the representations, warranties, covenants, agreements, conditions and understandings between the Lessor and the Lessee concerning the Demised Lands or the subject matter of this Lease.

38. NOTIFICATION OF FEES, RATES AND CHARGES

38.1 The Lessee will give not less than 90 day advance written notice to the Lessor prior to its intention to impose or increase any airport user fees, rates or charges, which notice shall include an explanation of the justification for such imposition of or increase, and will in each Lease Year together with the Statement of Gross Revenue and Expenditures to be provided under Section 3.4, provide to the Lessor a list of all fees, rates and charges set by the Lessee at the Airport and shall provide such a list ten (10) days in advance of any publication of amendment to such fees, rates and charges.

39. REGISTRATION

39.1 This Lease may be registered against title to the Demised Lands at the expense of the Lessee. Notwithstanding any election by the Lessee not to register this Lease, the parties agree that the Lease Amendment Agreement registered against title to the Demised Lands under No. BY316871 is entirely superceded and replaced by this Lease commencing as and from the Amendment Effective Date.

40. SCHEDULES

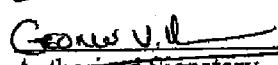
The following schedules are incorporated into and form part of this Lease:

Schedule I - Reference Plan of Demised Lands

- 48 -

- | | | |
|--------------|---|--|
| Schedule II | - | List of Facilities; |
| Schedule III | - | Description of As-Built Drawings; and |
| Schedule IV | - | Boundary Bay Vision Statement |
| Schedule V | - | Operating Agreement |
| Schedule VI | - | Aviation Services and Facilities Agreement |

IN WITNESS WHEREOF the Lessor and the Lessee have executed this Lease as of the day and year first above written.

THE CORPORATION OF DELTABy: _____
Authorized Signatory

Authorized Signatory**ALPHA AVIATION INC.**By: _____
Authorized Signatory_____
Authorized Signatory

SCHEDULE II**List of Facilities**

ITEM	DESCRIPTION
1. Grounds – Demised Lands	64 hectares (more or less)
2. Runway 02-25	1,080 m x 30 m
3. Runway 12-30	1,145 m x 30 m
4. Taxiways & A/C Aprons	approx. 125,000 m ²
5. Other Paved Areas	approx. 170,000 m ²
6. Flight Services & Customs Building	12 m x 6 m
7. Pump Station Building	6 m x 4 m
8. Drainage Pumps	3
9. Field Electrical Centre Building	8.5 m x 6.5 m
10. Indoor Regulators	3
11. Outdoor Substations	4
12. Standby Power Generator	1
13. Runway, Taxiway & Apron Light Units	194
14. Approach Light Units (On-Site)	26
15. Approach Light Units (Off-Site)	2
16. Runway Identification Lights	2
17. Obstruction Light Units (On-Site)	7
18. Obstruction Light Units (Off-Site)	9
19. Flood Lights	3
20. Lighted Wind Socks	3
21. Lighted Airfield Signs	15
22. Street lights	32

- 2 -

SCHEDULE II**List of Facilities** (continued)

ITEM	DESCRIPTION
23. Associated Lighting Facilities, Including Transformers	
24. Breakers, Panels Cables Ducts, etc.	
25. Water Mains (6" diameter and 8" diameter)	approx. 4,000 m
26. Water Service Lines (Maximum 2" diameter)	approx. 1,200 m
27. Fire Hydrants	7
28. Roads	approx. 5,000 m
29. Fences	approx. 8,000 m
30. Ditches, Drains & Culverts	approx. 20,000 m
31. Miscellaneous Related Items Including Anemometer, Flagpole, Sewage Tank and All Water Valves & Chambers, Gates, Manholes, Catch Basins, Culvert End Structures, Pavement Markings and Signage	

SCHEDULE III**Description of As-Built Drawings****Section 6.5**

	DRAWING NO.	SUBJECT	DATE AMENDED
1.	P652-P313 N124	New Fencing and Gates	April 8, 1983
2.	P562-P612-C101	Site Development Key Plan and Drawing Index	October 15, 1982
3.	P562-P612-C102	Site Development Aircraft Surfaces	October 15, 1982
4.	P562-P612-C103	Site Development Aircraft Surfaces	October 15, 1982
5.	P562-P612-C104	Site Development Aircraft Surfaces	October 15, 1982
6.	P562-P612-C105	Site Development Key Plan and Drawing Index	October 15, 1982
7.	P562-P612-C106	Site Development Aircraft Surfaces	October 15, 1982
8.	P562-P612-C107	Site Development Aircraft Surfaces	October 15, 1982
9.	P562-P612-C108	Site Development Layout Plan and Sections	October 15, 1982
10.	P562-P612-C109	Site Development Paint Markings	October 15, 1982
11.	P562-P613-R101	Site Development Road 'A'	October 15, 1982
12.	P562-P613-R102	Site Development Road 'A'	October 15, 1982
13.	P562-P613-R103	Site Development Road 'A'	October 15, 1982
14.	P562-P613-R104		
15.	P562-P613-R105	Site Development Road 'A'	October 15, 1982
16.	P562-P613-R106	Site Development Road 'A'	October 15, 1982
17.	P562-P613-R107	Site Development Road 'A'	October 15, 1982
18.	P562-P613-R108	Site Development Road 'A', 'B' and 'C'	October 15, 1982
19.	P562-P623-C001	Site Development Drawing Sheet 1	October 15, 1982
20.	P562-P623-C002	Site Development Drawing Sheet 2	October 15, 1982
21.	P562-P630-P101	Field Lighting and Power Supply Key Plan	January 31, 1983
22.	P562-P630-P103	Field Lighting and Power Supply and Layout, Fixtures and Details	January 31, 1983

- 2 -

SCHEDULE III**Description of As-Built Drawings** (continued)

DRAWING NO.	SUBJECT	DATE AMENDED
23. P562-P630-P103	Field Lighting Circuit Diagrams	January 31, 1983
24. P562-P630-P104	Field Lighting Underground Duct and Cable Routes	January 31, 1983
25. P562-P630-P106	Field Lighting and Power Supply Underground	January 31, 1983
26. P562-P630-P107	Field Lighting and Power Supply Field Lighting Installation Details	January 31, 1983
27. P562-P630-P108	Field Lighting and Power Supply Runway Approved Lighting Installation Details	January 31, 1983
28. P562-P630-P109	Field Lighting and Power Supply Airfield and Schedule Details	January 31, 1983
29. P562-P630-P110	Field Lighting and Power Supply F.E.C. and I.P.U. Building Details	January 31, 1983
30.	Field Lighting and Power Supply Single Line Diagram	February 10, 1983
31. P562-P630-P113	FFB.C. Safety Council Building - Obstruction Lights Power Supply	March 7, 1983
32. P630-P101-P630-P112	All should be titled Field Power Lighting and Power Supply	

SCHEDULE IV**Boundary Bay Vision Statement****BOUNDARY BAY AIRPORT ADVISORY COMMITTEE
VISION STATEMENT FOR BOUNDARY BAY AIRPORT, MAY 2002****INTRODUCTION**

The Boundary Bay Airport Advisory Committee conducted a number of visioning workshop sessions throughout 2001/2002. The purpose of these sessions was to develop a concise, clear statement of a vision in order to assist Council in future dealings at the Boundary Bay Airport. The Committee recommends Council endorse this long term vision statement to guide future negotiations, operations and development at the airport.

VISION STATEMENT

That the Boundary Bay Airport be recognized as a high quality general aviation airport, and a facility which is a valuable asset to our community.

ATTRIBUTES NECESSARY TO SUPPORT THE VISION STATEMENT**1. Operations and Maintenance:**

That the Airport Operator maintain the grounds, buildings and general appearance of Boundary Bay Airport to an appealing standard. The Airport Operator shall support the existing businesses, their clients, and users of the airport by:

- (a) Keeping the runways, taxiways and aprons free of debris, obstructions, snow/ice, weeds or any foreign objects which could impair the use by aircraft;
- (b) Expeditiously maintaining safety, lighting and electronic facilities and improvements for air-side operations;
- (c) Expeditiously repairing/modifying air-side signage; and,
- (d) Maintaining existing buildings and grounds which are consistent with industry property management standards, and are visually appealing.

2. Safety, Security and Noise:

That the Airport Operator, through the cooperation of the airport businesses, and Nav Canada, maintain a high level of airspace safety, minimize security breaches in access and operations occurring on lands within the airport perimeter, and maintain operational procedures to mitigate disturbance to birds and wildlife using the Boundary Bay area. The stakeholders must establish and maintain good community relations to mitigate the impact of noise.

3. Business Opportunities:

That the Airport Operator be given the mandate and expectation to meet the needs of existing airport tenants, while fostering a positive, attractive business environment to promote the marketability of the airport within the region. The airport should become a revenue generator for Delta.

4. Development:

That development on the airport lands zoned for development be optimized in order to provide a reasonable return on the capital infrastructure required to service these lands. Responsible development on the airport lands shall be planned and orderly consistent with municipal bylaws, aesthetically pleasing, fully serviced to industrial park standards including landscaping, and incorporate public amenities to encourage public use of the airport facilities.

The use of these lands should remain flexible in order to encourage appropriate future private sector investment. Any obstacles to encouraging new investment opportunities, such as security of tenure, should be addressed by Council. A current Master Plan is necessary to guide future development activities at the airport. Development should be consistent with the overall goals of the airport. Community input is necessary to achieve a successful Master Plan.

5. Financial:

That the airport become self-sustaining:

1. by minimizing the impact on Delta's tax base through optimizing the revenue potential of agricultural lands not required for direct airport purposes;
2. by taking advantage of film and other revenue opportunities;
3. by maximizing return on investment on development opportunities; and,
4. by encouraging sufficient development to support the infrastructure investment and public amenities required of a high quality airport.

These revenues generated by the airport shall be used to offset expenditures, and any surplus held in reserve to assist with long term capital expenditure needs.

6. Airport's Role in the Region:

That Boundary Bay Airport (ZBB) provide vital relief to the Vancouver International Airport (YVR) through accommodation of a large volume of general aviation traffic, of which the flight training schools are a significant component. This role becomes increasingly important as YVR runways reach ultimate capacity, which could occur within the next decade. In the longer term, the next 10 to 30 years, ZBB could attract business aircraft, maintenance facilities (including a Fixed Base Operation) for light aircraft, manufacturing, sales, storage and repair of aviation parts and equipment, continued growth of flight training companies, small air-cargo operations and a small domestic airline carrier.

That Boundary Bay Airport become a community destination point, "a place where people want to be", a community based airport with development that encourages general aviation and other compatible uses.

ACTIONS NECESSARY TO ACHIEVE THE VISION STATEMENT**1. Effective Governance Model:**

Council needs to determine an appropriate governance model to support the vision statement and its attributes. The governance model needs to establish an effective, focused communication link with the community, Transport Canada, YVR, Minister of Transport and community airport associations within the Province and region.

2. Long-term Financial Plan:

The Airport Operator and Delta need to establish and maintain a 10 year financial plan, acceptable to Council.

3. Master Plan:

The Airport Operator and Delta need to develop a long term land management plan for all lands within Delta's ownership at the airport, taking into consideration environmental, agricultural, community, business and aviation needs. The Master Plan should be reviewed at least every 10 years, and amended as required.

4. Transport Canada:

Delta and the Airport Operator need to create and maintain open lines of communication with the regulators at Transport Canada, and work towards expanding the scope of the federal government Airports Capital Assistance Program (ACAP) to ensure adequate funds are secured for larger capital improvements at the airport. Transport Canada needs to recognize the unique relationship between Delta and its Airport Operator.

5. Vancouver International Airports

Delta and the Airport Operator need to create and maintain open lines of communication with YVR staff. Council needs to establish a working relationship with the YVR Board of Directors.

6. Performance:

Performance standards for each attribute necessary to support the vision statement need to be established in conjunction with the Airport Operator, and mechanisms put in place to secure that performance. Delta, as land owner, should progressively work with the Airport Operator to ensure these standards are effectively managed on an ongoing basis.

Page 61

SCHEDULE V

Operating Agreement

OPERATING AGREEMENT

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

AND:

THE CORPORATION OF DELTA

TABLE OF CONTENTS

ARTICLE 1 - DEFINITIONS AND INTERPRETATION	2
Section 1.01 Definitions	2
Section 1.02 Subdivisions	4
Section 1.03 Number and Gender	4
Section 1.04 Headings	4
Section 1.05 Accounting Terms and Principles	5
Section 1.06 Business Day	5
Section 1.07 Schedule	5
Section 1.08 Statutes, Regulations and Rules	6
Section 1.09 Governing Law	6
Section 1.10 Construed Covenants	6
Section 1.11 Extended Meanings	6
ARTICLE 2 - OPERATION	7
Section 2.01 Operation of Airport	7
Section 2.02 Termination of Operations	9
ARTICLE 3 - DISPOSITION OF LAND	9
Section 3.01 Airport Operator's Ability to Deal with Land	9
ARTICLE 4 - REMEDIAL WORK	11
Section 4.01 Definitions	11
Section 4.02 Her Majesty's Obligation	11
Section 4.03 Limitations on Her Majesty's Liability	12
Section 4.04 Performance of Remedial Work	12
Section 4.05 Contract	13
ARTICLE 5 - PERMISSION TO ENTER	14
Section 5.01 Permission to Enter	14
ARTICLE 6 - DEBTS DUE TO HER MAJESTY	14
Section 6.01 Debts Due to Her Majesty	14
ARTICLE 7 - DEFAULT	15
Section 7.01 Default	15
ARTICLE 8 - ARBITRATION	16
Section 8.01 Arbitration	16
Section 8.02 Arbitration Tribunal	17
Section 8.03 Proceedings	17
Section 8.04 Obligations During Arbitration	17

ARTICLE 9 - NO PARTNERSHIP, JOINT VENTURE OR AGENCY	18
Section 9.01 No Partnership, Joint Venture or Agency	18
ARTICLE 10 - RIGHT TO CHARGE	18
Section 10.01 Right to Charge	18
ARTICLE 11 - TERM	19
Section 11.01 Effective Date and Term of the Agreement	19
ARTICLE 12 - GENERAL PROVISIONS	20
Section 12.01 Entire Agreement	20
Section 12.02 Agreement to Supersede	20
Section 12.03 House of Commons	21
Section 12.04 Time of Essence	21
Section 12.05 Notice	21
Section 12.06 Amendment	21
Section 12.07 Waiver	22
Section 12.08 Severability	23
Section 12.09 Assignment, Successors and Assigns	23
SCHEDULE "A"	26

OPERATING AGREEMENT

THIS AGREEMENT dated for reference the 4th day of December, 1997.

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA,
(hereinafter called "Her Majesty"),
represented by the Minister of Transport
(hereinafter called the "Minister"),

OF THE FIRST PART

AND:

THE CORPORATION OF DELTA
(hereinafter referred to as the "Airport Operator"),

OF THE SECOND PART

WHEREAS the Minister and the Airport Operator have entered into an Agreement to Transfer ("Agreement to Transfer") which has been executed on the 4th day of November, 1997 and which is registered in the legal registry of the Department of Transport as document no. 148606;

AND WHEREAS under the Agreement to Transfer the Minister and the Airport Operator have agreed to enter into this Agreement, amongst others, if certain conditions precedent were met or waived;

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

AND WHEREAS the Minister has and will retain, after the Transfer Date, regulatory authority and enforcement powers with respect to standards of safety and security for the aviation industry and travelling public at airports in Canada;

AND WHEREAS the Airport Operator has agreed to manage, operate and maintain the Airport for a specified period of years subject to the Lease and the Airport Certificate;

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 with each other as follows:

ARTICLE 1 - DEFINITIONS AND INTERPRETATION

Section 1.01 Definitions

1.01.01 In this Agreement:

"Aerodrome" means any area of land, water (including the frozen surface thereof) or other supporting surface used, designed, prepared, equipped or set apart for use either in whole or in part for the arrival, departure, movement or servicing of aircraft and includes any buildings, installations and equipment situated thereon or associated therewith;

"Agreement" means this Operating Agreement, as amended from time to time;

"Airport" means the Boundary Bay Airport;

"Airport Certificate" means a "Canadian aviation document" as defined in the *Aeronautics Act*, R.S.C. 1985 c. A-2, as amended, or any successor legislation, by which the Minister grants or renews accreditation to the operator of an airport pursuant to the *Aeronautics Act*;

"Airport Lands" means all and singular those certain parcels or tracts of lands and premises situate, lying and being in Delta, in the Province of British Columbia as more particularly described in the document annexed hereto as Schedule "A";

"Airport Operations Manual" means the airport operations manual which is prepared by the Airport Operator and is approved as part of the Airport Certificate;

"Airport Operator" means the Party of the Second Part as above designated and its successors and assigns;

"Applicable Provincial Environmental Laws" shall have the meaning ascribed thereto in Subsection 4.01.01 of this Agreement;

"Business Day" means a day other than a Saturday, Sunday or statutory holiday in the Province of British Columbia;

"Closing" means the execution and delivery of the Instruments;

"Closing Date" means the 4th day of December, 1997 or the date on which the Minister and the Airport Operator may agree as the date on which the Closing shall take place;

"Disclosure of Information Agreement" means the document referred to in Subsection 12.02.02 of this Agreement dated the 15th day of July, 1997;

"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 Agreement 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";

"Hazardous Substance" shall have the meaning ascribed thereto in Subsection 4.01.01 of this Agreement;

"Lease" shall have the meaning ascribed thereto in Subsection 2.01.05;

"Instruments" means the documents listed in Subsection 3.02.01 of the Agreement to Transfer when executed and delivered, as amended from time to time;

"Option to Purchase" means the document referred to in Paragraph 3.02.01(b) of the Agreement to Transfer when executed and delivered;

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

"Remedial Work" shall have the meaning ascribed thereto in Subsection 4.01.01 of this Agreement;

"Tenant" shall have the meaning ascribed thereto in Subsection 2.01.02 of this Agreement; and

"Transfer Date" means the 5th day of December, 1997 commencing at 00:00 hour.

Section 1.02 Subdivisions

1.02.01 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 Agreement or in a Schedule.

Section 1.03 Number and Gender

1.03.01 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 Airport Operator is deemed a proper reference. The necessary grammatical changes required to make the provisions of this Agreement apply shall in all instances be assumed as though in each case fully expressed.

Section 1.04 Headings

1.04.01 The division of this Agreement 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 Agreement.

Section 1.05 Accounting Terms and Principles

1.05.01 All accounting and financial terms used in this Agreement shall, except where otherwise provided either expressly or by necessary implication in this Agreement, 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.

1.05.02 Where the Canadian Institute of Chartered Accountants or any successor thereto includes a statement in its Handbook or any successor thereto on a method or alternative methods of accounting, such statement shall be regarded as the only generally accepted accounting principle and generally accepted auditing standard applicable to the circumstances that it covers and references herein to generally accepted accounting principles and generally accepted auditing standards shall be interpreted accordingly.

Section 1.06 Business Day

1.06.01 If the day on which any act or payment is required to be done or made under this Agreement 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 1.07 Schedule

1.07.01 The document attached hereto as Schedule "A" forms an integral part of this Agreement as fully as if it were set forth herein in full.

1.07.02 All capitalized words and phrases used in the Schedule annexed hereto will have the same meanings as defined in this Agreement.

1.07.03 Notwithstanding Subsection 1.07.01, in the event of any inconsistency or conflict between either the Schedule or any provision contained therein, and this Agreement or any provision of this Agreement, this Agreement or the provision of this Agreement prevails to the extent of the inconsistency or conflict.

Section 1.08 Statutes, Regulations and Rules

- 1.08.01** Any reference in this Agreement 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 re-enacted from time to time.

Section 1.09 Governing Law

- 1.09.01** This Agreement shall be interpreted in accordance with the laws in force in the Province of British Columbia, subject always to any paramount or applicable federal laws. Nothing in this Agreement is intended to or shall be construed as limiting, waiving or derogating from any Federal Crown prerogative.

Section 1.10 Construed Covenants

- 1.10.01** All of the provisions and each obligation or agreement of this Agreement, 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 1.11 Extended Meanings

- 1.11.01** Notwithstanding any provision to the contrary, where this Agreement provides that the Airport Operator shall "ensure" a covenant or obligation of any other Person or shall ensure compliance by any other Person or provides that the Airport Operator covenants or agrees to a specific matter on behalf of any other Person, the obligation of the Airport Operator herein shall be deemed to have been performed if:

- (a) the Airport Operator shall have obtained from such other Person, a covenant, obligation or agreement in terms which are no less stringent; and

2.01.02 For the purposes of Subsection 2.01.01, the Airport Operator may fulfil its obligation to manage, operate and maintain the Airport in any manner it determines appropriate, including but not limited to the Lessee or entering into a lease with a Person (the "Tenant") to operate the Airport as an undertaking, provided that:

- (a) the Airport Operator shall have obtained from such Tenant covenants, obligations or agreements with respect to the management, operation and maintenance of the Airport in terms which are no less stringent than this Agreement; and
- (b) any breach of such covenants, obligations or agreements by such Tenant shall constitute a breach of a covenant, obligation or agreement of this Agreement and be treated as such; and
- (c) the Airport Operator shall remain liable to Her Majesty in respect of its obligations hereunder.

2.01.03 The Airport Operator shall keep, perform or observe all of the covenants, agreements, provisions, conditions or provisos in any of the other Instruments on the part of the Airport Operator to be kept, performed, or observed.

2.01.04 Without limiting the generality of Subsection 2.01.01, the Airport Operator shall, at its cost:

- (a) comply with all laws and regulations, now or hereafter in force, applicable to the Airport Operator or to the management, operation and maintenance of the Airport;
- (b) where applicable, maintain an Airport Certificate in respect of the Airport, and adhere to all the terms and conditions thereof;
- (c) where applicable, comply with all the mandatory terms of the Airport Operations Manual, as amended or replaced from time to time;
- (d) ensure that general policing functions, including traffic, parking and crowd control, as applicable, are performed.

- 2.01.05 (a) The Airport Operator and Her Majesty acknowledges that Her Majesty has previously entered into a lease dated the 6th day of June 1983 and registered in the legal registry of the Department of Transport as document no. 117471 ("the Lease"), for a part of the lands comprising the Airport; and pursuant to the Lease, the lessee of such Lease (the "Lessee") has continuing obligations to operate, maintain and repair parts of the Airport.
- (b) Notwithstanding Paragraph 2.01.05(a), the Airport Operator shall remain liable to Her Majesty in respect of its obligations to perform, or observe all of its covenants, agreements, provisions in this Agreement on the part of the Airport Operator to be kept, performed or observed.

Section 2.02 Termination of Operations

- 2.02.01 The Airport Operator may cease to manage, operate and maintain on the Airport Lands an airport open to the public, provided the Airport Operator shall give the Minister six (6) months prior written notice of its intention to abandon that function.
- 2.02.02 Where the Airport Operator has given notice to the Minister pursuant to Subsection 2.02.01, Her Majesty shall have an option to purchase the lands in accordance with the terms of the Option to Purchase granted by the Airport Operator to Her Majesty by even date herewith.
- 2.02.03 If Her Majesty is given notice in accordance with Article 4 of the Option to Purchase, and does not exercise such Option, the obligations of the Airport Operator under Section 2.01.01 shall immediately cease.

ARTICLE 3 - DISPOSITION OF LAND

Section 3.01 Airport Operator's Ability to Deal with Land

- 3.01.01 Subject to Subsections 3.01.02 and 3.01.03 and notwithstanding Section 12.09, the Airport Operator may, from time to time during the term of this Agreement,

sell or otherwise dispose of any portion of the Airport Lands which is not necessary for the management, maintenance or operation of the Airport as an undertaking.

3.01.02 Where, during the term of this Agreement, the Airport Operator proposes to dispose of any portion of the Airport Lands, the Airport Operator, prior to entering into any binding agreement:

- (a) shall send a notice to the Minister setting out in sufficient detail a description of the Airport Lands it proposes to dispose of; and
- (b) may request a meeting with the Minister to ascertain what the Minister might determine to be the deemed proceeds of disposition, as provided for in Subsection 3.01.03.

3.01.03 If any portion of the Airport Lands is disposed of during the term of this Agreement, the Airport Operator shall credit to a separate revenue account the greater of the entire proceeds of disposition less disbursements and the fair market value of the land, based on its highest and best use, as determined by the Minister acting reasonably (the "deemed proceeds of disposition of the Airport Land"); and the aforesaid proceeds of disposition or deemed proceeds of disposition shall be used solely on account of airport operations or for capital improvements in support of airport operations.

3.01.04 If, during the term of this Agreement, the Airport Operator applies the proceeds of disposition or the deemed proceeds of disposition contrary to the provisions of Subsection 3.01.03 the Airport Operator shall remit the entire sum to the Minister.

3.01.05 If, at the end of the term of this Agreement, the Airport Operator has not expended the entire proceeds of disposition or the deemed proceeds of disposition in accordance with Subsection 3.01.03, the Airport Operator shall be entitled to retain the balance of such sum and apply it in any manner as it determines appropriate.

ARTICLE 4 - REMEDIAL WORK**Section 4.01 Definitions****4.01.01 For the purposes of this Article:**

"Applicable Provincial Environmental Laws" means all laws of the Province of British Columbia of general application respecting environmental matters as those laws apply to the Airport Operator;

"Hazardous Substance" means,

(a) any substance, howsoever defined in any Applicable Provincial Environmental Law, which is hazardous to persons, animals, plants and which affects the soil of or the water in, on, over or under the Airport, or

(b) the asbestos which is present in any buildings situate thereon,

and for which Remedial Work is required;

"Remedial Work" means any work required under the Applicable Provincial Environmental Laws to remedy an adverse environmental condition caused by the existence of a Hazardous Substance affecting the soil of or the water in, on, over or under the Airport or any buildings situate thereon.

Section 4.02 Her Majesty's Obligation

4.02.01 Subject to Section 4.03, Her Majesty covenants to perform or have performed any Remedial Work in respect of Hazardous Substances identified in the Environmental Baseline Study Report.

4.02.02 The parties further agree that the Minister's obligations herein are for the exclusive benefit of the Airport Operator and successors and permitted assigns and shall not be for the benefit of any other Person.

Section 4.03 Limitations on Her Majesty's Liability

4.03.01 Notwithstanding the definition of Hazardous Substance, the parties agree that the Applicable Provincial Environmental Laws shall be those laws in existence immediately prior to the Transfer Date in respect of lands zoned industrial/commercial.

4.03.02 For greater certainty, the parties agree that in no event shall Her Majesty be responsible or liable for Remedial Work relating to any Hazardous Substance:

- (a) if such Hazardous Substance was added to or put in, on or over the Airport Lands or any buildings situate thereon on or after the Transfer Date;
- (b) if any act or omission of any Person on or after the Transfer Date contributed to any substance becoming a Hazardous Substance;
- (c) which, on or after the Transfer Date, is released, spilled, leaks or flows from any container, tank, pipe, conduit, tube or any related or other equipment in which any substance is contained or by or through which any substance is transmitted or transported; or
- (d) where the Hazardous Substance is asbestos, if that asbestos was added to or put in, on or over any part of the Airport Lands or any buildings situate thereon on or after the Transfer Date.

Section 4.04 Performance of Remedial Work

4.04.01 If the Remedial Work for which Her Majesty is responsible has not been completed prior to the Transfer Date, the Airport Operator:

- (a) shall provide to Her Majesty and Her officers, servants, employees, agents, contractors, subcontractors and consultants access to the Airport Lands at any time or times during reasonable hours and without cost in order to perform such Remedial Work, or
- (b) may undertake to carry out the Remedial Work where Her Majesty agrees to contribute to the Airport Operator that portion of the contract price related solely to the performance of such Remedial Work.

Section 4.05 Contract

- 4.05.01** The Airport Operator shall not perform any Remedial Work or enter into any contract to perform any Remedial Work for which it will claim any contribution from Her Majesty without the prior written consent of Her Majesty which consent may be unreasonably withheld.
- 4.05.02** If the Remedial Work undertaken by the Airport Operator or the contract entered into by the Airport Operator to perform Remedial Work includes the performance of any other work:
- (a) the Airport Operator's cost of the Remedial Work; or
 - (b) the portion of the contract price related solely to the Remedial Work,
- shall be identified and separated from the balance of the cost of the work.
- 4.05.03** For the purposes of Subsection 4.05.02, Her Majesty's liability shall be:
- (a) conditional upon the identification and separation, on a fair and accurate basis, of that portion of the cost which is directly and solely related to the Remedial Work from all other work being performed; and
 - (b) limited to the portion of the cost directly and solely related to the Remedial Work.

ARTICLE 5 - PERMISSION TO ENTER**Section 5.01 Permission to Enter**

5.01.01 The Airport Operator agrees that Her Majesty and Her agents, employees or contractors may enter upon the Airport Lands and any buildings situate thereon at any time or times during reasonable hours, with machinery or equipment, for the purpose of carrying out the Remedial Work pursuant to Subsection 4.04.01 provided that by the exercise of such permission Her Majesty shall:

- (a) indemnify and save harmless the Airport Operator from all claims and demands resulting from the negligent exercise of the said permission to enter; and
- (b) repair and make good or pay compensation for any damage done to the Airport Lands and buildings resulting from the negligent exercise of the permission to enter.

ARTICLE 6 - DEBTS DUE TO HER MAJESTY**Section 6.01 Debts Due to Her Majesty**

6.01.01 Any amount due to the Minister pursuant to Subsection 3.01.04 of this Agreement shall constitute a debt due to Her Majesty and the Airport Operator shall repay all such amounts forthwith. The Minister may, in his sole discretion, in addition to any other remedies available to him, set off such amount against any amount payable by Her Majesty to the Airport Operator.

6.01.02 The rights of the Minister under Subsection 6.01.01 of this Agreement shall survive the termination of the Agreement.

ARTICLE 7 - DEFAULT**Section 7.01 Default**

7.01.01 If, during the term of this Agreement the Airport Operator:

- (a) fails to operate the Airport in accordance with Article 2;
- (b) subject to Subsection 2.01.02, sells, leases, converts or otherwise disposes of any portion of the Airport Lands and fails to apply the proceeds of disposition or the deemed proceeds of disposition in accordance with Subsection 3.01.03;
- (c) becomes bankrupt or insolvent, goes into receivership or takes the benefit of any statute from time to time relating to bankrupt or insolvent debtors, or is required to wind up or dissolve by any order or resolution or is otherwise unable to meet its liabilities as they become due;
- (d) is convicted of any offence against the law, order or regulation of Canada or duly constituted authority thereof or the conditions of any licence, or of being an accessory to any such offence, and if such offence is committed in connection with the management, operation or maintenance of the Airport;
- (e) is in default of any provision of this Agreement or any other Instrument and such default shall continue for a period of ninety (90) days after notice by Her Majesty to the Airport Operator specifying the nature of the default and requiring the default to be remedied; or
- (f) is in default of Article 2 as a result of the actions or inactions of the Lessee and such default shall continue for a period of ninety (90) days (or such longer period as may be reasonably necessary to cure such default considering the nature thereof) after notice by Her Majesty to the Airport Operator specifying the nature of such default and requiring the same to be remedied; and if the default set out in the notice given to the Airport Operator by Her Majesty reasonably requires more time to cure than the ninety (90) day period; and in the opinion of Her Majesty, the Airport Operator fails to diligently complete the same within a reasonable time;

the Minister may, in addition to any other remedies available to the Minister, terminate any obligation of the Minister under this Agreement by giving ninety (90) days notice in writing to the Airport Operator.

7.01.02 Subject to Subsection 7.01.03, 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 Agreement by an event of Force Majeure, such party shall be relieved from the fulfillment of the part of its obligations affected by Force Majeure during the period of Force Majeure.

7.01.03 Notwithstanding an event of Force Majeure, the party affected shall proceed with the performance of its obligations not thereby affected.

ARTICLE 8 - ARBITRATION

Section 8.01 Arbitration

8.01.01 Any dispute or difference between the parties hereto arising under this Agreement or any of the Instruments except a dispute or difference involving a question of law may be referred to an arbitration tribunal for an award and determination by written submission signed by either the Minister or the Airport Operator.

8.01.02 The parties hereto agree that the award and determination of the arbitration tribunal shall be final and binding on both parties hereto, subject to the *Commercial Arbitration Act*, R.S.B.C. 1985, c. C-34.6.

8.01.03 The arbitration tribunal shall be governed by the Commercial Arbitration Code referred to in the *Commercial Arbitration Act*, R.S.C. 1985, c. C-34.6.

Section 8.02 Arbitration Tribunal

- 8.02.01** 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.
- 8.02.02** The arbitration tribunal shall decide the dispute or difference solely in accordance with the laws in force in the Province of British Columbia. The arbitration tribunal shall not be authorized to decide according to equity and conscience or abate the strictness of the law in favour of equity.

Section 8.03 Proceedings

- 8.03.01** The proceedings shall take place in Delta, British Columbia, unless the parties hereto agree otherwise.
- 8.03.02** The language to be used in the proceedings is English unless the parties hereto agree otherwise.
- 8.03.03** All written communication shall be delivered to the parties hereto in the manner provided for in Section 12.05.

Section 8.04 Obligations During Arbitration

- 8.04.01** During the progress of arbitration, the parties hereto shall continue to perform their obligations under the Agreement or any of the Instruments.

ARTICLE 9 - NO PARTNERSHIP, JOINT VENTURE OR AGENCY**Section 9.01 No Partnership, Joint Venture or Agency**

9.01.01 Her Majesty and the Airport Operator expressly disclaim any intention to create a partnership, joint venture or joint enterprise. It is understood, acknowledged and agreed that nothing contained in this Agreement nor any acts of Her Majesty or the Airport Operator shall constitute or be deemed to constitute Her Majesty and the Airport Operator as partners, joint venturers or principal and agent in any way or for any purpose. The Airport Operator shall not represent or hold itself out to be an agent of Her Majesty. No party hereto shall have any authority to act for or to assume any obligations or responsibility on behalf of the other party hereto.

9.01.02 The Airport Operator hereby agrees to indemnify Her Majesty for any liability that Her Majesty incurs by virtue of being found, in respect of the management, operation or maintenance of the Airport, to be liable with the Airport Operator as a partner of or joint venturer with the Airport Operator or as a principal of the Airport Operator. For greater certainty, the foregoing indemnity shall not apply to any claim or liability arising as a result of the act or omission of Her Majesty or Her agent other than those specific acts or omissions that are the basis for the finding that Her Majesty or Her agent is a partner of, joint venturer with the Airport Operator or principal of the Airport Operator.

ARTICLE 10 - RIGHT TO CHARGE**Section 10.01 Right to Charge**

10.01.01 Nothing in this Agreement shall prohibit, restrict, or affect the right of the Minister to assess or impose on the Airport Operator or any other Person:

- (i) any charge or fee which the Minister has the power under any law to assess or impose;

- (b) any charge or fee with respect to any service provided by the Minister; and
- (c) any charge or fee with respect to or related to the Minister's position as a regulator.

10.01.02 Nothing in this Agreement precludes the Airport Operator and its successors and permitted assigns from charging and taking whatever lawful action the Airport Operator deems appropriate in order to charge and collect any unpaid landing fees, general terminal fees and other user charges.

10.01.03 The Airport Operator covenants to give not less than 60 days advance public notice through appropriate local media of its intention to impose any airport user charges or any planned increases in airport user charges (excluding rent). The notice shall include an explanation of the justification for such imposition of or increase in the airport user charges, except for airport user charges established pursuant to the Lease.

ARTICLE 11 - TERM

Section 11.01 Effective Date and Term of the Agreement

11.01.01 This Agreement shall take effect as of 00:00 a.m. on the Transfer Date and shall terminate on the 4th day of December, 2077 unless it is earlier terminated by mutual consent or by the Minister pursuant to Article 7.

ARTICLE 12 - GENERAL PROVISIONS**Section 12.01 Entire Agreement**

12.01.01 This Agreement and the other Instruments set forth the entire agreement between the parties hereto concerning the subject matter hereof. No representation or warranty expressed, implied or otherwise is made by Her Majesty to the Airport Operator or by the Airport Operator to Her Majesty except as expressly set out in this Agreement or in any of the Instruments.

Section 12.02 Agreement to Supersede

12.02.01 This Agreement and the other Instruments set forth the entire agreement between the parties hereto concerning the subject matter hereof and supersede and revoke all negotiations, arrangements, communications, letters of intent, brochures, representations and information conveyed, either oral or written, between the parties hereto or their representatives or any other Person purporting to represent the Minister or the Airport Operator. No representation or warranty expressed, implied or otherwise is made by Her Majesty to the Airport Operator or by the Airport Operator to Her Majesty except as expressly set out in this Agreement or in any of the Instruments. The Airport Operator agrees that:

- (a) it has not been induced to enter into this Agreement or any of the Instruments by any representations not set forth in this Agreement or any of the Instruments;
- (b) it has not relied on any such 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 such representations shall be used in the interpretation or construction of this Agreement or any of the Instruments; and
- (e) no claims, including loss of profits and consequential damages arising as a result of, or from any such representations shall accrue to or be pursued by it and Her Majesty shall have no liability for any such claims.

12.02.02 The Disclosure of Information Agreement entered into by the parties hereto shall remain in full force and effect during the term of this Agreement but only in respect of matters in existence as of the Transfer Date and insofar as the provisions of that Agreement are not inconsistent with the provisions of this Agreement or any of the other Instruments.

Section 12.03 House of Commons

12.03.01 As required by the *Parliament of Canada Act*, R.S.C. 1985, c. P-1, it is an express condition of this Agreement that no member of the House of Commons shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.

Section 12.04 Time of Essence

12.04.01 Time shall in all respects be of the essence of this Agreement.

Section 12.05 Notice

12.05.01 All notices or other communications necessary for the purposes of this Agreement shall be in writing and shall be delivered personally or by courier, or shall be sent by registered mail or by prepaid post or sent by facsimile, addressed,

(a) in the case of Her Majesty, to:

Transport Canada, Pacific Region
620 - 800 Burnard Street
Vancouver, B.C.
V6Z 2J8

Attention: Regional Director General

Telephone: (604) 666-5849

Facsimile: (604) 666-7253

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 Airport Operator; and

(b) in the case of the Airport Operator, to:

The Corporation of Delta
4500 Clarence Taylor Crescent
Delta, B.C.
V4K 3R2

Telephone: (604) 946-3212
Facsimile: (604) 946-6055

or to such other address or facsimile number or addressed to such other person as the Airport Operator may, from time to time, designate in writing to the Minister.

12.05.02

Any notice or other 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.

Section 12.06 Amendment

12.06.01

This Agreement may be amended by a written agreement signed by both the Minister and the Airport Operator at any time during the term of this Agreement.

12.06.02

No amendment, variation, addition, deletion (which term includes lining out), rider or other change to this Agreement shall have any force or effect unless it is in writing and unless it is signed by both the Minister and the Airport Operator.

Section 12.07 Waiver

- 12.07.01 The failure by any party hereto to insist in any one instance upon the strict performance by the other party hereto of Her or its obligations hereunder shall not constitute a waiver or relinquishment of any such obligations as to any other instances, and the same shall continue in full force and effect.
- 12.07.02 No covenant or condition of this Agreement 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 Agreement or by law, despite the forbearance or indulgence.

Section 12.08 Severability

- 12.08.01 If, for any reason, any provision of this Agreement, other than any provision which is of fundamental importance to the arrangement between the parties, is, to any extent, held or rendered invalid, void, illegal or unenforceable for any reason whatsoever, then the particular provision shall be deemed to be independent of and severed from the remainder of this Agreement and all the other provisions of this Agreement shall nevertheless continue in full force and effect.

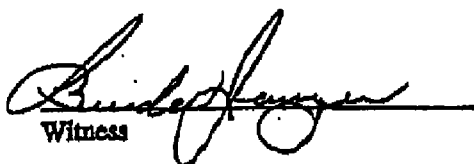
Section 12.09 Assignment, Successors and Assigns

- 12.09.01 The Airport Operator shall not:
- (a) assign its rights and obligations contained in this Agreement; or
 - (b) subject to Subsection 2.01.02, transfer, lease or otherwise dispose of the Airport,
- without the prior written consent of the Minister, which consent may not be unreasonably withheld.

- 12.09.02 Notwithstanding any assignment by Her Majesty or any permitted assignment by the Airport Operator of their respective benefits under this Agreement, Her Majesty and the Airport Operator shall, unless otherwise stated, each remain liable to the other in respect of its obligations hereunder.
- 12.09.03 No rights shall enure to the benefit of any transferee or assignee of the Airport Operator unless the transfer or assignment is permitted or consented to by Her Majesty.
- 12.09.04 Nothing expressed or implied in this Agreement or in any of the Instruments is intended to or shall be construed to confer on or to give any Person, other than the parties hereto and the successors and assigns of Her Majesty and the successors and permitted assigns of the Airport Operator, any rights or remedies under or by reason of this Agreement or any of the Instruments.

Page 87

IN WITNESS WHEREOF the Minister of Transport, on behalf of Her Majesty the Queen in right of Canada, has hereunto subscribed his signature and the Airport Operator has hereunto affixed its corporate seal attested to by the hands of its proper officers in that behalf as of the day and year first above written.


Witness

) HER MAJESTY THE QUEEN IN
) RIGHT OF CANADA
)
)
)
)
)
)


Minister of Transport

THE CORPORATION OF DELTA
by its authorized signatories:


Mayor: Beth Johnson


Municipal Clerk: Tanalee Hesse

Page 88

SCHEDULE "A"

This is Schedule "A" to the Operating Agreement between Her Majesty the Queen in right of Canada and the The Corporation of Delta dated the 4th day of December, 1997.

Firstly: 003-528-472
Parcel "B" sections 29, 30, 31 and 32 Township 3
New Westminster District reference plan 64938

Secondly: 015-571-718
All that portion of the south half of the north half section 31 Township 3
shows outlined red on expropriation plan 7066 except: firstly: parcel "B"
(statutory right of way plan 38003), secondly: part road on plan LMP28854,
New Westminster District

Page 89

PR 9795

SCHEDULE VI

Aviation Services and Facilities Agreement

**AVIATION SERVICES & FACILITIES
AGREEMENT**

[NON-NAS AIRPORT WITH NO AVIATION WEATHER PROVISION]

BOUNDARY BAY AIRPORT, B.C.

TABLE OF CONTENTS

ARTICLE 1 - DEFINITIONS AND INTERPRETATION		7
Section 1.01	Definitions	7
Section 1.02	Subdivisions	13
Section 1.03	Number and Gender	13
Section 1.04	Headings	14
Section 1.05	Accounting Terms and Principles	14
Section 1.06	Business Day	14
Section 1.07	Schedules	14
Section 1.08	Statutes, Regulations and Rules	15
Section 1.09	Governing Law	15
Section 1.10	Construed Covenants	15
Section 1.11	Extended Meanings	15
ARTICLE 2 - LICENCE FOR CERTAIN CIVIL AIR NAVIGATION SERVICES		
ASSETS AND ENVIRONMENTAL REPORT		16
Section 2.01	Grant of a Licence	16
ARTICLE 3 - TERM		
Section 3.01	Term	16
Section 3.02	Extension	16
Section 3.03	Renewal	17
Section 3.04	Perpetuities	17
ARTICLE 4 - LEASES		18
Section 4.01	Leases for Uses at the Commencement of the Term	18
ARTICLE 5 - ADDITIONAL SPACE OR LAND		18
Section 5.01	Additional Space or Land (For Primary Benefit of Airport)	18
Section 5.02	Additional Space or Land (Not for Primary Benefit of Airport)	20
Section 5.03	No Leasehold Rights	21
ARTICLE 6 - IMPROVEMENTS FOR CIVIL AIR NAVIGATION SERVICES		21
Section 6.01	Improvements	21
Section 6.02	Cost of Civil Air Navigation Service Improvements ..	21
Section 6.03	Construction of Civil Air Navigation Service Improvements	22

ARTICLE 7 - DAMAGE		
Section 7.01	Damage to Licensed Civil Air Navigation Services Assets	22
Section 7.02	or Stand Alone Facilities	22
	Damage to Airport Premises	23
ARTICLE 8 - ACCESS ROADS, UTILITIES, SERVICES		
Section 8.01	Her Majesty to Provide	23
ARTICLE 9 - MAINTENANCE AND SUPPORT SERVICES		
Section 9.01	Consumption of Utilities	24
Section 9.02	Maintenance of Buildings, Structures and Grounds	25
ARTICLE 10 - LIFE CYCLE MANAGEMENT ELECTRICAL POWER SYSTEMS		
Section 10.01	Interior Aviation Electrical Power Systems	26
Section 10.02	Electrical Power Distribution Systems	26
Section 10.03	Emergency Power Systems	27
ARTICLE 11 - VISUAL AIDS		
Section 11.01	Visual Aids	27
ARTICLE 12 - COMMUNICATION SERVICES		
Section 12.01	Her Majesty to Provide	27
Section 12.02	Telecommunication Cabling	28
ARTICLE 13 - FINANCIAL ADMINISTRATION ACT		
Section 13.01	Financial Administration Act	29
ARTICLE 14 - ACCESS		
Section 14.01	Restricted Area Passes	29
Section 14.02	Access	29
ARTICLE 15 - OPERATION OF AIRPORT		
Section 15.01	Interference	30
Section 15.02	Security Programs and Plans	31
ARTICLE 16 - AIR TRAFFIC MANAGEMENT		
Section 16.01	Her Majesty's Procedures	32
Section 16.02	NAVCAN's Procedures	32
ARTICLE 17 - OPERATIONAL COOPERATION AND REVIEW		
Section 17.01	Operational Cooperation and Review	32

Section 17.02	Interference with Utilities	33
Section 17.03	Noise Management	33
ARTICLE 18 - ARBITRATION		
Section 18.01	Application	33
Section 18.02	Jurisdiction of the Arbitrator	34
Section 18.03	Governing Legislation	34
Section 18.04	Agreement re: the Commercial Arbitration Code	34
Section 18.05	Obligations During Arbitration	36
ARTICLE 19 - ROLE OF HER MAJESTY		
Section 19.01	No Partnership, Joint Venture or Agency	36
Section 19.02	Role of Her Majesty	36
ARTICLE 20 - NON-COMPLIANCE		
Section 20.01	Event of Non-Compliance	37
Section 20.02	Time to Cure	37
Section 20.03	Remedies	37
ARTICLE 21 - ASSIGNMENT BY HER MAJESTY		
Section 21.01	Assignment	38
ARTICLE 22 - LAND OR SPACE NO LONGER REQUIRED		
Section 22.01	NAVCAN Ceases Occupation	39
ARTICLE 23 - ENVIRONMENTAL		
Section 23.01	Compliance with Laws	42
Section 23.02	Environmental Management Plan	42
ARTICLE 24 - OWNERSHIP		
Section 24.01	Ownership	43
ARTICLE 25 - RELOCATION		
Section 25.01	Her Majesty may request Relocation	43
ARTICLE 26 - GENERAL PROVISIONS		
Section 26.01	Entire Agreement	44
Section 26.02	House of Commons	44
Section 26.03	Time of Essence	44
Section 26.04	Notice	44
Section 26.05	Amendment	45
Section 26.06	Waiver	46

Page 93

Section 26.07	Severability	46
Section 26.08	Paramountcy of Federal Authority	46
Section 26.09	Assignment, Successors and Assigns	47
Section 26.10	Action by the Minister	47
Section 26.11	Further Assurances	47
SCHEDULE A	49
SCHEDULE B	50
SCHEDULE C	51

Page 94

AVIATION SERVICES AND FACILITIES AGREEMENT

THIS AGREEMENT made as of the Closing Date, as hereinafter defined.

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA
(hereinafter called "Her Majesty"),
represented by the Minister of Transport
(hereinafter called the "Minister"),

OF THE FIRST PART

AND:

NAV CANADA
a corporation incorporated under the provisions of
Part II of the *Canada Corporations Act*
(hereinafter called "NAVCAN"),

OF THE SECOND PART

WHEREAS Her Majesty the Queen in right of Canada is responsible for the management, operation and maintenance of the Boundary Bay airport;

AND WHEREAS Her Majesty and NAVCAN have entered into an Agreement to Transfer ("Agreement to Transfer") which has been executed and delivered on the first day of April 1996, and which is registered in the Legal Registry of the Department of Transport as instrument No. 146268;

AND WHEREAS, under the Agreement to Transfer, Her Majesty and NAVCAN have agreed to enter into this Aviation Services and Facilities Agreement, *inter alia*, if certain conditions precedent were met or waived;

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

AND WHEREAS the Minister is authorized under Section 4.2 of the *Aeronautics Act*, R.S.C. 1985 c. A-2, as amended, to enter into this Agreement;

AND WHEREAS NAVCAN acknowledges that the Minister, on behalf of Her Majesty, intends to assign Her Majesty's rights and obligations under this Agreement to an Airport Operator;

AND WHEREAS this Agreement is not intended to affect or restrict in any way Her Majesty's or the Minister's role as described in the *Aeronautics Act* or any successor legislation and any regulation or order made pursuant to that Act or, subject to the Act, Her Majesty's ability to regulate, administer, manage or otherwise deal with aeronautics and all attendant matters thereto;

NOW THEREFORE THIS AGREEMENT WITNESSES THAT in consideration of the premises, and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), and the terms and conditions set out in this Aviation Services and Facilities Agreement, the parties hereto agree with each other as follows:

ARTICLE 1 - DEFINITIONS AND INTERPRETATION

Section 1.01 Definitions

1.01.01 In this Agreement

"Act" means the *Civil Air Navigation Services Commercialization Act*, S.C. 1996, c.20;

"Aeronautical Communication Services" means "aeronautical communication services" as defined in the Act;

"Aeronautical Information Services" means "aeronautical information services" as defined in the Act;

"Aeronautical Radio Navigation Services" means "aeronautical radio navigation services" as defined in the Act;

"Agreement" means this Aviation Services and Facilities Agreement, as amended from time to time;

"Air Navigation Services" means "air navigation services" as defined in the Act;

"Air Traffic Control Services" means "air traffic control services" as defined in the Act;

"Airport" means the Boundary Bay airport;

"Applicable Federal Environmental Laws" means all applicable federal laws respecting environmental matters as those laws apply to NAVCAN, but excludes Part II of the *Canada Labour Code*, as amended;

"Applicable Municipal or Local Environmental Laws" means municipal or local laws of general application respecting environmental matters as those laws apply to NAVCAN, as amended;

"Applicable Provincial or Territorial Environmental Laws" means provincial or territorial laws of general application respecting environmental matters as those laws apply to NAVCAN, as amended;

"Aviation Weather Services" means "aviation weather services" as defined in the Act;

"Business Day" means a day other than a Saturday, Sunday or statutory holiday in the Province of British Columbia;

"Civil Air Navigation Service Improvements" means

- (a) any expansion, reconstruction, upgrade, replacement or modification of that part of any building or structure on the Airport used solely for the provision of a Civil Air Navigation Service, and
- (b) the construction of any new building or structure on the Airport or such part thereof that is required solely for the provision of a Civil Air Navigation Service,

but excludes a hut used exclusively to house Licensed Civil Air Navigation Services Assets;

"Civil Air Navigation Services" means "civil air navigation services" as defined in the Act;

"Closing Date" means the day determined to be the Closing Date in accordance with Subsection 1.01.01 of the Agreement to Transfer, as amended from time to time;

"Electrical Power Distribution System" means

- (a) all electrical cabling and equipment required to bring electrical power to the circuit breaker panel within a space occupied or used by NAVCAN,
- (b) the circuit breaker panel within such space,
- (c) all normal electrical wiring required to bring electrical power from the circuit breaker panel to plugs, electrical outlets and switches within such space,
- (d) all plugs, electrical outlets and switches within such space as required for NAVCAN's purposes, and
- (e) all electrical cabling and equipment required to bring electric power to Licensed Civil Air Navigation Services Assets;

"Emergency Assistance Services" means "emergency assistance services" as defined in the Act;

"En Route Air Traffic Control Services" means "en route air traffic control services" as defined in the Act;

"Environmental Contaminant" means any substance, solid, liquid or gaseous matter, fuel (including, without limitation, petroleum or petroleum products, crude oil, natural gas, natural gas liquid, liquefied natural gas, synthetic fuel or any combination of the above), microorganism, sound, vibration, ray, heat, odour, radiation, energy, vector, plasma, organic or inorganic matter, whether animate or inanimate, container, transient reaction, nuclear material or any combination of the above, deemed or defined as hazardous, toxic, a pollutant, a deleterious substance, a hazardous material, a waste, a hazardous waste, a contaminant or source of pollution or contamination under any Applicable Federal Environmental Laws or Applicable Provincial or Territorial Environmental Laws or if the space or land which is the subject of a lease to NAVCAN or a licence on which a Licensed Civil Air Navigation Services Asset is located is situated north of the 60th parallel, Applicable Municipal or Local Environmental Laws and environmental standards published by the federal government and generally applicable to federal lands which are the subject of a lease with Her Majesty; and "Environmental Contamination" means the presence of any of the foregoing, as well as the presence of any tank, piping or equipment which, in the case of Her Majesty's obligations hereunder, is, in, on or over or under the said space or land immediately prior to the commencement of the Term,

and which, in the case of NAVCAN's obligations hereunder, is placed, put or introduced in, on or over or under the said space or land after the commencement of the Term other than any Environmental Contamination resulting from an Environmental Contaminant identified in the Environmental Report, as being in need of environmental remediation; the verb "contaminate" shall have a similar meaning;

"Environmental Management Plan" means a plan describing the environmental management procedures, equipment, programs and standards used by the operator of the Airport to ensure that all its activities and those of the occupants on the space or land which is the subject of a lease to NAVCAN or a licence on which a Licensed Civil Air Navigation Services Asset is located are conducted in an environmentally responsible manner and in accordance with Applicable Federal Environmental Laws, or Applicable Provincial or Territorial Environmental Laws or if the space or land which is the subject of a lease to NAVCAN or a licence on which a Licensed Civil Air Navigation Services Asset is located is situated north of the 60th parallel, Applicable Municipal or Local Environmental Laws and environmental standards published by the federal government and generally applicable to federal lands which are the subject of a lease with Her Majesty;

"Environmental Remediation" means any neutralization, treatment, stabilization, removal, restoration, or reclamation of an Environmental Contaminant on, under or arising from the space or land which is the subject of a lease to NAVCAN or a licence on which a Licensed Civil Air Navigation Services Asset is located and includes any storage or labelling, necessary to comply with Applicable Federal Environmental Laws, Applicable Provincial or Territorial Environmental Laws and in the case of space or land which is the subject of a lease to NAVCAN or a licence on which a Licensed Civil Air Navigation Services Asset is located is situated north of the 60th parallel, Applicable Municipal or Local Environmental Laws or environmental standards published by the federal government and generally applicable to federal lands which are the subject of a lease with Her Majesty including any storage or labelling as required by such Laws, and in the case of Her Majesty's obligations hereunder, includes any neutralization, treatment, stabilization, removal, restoration or reclamation of an Environmental Contaminant, which may be consistent with the due diligence that a public corporation such as NAVCAN would reasonably take regarding the acquisition of such space or lands and in respect of the presence as of the commencement of the Term, of an Environmental Contaminant or Environmental Contamination on, under or arising from such space of land taking into account the use of the said space or land and the province or

territory in which such space or land is located and including any due diligence to address an imminent breach of any Applicable Federal Environmental Laws, Applicable Provincial or Territorial Environmental Laws and if the space or land which is the subject of a lease to NAVCAN or a licence on which a Licensed Civil Air Navigation Services Asset is located is situated north of the 60th parallel, Applicable Municipal or Local Environmental Laws. In the case of NAVCAN's obligations hereunder, Environmental Remediation shall include any neutralization, treatment, stabilization, removal, restoration or reclamation of an Environmental Contaminant, which may be consistent with the due diligence that a public corporation such as NAVCAN would reasonably take regarding the occupation of such lands and in respect of a discharge, addition, deposit, emission or leak occurring after the commencement of the Term, of an Environmental Contaminant or Environmental Contamination, under or arising from the said space or land, taking into account the use of the said land or space and the province or territory in which such space or land is located and including any due diligence to address an imminent breach of any Applicable Federal Environmental Laws, Applicable Provincial or Territorial Environmental Laws and in the case of space or land which is the subject of a lease to NAVCAN or a licence on which a Licensed Civil Air Navigation Services Asset is located is situated north of the 60th parallel, Applicable Municipal or Local Environmental Laws. The verb 'Remediate' shall have a similar meaning;

"Environmental Report" means a report prepared by or on behalf of Her Majesty and NAVCAN pursuant to Subsection 9.02.03 of the Agreement to Transfer by an independent qualified and licensed professional engineer ("Environmental Engineer") with respect to the existence of any environmental contaminant, as that term is defined in Article 9 of the Agreement to Transfer, on or arising from any ANS Lands, as that term is defined in Article 1 of the Agreement to Transfer, any environmental remediation, as that term is defined in Article 9 of the Agreement to Transfer, and the recommended time frame for completion of the same and an estimate of the costs of such environmental remediation;

"Flight Information Services" means "flight information services" as defined in the Act;

"Interior Aviation Electrical Power System" means the system of special or unique electrical distribution cables required to bring electrical power from the circuit breaker panel within a space to the specialized equipment required to operate any Civil Air Navigation Service or any Licensed Civil Air

Navigation Services Asset, and includes the interruptible power units and static uninterruptible power systems if within such space or, if outside the space, then only if such unit or system is dedicated to such space but does not include any special electrical distribution cables which are components of Visual Aids;

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

"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 Civil Air Navigation Services 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, but does not include Visual Aids, a Stand Alone Facility or a Joint Use Facility;

"Minister" means the Minister of Transport or any person authorized in writing by the Minister of Transport to act on his or her behalf;

"Specified Flight Information Services" means "specified flight information services" as defined in Subsection 10(5) of the Act;

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

- (a) located on the Airport immediately prior to the first (1st) day of the Term, or
- (b) constructed by or on behalf of NAVCAN on any part of the Airport on or after the first (1st) day of the Term,

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

"Term" means the period of time referred to in Section 3.01;

"Transfer Date" means the day determined to be the Transfer Date in accordance with Subsection 1.01.01 of the Agreement to Transfer, as amended from time to time; and

"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.

Section 1.02 Subdivisions

- 1.02.01 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 Agreement or in a Schedule.

Section 1.03 Number and Gender

- 1.03.01 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 NAVCAN is deemed a proper reference. The necessary grammatical changes required to make the provisions of this Agreement apply shall in all instances be assumed as though in each case fully expressed.

Section 1.04 Headings

- 1.04.01 The division of this Agreement 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 Agreement.

Section 1.05 Accounting Terms and Principles

- 1.05.01 All accounting and financial terms used in this Agreement shall, except where otherwise provided either expressly or by necessary implication in this Agreement, 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.
- 1.05.02 Where the Canadian Institute of Chartered Accountants or any successor thereto includes a statement in its Handbook or any successor thereto on a method or alternative methods of accounting, such statement shall be regarded as the only generally accepted accounting principle and generally accepted auditing standard applicable to the circumstances that it covers and references herein to generally accepted accounting principles and generally accepted auditing standards shall be interpreted accordingly.

Section 1.06 Business Day

- 1.06.01 If the day on which any act or payment is required to be done or made under this Agreement 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 1.07 Schedules

- 1.07.01 The documents attached hereto as Schedules A, B and C form an integral part of this Agreement as fully as if they were set forth herein *in extenso*. The following are the Schedules to this Agreement:

- Schedule A Description of Space and Land including the location of licensed facilities;
Schedule B Services;
Schedule C Lease.

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

1.07.03 The articles, sections and subsections in this Agreement shall only apply to spaces and land located within the Airport.

Section 1.08 Statutes, Regulations and Rules

1.08.01 Any reference in this Agreement 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 re-enacted from time to time.

Section 1.09 Governing Law

1.09.01 This Agreement shall be interpreted in accordance with the laws in force in the Province of British Columbia, subject always to any paramount or applicable federal laws.

Section 1.10 Construed Covenants

1.10.01 All of the provisions and each obligation or agreement of this Agreement, 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 1.11 Extended Meanings

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

1.11.02 In this Agreement, "includes" means "includes, without limitation"; "including" means "including, without limitation"; "agrees" or "acknowledges" means "expressly agrees or expressly acknowledges"; "any" means "any and all"; and "law" means "law, by-law, regulation, order, decision and rule".

1.11.03 For purposes of this Agreement "utilities" does not include communications cabling.

ARTICLE 2 - LICENCE FOR CERTAIN CIVIL AIR NAVIGATION SERVICES ASSETS AND ENVIRONMENTAL REPORT

Section 2.01 Grant of a Licence

- 2.01.01 Subject to Article 5, Her Majesty hereby grants to NAVCAN an irrevocable licence for the Term over the whole of the Airport for the purposes of installing, replacing, altering, adjusting, improving, removing, reducing, expanding, modifying, repairing, maintaining and operating any Licensed Civil Air Navigation Services Asset on or under any part of the Airport.
- 2.01.02 NAVCAN may determine the Licensed Civil Air Navigation Services Assets which NAVCAN shall provide from time to time at the Airport, and may without any hindrance, interference or obstruction from Her Majesty, but subject to Article 5 and Subsection 2.01.03, install, replace, alter, adjust, improve, remove, reduce, expand, modify, repair, maintain and operate any Licensed Civil Air Navigation Services Asset on or under any part of the Airport.
- 2.01.03 If any Licensed Civil Air Navigation Services Asset on or under any part of the Airport is to be installed or expanded at the request of NAVCAN, NAVCAN shall prior to such installation or expansion, deliver to Her Majesty an environmental report prepared by an independent qualified and licensed professional engineer ("Environmental Engineer") addressed to Her Majesty which shall set out the state of the environment and the existence of any substance affecting the soil or water of the land on which such Licensed Civil Air Navigation Services Asset is to be installed or expanded.

ARTICLE 3 - TERM

Section 3.01 Term

- 3.01.01 This Agreement shall commence on the Transfer Date and, subject to Subsections 3.01.04 and 3.01.05, Section 3.02 and Section 3.03 shall be for a term of ten (10) years.
- 3.01.02 If, on or after the third anniversary date of this Agreement, either party determines that the division of rights and obligations reflected in Articles 8 and 9, the corresponding provisions of any lease entered into pursuant to Subsection 4.01.01 or Schedule B results in that party bearing more than its fair and equitable share of costs, that party may provide notice to the other party, which notice shall contain full particulars of its objection. The parties

shall, within thirty (30) days of service of such notice, meet and in good faith attempt to resolve the objection. If the parties are unable to resolve the objection within sixty (60) days of service of such notice, either party may submit the matter to arbitration pursuant to the provisions of Article 18.

3.01.03 The parties acknowledge that the division of rights and obligations reflected in Articles 8 and 9, the corresponding provisions of any lease entered into pursuant to Subsection 4.01.01 and Schedule B, all as of the date hereof, shall not be used for the purposes of determining a fair and equitable share of costs nor shall such provisions be so used or interpreted by an arbitrator in any arbitration.

3.01.04 Subject to Subsection 3.01.05, Her Majesty may terminate this Agreement if the Airport is no longer managed, operated and maintained as a certified (registered) airport or aerodrome open to the public.

3.01.05 NAVCAN shall have the right to extend this Agreement for so long as

- (i) the Airport continues to be managed, operated and maintained as a certified (registered) airport or aerodrome open to the public; or,
- (ii) the Licensed Civil Air Navigation Services Assets located on or under any part of the Airport continue to be necessary for and used for the provision of *En Route* Air Traffic Control Services.

Section 3.02 Extension

3.02.01 In the event Her Majesty transfers the management, operation and maintenance of the Airport, as contemplated in Article 21, for a term which is more than the then balance of the Term, the Term shall be automatically extended so that the date of termination is the same day as the last day of the term of the operating agreement with the entity to whom the management, operation and maintenance of the Airport is transferred.

Section 3.03 Renewal

3.03.01 NAVCAN shall have the right to renew this Agreement on the same terms and conditions as this Agreement for such period of time as the entity continues to manage, operate and maintain the Airport as a certified (registered) airport or aerodrome open to the public.

Section 3.04 Perpetuities

- 3.04.01 Notwithstanding anything to the contrary contained in this Agreement, any right of either party to acquire any interest in property in circumstances where such acquisition 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 4 - LEASES**Section 4.01 Leases for Uses at the Commencement of the Term**

- 4.01.01 With respect to the space and land identified in Schedule A attached to this Agreement, Her Majesty shall, contemporaneously with this Agreement, execute and deliver leases, each one being substantially in the form of Schedule C.
- 4.01.02 Subject to Subsection 4.01.03, NAVCAN shall have the right to use the space and land identified in Schedule A only for the provision of any Civil Air Navigation Service.
- 4.01.03 NAVCAN may, with the consent of Her Majesty, in Her Majesty's sole discretion, sublet a portion of any space located in a Stand Alone Facility and not being used for the provision of Civil Air Navigation Services, provided that NAVCAN shall not be entitled to any additional space or land pursuant to Subsections 5.01.02 or 5.02.01 to the extent that any space suitable for the purposes set out in Subsections 5.01.02 and 5.02.01 has been sublet by NAVCAN pursuant to this Subsection 4.01.03.

ARTICLE 5 - ADDITIONAL SPACE OR LAND**Section 5.01 Additional Space or Land (For Primary Benefit of Airport)**

- 5.01.01 For the purposes of this Agreement, navigation equipment, weather equipment, communication equipment and surveillance equipment used by or on behalf of NAVCAN for the provision of Civil Air Navigation Services shall be deemed to be of primary benefit to the Airport.

5.01.02 Where NAVCAN requires any space or land on the Airport, in addition to that space or land which is the subject matter of the licence set out in Section 2.01 or the lease or leases contemplated in Section 4.01 for

- (a) a new Licensed Civil Air Navigation Services Asset, or
- (b) to meet the operational requirements in respect of the provision of Civil Air Navigation Services

for the primary benefit of the Airport and the site of such space or land cannot be agreed upon by the parties, the space or land shall be selected in accordance with the process and criteria set out in Subsection 5.01.03 and, upon completion of the selection process,

- (c) in the case of a new Licensed Civil Air Navigation Services Asset, such space or land shall only be used for such new Licensed Civil Air Navigation Services Asset under the terms of and in accordance with the licence set out in Section 2.01, or
- (d) Her Majesty shall enter into a lease with NAVCAN, substantially in the form of Schedule C, for such land or such space for the then balance of the Term.

- 5.01.03
- (a) If only one site is technically and operationally feasible that site shall be the selected site;
 - (b) If more than one site is technically and operationally feasible, Her Majesty and NAVCAN shall, within thirty (30) days of the notification from NAVCAN that it requires such additional space or land, identify all sites which each prefers provided that all such sites shall be:
 - (i) located within the area designated on any land use plan which legally applies to the Airport for that purpose and
 - (ii) technically and operationally feasible.

If Her Majesty and NAVCAN are not able to agree on a single site from all such identified sites within thirty (30) days next following the thirty (30) day period referred to above, NAVCAN shall forthwith indicate its preferred choice with respect to such identified sites. Her Majesty shall, within fifteen (15) days of NAVCAN indicating its preferred choice, select a site. If such selected site is not NAVCAN's

preferred choice, Her Majesty shall pay to NAVCAN, upon request, any reasonable additional cost of constructing or installing:

- (iii) the new Licensed Civil Air Navigation Services Asset on the selected site over and above the cost of constructing or installing such asset on the site preferred by NAVCAN, and
- (iv) the asset used in the provision of a Civil Air Navigation Service on the selected site over and above the cost of constructing or installing the asset used in the provision of such Civil Air Navigation Service

including the cost of constructing or installing any required extra length of road or utility.

Section 5.02

Additional Space or Land (Not for Primary Benefit of Airport)

5.02.01

Where NAVCAN requires any space or land on the Airport, in addition to that space or land which is the subject matter of the licence set out in Section 2.01 or the lease or leases contemplated in Section 4.01 for

- (a) a new Licensed Civil Air Navigation Services Asset, or
 - (b) for the provision of Civil Air Navigation Services, and
 - (c) such new Licensed Civil Air Navigation Services Asset or such space or land necessary for the provision of a Civil Air Navigation Service is also necessary to meet the requirements of any aeronautical legislation or regulation or any rule or order pursuant thereto enacted to protect safety or security
- but
- (d) it is not for the primary benefit of the Airport, and
 - (e) the site of such space or land is not agreed upon, and

the only sites which are technically and operationally feasible for such new Licensed Civil Air Navigation Services Asset or for the provision of a Civil Air Navigation Service are located at the Airport, the site shall be selected pursuant to the process and criteria set out in Subsection 5.01.03. Such space or land may be used for such new Licensed Civil Air Navigation Services Asset under the terms of the licence set out in Section 2.01 or Her

Majesty shall enter into a lease with NAVCAN, substantially in the form of Schedule C, for the then balance of the Term, and NAVCAN shall pay to Her Majesty, in respect of such space or land and all adjacent land the use of which is restricted as the result of the existence or use of such new Licensed Civil Air Navigation Services Asset or the provision of such Civil Air Navigation Service, such fair compensation as may be agreed to by the parties or, if the parties fail to agree thereon, as may be determined by arbitration in accordance with Article 18.

5.02.02

Any additional space or land required by NAVCAN which is not

- (a) for a new Licensed Civil Air Navigation Services Asset, or
- (b) to meet the operational requirements in respect of the provision of Civil Air Navigation Services

for the primary benefit of the Airport shall be the subject of separate negotiations between the parties hereto.

Section 5.03**No Leasehold Rights**

5.03.01

For greater certainty, it is understood and agreed that it is not intended that, and NAVCAN shall never have a leasehold interest in, any land occupied by or used for a Licensed Civil Air Navigation Services Asset, it being intended that all Licensed Civil Air Navigation Services Assets shall be the subject of a licence contemplated in Article 2.

ARTICLE 6 - IMPROVEMENTS FOR CIVIL AIR NAVIGATION SERVICES**Section 6.01****Improvements**

6.01.01

NAVCAN may determine the Civil Air Navigation Service Improvements which it shall provide from time to time. Nothing in this Agreement obligates or shall be construed so as to obligate NAVCAN to provide any such Civil Air Navigation Service Improvement.

Section 6.02**Cost of Civil Air Navigation Service Improvements**

6.02.01

Except as may otherwise be agreed to by the parties, any Civil Air Navigation Service Improvement will be provided at the cost of NAVCAN.

Section 6.03 Construction of Civil Air Navigation Service Improvements

- 6.03.01 Any Civil Air Navigation Service Improvement which is a Stand Alone Facility or which is a Civil Air Navigation Service Improvement to a Stand Alone Facility shall be constructed by NAVCAN, unless otherwise agreed by the parties hereto.
- 6.03.02 NAVCAN shall, in constructing any Civil Air Navigation Service Improvement, comply with
- (a) any process of general application for construction on the Airport implemented by Her Majesty, and
 - (b) all applicable laws.
- 6.03.03 Any Civil Air Navigation Service Improvement that is not a Stand Alone Facility and any Civil Air Navigation Service Improvement to space occupied by NAVCAN which is part of a Joint Use Facility shall be constructed
- (a) by Her Majesty at NAVCAN's cost, and
 - (b) according to the plans and specifications therefor provided by NAVCAN
- as agreed to by the parties acting reasonably.

ARTICLE 7 - DAMAGE**Section 7.01 Damage to Licensed Civil Air Navigation Services Assets or Stand Alone Facilities**

- 7.01.01 All repairs to a Licensed Civil Air Navigation Services Asset or a Stand Alone Facility shall be carried out by NAVCAN.
- 7.01.02 Where any Licensed Civil Air Navigation Services Asset or a Stand Alone Facility has been damaged by any act or omission of Her Majesty or any other Person for whom Her Majesty may be responsible in law, Her Majesty shall immediately pay, on demand, to NAVCAN the full cost of repairing any such damage.

Section 7.02 Damage to Airport Premises

- 7.02.01 All repairs to airport premises, including any appurtenances thereto, except as may be otherwise agreed to herein, shall be carried out by Her Majesty.
- 7.02.02 Where any airport premises, including any appurtenances thereto, have been damaged by any act or omission of NAVCAN or any other Person for whom NAVCAN may be responsible in law, NAVCAN shall immediately pay, on demand, to Her Majesty the full cost of repairing any such damage.

ARTICLE 8 - ACCESS ROADS, UTILITIES, SERVICES**Section 8.01 Her Majesty to Provide**

- 8.01.01 Subject to Schedule B, Her Majesty shall, at Her cost provide, maintain, repair and replace any road, utility, equipment and other infrastructure required or used to provide access, utilities or services to any:
- (a) Stand Alone Facility used immediately prior to the first (1st) day of the Term for the provision of any Civil Air Navigation Service,
 - (b) space within any Joint Use Facility used immediately prior to the first (1st) day of the Term for the provision of any Civil Air Navigation Service, and
 - (c) Licensed Civil Air Navigation Services Asset on the Airport immediately prior to the first (1st) day of the Term.
- 8.01.02 Subject to Schedule B, NAVCAN shall, at its cost, plan, design and install or construct any road, utility, equipment and other infrastructure required to provide access, utilities or services to any,
- (a) Stand Alone Facility constructed on or after the first (1st) day of the Term, or
 - (b) Licensed Civil Air Navigation Services Asset constructed or installed on any part of the Airport on or after the first (1st) day of the Term.
- Once installed or constructed, any such road, utility, equipment or other infrastructure shall become the property of Her Majesty at no cost to Her Majesty.

8.01.03 Subject to Schedule B, and having regard to the operational needs of NAVCAN, Her Majesty shall plan and design and install or construct any road, utility, equipment and other infrastructure required to provide access, utilities or services to any space within any Joint Use Facility constructed or installed on or after the first (1st) day of the Term for the provision of any Civil Air Navigation Service.

8.01.04 Subject to Schedule B, Her Majesty shall maintain, repair and replace any road, utility, equipment and other infrastructure referred to in Subsections 8.01.02 and 8.01.03 after such road, utility, equipment or other infrastructure has been installed or constructed provided that if any new road, utility, equipment or infrastructure or part thereof is solely for the benefit of a Stand Alone Facility or a Licensed Civil Air Navigation Services Asset or both, then NAVCAN will pay to Her Majesty for so long as such road, utility, equipment or infrastructure or part thereof is solely for the benefit of a Stand Alone Facility or a Licensed Civil Air Navigation Services Asset or both, the out-of-pocket cost for the maintenance, repair and replacement of any

(a) such road, infrastructure or utility or such part thereof, or

(b) such equipment or such part thereof

and a reasonable amount for administrative charges.

8.01.05 For greater certainty, subject to Schedule B, Her Majesty shall, at Her cost, maintain, repair and replace any road, utility, equipment or other infrastructure which was on, over or under any part of the Airport immediately prior to the first (1st) day of the Term even if such road, utility, equipment or other infrastructure is solely for the benefit of a Stand Alone Facility or a Licensed Civil Air Navigation Services Asset or both.

ARTICLE 9 - MAINTENANCE AND SUPPORT SERVICES

Section 9.01 Consumption of Utilities

9.01.01 Subject to Schedule B, provided NAVCAN's consumption of a utility is separately metered or is measured in a manner agreed to by NAVCAN, NAVCAN shall pay:

(a) to the utility supplier or Her Majesty the actual cost of consumption of utilities

- (i) in the space occupied by NAVCAN, or
 - (ii) by a Licensed Civil Air Navigation Services Asset
- if NAVCAN's consumption is billed or invoiced separately, or
- (b) to Her Majesty the amount as measured in the manner agreed to with respect to the consumption of utilities:

- (i) in the space occupied by NAVCAN, or
- (ii) by a Licensed Civil Air Navigation Services Asset

if NAVCAN's consumption is not billed or invoiced separately plus a reasonable amount for administrative charges.

9.01.02 Notwithstanding Subsection 9.01.01, and except as may otherwise be agreed to by the parties, NAVCAN shall pay for any consumption of any utility for or in a Stand Alone Facility.

Section 9.02 Maintenance of Buildings, Structures and Grounds

9.02.01 Subject to Schedule B and Subsection 9.02.02, Her Majesty shall, at Her cost, for or in respect of any Joint Use Facility used in part for any Civil Air Navigation Services

- (a) maintain and repair, such Joint Use Facility, whether such maintenance or repair is interior or exterior, structural or non-structural and foreseen or unforeseen;
- (b) maintain and repair equipment in respect of such Joint Use Facility, except equipment owned by NAVCAN;
- (c) provide to NAVCAN, to its reasonable satisfaction, all services and utilities required to operate NAVCAN's equipment and facilities;
- (d) provide janitorial services; and
- (e) provide security of such Joint Use Facility and persons and property.

9.02.02 Subject to Schedule B, NAVCAN, will at its cost,

Page 114

- (a) maintain and repair any Stand Alone Facility, whether such maintenance or repair is interior or exterior, structural or non-structural and foreseen or unforeseen;
- (b) maintain and repair equipment in respect of such Stand Alone Facility, except equipment owned by Her Majesty;
- (c) provide janitorial services; and
- (d) provide security of such Stand Alone Facility and persons and property.

9.02.03 At the request of NAVCAN, Her Majesty shall provide the services referred to in Subsection 9.02.02. In this event, NAVCAN will pay to Her Majesty, the out of pocket cost for such service plus a reasonable amount for administrative charges.

9.02.04 Subject to Schedule B, Her Majesty shall, at Her cost, cut all grass and trim and cut down all trees and remove all snow and ice from around and near all Licensed Civil Air Navigation Services Assets to the reasonable satisfaction of NAVCAN.

ARTICLE 10 - LIFE CYCLE MANAGEMENT ELECTRICAL POWER SYSTEMS

Section 10.01 Interior Aviation Electrical Power Systems

10.01.01 Except as may otherwise be provided in Schedule B, NAVCAN will, at its cost, provide and maintain, repair and replace the Interior Aviation Electrical Power Systems.

Section 10.02 Electrical Power Distribution Systems

10.02.01 Subject to Subsection 10.02.02, and except as may otherwise be provided in Schedule B, Her Majesty shall, at Her cost, provide and maintain, repair and replace all Electrical Power Distribution Systems to the reasonable satisfaction of NAVCAN.

10.02.02 NAVCAN shall, at its cost, provide, maintain, repair and replace all Electrical Power Distribution Systems to a Stand Alone Facility to its own requirements.

Section 10.03 Emergency Power Systems

- 10.03.01 Except as may otherwise be provided in Schedule B, and subject to Subsection 10.03.02, Her Majesty shall, at Her cost, provide and maintain, repair and replace all emergency power systems and cables which supply emergency power.
- 10.03.02 Except as may otherwise be provided in Schedule B, NAVCAN will, at its cost, provide and maintain, repair and replace emergency power systems which are exclusively dedicated to a Stand Alone Facility, a Licensed Civil Air Navigation Services Asset or to a space within a Joint Use Facility which is exclusively under the control of NAVCAN. NAVCAN will also provide, maintain, repair and replace at its cost the cables from such emergency power systems to such Stand Alone Facility, such Licensed Civil Air Navigation Services Asset or such space within a Joint Use Facility. Her Majesty shall provide NAVCAN with uninterrupted and unimpeded access to any such emergency power system and cables in order to facilitate any such maintenance by NAVCAN.

ARTICLE 11 - VISUAL AIDS**Section 11.01 Visual Aids**

- 11.01.01 Her Majesty shall, at Her cost,
- (a) purchase,
 - (b) provide,
 - (c) maintain, repair and replace, and
 - (d) supply power and emergency power to
- any Visual Aid.

ARTICLE 12 - COMMUNICATION SERVICES**Section 12.01 Her Majesty to Provide**

- 12.01.01 Her Majesty shall, at Her cost, provide, maintain, repair and replace any communication system including

- (a) telephone and telecommunication systems;
 - (b) airport communications systems; and
 - (c) mobile and portable radio equipment, including any required licence which Her Majesty requires to operate the Airport.
- 12.01.02 Her Majesty agrees that any mobile and portable radio equipment used by Her Majesty shall be compatible for use with the equipment used by NAVCAN at the Airport.
- 12.01.03 At the request of and at the cost of Her Majesty, NAVCAN, on behalf of Her Majesty, may, if it agrees, install, maintain or repair any communication system including
- (a) telephone and telecommunication systems;
 - (b) airport communications systems; and
 - (c) mobile and portable radio equipment used at the Airport.

Section 12.02 Telecommunication Cabling

- 12.02.01 Subject to Subsection 12.02.03, Her Majesty shall, at Her cost, provide and maintain, repair and replace all cable ducts, support mechanisms and any other infrastructure that will facilitate the routing and maintenance of all telecommunications cabling owned or leased by NAVCAN or licensed to NAVCAN.
- 12.02.02 Her Majesty shall provide to NAVCAN, its servants, employees, agents, contractors and subcontractors unimpeded access, at reasonable times, to all such cable ducts, support mechanisms and infrastructure. Any repair or maintenance of the cables shall be carried out only by NAVCAN at its cost.
- 12.02.03 If the cable duct, support mechanism or other infrastructure contemplated in Subsection 12.02.01, contains telecommunication cabling providing service only to a Stand Alone Facility or a Licensed Civil Air Navigation Services Asset and contains no other cabling used by other persons, NAVCAN shall,

at its cost, provide and maintain, repair and replace such cable duct, support mechanism or other infrastructure.

ARTICLE 13 - FINANCIAL ADMINISTRATION ACT

Section 13.01 Financial Administration Act

- 13.01.01 Notwithstanding any provisions of this Agreement, this Agreement is subject to the *Financial Administration Act*, R.S.C. 1985, c. F-11 including, without limitation, Section 40.

ARTICLE 14 - ACCESS

Section 14.01 Restricted Area Passes

- 14.01.01 Where an access and restricted area pass system is provided by Her Majesty, She shall:

- (a) provide, at no cost to NAVCAN, access and restricted area passes to all persons authorized by NAVCAN to possess such a pass, and
- (b) honour all access and restricted area passes issued to NAVCAN's servants, employees, agents, invitees, contractors and subcontractors.

- 14.01.02 NAVCAN shall take all reasonable steps to ensure that all access and restricted area passes are used only for purposes of performing its rights and obligations under the Act or under this Agreement.

- 14.01.03 NAVCAN shall comply with Her Majesty's procedures respecting the issuance of access and restricted area passes and the administration of the restricted area pass system for the Airport and with respect to airport security programs and plans.

Section 14.02 Access

- 14.02.01 NAVCAN hereby grants to Her Majesty, Her servants, employees, agents, contractors and subcontractors for the term of this Agreement, the irrevocable licence and permission to have free and unencumbered access at any time with or without machinery and equipment to any part of any land or space occupied or used by NAVCAN pursuant to the licence granted under Section 2.01 as may be required for any of the purposes of this

Agreement or any of the provisions of the *Aeronautics Act* or any Regulation made pursuant thereto.

- 14.02.02 Her Majesty may have access to all or any part of any land or space occupied or used by NAVCAN at any time in order to deal with any emergency or danger, at any time where, in the Minister's judgment, there is a real or apprehended emergency or danger to persons or property or where any delay would or might prejudice the health or safety of the public at the Airport.

ARTICLE 15 - OPERATION OF AIRPORT

Section 15.01 Interference

- 15.01.01 Her Majesty shall not, and shall ensure that any sub-tenant of Her Majesty or other user of the Airport, or any assignee of the rights and obligations of Her Majesty hereunder (each a "Third Party") shall not:

- (a) conduct any operation;
- (b) erect or construct any building, structure, improvement or other work;
- (c) make any addition to any building, structure, improvement or other work;
- (d) install any facility or equipment in, over or upon the Airport or any part thereof; or
- (e) do anything else

which will, in any manner:

- (f) interfere with any electronic signal from any Licensed Civil Air Navigation Services Asset or Stand Alone Facility;
- (g) cause physical or electronic interference or hazard to the navigation of any aircraft;
- (h) obstruct the line of sight from the air traffic control tower or, where applicable, the flight service station to any part of the Airport and its approaches over which the air traffic control tower or the flight service

station has the responsibility for the control or advice related to aircraft and vehicle movements;

- (i) violate any safety-related standards, procedures, or recommended practices affecting the provision of Civil Air Navigation Services; and
- (j) adversely affect any Licensed Civil Air Navigation Services Asset or Stand Alone Facility or any electrical power system

provided, however, that the obligation of Her Majesty hereunder with respect to any assignee shall not apply to Her Majesty with respect to an assignment to an entity as contemplated in Article 21.

15.01.02 Upon receipt of a notice from NAVCAN of any such interference, obstruction, hazard, violation or effect, Her Majesty shall, at Her own expense, immediately take all steps necessary to cease any activity causing any interference, obstruction or hazard, to remove any interference, obstruction or hazard contemplated in Subsection 15.01.01 or to rectify any violation to Subsection 15.01.01 to the satisfaction of NAVCAN. Without limiting the generality of the foregoing, such steps may include, but shall not be limited to, discontinuance or modification of operations of Her Majesty or any Third Party, and removal, rebuilding or repair of buildings, structures, improvements, facilities or equipment of Her Majesty or any Third Party.

15.01.03 With respect to any such building, structure or other work causing any such interference, obstruction or hazard, in the event Her Majesty fails to forthwith remove any such interference, obstruction or hazard, NAVCAN may enter the Airport and remove the building, structure, improvement or work causing any such interference, obstruction or hazard at Her Majesty's expense, and Her Majesty shall permit such entry. Her Majesty shall forthwith reimburse NAVCAN for all expenses and costs NAVCAN has incurred in entering the Airport and removing the building, structure or work causing any such interference, obstruction or hazard.

Section 15.02 Security Programs and Plans

15.02.01 NAVCAN shall comply with all Her Majesty's programs and plans in relation to security at the Airport which are in effect from time to time.

ARTICLE 16 - AIR TRAFFIC MANAGEMENT

Section 16.01 Her Majesty's Procedures

- 16.01.01 Her Majesty shall consult with NAVCAN prior to adopting any new procedure or any modification of any existing procedure at the Airport relating to airside capacity, including airside capacity restrictions, preferential runway use, and restrictions on hours of use of the Airport and will provide reasonable notice to NAVCAN prior to implementing any such new procedure or modification of an existing procedure.

Section 16.02 NAVCAN's Procedures

- 16.02.01 NAVCAN shall consult with Her Majesty prior to adopting any new procedure or any modification of any existing procedure at the Airport relating to flow management procedures or the rotation of runway use and will provide reasonable notice to Her Majesty prior to implementing any such new procedure or modification of an existing procedure.
- 16.02.02 From time to time, NAVCAN may produce regional systems plans. Where such plans are produced, NAVCAN shall consult with Her Majesty in the production of such plans as they directly relate to the Airport.

ARTICLE 17 - OPERATIONAL COOPERATION AND REVIEW

Section 17.01 Operational Cooperation and Review

- 17.01.01 In order to ensure continuing effective operation of the Airport and to fulfil the objectives and provisions of this Agreement, the parties hereto shall arrange for their representatives in an operational capacity at the Airport to meet regularly in order to:
- (a) address topics of common concern;
 - (b) coordinate any aspect of any operation, activity and construction projects which might affect any Licensed Civil Air Navigation Services Asset or the ability of NAVCAN to provide a safe, orderly, expeditious and efficient service to aircraft or the ability of Her Majesty to carry out Her functions as airport operator;
 - (c) discuss and establish the current and projected levels of air traffic which could be accommodated at the Airport taking into account

specific aircraft handling capacity data such as any engineered performance standard for Air Traffic Control Service at the Airport; and

- (d) ensure that the operational objectives of this Agreement are being achieved.

Section 17.02 Interference with Utilities

- 17.02.01 The parties hereto shall ensure that no excavation, construction, renovations or other activities on any part of the Airport will interfere with any electrical power, communication or other cable runs or utility lines whether above, on, or below the ground level.

Section 17.03 Noise Management

- 17.03.01 Where Her Majesty has established a community consultative committee to address plans for the management of noise and noise mitigation, NAVCAN shall appoint a representative to the committee and shall participate in any consultative process undertaken by Her Majesty.

ARTICLE 18 - ARBITRATION

Section 18.01 Application

- 18.01.01 Any dispute or difference between the parties hereto arising under this Agreement shall be referred to a tribunal for an award and determination by written submission signed by either the Minister or NAVCAN.

- 18.01.02 The parties agree that

- (a) any dispute or difference related to a real property matter which is not a question of valuation or which does not concern obligations of maintenance, repair and condition of premises as set out in a lease or licence or
- (b) any question that involves the interpretation or application of the public law of Canada whether constitutional, administrative, criminal or tax law, including, without limitation, the interpretation of any statute relating to public law, or the exercise of any power under such law

is not subject to this Article.

18.01.03 For the purposes of this Agreement a question of valuation means a question concerning

- (a) the determination of rent or other amounts payable under a lease or real property licence;
- (b) market value of real property that is the subject of an option agreement that is based on a determination of the market value; or
- (c) the determination of fees or other amounts payable under a licence.

Section 18.02 Jurisdiction of the Arbitrator

18.02.01 The arbitrator may determine all questions of law and jurisdiction including questions as to whether the dispute is arbitrable and shall have the discretion to award costs including reasonable legal fees, interest and costs of the arbitration.

Section 18.03 Governing Legislation

18.03.01 Each arbitration pursuant to this Agreement shall be conducted pursuant to the Commercial Arbitration Code (the "Code") set out in the schedule to the *Commercial Arbitration Act*, R.S.C. 1985, c. 17 (2nd Supp.).

Section 18.04 Agreement re: the Commercial Arbitration Code

18.04.01 The parties agree as follows with respect to the Code:

- (a) Article 3: Notwithstanding the provisions of Article 3 of the Code, Notices shall be given and deemed received in accordance with the provisions of Section 26.04 of this Agreement.
- (b) Article 7: For the purposes of Article 7 of the Code, this Section 18 shall constitute the "arbitration agreement".
- (c) Articles 10 and 11: For the purposes of Articles 10 and 11 of the Code, the arbitral tribunal shall be selected as follows:
 - (i) After such notice and demand being given and deemed received in accordance with the provisions of Section 26.04 of this Agreement, the parties shall:

- (ii) within ten (10) days, jointly select a single arbitrator, or
- (iii) if the parties fail to select a single arbitrator with such ten (10) day period, they shall each appoint an arbitrator within seven (7) days. If one party selects an arbitrator, and the other party neglects or refuses to do so within the time specified, the arbitral tribunal shall be the sole arbitrator so selected. If each party selects an arbitrator, the two arbitrators so selected shall, within five (5) days, select a third arbitrator as chairperson of the arbitration. If the two arbitrators selected as described above do not agree upon a third, then either party may apply to a court of competent jurisdiction to appoint the third arbitrator, who shall chair the arbitral tribunal.
- (d) Article 20: For the purposes of Article 20 of the Code, each arbitration pursuant to this Agreement shall be conducted at Ottawa, or such other place as the parties may agree.
- (e) Article 22: Pursuant to Article 22 of the Code, the language used in all arbitral proceedings shall be English unless the parties hereto agree otherwise.
- (f) Article 28: For the purposes of paragraph (1) of Article 28 of the Code, the rules of law applicable to any dispute before an arbitral tribunal shall be the laws in effect in the Province of British Columbia at the time the dispute arose or such other jurisdiction where the arbitration takes place by agreement of the parties. For the purposes of paragraph (3) of Article 28 of the Code, the arbitral tribunal is not authorized to decide *ex aequo et bono* or as *amiable compositeur*.
- (g) Article 34: References in Article 34 of the Code to a "court" shall be references to the Federal Court Trial Division or, where applicable, any court of appeal therefrom.
- (h) Article 35: For the purposes of Article 35 of the Code, an arbitral award shall be final and binding and, upon application to the Federal Court in accordance with the *Federal Court Act*, R.S.C. 1985, c. F-7 shall be enforced as a judgment or award of that Court.

Section 18.05 Obligations During Arbitration

- 18.05.01 During the progress of arbitration, the parties hereto shall continue to perform their obligations under the Agreement or any of the Instruments.

ARTICLE 19 - ROLE OF HER MAJESTY**Section 19.01 No Partnership, Joint Venture or Agency**

- 19.01.01 Her Majesty and NAVCAN expressly disclaim any intention to create a partnership, joint venture or joint enterprise. It is understood, acknowledged and agreed that nothing contained in this Agreement nor any acts of Her Majesty or NAVCAN shall constitute or be deemed to constitute Her Majesty and NAVCAN as partners, joint venturers or principal and agent in any way or for any purpose. NAVCAN shall not represent or hold itself out to be an agent of Her Majesty. No party hereto shall have any authority to act for or to assume any obligations or responsibility on behalf of the other party hereto.

- 19.01.02 The provisions of Article 6 (Indemnity and Insurance) of the Department of Transport Agreement form an integral part of this Agreement as fully as if such Article were set forth herein, *in extenso*, and the parties shall be entitled to all the rights and benefits and be subject to and comply with all of the obligations and undertakings contained therein.

- 19.01.03 For greater certainty, neither this Agreement, nor any other document contemplated by this Agreement shall constitute or be construed or be deemed to constitute or be construed as a delegation by the Minister to NAVCAN of any of his powers, duties or functions.

Section 19.02 Role of Her Majesty

- 19.02.01 Subject to the Act, nothing in this Agreement shall affect or restrict Her Majesty's or the Minister's role as described in the *Aeronautics Act* or in any regulation or order made pursuant to that Act.
- 19.02.02 Subject to the Act, nothing in this Agreement shall derogate or otherwise fetter the ability of Her Majesty to regulate, administer, manage or deal with aeronautics and all attendant matters thereto.
- 19.02.03 Nothing in this Agreement shall prohibit, restrict, or affect the right of the Minister to assess or impose:

- (a) any charge or fee which the Minister has the power under any law to assess or impose;
- (b) any charge or fee with respect to any service provided by the Minister and not specifically provided for herein; and
- (c) any charge or fee with respect to or related to the Minister's role as regulator.

ARTICLE 20 - NON-COMPLIANCE

Section 20.01 Event of Non-Compliance

- 20.01.01 Each party shall be in non-compliance of this Agreement where that party fails to keep, perform or observe any of the obligations, covenants, agreements, provisions, conditions or provisos contained in this Agreement on the part of that party to be kept, performed or observed.

Section 20.02 Time to Cure

- 20.02.01 Neither party hereto shall be in non-compliance under this Agreement unless any non-compliance by such party hereto continues for thirty (30) days following receipt by such party hereto from the other of a written notice of such non-compliance (hereinafter called "Notice of Non-Compliance").
- 20.02.02 Notwithstanding Subsection 20.02.01, if the non-compliance by either party hereto reasonably requires more than thirty (30) days to cure, such party hereto shall not be in non-compliance, provided that the curing of the non-compliance is promptly commenced upon receipt by such party hereto of the Notice of Non-Compliance, and with due diligence is thereafter continuously prosecuted to completion and is completed within a reasonable period of time, and provided that the party hereto in receipt of the Notice of Non-Compliance keeps the other well informed at all times of its progress in curing the non-compliance.

Section 20.03 Remedies

- 20.03.01 Where either party is in non-compliance under this Agreement, the other party shall have any remedy that is available to it at law or in equity after the period to cure such non-compliance has expired.

ARTICLE 21 - ASSIGNMENT BY HER MAJESTY

Section 21.01 Assignment

- 21.01.01 For greater certainty, NAVCAN acknowledges that Her Majesty may transfer all or substantially all of the management, operation and maintenance of the Airport to an entity or entities for a term which may be more than, equal to or less than the Term hereof.
- 21.01.02 If Her Majesty transfers all or substantially all of the management, operation and maintenance of the Airport to an entity, then Her Majesty will assign to that entity Her obligations and, subject to Subsection 21.01.04, Her rights in this Agreement. NAVCAN covenants and agrees that, upon such entity agreeing with Her Majesty and NAVCAN to perform Her Majesty's obligations in this Agreement, NAVCAN shall be bound to such entity by all of the terms, covenants and conditions contained in this Agreement which have been assigned as if such entity was a party to this Agreement and NAVCAN had executed this Agreement directly with such entity.
- 21.01.03 Subject to Subsection 21.01.04, upon transfer of Her Majesty's obligations and rights to such entity, and subject to such entity having agreed with Her Majesty and NAVCAN to perform Her Majesty's obligations in this Agreement
- (a) Her Majesty shall have no further obligations to NAVCAN under this Agreement, and
 - (b) NAVCAN hereby releases Her Majesty from any claims whatsoever arising from any act or omission in the performance of any of Her Majesty's obligations or in the exercise of any of Her rights assigned to such entity occurring on or after assignment of Her Majesty's obligations and Her rights to such entity.
- 21.01.04 *joint venture* *partnership* *of fiduciaries*
Notwithstanding any transfer contemplated in this Article 21, the provisions of Article 19, Paragraphs 22.01.03(c) and 22.01.04(c), Subsections 22.01.05, 22.01.06 and 22.01.07 and Sections 26.02, 26.08 and 26.10 of this Agreement shall not be assigned to any such entity and shall remain in force as between NAVCAN and Her Majesty.
- 21.01.05 Upon transfer of Her Majesty's obligations and rights to the entity:
- (a) *from Financial Admin. Act* Article 13 shall be deleted in its entirety; and

- (b) Article 18 shall be amended by deleting Section 18.03 and substituting therefor the following:

"Section 18.03 Governing Legislation

- 18.03.01 Each arbitration pursuant to this Agreement shall be conducted pursuant to the Commercial Arbitration Code (the "code") set out in the schedule to the *Commercial Arbitration Act*, R.S.C. 1985, c. 17 (2nd Supp.) as if Her Majesty in right of Canada, as represented by the Minister of Transport, were a party to this Agreement."

ARTICLE 22 - LAND OR SPACE NO LONGER REQUIRED

Section 22.01 NAVCAN Ceases Occupation

- 22.01.01 NAVCAN shall notify Her Majesty if it wishes to cease occupying part or all of any space or land which is the subject of a lease to NAVCAN or a licence on which a Licensed Civil Air Navigation Services Asset is located.
- 22.01.02 The lease or licence to NAVCAN for the land or space NAVCAN wishes to cease occupying and any sublease entered into by NAVCAN pursuant to Subsection 4.01.03 shall terminate when all facilities, fixtures and equipment used by NAVCAN or its subtenant on the site, including but not limited to any Stand Alone Facility, have been removed from the site and the land reinstated and that portion of the Environmental Contamination on the space or land which is the subject of a lease to NAVCAN caused or contributed to by NAVCAN or its subtenant has been Remediated as provided herein except as otherwise provided under Subsection 22.01.05.
- 22.01.03 Unless, within ninety (90) days of sending the notice referred to in Subsection 22.01.01, NAVCAN receives permission from Her Majesty to abandon any Stand Alone Facility, NAVCAN shall decommission and remove, at its expense, any Stand Alone Facility located on the Airport and shall,
- (a) fill up all excavations made in removing or as a result of removing such Stand Alone Facility at NAVCAN's cost,
 - (b) replace all surface soil and leave the area upon which such Stand Alone Facility stood in a neat and tidy condition at NAVCAN's cost, and

- (c) unless Her Majesty elects in accordance with Subsection 22.01.05, NAVCAN shall contribute its proportionate share of the total cost to Remediate that portion of the Environmental Contamination on the land which is the subject of a lease to NAVCAN. NAVCAN's proportionate share of the total cost shall be the cost to Remediate that portion of the Environmental Contamination on the said land caused or contributed to by NAVCAN or its subtenant.

22.01.04 Where NAVCAN wishes to cease to occupy any part or all of any land or space on which a Licensed Civil Air Navigation Services Asset is located, NAVCAN shall remove any such Licensed Civil Air Navigation Services Asset located thereon and NAVCAN shall, at its cost:

- (a) fill up all excavations made in or as a result of removing such Licensed Civil Air Navigation Services Asset,
- (b) replace all surface soil and leave the area upon which such Licensed Civil Air Navigation Services Asset stood in a neat and tidy condition, and
- (c) unless Her Majesty elects in accordance with Subsection 22.01.05, NAVCAN shall contribute its proportionate share of the total cost to Remediate that portion of the Environmental Contamination on the space or land which is the subject of a lease or licence on which the Licensed Civil Air Navigation Services Asset is located. NAVCAN's proportionate share of the total cost shall be the cost to Remediate that portion of the Environmental Contamination on the said space or land which is the subject of a lease or licence on which the Licensed Civil Air Navigation Services Asset is located caused or contributed to by NAVCAN or its subtenant.

22.01.05 Prior to the commencement of any Environmental Remediation contemplated by Subsections 22.01.03, 22.01.04 and 23.01.01, where Her Majesty's proportionate share of the total cost to Remediate the site, based on an estimate from a qualified engineering consultant, is in excess of twenty five percent (25%) Her Majesty shall have the right to notify NAVCAN that Her Majesty elects not to Remediate the site at the time when NAVCAN removes all its facilities, fixtures and equipment from the site, including but not limited to any Licensed Civil Air Navigation Services Asset or any Stand Alone Facility. In such event NAVCAN shall pay to Her Majesty fair compensation for NAVCAN's proportionate share of the estimated cost to carry out such Environmental Remediation, as though it had been carried out at that time

in accordance with Subsections 22.01.03, 22.01.04 and 23.01.01, such fair compensation to be paid forthwith by NAVCAN. If Her Majesty and NAVCAN are unable to agree to such fair compensation within sixty (60) days of the election by Her Majesty not to Remediate, either party may submit the matter to arbitration pursuant to Article 18 of this Agreement.

22.01.06 Notwithstanding Subsection 22.01.05, where, in the opinion of NAVCAN, acting reasonably, the extent of the Environmental Contamination in or on the space or land which is the subject of a lease or licence to NAVCAN on which the Licensed Civil Air Navigation Services Asset or Stand Alone Facility is located will have any reasonable likelihood of a penal sanction resulting in a term of incarceration for any officer or director of NAVCAN, the parties shall carry out the Environmental Remediation contemplated by Subsections 22.01.03, 22.01.04 and 23.01.01.

22.01.07 In the event that Her Majesty

- (a) has granted permission to NAVCAN to abandon any Stand Alone Facility pursuant to Subsection 22.01.03 or
- (b) has elected not to Remediate the site at the time when NAVCAN removes all its facilities, fixtures and equipment from the site

and NAVCAN has paid to Her Majesty such fair compensation as the parties have agreed to or has been determined by arbitration Her Majesty shall release and forever discharge NAVCAN from all actions, causes of action, damages, claims and demands whatsoever which She may have against NAVCAN and shall indemnify NAVCAN against all actions, damages, claims and demands which may be brought against NAVCAN by reason of or arising out of any Environmental Contamination on the said space or land which was the subject of a lease or licence to NAVCAN on which the Licensed Civil Air Navigation Services Asset or Stand Alone Facility had been located.

22.01.08 For greater certainty, if NAVCAN fails to remove any Licensed Civil Air Navigation Services Asset as required by Subsection 22.01.04, or abandons the Stand Alone Facility contrary to Subsection 21.01.03, and if such Licensed Civil Air Navigation Services Asset or Stand Alone Facility has not been previously acquired, paid for or constructed by or on behalf of Her Majesty, Her Majesty may, at Her option on notice to NAVCAN, acquire all right, title and interest of NAVCAN in the Licensed Civil Air Navigation

Services Asset or the Stand Alone Facility at no cost to Her Majesty at the date fixed in such notice.

ARTICLE 23 - ENVIRONMENTAL

Section 23.01 Compliance with Laws

- 23.01.01 Without limiting the generality of any other covenant herein, NAVCAN shall, at its own cost and expense, comply with all Applicable Federal Environmental Laws and Applicable Provincial or Territorial Environmental Laws and shall immediately give written notice to Her Majesty of the occurrence of any event in or on the said space or land constituting an offence thereunder or a breach of this provision.
- 23.01.02 NAVCAN shall, at its own cost and expense, remedy any damage to the space or land which is the subject of a lease to NAVCAN or a licence on which the Licensed Civil Air Navigation Services Asset is located or adjacent land, air or water caused by the occurrence of any such event in or on such space or land or caused by the performance or lack of performance of any of NAVCAN's obligations under this Section.
- 23.01.03 If any governmental authority having jurisdiction shall require the clean-up of any Environmental Contaminant held, released, spilled, leaked, abandoned, flowing onto or into or placed upon the space or land which is the subject of a lease to NAVCAN or a licence on which the Licensed Civil Air Navigation Services Asset is located or any adjacent land, air or water or released into the environment on or after the commencement of the Term as a result of any use or occupancy of the whole or any part of such space or land on or after the commencement of the Term, then NAVCAN shall, at its own cost and expense, take all steps necessary to carry out the work required, and shall keep Her Majesty fully informed. If NAVCAN fails to comply, in a timely manner, with the requirement to clean-up, Her Majesty may Herself undertake such work or any part thereof at the cost and expense of NAVCAN.

Section 23.02 Environmental Management Plan

- 23.02.01 Where the operator of the Airport has established an Environmental Management Plan for and in respect of the Airport, NAVCAN agrees and covenants to co-operate, at its own cost, with the operator of the Airport and act in a manner consistent with the Environmental Management Plan.

- 23.02.02 NAVCAN agrees to grant to the operator of the Airport and to the employees, agents, contractors and subcontractors of the operator, together with machinery and equipment, for the duration of the Environmental Management Plan, access to the land or space on the Airport which is the subject of a lease to NAVCAN or any licence on which the Licensed Civil Air Navigation Services Asset is located at any time or times during reasonable hours for the purpose of permitting the operator to comply with the requirements of its Environmental Management Plan.

ARTICLE 24 - OWNERSHIP

Section 24.01 Ownership

- 24.01.01 For greater certainty, any Licensed Civil Air Navigation Services Asset and any Stand Alone Facility, except for such Licensed Civil Air Navigation Services Asset or Stand Alone Facility which has been acquired, paid for or constructed by or on behalf of Her Majesty after the date hereof (other than any such Licensed Civil Air Navigation Services Asset or Stand Alone Facility which has been acquired, paid for or constructed pursuant to Articles 5 or 25 hereof), which is subject to a licence granted pursuant to Section 2.01 or a leases granted pursuant to Section 4.01, shall be the property of NAVCAN.

ARTICLE 25 - RELOCATION

Section 25.01 Her Majesty may request Relocation

- 25.01.01 Unless the land or space from which a Civil Air Navigation Service is performed or on which a Licensed Civil Air Navigation Services Asset is located is required to meet the requirements of any aeronautical legislation or regulation or any rule or order pursuant thereto enacted to protect safety or security, Her Majesty may require that NAVCAN relocate from such land or space to other land or space on the Airport which is no less technically and operationally feasible or to a site off the Airport which is no less technically and operationally feasible if, in accordance with Her Majesty's land use plan, as approved for the Airport from time to time, there exists no suitable site on the Airport other than the existing site. Her Majesty shall give NAVCAN reasonable notice of such relocation taking into consideration any safety, security or operational requirements. Her Majesty shall, at Her cost, provide the land or space to which NAVCAN shall be relocated.
- 25.01.02 If Her Majesty requests that NAVCAN relocate from one space it occupies to another space or from one parcel of land it occupies to another parcel of

land or that it relocate a Licensed Civil Air Navigation Services Asset from one parcel of land to another parcel of land,

- (a) the land or space to which NAVCAN is relocated shall thereupon be substituted for the land or space respectively from which NAVCAN is relocated for all purposes of this Agreement and any lease in relation thereto, and
- (b) Her Majesty shall pay to NAVCAN fair compensation for such relocation.

ARTICLE 26 - GENERAL PROVISIONS

Section 26.01 Entire Agreement

- 26.01.01 This Agreement and the leases set forth the entire agreement between the parties hereto concerning the subject matter hereof. No representation or warranty expressed, implied or otherwise is made by Her Majesty to NAVCAN or by NAVCAN to Her Majesty except as expressly set out in this Agreement or in any of the leases.

Section 26.02 House of Commons

- 26.02.01 As required by the *Parliament of Canada Act*, R.S.C. 1985, c. P-1, it is an express condition of this Agreement that no member of the House of Commons shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.

Section 26.03 Time of Essence

- 26.03.01 Time shall in all respects be of the essence of this Agreement.

Section 26.04 Notice

- 26.04.01 All notices, or other communications necessary for the purposes of this Agreement 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

Page 133

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 NAVCAN; and

(b) in the case of NAVCAN, to:

NAV CANADA
77 Metcalfe Street
12th Floor
Ottawa, Ontario
K1P 5L6

Attention: Vice-President and General Counsel

Telephone: (613) 563-5588

Facsimile: (613) 563-3487

or to such other address or facsimile number or addressed to such
other person as NAVCAN may, from time to time, designate in writing
to the Minister.

26.04.02 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.

Section 26.05 Amendment

26.05.01 This Agreement may be amended by a written agreement signed by both
Her Majesty and NAVCAN.

26.05.02 Schedule B may be amended by a written agreement signed by both the Minister of the Minister's nominee, on the one hand, and NAVCAN on the other hand.

26.05.03 No amendment, variation, addition, deletion (which term includes lining out), rider or other change to this Agreement shall have any force or effect unless it is in writing and unless it is signed by both the Minister or the Minister's nominee and NAVCAN.

Section 26.06 Waiver

26.06.01 The failure by any party hereto to insist in any one instance upon the strict performance by the other party hereto of Her or its obligations hereunder shall not constitute a waiver or relinquishment of any such obligations as to any other instances, and the same shall continue in full force and effect.

26.06.02 No covenant or condition of this Agreement 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 Agreement or by law, despite the forbearance or indulgence.

Section 26.07 Severability

26.07.01 If, for any reason, any provision of this Agreement, other than any provision which is of fundamental importance to the arrangement between the parties, is, to any extent, held or rendered invalid, void, illegal or unenforceable for any reason whatsoever, then the particular provision shall be deemed to be independent of and severed from the remainder of this Agreement and all the other provisions of this Agreement shall nevertheless continue in full force and effect.

Section 26.08 Paramountcy of Federal Authority

26.08.01 Notwithstanding anything contained in this Agreement relating to any provincial or municipal law, code or other enactment, Her Majesty hereby declares that no such reference shall be interpreted, construed or implied as a recognition by Her Majesty that the Province of British Columbia, any municipality, or any provincial or municipal law, code or other enactment, has any jurisdiction over Her Majesty or the Airport.

Section 26.09 Assignment, Successors and Assigns

- 26.09.01 Where either party assigns its rights and obligations contained in this Agreement, that party shall provide to the other party an agreement executed by the proposed assignee, in a form satisfactory to the other party, whereby the proposed assignee agrees with the other party to be bound by all the terms, covenants and conditions of this agreement as if such proposed assignee had executed this Agreement.
- 26.09.02 This Agreement shall be binding upon and shall enure to the benefit of Her Majesty and Her heirs, successors and assigns and NAVCAN and its successors and assigns.
- 26.09.03 Nothing expressed or implied in this Agreement is intended to or shall be construed to confer on or to give any person or entity, other than the parties hereto and their successors and assigns, any rights or remedies under or by reason of this Agreement.

Section 26.10 Action by the Minister

- 26.10.01 Where any action by Her Majesty is required or permitted under this Agreement, such action may be taken by the Minister.

Section 26.11 Further Assurances

- 26.11.01 The parties shall execute and deliver such further assurances and documents as may reasonably be required to give effect to any provision of this Agreement.

IN WITNESS WHEREOF both parties have hereunto subscribed their signatures and affixed their corporate seals attested to by the hand of their proper officer in that behalf as of the Closing Date.


Witness


HER MAJESTY THE QUEEN IN
RIGHT OF CANADA


Minister of Transport

Scott M. Eaton
Vice President and
General Counsel

Print Name of Officer

NAV CANADA

Per. 
Signature of Authorized
Signing Officer

This is **SCHEDULE A** to the Aviation Services and Facilities Agreement between Her Majesty the Queen in right of Canada and NAV CANADA dated as of the Closing Date as defined in Subsection 1.01.01 of the Agreement to Transfer with respect to the Boundary Bay Airport.

SCHEDULE A

DESCRIPTION OF SPACE AND LAND INCLUDING THE LOCATION OF LICENSED FACILITIES

See attached "On-Airport Facilities Listing and Site Map Reconciliation".

To locate ANS facilities, refer to Key Plan No. P562 P013 N002 dated June 21, 1996 for the Boundary Bay Airport.




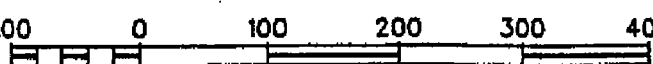
Page 138

Schedule "A"
On-Airport Facilities Listing and Site Map Reconciliation

to: Boundary Bay

File	Item	Description	Status	Comments
2A0201	A0201	Air Traffic Control Tower	A	Refer to Air Traffic Control Tower Complex (Function A) on Key Plan (Land Lease)

October 18, 1998

 Transport Canada -Airports Group		Transports Canada Groupe des aéroports			
 Pacific Region		Region du Pacifique			
no.	description			by par	approved approuvé
scale échelle 1:5000					
					
site emplacement BOUNDARY BAY AIRPORT					
title titre THE KEY PLAN FOR THE INVENTORY OF NAV CANADA FACILITIES					
designed by conçu par			drawn by dessiné par L. WONG		
reviewed and approved 96/06/21 by DON ENTWISTLE Project Manager, Engineering Technical Services Branch, Aviation			reviewed and approved 96/06/21 by DAVE GRIFFIN Superintendent, Operational Requirements Air Navigation System Requirements Branch, Aviation		
project no. projet no. ANS TRANSFER		date 21 JUNE, 96		rev. rév.	sheet feuille 1 of 1
P	5	6	2	P	0
				1	3
				N	0
				0	2

This is **SCHEDULE B** to the Aviation Services and Facilities Agreement between Her Majesty the Queen in right of Canada and NAV CANADA dated as of the Closing Date as defined in Subsection 1.01.01 of the Agreement to Transfer with respect to the Boundary Bay Airport.

SCHEDULE B

SERVICES

Not applicable.

Page 141

This is **SCHEDULE C** to the Aviation Services and Facilities Agreement between Majesty the Queen in right of Canada and NAV CANADA dated as of the Closing L defined in Subsection 1.01.01 of the Agreement to Transfer with respect to the Boun Bay Airport.

SCHEDULE C**LEASE(S)**

Generic Space Lease and generic Land Lease hereto attached.

AMENDED AND RESTATED LEASE AMENDMENT AGREEMENT – BOUNDARY BAY AIRPORT

TABLE OF CONTENTS

1.	DEFINITIONS AND INTERPRETATIONS.....	5
1.1	Definitions.....	5
1.2	Interpretation.....	9
1.3	Lease Amendment	10
2.	DEMISE.....	10
2.1	Grant	10
2.2	Remaining Term	10
2.3	Overholding after Term	10
2.4	Surrender of Lease	10
2.5	Use of the Hangar	11
2.6	Restrictive Covenants	11
3.	ANNUAL RENT AND PERCENTAGE RENT	11
3.1	Annual Rent and Municipal Taxes	11
3.2	Percentage Rent	11
3.3	Accurate Records	13
3.4	Statement of Gross Revenue and Expenditures	13
3.5	Lessee's Share of Costs	14
3.6	Net Rent	14
4.	GENERAL COVENANTS OF THE LESSOR AND LESSEE.....	14
4.1	General covenants of the Lessee.....	14
4.2	General covenants of the Lessor	15
5.	OBLIGATION OF LESSEE RESPECTING THE AIRPORT AND ITS REPAIR, MAINTENANCE AND OPERATION.....	15
5.1	Repair.....	15
5.2	Restoration of Improvements.....	16
5.3	Lessee to Operate, Maintain and Repair in Accordance with Aeronautics Act	16
5.4	Comply with Airport Certificate.....	16
5.5	Lessee to Operate, Maintain and Repair Road and Utility Areas.....	16
5.6	Specific Operation, Maintenance and Repair	16
5.7	Further Operation, Maintenance and Repair.....	19
5.8	Consent	19
5.9	Work to be done diligently	20
5.10	Builders All Risk and Liability Insurance	20

5.11	Inspection and Modifications by Lessor	20
5.12	Lessee to be Solely Responsible	20
5.13	Lessee to Discharge All Liens	20
5.14	Financial Commitment to Improvements	21
5.15	Lump Sum Payment to Lessor	22
5.16	Stakeholder Relations	23
5.17	Assumption of Aviation Services and Facilities Agreement	23
5.18	Lessor to Apply Airport Infrastructure Account	23
6.	OWNERSHIP OF IMPROVEMENTS	23
6.1	Ownership of Improvements	23
6.2	Ownership of Tenant's Fixtures	24
6.3	Removal of Tenant's Fixtures	24
7.	TAXES AND UTILITY CHARGES	24
7.1	Taxes	24
7.2	Utility charges	24
7.3	The Lessor May Pay Taxes or Utility Charges	25
7.4	Contesting Taxes and Utility Charges	25
8.	INSURANCE	25
8.1	Lessee's Insurance	25
8.2	General Insurance Provisions	27
8.3	Other Insurance	27
8.4	Identity of Insurers and Policy Terms	28
8.5	Payment of Loss Under All Risks Policy	28
8.6	The Lessor's Right to Insure	29
8.7	Co-Insurance - Waiver of Subrogation	30
8.8	Release and Indemnity	30
9.	USE OF LANDS AND WASTE AND NUISANCE	30
9.1	Use of Demised Lands	30
9.2	Use of Airport Lands	30
9.3	Easement Respecting Road and Utility Areas	30
9.4	Other Access	31
9.5	Airshows	31
9.6	Nuisance	31
9.7	Compliance with by-laws	32
10.	DAMAGE OR DESTRUCTION OF IMPROVEMENTS	32
10.1	Lease Not To Be Determined	32
10.2	Rent Not To Abate	32
11.	CHANGES AND ALTERATIONS TO THE IMPROVEMENTS	32
11.1	Alterations, Additions, Demolitions and Replacements	32
11.2	If Cost Less Than \$50,000.00	32

11.3	Value of Improvements.....	33
11.4	Work To Be Done Diligently.....	33
12.	INSPECTION BY THE LESSOR.....	33
12.1	Inspection.....	33
13.	RESTRICTIONS ON MORTGAGING, ASSIGNING AND SUBLEASING.....	33
13.1	Restrictions	33
14.	MORTGAGE.....	33
14.1	Mortgage of Leasehold Interest	33
14.2	The Lessor Not Required To Join In Mortgage.....	35
14.3	Copies of Mortgage.....	35
14.4	Acknowledgement by the Lessor.....	35
14.5	Lessee to Remain Liable.....	35
15.	RIGHT TO SUBLET.....	35
15.1	Subleases.....	35
15.2	Submissions for Development by Sublessees.....	37
15.3	Copies of Sublease and Licence of Occupation.....	37
15.4	Subleases and Licences of Less Than One Year	37
15.5	Existing Subleases	37
15.6	Sublease of All or Substantially All of the Demised Lands	37
16.	ASSIGNMENTS AND CHANGE OF CONTROL	38
16.1	Assignment or Transfer.....	38
16.2	Duplicate Original.....	39
16.3	Default.....	39
16.4	Liability of Lessee.....	39
16.5	Change of Control.....	39
16.6	Dissolution.....	40
16.7	Additional Restrictions on Assignment	40
16.8	Rent Adjustment on Assignment	40
17.	LICENCES TO UTILITIES	41
17.1	Licences	41
18.	LIABILITY AND INDEMNITY OF THE LESSOR.....	41
18.1	Exemption of the Lessor From Liability.....	41
18.2	Indemnity of The Lessor by Lessee.....	41
19.	NOTICES.....	41
19.1	Notices to Parties	41
20.	DEFAULT OF LESSEE AND REMEDIES OF THE LESSOR	42
20.1	Bankruptcy or Insolvency of Lessee.....	42

20.2	Termination and Re-Entry on Certain Defaults by the Lessee	43
20.3	Notice to Mortgagee	44
20.4	Remedies of the Lessor are Cumulative	45
20.5	Effect of Waiver by the Lessor	45
20.6	Damages and Expenses.....	45
21.	COMPLIANCE WITH LAWS GENERALLY	45
21.1	Compliance	45
22.	ENVIRONMENTAL.....	46
22.1	Environmental.....	46
23.	LESSEE TO COMPLY WITH LEASE, MORTGAGE AND OTHER OBLIGATIONS.....	47
23.1	Lessee's Compliance	47
24.	DISTRESS.....	47
24.1	Distress.....	47
25.	SIGNS	48
25.1	Signs.....	48
26.	LESSEE TO YIELD UP PREMISES IN GOOD REPAIR.....	48
26.1	Yielding Up.....	48
27.	UNPAID RENT	48
27.1	Unpaid Rent	48
28.	NO PARTNERSHIP OR JOINT VENTURE.....	48
28.1	No partnership or Joint Venture.....	48
28.2	No agency	48
29.	NO IMPLIED COVENANT.....	48
29.1	No Implied Covenant.....	48
30.	TIME OF THE ESSENCE.....	49
30.1	Time	49
31.	NO OBLIGATION TO RENEW OR EXTEND	49
31.1	No Renewal.....	49
32.	COVENANTS BINDING ON SUCCESSORS AND ASSIGNS	49
32.1	Successors and Assigns.....	49
33.	WAIVER BY THE LESSOR OR THE LESSEE.....	49
33.1	Waiver.....	49

Page 146

34.	CAPTIONS AND MARGINAL TITLES	49
34.1	Captions and Headings	49
35.	EFFECTIVE DATE.....	50
35.1	Date	50
36.	TRANSFER OF THE LESSOR'S INTEREST.....	50
37.	ENTIRE AGREEMENT.....	50
38.	NOTIFICATION OF FEES, RATES AND CHARGES.....	50
39.	REGISTRATION	50
40.	Schedules	50

END OF DOCUMENT

THIS IS EXHIBIT "B" REFERRED TO IN THE AFFIDAVIT OF
CRISTINE BOSMA MADE BEFORE ME ON THE
13th DAY OF JANUARY, 2017



A COMMISSIONER FOR TAKING AFFIDAVITS FOR
BRITISH COLUMBIA

Magnus C. Verbrugge
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BLG
Borden Ladner Gervais

File No. 553781/000006

December 9, 2016

Delivered by Email

Blake, Cassels & Graydon LLP
595 Burrard Street
Vancouver, BC V7X 1L3

Attention: Bill Kaplan, QC

Dear Sirs/Mesdames:

Re: Heli-One Canada ULC / 0921528 BC Ltd.

Further to my email of yesterday, 0921528 BC Ltd. ("Argo") has become increasingly concerned about the removal of fixtures from the leased premises (the "Premises"): Argo's property manager reports that removal of fixtures by your client appears to be ongoing at the property, without Argo's consent and without any agreement in place as to your client's exit from the Premises.

Further, Heli-One Canada ULC's ("Heli-One") representatives do not appear willing to deal with Argo's property manager or provide him with information that he is requesting and entitled to under the terms of the lease dated April 17, 2012 (the "Lease").

Our client remains hopeful that a consensual exit agreement can be entered into shortly. In the meantime and in the circumstances, we wish to bring to your attention certain background facts and contractual terms as between Heli-One and Argo. The Landlord reserves all of its rights and remedies as against Heli-One for any breach of the Lease and other agreements as exist between the parties.

The Landlord hereby requires that Heli-One not remove any personal property from the Premises that belongs to the landlord or that is excluded as set out below from the chattels or trade fixtures that Heli-One is entitled to remove, and further requires that Heli-One immediately provide a complete list of all property that has been removed from the Premises to date.

The operative terms of the Lease and related document are as follows:

A. Purchase of the Premises by Argo

The Premises were purchased by Argo Ventures Inc. ("Argo") pursuant to a Purchase and Sale Agreement dated for reference June 30, 2011 (the "Purchase Agreement"). The Purchase Agreement was amended several times before the transaction closed in April 2012, but most of the

amendments were to extend the closing date and none of the amendments were material to issues at hand. Shortly before closing, Argo assigned its interest in the Purchase Agreement to Argo. Under the Purchase Agreement, Argo purchased the “**Property**” meaning the property situate at 4300 – 80th Street, Delta BC, including *inter alia* the “Leasehold Premises”, the “Buildings” and the “Chattels”:

1. The “**Leasehold Premises**” are the portion of the Premises charged by the July 31, 2006 sublease between Alpha Aviation Inc. and CHC Helicopters International Inc. (the “**Head Lease**”).
2. The “**Buildings**” are the buildings on the Leasehold Premises including all improvements, structures, fixtures, etc., including all heating, lighting, air conditioning, plumbing, electrical, ventilation, drainage, water, elevator and mechanical fixtures and systems (but excluding the trade fixtures which shall be removable under the Head Lease):
 - (a) Accordingly, whatever fixtures were on the Premises as of April 17, 2012, when the Lease was entered into, have been purchased by and are the property of Argo, unless they are “trade fixtures” removable under the Head Lease.
3. “**Chattels**” means equipment, furniture, inventory, appliances, chattels and personal property used for the operation of the Leasehold Premises shown on Schedule B (but not Chattels owned by Heli-One and used in the operation of the business).
 - (a) Schedule B lists the Chattels as being “all overhead hoists and cranes, engine evaporators, skid air compressor, cobra integrated security system” – these Chattels were purchased by Argo and are owned by it, and cannot be removed by Heli-One.

B. Terms of the Head Lease applicable to fixtures and leasehold improvements

1. The Head Lease defines “Trade Fixtures” as “the unattached, moveable chattels and equipment installed prior to or during the Term... for the purpose of the [Argo] or [Heli-One] carrying on its business.... and which [Argo] or [Heli-one] is permitted to remove only by the terms of this Agreement, but Trade Fixtures do not include Leasehold Improvements”.
 - (a) “Leasehold Improvements” are defined in the Head Lease as “all improvements, fixtures, equipment and Alterations from time to time made, constructed, erected or installed by, for or on behalf of [at the time, Heli-One, now Argo, as tenant] in, on, to or for the Premises, whether or not easily disconnected or moveable.”
 - (b) “Alterations” are defined in the Head Lease as “alterations, adjustments, changes, repairs, renewals, restorations, additions, reconstructions, replacements, modifications, improvements, betterments and installations”.
 - (c) Section 8.8 of the Head Lease provides that all Leasehold Improvements and other improvements to the buildings become the property of [Alpha] “except as otherwise specifically provided for herein”.
 - (d) Section 13.1 of the Head Lease provides that at the end of the Term or sooner termination, [Argo] shall surrender the Premises, “subject to the right of [Argo (as tenant)] and [Heli-One (as occupant)] to remove Trade Fixtures. However, the Head Lease has not expired and been terminated, and accordingly, Section 13.1 has not been triggered.

C. Provisions under the Lease dealing with Fixtures

1. Section 9.1(c) of the Lease provides that at the end of the term or upon earlier termination, Heli-One is to yield up the Premises and all fixtures in the condition required by the Lease, but excluding "tenant's trade fixtures".
2. Although "tenant's trade fixtures" are not defined in the Lease, they would not of course include any fixtures purchased by Argo under the Purchase Agreement and which belong to Argo. Further, as noted above, the Purchase Agreement only gives Heli-One rights to trade fixtures removable under the Head Lease.
3. Accordingly, to the extent that any fixtures on the Premises, whether trade fixtures or otherwise, were purchased by Argo under the Purchase Agreement, they are not owned by Heli-One and are not Heli-One's trade fixtures.
4. Any trade fixtures purchased and affixed by Heli-One subsequent to April 17, 2012 would in fact be Heli-One's trade fixtures and may be removed.
5. Section 9.5 of the Lease specifically provides that Heli-One's trade fixtures do not include any "Tenant's Repairs" (as defined), or any heating, ventilation and air conditioning systems, facilities or equipment in or serving the Premises, floor covering that it affixed, light fixtures, doors, internal stairways, or anything that would not normally be considered a trade fixture.

D. Property that Cannot be Removed

E.

1. As noted in my email of December 8, 2016, the assertion in your December 7, 2016 letter that the Premises were "bare" when Heli-One leased them from Argo is factually incorrect. The Premises at the commencement of the Lease were in substantially the condition they were in when Heli-One recently started to move out. It is important to note that except for any property excluded under the Purchase Agreement and Lease, Argo purchased everything from your client and has already paid for it.
2. Heli-One is not permitted to strip the Premises of fixtures or chattels and leave the buildings "bare"; they can only remove property to the extent that the Lease (and by extension the Purchase Agreement and Head Lease) specifically permit it.
3. The above summary of the terms of the Purchase Agreement and the Lease is intended to be illustrative for purposes of reaching an agreement, not an exhaustive analysis, and Argo reserves all of its rights as landlord and in connection with its agreements with Heli-One. However, based only on the foregoing, the list of property that Argo is not entitled to remove from the Premises includes:
 - (a) Under the Head Lease, the following are not trade fixtures for purposes of the Lease and therefore cannot be removed by Heli-One:
 - Any fixtures or other property that are not "unattached, moveable chattels and equipment installed prior to or during the Term... for the purpose of [Heli-One] carrying on its business".
 - "Leasehold Improvements" meaning "all improvements, fixtures, equipment and Alterations from time to time made, constructed, erected or installed by, for or on behalf of the [tenant] in, on, to or for the Premises, whether or not easily disconnected or moveable.
 - alterations, adjustments, changes, repairs, renewals, restorations, additions, reconstructions, replacements, modifications, improvements, betterments and installations.

(b) In addition, and specifically, the following cannot be removed from the Premises except if (and only to the extent that) they are "trade fixtures removable under the Head Lease":

- Improvements
- Structures
- Fixtures, including the following fixtures and systems:
 - heating
 - lighting
 - air conditioning
 - plumbing
 - electrical
 - ventilation
 - drainage
 - water
 - elevator
 - mechanical
- Heli-One's Repairs (as defined in the Lease)
- floor covering that is affixed
- light fixtures
- doors
- internal stairways
- anything that would not normally be considered a trade fixture.
- Overhead hoists and cranes
- encon evaporators
- skeans air compressor
- cobra integrated security system

F. **Overholding under the Lease.** As you know, Argo's position that the Lease was automatically rejected and terminated on December 1, 2016 under the United States Bankruptcy Code. As a result, Heli-One is currently overholding without Argo's consent. The Lease deals with these circumstances:

1. Section 16.1(a) of the Lease provides that if Heli-One remains in possession of the Premises after the Lease has been terminated with Argo's written consent, the monthly base rent shall be 1.5 times the Base Rent that would apply during the last month of the Term (which is substantially higher Base Rent number than existed in 2016, due to increasing rents under the terms of the Lease, which had more than 18 years remaining on the term when it was rejected).
2. Section 16.1(b) provides that if Heli-One remains in possession without Argo's written consent, the monthly Base Rent is 2 times the Base Rent that would apply during the last month of the Term.
3. The Landlord has offered an accommodation for a consensual exit agreement, under which the existing Base Rent is payable for the month of December, and slightly less than double the Base Rent is payable for the month of January. Both of these amounts are substantially less than the amount set out in the Lease, and are a significant accommodation to Heli-One to allow it to transition its operations to its new premises.
4. Absent a consent exit agreement, Argo will seek a court order in the Chapter 11 for the rent set out in the contract for the entire period of overholding, and Argo reserves all of its rights in connection with same.

This letter has two purposes. First, to make it clear that Argo intends to rely on all of its rights and remedies under the Lease and related agreements to ensure that it retains the assets that it paid for under the Purchase Agreement. And second, to assist in clarifying what Heli-One can and cannot remove from the premises, and the relief that Argo would ask the court to provide if agreement cannot be reached, so that hopefully Heli-One will agree that Argo's offer set out in my email of December 7, 2016 is an attempt to provide Heli-One with substantial accommodation as it moves to its new premises.

Argo needs to mitigate its losses; it goes without saying that the termination of the Lease creates tremendous hardship for Argo, but it is prepared to come to reasonable terms with Heli-One as to rent and the removal of chattels and fixtures during a short interim exit period, provided that the spirit of cooperation is mutual.

Yours truly,

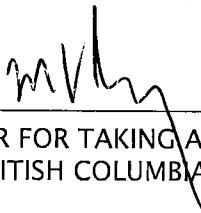
BORDEN LADNER GERVAIS LLP

By: 

Magnus C. Verbrugge

MCV/cb

THIS IS EXHIBIT "C" REFERRED TO IN THE AFFIDAVIT OF
CRISTINE BOSMA MADE BEFORE ME ON THE
13th DAY OF JANUARY, 2017

A handwritten signature in black ink, appearing to be 'mVh', is written over a horizontal line.

A COMMISSIONER FOR TAKING AFFIDAVITS FOR
BRITISH COLUMBIA



Blake, Cassels & Graydon LLP
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Suite 2600, Three Bentall Centre
Vancouver BC V7X 1L3 Canada
Tel: 604-631-3300 Fax: 604-631-3309

December 16, 2016

Bill Kaplan*, Q.C., FCI Arb

Dir: 604-631-3304

bill.kaplan@blakes.com

*Denotes Law Corporation

VIA EMAIL

Reference: 00013237/000001

Borden Ladner Gervais LLP
1200 Waterfront Centre
200 Burrard Street
Vancouver, BC V7X 1T2

Attention: Magnus C. Verbrugge

**RE: In the Matter of CHC Group Ltd.
SCBC Vancouver Registry No. S-169079**

Re: Heli-One Canada ULC (the "Tenant") and 0921528 B.C. Ltd. (the "Landlord")

Dear Sir:

We write further to our recent correspondence and the meeting that took place on December 13, 2016 at the Boundary Bay facility (the "Premises") in Delta, British Columbia between Paul King, on behalf of the Tenant, and Eric Lee and Tony Akester, on behalf of the Landlord and its property manager, respectively.

The December 13th meeting was arranged in the context of correspondence and email exchanges regarding the negotiation of an exit agreement associated with the upcoming lease rejection motion in the Chapter 11 proceedings. Based upon these exchanges, it appeared that your client was prepared to negotiate an exit agreement and that the commercial differences between the parties in respect thereto were manageable. On that basis a direct discussion between the parties was arranged at the Premises to determine whether or not the differences in the January rent positions of the parties could be resolved and the issues of trade fixtures/leasehold improvements referenced in your email of December 8th could be resolved.

At the meeting, your client refused to even negotiate the outstanding items of the exit agreement and instead reversed its position entirely by indicating that the lease required double rent payment for January and that, more importantly, anything that was affixed to the floor or a wall was a leasehold improvement and the property of the Landlord. That latter position was very different from the position taken in correspondence between counsel and, as canvassed below, is an illegitimate position pursuant to the terms of the lease and the dealings of the parties.

The lease agreement between the Tenant and Landlord dated April 17, 2012 provides that the Tenant may remove the Tenant's trade fixtures at the end or sooner termination of the term of the lease. This right is consistent with the common law right of a tenant to remove its trade fixtures on the expiration of the lease. It is also not inconsistent with any of the Landlord's own obligations owed to its landlord under the terms of the Head Lease.



The lease agreement between the Tenant and Landlord does not provide a definition of "Tenant's trade fixtures". However, as you note in your December 8th email, it should be obvious to a reasonable observer which fixtures located at the Premises were installed for the purpose of being used by the Tenant in its business and which fixtures were intended to improve the leasehold Premises irrespective of their future use.

As a question of law, the Tenant is of the view that the following categories of fixtures were installed at the Premises for the purpose of being used in the Tenant's business and are therefore subject to the Tenant's right of removal:

- Machinery and equipment related to the performance of helicopter repair services or related activities, including test cells and the paint booths.
- Specialty HVAC and electrical equipment dedicated solely to the above equipment (eg. exhausting for paint booths).
- Equipment and other items related to the sorting and storing of inventory, including pallet and parts racking and the vertical carousels.

The Tenant's removal of these trade fixtures is consistent with the terms of the lease and the applicable case law.

Additionally, the Landlord's position that the Tenant is not able to remove anything attached in any manner to the Premises from the Premises is inconsistent with the dealings of the parties and the terms of the Purchase Agreement between the Tenant and Argo Ventures Inc. The Purchase Agreement does not contain any provision which would override the Tenant's common law or contractual rights to remove its trade fixtures upon the expiration or termination of the lease. Moreover, certain of the items listed as falling within the definition of "chattels" under the Purchase Agreement, and which are specifically "purchased" by the Landlord, are items that are attached to the Premises. They are substantially similar to the types of fixtures which the Landlord now says constitute "leasehold improvements". The parties would not have included the relevant items as purchased "chattels" if they believed that they were leasehold improvements and therefore part of the Premises.

We note that in your letter of December 9, 2016 you suggest that the definition of trade fixtures found in the Head Lease restricts the types of property that the tenant would otherwise be entitled to remove from the Premises under the lease or at common law. This definition, even if it did apply to the lease, does not assist the Landlord in that it expressly excludes the types of equipment that the Tenant will be removing from the Premises.

This is unfortunately not the first time that the Landlord has taken legal positions intended to impede the Tenant's attempt to restructure and/or make arrangements for an orderly exit from the Premises.

In our view, the Landlord's conduct throughout has not been in good faith. You will recall that our client attempted to initiate meetings with yours on a number of occasions beginning in June to discuss issues related to the lease in the context of its restructuring. Its initial approach was not with the intention of a lease rejection motion, but obviously in the circumstances that was one of the options available to our client. Your



client refused to even discuss the issue of the lease until the insolvency proceedings were concluded. As you well know that is simply not a viable situation.

Thereafter, there were further attempts in circumstances where our client was well aware that it had to rationalise its lease arrangements and that it had a defined time frame in which all of the restructuring arrangements had to be considered, negotiated and concluded. By the fall of this year, in the context of plan support arrangements, further attempts were made to initiate discussions with your client, again to no avail, until we filed a motion of recognition of the Chapter 11 orders and the lease issue was raised in that context.

The Tenant has been transparent with respect to its restructuring plans from the outset and has continued to keep the Landlord up to date on the process of relocating to its new premises. Your client is entitled to take whatever position it wishes with respect to the Tenant's restructuring efforts and exit from the Premises considering its legal rights and our client's own legal rights in respect to the lease rejection. However, to raise a substantial leasehold improvement/trade fixture issue at this late date, and to take a position that is inconsistent with the Landlord's previous positions, creates material issues going forward and does not demonstrate a bona fide attempt to resolve matters. Nor does it demonstrate good faith.

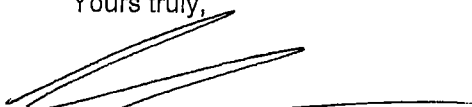
Indeed, it appears that your client may have lost its replacement tenant and is attempting to exert leverage on our client to extract further payments.

The British Columbia and U.S. Bankruptcy courts have stayed all proceedings against the Tenant. The Tenant will oppose any motion that the Landlord may bring for the lifting of the stays or other interim relief pending the completion of the Tenant's exit from the Premises. In the event that the Landlord does bring such a motion, the Tenant will bring to the court's attention the full history of the Landlord's course of conduct in regard to the Tenant's attempts to negotiate a restructuring of the lease and exit from the premises, including the Landlord's delay in asserting its current position, intentional interference with the Tenant's ability to complete its exit from the premises in a timely and orderly manner, and general lack of good faith in its dealings with the Tenant.

As your client is aware, the Tenant is currently in financially difficult circumstances. The inability to move its trade fixture to its new premises will cause serious financial hardships and disruptions to its business. In the circumstances, any attempt by the Landlord to take self-help remedies will cause material damages to our client and will form the basis of legal proceedings to recover such damages.

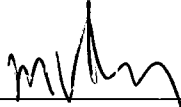
On the other hand, if the Landlord is correct the Tenant will be required to replace the items or provide compensation. In the circumstances, the balance of convenience favours the Tenant being able to vacate the premises. If there is a particular position your client has in respect to the items listed above, we will consider your representations supporting that position. However, our client categorically rejects your client's suggestion that anything attached to the Premises is a leasehold improvement.

Yours truly,



for Bill Kaplan, Q.C.

THIS IS EXHIBIT "D" REFERRED TO IN THE AFFIDAVIT OF
CRISTINE BOSMA MADE BEFORE ME ON THE
13th DAY OF JANUARY, 2017



A COMMISSIONER FOR TAKING AFFIDAVITS FOR
BRITISH COLUMBIA

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File No. 553781/000006

December 19, 2016

Delivered by Email

Blake, Cassels & Graydon LLP
 595 Burrard Street
 Suite 2600, Three Bentall Centre
 Vancouver, BC V7X 1L3

Attention: Bill Kaplan, QC

Dear Bill:

Re: Heli-One Canada ULC

We refer to your letter dated December 16, 2016.

You allege that 0921528 B.C. Ltd. (the “**Landlord**”) has not acted in good faith in its dealing with Heli-One Canada ULC (the “**Tenant**”). In response, we make the observation that the Landlord has not breached the Lease and that it is entitled to rely on all of its rights and remedies under the Lease and its 2012 purchase agreement for the subject premises. It is not appropriate to accuse the Landlord of acting in bad faith on the basis that its rights and remedies are inconvenient or cause difficulties for the Tenant. The Tenant received \$37,000,000 from the Landlord for the purchase of the property in 2012. It has spent that money and is now using insolvency legislation to reject its obligations under the lease. While we concede that the Tenant’s rejection of the lease is permitted as a matter of statute, it is also true that the Landlord’s very substantial investment in the property only four years ago has been seriously jeopardized and the Landlord has suffered and continues to suffer serious damages as a result.

The Landlord has tried to accommodate your client, but the Tenant wishes to go further than either the contracts permit or the Landlord is willing to agree to. Every offer your client has made in respect of any exit agreement has been responded to promptly. The Landlord has been the cause of neither any delay nor your client’s financial difficulties.

As you noted, our respective clients met at the leased premises on December 13, 2016 and no agreement was reached by them on the outstanding commercial issues: the amount of rent payable and the removal of fixtures and chattels from the premises. We don’t wish to debate your description of that meeting since counsel for neither party was there. We note only that while you say that the Landlord indicated that the Lease requires double rent for January, that point is not new and was already covered in my December 9 Letter in paragraph F.

Your letter states that the Landlord has taken inconsistent positions with respect to the removal of chattels and fixtures from the premises. That is not correct. Until your letter of December 6, 2016, the subject of fixtures had not been discussed in any detail as between counsel or as between our respective clients. The Landlord's position throughout has been that it wishes to work with the Tenant - from a list produced by either the Tenant or the Landlord - to determine what is removed and what stays. This is a practical issue that should be dealt with "on the ground" and not as between counsel, but the Tenant has been consistently unwilling to either produce a list of what it wishes to take, or to take the Landlord up on its offer to attend to produce a list of what it considers to be its property.

As discussed further below and in my December 9 letter, what the Tenant is permitted to take does not extend to property that the Landlord purchased from the Tenant in 2012, and to suggest that the Landlord has at any time agreed that the "tenant's trade fixtures" include the Landlord's own property is simply not accurate (or reasonable).

In light of recent events as well as the Tenants' failure to make a meaningful counterproposal since the December 9 letter, the Landlord's December 9, 2016 offer is hereby withdrawn. That is not to say that the Landlord is unwilling to enter into an exit agreement; only that it is not prepared to make an open-ended offer to the Tenant. To be clear, the Landlord's preference for a consensual exit arrangement remains but it has to be on reasonable terms.

It is worth recounting here some of the salient points from Landlord's and Tenant's dealings and agreements with each other. The context of the Landlord's 2012 purchase of the premises is important in light of the outstanding issues:

1. The Landlord purchased the leased premises from the Tenant in 2012 in a sale-and-leaseback transaction. The Landlord purchased the entire premises (including fixtures and certain chattels) for \$37,000,000. The Tenant has already received full value for everything that it sold.
2. The 2012 purchase agreement makes it clear that purchase price was based on the "whole package" of the buildings and their contents. The purchase by the Landlord of the "Property" (meaning the "Leasehold Premises", the "Buildings" including fixtures, the "Chattels", and certain associated rights), and the consequent and related restrictions in the lease on the removal of chattels and fixtures, were important as a business point because the Landlord needed the assurance that it would be difficult for the Tenant to "walk away" from the lease, given the amount of money being paid and the Landlord's reliance on the lease revenue stream over time to recover its investment.
3. The key commercial point of the 2012 transaction is that the Landlord paid full market value in 2012 for all of the "Property" as provided in the purchase agreement. The purchase agreement, the lease between the Landlord and the tenant, and the "Head Lease" between Alpha Aviation and the Landlord make it crystal clear that the fixtures and chattels were purchased by the Landlord and belong to the Landlord, and that the Tenant has only very specific rights as set out in the lease to remove any assets from the premises.

4. The Landlord was alarmed by the statement in your December 6 letter that the Tenant intended to remove substantially all fixtures and chattels from the premises and to leave the buildings "bare". This was not the Landlord's commercial expectation and the Tenant's intentions violate the terms of the lease, as explained more fully in my December 9 letter. Contrary to the assertions in your December 16 letter, what governs here is not the common law with respect to trade fixtures, but rather the terms of the applicable contracts. Under the 2012 purchase agreement, the Landlord purchased all fixtures except "trade fixtures which shall be removable under the Head Lease", and the Head Lease is very specific about what those excluded Trade Fixtures are. It is nonsense to suggest that any property on the premises that was specifically purchased by the Landlord in 2012 has somehow reverted to the Tenant as a trade fixture. The lease permits the Tenant to remove "tenant's trade fixtures" upon exit from the premises, but there is no statute or common law that gathers the Landlord's property into that category. The effect of the lease is that the Tenant is entitled to remove trade fixtures that it purchased and installed after it sold the entire property to the Landlord in 2012, but it is not entitled to remove any fixtures that existed on the purchase date, regardless of whether it considers those fixtures to be useful in its business.
5. While the Landlord acknowledges the effect of the chapter 11 proceedings with respect to the rejection of leases, it goes without saying that the Tenant's rights do not extend to taking the Landlord's property without the Landlord's consent and an agreement regarding payment for such property. The Landlord has invited the Tenant several times to provide a list of chattels and fixtures that it desires to remove but such a list has not been provided. Nor does the Landlord know whether any of its property has already been removed. Until the Landlord receives answers, it is unable to discuss whether and on what terms it will consent to the Tenant's purchase of the Landlord's owned property. This is a separate issue from your client's exit of the premises.
6. The suggestion in your December 16 letter that the Tenant should be entitled to remove what it likes, on the theory that it will be required to "replace the items or provide compensation", is not an appropriate solution. The Tenant is not entitled to remove disputed property on the basis that "it is better to ask for forgiveness than permission". The reasonable good faith solution proposed by the Landlord is for a list of assets to be prepared by either the Tenant and the Landlord, and if the parties cannot agree on some or all of those items, then either the court will need to decide, or the parties will need to come to some other arrangement – funds in escrow as security for the disputed items, for example. While your client may be under some time pressure, that situation was not created by the Landlord and any delay in dealing with the fixtures has resulted directly from the Tenant's refusal to produce the requested list or to allow the Landlord to produce it. You have my December 9 letter setting out what the lease and the purchase agreement provide in terms of what can be removed and what belongs to the Landlord; in light of that, we have already provided the "particular position [of the Landlord] in respect of the items as listed above" (as you request in the final paragraph in you December 16 letter).
7. Contrary to your December 16 letter, the Landlord is not attempting to exert leverage to extract further payments. That and the accusations of bad faith are inflammatory

statements that do not assist in resolving the issues – the Landlord could as easily argue that the Tenant has used the chapter 11 proceedings to exert leverage and to leave the Landlord in an unacceptable state of limbo. The Tenant filed for chapter 11 protection in May of 2016. The Tenant indicated to the Landlord soon afterwards that it wished to discuss or renegotiate the lease. The Landlord's response was that it was unwilling to do so without certain financial information that was never received. The Landlord heard nothing further and the Tenant continued to pay the rent each month. The Tenant chose not to make any proposal to the Landlord at that time; accordingly, there was nothing for the Landlord to respond to.

8. The Tenant chose to open negotiations with the Landlord in late October, with full knowledge that the lease would be deemed rejected on December 1, 2016. The parties had a meeting on a without prejudice basis. No agreement was reached.
9. In November 2016, the Landlord learned that the Tenant had signed a lease for new premises in Richmond. The Landlord decided to abandon its attempt to oppose the disclaimer of the lease under the CCAA and to accede to the jurisdiction of the US Bankruptcy Court on the issue of rejection.
10. On December 1, the lease was deemed rejected under the US Bankruptcy Code. We acknowledge that your client does not agree with that characterization, but that is the Landlord's position and it is consistent with the plain language of the US Bankruptcy Code.
11. Pursuant to your letter of November 29, 2016, the Tenant proposed an exit agreement. This was the first written proposal of any kind received from the Tenant, more than six months after the chapter 11 filing and only two days prior to deemed rejection. The proposed terms were not acceptable to the Landlord.
12. We promptly responded to your client's November 29 offer on December 1, 2016 with a counter-offer from the Landlord. As the Tenant had made the normal rent payment for December on that date, we noted that the Landlord would hold that rent on a without prejudice basis pending an agreement among the parties, failing which it reserved its rights under the lease and at law.
13. The Landlord's December 1 proposal was not accepted and your letter of December 6 set out a revised proposal from the Tenant, including the assertion that the Tenant was entitled to leave the premises "bare." This raised a serious issue as to the ownership and removal of the chattels and fixtures. In addition, there were other terms in that proposal that were not acceptable to the Landlord.
14. On December 8, I responded to your December 6 letter by email, setting out the revised terms on which the Landlord was prepared to enter into an exit agreement, and noted that failing an agreement being reached by Tuesday, December 13, 2016, the Landlord intended to pursue its remedies in the chapter 11 proceedings.

15. Our clients met on the premises on December 13 and were unable to come to agreement on the outstanding commercial terms.

The Landlord has attempted to accommodate the Tenant throughout. All proposals from the Tenant have been responded to promptly. The Tenant is now overholding without the Landlord's consent and the Landlord is not able to move forward with its marketing plans to secure a replacement tenant in order to mitigate its substantial damages. The Landlord offered terms that include a negotiated rental rate for the overholding period that is substantially less than the overholding rent payable under the lease, and offered to enter into discussions with the Tenant regarding chattels and fixtures that the Tenant wishes to purchase from The Landlord for its ongoing business at its new premises.

The Landlord has taken no steps against the Tenant, and has breached no terms of the lease. We are not sure what "self-help" remedies you are referring to in your December 16 letter: the landlord has not taken any; nor has it indicated any intention to do so. The Landlord is now in a position where the Tenant has rejected or not responded to the terms offered for an exit agreement (but has also not vacated the premises), has rejected the lease, has threatened to remove the Landlord's property unlawfully from the premises (and may have already removed some of it), and despite several requests has not provided a list of chattels and fixtures that it wishes to remove and/or purchase.

The Landlord is concerned that rather than engaging in a practical way to attempt to come to a mutually acceptable agreement, the Tenant is trying to cast the Landlord's actions and position in a negative light. The reality is that the Landlord is the aggrieved party here. We note again that the Landlord has:

- (a) been promptly responsive to all offers from the Tenant;
- (b) not interfered with the Tenant in any way;
- (c) taken no action against the Tenant;
- (d) abandoned its efforts to resist the rejection of the lease;
- (e) offered accommodations to the Tenant that represent material concessions on the terms of the lease; and
- (f) offered to produce a list, for discussion, of the fixtures and chattels that it takes the position it owns under the terms of the purchase agreement and the lease.

In the circumstances, the Landlord continues to suffer ongoing damages and in the absence of a negotiated agreement it appears that the Landlord's only recourse is to (i) rely on the strict terms

of the lease, the Head Lease and the 2012 purchase agreement, and (ii) seek relief from the US Bankruptcy Court in the chapter 11 proceedings.

Yours truly,

BORDEN LADNER GERVAIS LLP

By:

Magnus C. Verbrugge

MCV/cb

THIS IS EXHIBIT "E" REFERRED TO IN THE AFFIDAVIT OF
BETTY TORSKY MADE BEFORE ME ON THE
13th DAY OF JANUARY, 2017



A COMMISSIONER FOR TAKING AFFIDAVITS FOR
BRITISH COLUMBIA



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December 21, 2016

Bill Kaplan*, Q.C., FCI Arb

Dir: 604-631-3304

bill.kaplan@blakes.com

*Denotes Law Corporation

VIA EMAIL

Reference: 00013237/000001

Borden Ladner Gervais LLP
1200 Waterfront Centre
200 Burrard Street
Vancouver, BC V7X 1T2

Attention: Magnus C. Verbrugge

**RE: In the Matter of CHC Group Ltd.
SCBC Vancouver Registry No. S-169079**

Re: Heli-One Canada ULC (the "Tenant") and 0921528 B.C. Ltd. (the "Landlord")

Dear Sir:

We are in receipt of your letter dated December 19, 2016.

The Tenant disagrees with the version of events and legal conclusions set out in your letter. Specifically, contrary to the arguments put forward in your December 19th letter, the purchase agreement between the parties was for the sale of the Tenant's interest in the leasehold premises as opposed to the Tenant's business. Title to the Tenant's trade fixtures did not pass to the Landlord, was not intended to pass to the Landlord, and cannot reasonably be considered to have passed to the Landlord pursuant to the terms of the purchase agreement. Indeed, the definition of "Buildings" under the purchase agreement expressly excludes trade fixtures from the property being transferred.

The Tenant does not take issue with your proposal that the parties exchange lists of items which they consider to be trade fixtures, within reason. It is not practical for the Tenant to provide a full list of every chattel located at or in any way connected to the premises. Indeed, from a practical perspective, it should be a less burdensome exercise for the Landlord to provide the Tenant with a list of the items it claims to have purchased from the Tenant pursuant the purchase agreement. We are also advised by our client that the Landlord has informed the Tenant that it has in its possession a video of the premises which was apparently taken at the time of the signing of the purchase agreement. If it exists, this video should facilitate the Landlord's preparation of such a list. If the Landlord does not know what it claims to have purchased from the Tenant in 2012, we fail to see how either reviewing a list prepared by the Tenant or conducting an "on the ground" review of the Tenant's inventory and equipment could assist the Landlord in identifying its alleged property.

Our December 16th letter provides you with a list of the main categories of items that the Tenant intends to remove from the premises. While these categories speak for themselves, we can



supplement them by providing more specific descriptions of the main items the Tenant intends to remove. These items are listed on Schedule "A" hereto.

The enclosed list is not intended to be exhaustive. In addition to the items listed on Schedule "A", the Tenant intends to remove from the premises other machinery and equipment, including pallet and parts racking, blade racks, vertical carousels, and other similar items. In each case, the items the Tenant intends to remove from the premises were purchased by the Tenant and installed at the premises for the purpose of being used by the Tenant in its business.

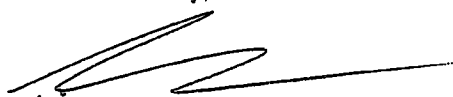
We can also confirm that the Tenant does not intend to remove from the premises any improvements, structures, fixtures (other than those installed for the purpose of being used in the Tenant's business as described above), or mechanical systems, including heating, lighting, air-conditioning, plumbing, electrical, ventilation, drainage, water, elevator, and mechanical fixtures and systems. Additionally, the Tenant will not be removing from the premises any of the items defined as "Chattels" in the purchase agreement.

If there are additional items located at the premises which the Landlord believes to be its "property" by virtue of being leasehold improvements, please provide us with a comprehensive list identifying specific items for the Tenant's consideration. We would also request that you provide us with a copy of any video of the premises which the Landlord has made along with the Landlord's list of the items it claims to own to facilitate the Tenant's review of the Landlord's claims.

From our review of our recent correspondence, it appears that the parties are in dispute with respect to the amount of the January rent payment and the issue of the removal of trade fixtures from the premises. It does not appear that the parties are in dispute in respect of the other provisions of our letter dated December 6, 2016. Please confirm whether or not that is accurate, and if it is not, what other matters are in dispute, so that the parties are in a position to negotiate all matters outstanding on an expedited basis upon our receipt of the Landlord's position with respect to the trade fixtures listed in this letter.

As advised in our earlier correspondence, the Tenant is in the process of exiting the premises. It has and will continue to move its trade fixtures as part of this process and may be selling certain trade fixtures. If the Landlord wishes to discuss the process of the Tenant's exit from the premises, including by making arrangements to visit the premises, the Tenant will make reasonable accommodations to allow for such discussions. However, as noted in our December 16th letter, the Tenant is not prepared to delay its planned exit from the premises on the basis of the Landlord's blanket assertion of ownership of all fixtures located at the premises.

Yours truly,


For Bill Kaplan, Q.C.

SCHEDULE "A"

Description

Large Aircraft paint Booth c/w dedicated HVAC and exhaust fans
Small Aircraft paint Booth, c/w dedicated HVAC and exhaust fans
Paint Shop Prep Dust collector c/w dedicated fan(s)
Workshop Paint Booth, c/w dedicated HVAC and Exhaust fans
Walk In paint Booth
PT6 Test Cell Equipment, c/w mobile test cart, control room instrumentation, water tower, cooling pumps, exhaust stacks, power unit, fuel system, cell instrumentation **
CT58 Test Cell Equipment, c/w mobile test cart, mobile fuel system, mobile start power unit, control room instrumentation **
MGB Test Cell Equipment, c/w gearbox test stand, Hydraulic units, dedicated electrical panels, dedicated piping, cooling tower, dedicated genset**
Old Miller Plasma Spray Equipment (only stored at facility, never installed)
Plasma spary Booth and Air Filter
PWC PT6 Hand Tools
Calibration lab Hand tools and benches
Heat treat and paint bake, & drying ovens
Mag partical Machines (2)
NDT Dedicated process ventilation fans
Machine Shop Machines
Dedicated NDT/Cleaning Electrical Panel
Dedicated fans for Cleaning shop process equipment
Structures shop Dust Collectors (2)
Structure shop Dust Collector (1)
Media Blasters c/w dedicated ventilation system
Hydraulic shop presses
S92 MGB Build stand
NDT Liquid process tanks
Cleaning shop process tanks and booths

** Building remains, this is only equipment

No. S-169079
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,

R.S.C. 1982, c. C36, AS AMENDED

AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT FOR
THE NORTHERN DISTRICT OF TEXAS WITH RESPECT TO THE COMPANIES LISTED ON SCHEDULE "A"
HERETO

AFFIDAVIT

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