

**Request for Proposal**  
**Flight School Operation – Hamilton International (*hi*)**

**Part 3 - Appendix A**  
**Sample Land Sublease Agreement**

[For Major Tenants Only]  
Land Lease  
- Master -  
August 26, 2004  
(Replaces draft dated  
September 7, 2001)

**SUBLEASE** dated as of the 1st day of \_\_\_\_\_, \_\_\_\_\_

**B E T W E E N:**

**HAMILTON INTERNATIONAL AIRPORT LIMITED**

- and -

[ **TENANT** ]

**Lease No.**

**Date of Lease:** As of \_\_\_\_\_, \_\_\_\_\_

**Airport:** John C. Munro Hamilton International Airport

**Description:** Lands more particularly described as being \_\_\_\_\_  
on Reference Plan 62R-\_\_\_\_\_, comprising  
an area of approximately \_\_\_\_\_ square  
metres

**Brief Purpose:** To be used as a site for constructing a \_\_\_\_\_

**Commencement Date:** \_\_\_\_\_, \_\_\_\_\_

**Length of Term:** \_\_\_\_\_ ( ) Years

**Options to Renew:** \_\_\_\_\_ ( ) option(s), each for a term of \_\_\_\_\_  
( ) years, which if all exercised, would extend the  
Term until \_\_\_\_\_, \_\_\_\_\_

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**THIS LEASE** is dated as of the 1st day of \_\_\_\_\_, \_\_\_\_\_

**B E T W E E N:**

**HAMILTON INTERNATIONAL AIRPORT LIMITED**  
(hereinafter called the "**Landlord**")

- and -

**[ TENANT ]**  
(hereinafter called the "**Tenant**").

WHEREAS by an agreement executed July 19, 1996 and amended by two Amending Agreements, the first of which is dated December 20, 1996 and the second of which is dated as of December 20, 1996, all of which are between The Regional Municipality of Hamilton-Wentworth (the "Region") and Tradeport International Corporation ("Tradeport"), Tradeport, together with its subsidiaries, became the manager and operator of JOHN C. MUNRO HAMILTON INTERNATIONAL AIRPORT (the "Airport") and the tenant of the Airport;

AND WHEREAS the Landlord, a wholly-owned subsidiary of TradePort, has been established by Tradeport to enter into agreements regarding the use and occupancy of the Airport and, as a wholly-owned subsidiary of TradePort, is a tenant of the Airport with the authority and capacity to sublease and demise the Premises as contemplated herein;

AND WHEREAS as of and from January 1, 2001, pursuant to Section 5 of the City of Hamilton Act, 1999, the Region was dissolved and all of the assets and liabilities of the Region, including all contractual benefits and obligations under the Head Lease, became assets and liabilities of the City of Hamilton (the "City");

AND WHEREAS the Landlord and the Tenant have agreed to enter into this Lease as of the date first written above, to be effective as of and from the Commencement Date:

In consideration of the mutual covenants set forth herein, the parties covenant and agree each with the other as follows:

**ARTICLE I: BASIC TERMS, SCHEDULES, DEFINITIONS**

**1.1 Basic Terms**

- |     |      |                      |   |
|-----|------|----------------------|---|
| (a) | (i)  | Landlord:            | Hamilton International Airport Limited  |
|     | (ii) | Address of Landlord: | John C. Munro Hamilton International Airport<br>Air Terminal Building<br>9300 Airport Road, Suite 2206<br>Mount Hope, Ontario<br>L0R 1W0<br>Attention: Vice President, Finance & CFO<br>Facsimile No.: (905) 679-2100 |

- (b) (i) Tenant:  
(ii) Address of Tenant:

Attention:  
Facsimile No.:

- (c) Description of Premises: The Premises comprise a part of the Airport Lands and are more particularly described as being \_\_\_\_\_ on Reference Plan 62R-\_\_\_\_\_. The approximate location and configuration of the Premises at the Commencement Date is, more or less, shown outlined in red on the plan/sketch attached as Schedule "C"
- (d) Estimated Total Ground Area comprising the Premises: approximately \_\_\_\_\_ square metres
- (e) (i) Original Term: \_\_\_\_\_ (\_\_\_) years from the Commencement Date  
(ii) Commencement Date: \_\_\_\_\_, \_\_\_\_\_  
(iii) Options to Renew: \_\_\_\_\_ (\_\_\_) option(s), each for a term of \_\_\_\_\_ (\_\_\_) years
- (f) Annual Base Rent: See section 4.1 and Schedule "F"
- (g) Airport Maintenance Charge: Throughout the Term, the Tenant shall not be required to pay a separate Airport Maintenance Charge. See section 4.9 for further details.

The parties agree that each reference in this Lease to any of the Basic Terms shall be construed to include the provisions set forth above as well as all of the additional terms and conditions of the applicable sections of this Lease where such Basic Terms are more fully set forth.

## 1.2 Schedules

All schedules to this Lease, being Schedules "A" through "K", inclusive, are incorporated into and form an integral part of this Lease. Without limiting the generality of the foregoing, the parties agree that those provisions referred to as "Additional Provisions" and being attached to this Lease as Schedule "G" constitute an integral part of this Lease.

## 1.3 Definitions

In this Lease, the words, phrases and expressions set forth in Schedule "B" are used with the meanings defined therein.

## ARTICLE 2: GRANT OF LEASE

### 2.1 Demise

The Landlord, in accordance with its interest under the Head Lease, does hereby sublease and demise the Premises to the Tenant for the Term upon and subject to the covenants and conditions hereinafter expressed.

## **2.2 Head Lease**

- (a) The Tenant acknowledges that this Lease and the leasehold interest of the Tenant hereunder may be subject to and conditional upon obtaining the written approval thereto of the City. Notwithstanding the receipt of such approval, the Tenant agrees that no privity of estate or privity of contract shall arise by virtue thereof as between the Tenant and the City or as between the Tenant and Transport Canada.
- (b) The Tenant acknowledges that title to the lands comprising the Airport has been transferred to the City by Transport Canada under the National Airports Policy. The Tenant agrees that this Lease and the leasehold interest of the Tenant hereunder is subject to all terms and conditions of the Head Lease as such terms and conditions apply to the Premises; provided, however, nothing herein shall impose any obligation upon the Tenant to comply with those provisions of the Head Lease which govern the obligations of TradePort and/or the Landlord in its role as the manager and operator of the Airport generally. The Tenant further acknowledges that should the Landlord default in its obligations under the Head Lease and should the Head Lease be terminated prior to the expiration of the Term, the City has the option, in its sole and unfettered discretion, to require the Tenant to attorn its interest hereunder to the City, in which event, the Tenant shall forthwith attorn such interest to the City.
- (c) The Landlord agrees to (i) provide to the Tenant a non-disturbance agreement from the City substantially in the form of non-disturbance agreement previously agreed to by the City for use with other major subtenants with land subleases at the Airport; provided, however, the Tenant must first provide to the City (with an original signed copy to the Landlord) a certificate in the form attached hereto as Schedule “K”, or such other form of certificate as may be satisfactory to the City; and (ii) use its best reasonable commercial efforts to cause the Landlord’s current lenders, CIT Financial Ltd. (“CIT”), formerly Newcourt Capital Inc., to enter into an agreement with respect to CIT’s debentures and other encumbrances charging the Premises in priority to the Tenant’s interest under this Lease, such agreement to be in the form of Subordination and Attornment Agreement attached hereto as Schedule “I”, with such changes as may be satisfactory to the Landlord and the Tenant, both acting reasonably, and to CIT. In addition, the Landlord hereby agrees to conduct its affairs in such a manner to ensure that CIT does not become a mortgagee in possession of the Airport and/or otherwise assume control of the Airport’s operations.
- (d) The Landlord hereby agrees to pay the rent reserved by, and to observe and perform the covenants, agreements, conditions and provisions of the Head Lease on its part to be paid, observed and performed (including payment of rent and Percentage Rent reserved by the Head Lease) and to keep the Head Lease in good standing; but the Landlord shall have no liability to the Tenant for any breach of the Head Lease or any consequence thereof resulting from the Tenant’s act or neglect.
- (e) Throughout the whole of the Term, the Landlord agrees to continuously, actively, diligently and carefully manage, operate and maintain the Airport as an Aerodrome open to the public, in accordance with the Aeronautics Act and in the manner contemplated by the provisions of the Operating Agreement made December 20, 1996 between Her Majesty the Queen as represented by the Minister of Transport and the City, as same may be amended or replaced from time to time.

## **ARTICLE 3: TERM, COMMENCEMENT**

### **3.1 Original Term**

The original term of this Lease (the “Original Term”) shall commence upon the Commencement Date and shall continue thereafter, unless sooner terminated pursuant to any other provisions hereof, for a period ending and ceasing on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

### **3.2 Commencement Date**

The Term shall commence upon the Commencement Date set forth in subsection 1.1(e)(ii).

### 3.3 Quiet Enjoyment

The Landlord covenants with the Tenant for quiet enjoyment so long as the Tenant is not in default hereunder (beyond applicable cure periods, if any) and except as provided herein.

### 3.4 Licence

The Landlord, subject to the Head Lease, grants to the Tenant, for the Term, as an appurtenant part of this Lease for use by the Tenant and its agents, customers, employees, invitees and servants, in common with the Landlord and other tenants of the Landlord and users of the Airport and their respective agents, customers, employees, invitees, licencees and servants, the non-exclusive license to use such parts of the Airport set aside by the Landlord for roadways and designated by the Landlord from time to time for public access and ingress to and egress from the Premises, all subject to the terms of the Head Lease, this Lease and any limitations and/or rules and regulations imposed from time to time by the Landlord in respect of such use.

### 3.5 Option to Renew **[Note to Draft: Sample Only. Will require amendment. Depends upon number/length of options granted.]**

#### (a) First Renewal Option

If the Tenant is not then in breach of the performance of any covenant, proviso or agreement contained in this Lease on the part of the Tenant to be performed and provided that the Tenant has not been in persistent breach of any such covenants, provisos or agreements during the Original Term, then the Tenant shall have the option of renewing the within Lease for one (1) additional term of five (5) year's duration (the "First Renewal Term") upon the expiration of the Original Term, provided that the Tenant shall give to the Landlord notice in writing of its intention to exercise such option at least twelve (12) months and no more than twenty-four (24) months prior to the expiration of the Original Term.

#### (b) Second Renewal Option

If the Tenant is not then in breach of the performance of any covenant, proviso or agreement contained in this Lease on the part of the Tenant to be performed and provided that the Tenant has not been in persistent breach of any such covenants, provisos or agreements during the First Renewal Term, then the Tenant shall have the further option of renewing the within Lease for one (1) additional term of five (5) year's duration (the "Second Renewal Term") upon the expiration of the First Renewal Term, provided that the Tenant shall give to the Landlord notice in writing of its intention to exercise such option at least twelve (12) months and no more than twenty-four (24) months prior to the expiration of the First Renewal Term.

#### (c) Third Renewal Option

If the Tenant is not then in breach of the performance of any covenant, proviso or agreement contained in this Lease on the part of the Tenant to be performed and provided that the Tenant has not been in persistent breach of any such covenants, provisos or agreements during the Second Renewal Term, then the Tenant shall have the further option of renewing the within Lease for one (1) additional term of five (5) year's duration (the "Third Renewal Term") upon the expiration of the Second Renewal Term, provided that the Tenant shall give to the Landlord notice in writing of its intention to exercise such option at least twelve (12) months and no more than twenty-four (24) months prior to the expiration of the Second Renewal Term.

#### (d) Fourth Renewal Option

If the Tenant is not then in breach of the performance of any covenant, proviso or agreement contained in this Lease on the part of the Tenant to be performed and provided that the Tenant has not been in persistent breach of any such covenants, provisos or agreements during the Third Renewal Term, then the Tenant shall have the further option of renewing the within Lease for one (1) additional term (the "Fourth Renewal Term") upon the expiration of the Third Renewal Term, provided that the Tenant shall give to the Landlord notice in writing of its intention to exercise such option at least twelve (12) months and no more than twenty-four (24) months prior to the expiration of the Third Renewal Term. The parties agree that the term of this Fourth Renewal

Term shall continue, unless sooner terminated pursuant to any other provisions of this Lease, and shall end and cease on the 29th day of March, 2036.

(e) **Renewal - Generally**

In the event that the Tenant shall exercise any of the options set out in subsections 3.5(a), 3.5(b), 3.5(c) and/or 3.5(d) above, then the Lease (as renewed) shall be upon the same terms and conditions as contained in this Lease save and except that:

- (i) there shall be no additional options to renew the Term;
- (ii) the Revised Annual Base Rent per annum payable by the Tenant during the First Renewal Term, the Second Renewal Term, the Third Renewal Term or the Fourth Renewal Term, as the case may be, shall be determined pursuant to Schedule "F";  
and

during the Renewal Terms, the Landlord shall not be obligated to do or perform any Landlord's Work in, on, to or for the Premises, nor shall the Landlord be required to grant, pay or provide to the Tenant any allowance, concession or inducement of any type or nature.

## **ARTICLE 4: RENT**

### **4.1 Annual Base Rent**

The Tenant shall pay to the Landlord, from and after the Commencement Date, throughout the Term, Annual Base Rent or Revised Annual Base Rent, as the case may be, in accordance with the provisions of this Article 4 and the provisions set out in Schedule "F".

### **4.2 Payment of Annual Base Rent**

Instalments of Annual Base Rent or Revised Annual Base Rent, as the case may be, shall be paid monthly, strictly in advance, on the first day of each and every succeeding month throughout the Term.

### **4.3 Pro Rata Adjustment of Rent**

All rent shall be deemed to accrue from day to day, and if for any reason, it shall become necessary to calculate rent for irregular periods of less than one calendar month, an appropriate pro rata adjustment shall be made in order to calculate rent for such irregular period.

### **4.4 Payments Generally**

All payments by the Tenant to the Landlord of whatsoever nature required or contemplated by this Lease shall be:

- (a) paid to the Landlord by the Tenant in lawful currency of Canada;
- (b) made when due hereunder, without prior demand therefor and without any set-off, compensation or deduction whatsoever (unless expressly provided for herein), at the office of the Landlord at the Airport or such other place as the Landlord may designate from time to time in writing to the Tenant; and
- (c) applied towards Annual Base Rent or Revised Annual Base Rent, as the case may be, then-outstanding hereunder and/or any other amounts then-owing and payable by the Tenant under this Lease in such manner as the Landlord may see fit.

### **4.5 Net Lease**

The Tenant acknowledges and agrees that it is intended that this lease is an absolutely net and carefree lease to the Landlord, except as expressly herein set out; that the Landlord is not responsible during the Term for any costs, charges, expenses and outlays of any nature whatsoever arising from or relating to the Premises or the use and occupancy thereof, or the

contents thereof, or the business carried on therein, except as expressly herein set out; and the Tenant shall pay all charges, impositions, taxes, costs and expenses of every nature and kind relating to the Premises, except as expressly herein set out.

#### **4.6 Interest on Amounts in Arrears**

If the Tenant fails to pay any amount payable hereunder when due and payable, the unpaid amount will bear interest from the due date thereof to the date of payment at the Prime Rate, plus two (2%) percent, calculated and payable monthly, without prejudice to any other rights or remedies of the Landlord.

#### **4.7 Arrears**

Any amounts owing and payable by the Tenant to the Landlord under this Lease, may, at the option of the Landlord, be payable and recoverable as rent, such that the Landlord shall have all rights and remedies against the Tenant for default in making any such payment as are available to the Landlord for default in payment of rent.

#### **4.8 Additional Rent**

The Tenant shall pay to the Landlord all sums referred to and payable as Additional Rent in this Lease in the amounts and at the times provided for in this Lease.

#### **4.9 Airport Maintenance Charge**

Throughout the Term (including any renewals or extensions thereof) the Tenant shall not be responsible to pay a separate Airport Maintenance Charge (also sometimes referred to in this Lease as the "AMC"). In this regard, the parties specifically acknowledge and agree that the Annual Base Rent payable hereunder already incorporates, as a component, an amount on account of the AMC and that the Revised Annual Base Rent payable hereunder shall hereinafter incorporate, as a component, an amount on account of the Revised AMC.

#### **4.10 Revised Annual Base Rent**

Revised Annual Base Rent payable during each Subsequent Period shall be determined in accordance with Schedule "F" hereto.

#### **4.11 Goods and Services Tax**

In addition to the payment of all rent and other sums payable hereunder, the Tenant shall pay to the Landlord (acting as agent for the taxing authority if applicable) or directly to the appropriate taxing authority (if required by the Excise Tax Act or any replacement legislation regarding goods and services tax or multi-stage tax) in the manner specified by the Landlord, the full amount of all goods and services tax or any replacement thereof or other similar tax imposed upon the Tenant in respect of the rent or any other amounts payable by the Tenant under this Lease or in respect of the rental of the Premises by the Tenant under this Lease. All taxes so payable by the Tenant will:

- (1) be calculated by the Landlord in accordance with the applicable legislation; and
- (2) be paid by the Tenant when same are due under the applicable legislation.

Amounts payable under this section 4.11 shall be deemed not to be rent, however the Landlord shall have all of the same remedies for and rights of recovery with respect to such amounts as are available to the Landlord for recovery of rent under this Lease.

#### **4.12 Tenant's Records**

The Tenant covenants and agrees to keep on the Premises for a period of no less than three (3) years following the end of each lease year, full, true and accurate books and records which record all amounts paid by the Tenant to the Landlord and/or TradePort pursuant to this Lease and which satisfy the requirements of generally accepted accounting principles and which would normally

be examined by an independent chartered accountant in performing a detailed audit of the Tenant's business involving TradePort and/or the Landlord. The Tenant further agrees that upon written request, the Tenant, solely for the purposes of ascertaining Percentage Rent payable by the Landlord and/or TradePort to the City under the Head Lease, shall open its books and records for inspection or audit, or either, at any time and from time to time by the City and/or by the City's auditors or chartered accountants.

#### **4.13 Prepayment of Rent**

The Landlord and the Tenant covenant and agree that the prepayment (or payment in advance) of any rent payable under this Lease for more than one (1) month (and the prepayment or payment in advance of any other amounts payable to the Landlord under this Lease for more than one (1) month) is strictly prohibited. Further, as of the date(s) of execution of this agreement by the Landlord and the Tenant, the Landlord and the Tenant represent and warrant to the City that no such rent and/or other amounts has, in fact, been prepaid or otherwise paid in advance in contravention of the foregoing covenant and agreement.

### **ARTICLE 5: TAXES**

#### **5.1 Tenant's Taxes**

The Tenant shall pay promptly, when due, all taxes, assessments, charges and rates, as well as any permit or licence fees, attributable to the Premises, including the Improvements, and on the property, business, sales, or income of the Tenant in respect of the business carried on by the Tenant from the Premises.

#### **5.2 Property Taxes**

- (a) Throughout the Term, but subject to subsection 5.2(f) below, the Tenant shall pay to the appropriate taxing authority all Property Taxes separately assessed on the Premises before any fine, penalty, interest or costs accrue for the non-payment thereof (but subject to subsection 5.2(c) below). The Tenant may take advantage of any provisions of law whereby Property Taxes may be paid by instalments or deferred for some portion of the fiscal year to which they relate, provided that no fine, penalty or cost is incurred except for accrued interest on the unpaid balance thereof. If the Tenant fails to pay any Property Taxes as set out in this subsection 5.2(a), the Tenant shall pay any fine, penalty, interest and expense arising therefrom.
- (b) The Tenant shall furnish to the Landlord, upon request, official receipts or other proof satisfactory to the Landlord evidencing payment of Property Taxes due by the Tenant under this Article 5 where any such payments have been paid to a taxing authority by the Tenant.
- (c) The Tenant has the right to appeal or contest the validity of Property Taxes. Prior to appealing or contesting all or any portion of any Property Taxes, the Tenant shall provide the Landlord with ten (10) days prior written notice of its intention to do so. The Tenant shall also deliver to the Landlord prior to appealing or contesting all or any portion of any Property Taxes, such security as the Landlord, acting reasonably, may reasonably require. The Tenant shall prosecute any such proceedings with due diligence and shall keep the Landlord advised, in writing, with respect to the progress thereof.
- (d) If the Tenant is contesting in good faith the amount or validity of any Property Taxes and has complied with the provisions of this Article 5 and if it becomes necessary for the Landlord to join in or consent to the proceedings, the Landlord shall join or consent as required, and the Tenant shall indemnify the Landlord against all expenses arising therefrom.
- (e) Intentionally deleted.
- (f) If a separate assessment of Property Taxes for the Premises is, for any reason, not made or levied by the appropriate taxing authority, or should the Landlord, upon written notice to the Tenant, choose to collect all or any portion of the Property Taxes, the Tenant shall

pay to the Landlord, on demand, as Additional Rent, an amount determined and allocated by the Landlord, acting reasonably and equitably (using such general principles of assessment and such assessment values and other information relating to the Airport and/or to the Premises as is available) to be equal to the amount of Property Taxes or grants in lieu of Property Taxes payable in respect of the Premises, together with an amount established by the Landlord, acting reasonably, in accordance with the Landlord's then-current policy, as an administrative and overhead charge.

- (g) In the event that amounts become payable to the Landlord on account of Property Taxes pursuant to subsection 5.2(f) above, such amounts shall be payable upon demand or, at the option of the Landlord, in equal monthly instalments (based upon the Landlord's reasonable estimates), in advance, on the dates and at the times set out under this lease for payment of Annual Base Rent or Revised Annual Base Rent, as the case may be. The Landlord shall be entitled, upon fifteen (15) days' written notice, to subsequently revise any estimate(s) upon which payments required hereunder are based and monthly instalments shall be adjusted accordingly. Following the end of the calendar year or such other accounting period as the Landlord may adopt from time to time (the "Accounting Period"), the Landlord shall compute the Property Taxes which should have been paid in respect of the Premises for such Accounting Period and shall submit a statement thereof to the Tenant. If the total amount paid by the Tenant on account of the Property Taxes pursuant to subsection 5.2(f) above is less than the amount which should have been paid during such Accounting Period, then the Tenant shall pay the difference to the Landlord forthwith. If the total amount paid by the Tenant exceeds the amount which should have been paid during such Accounting Period, then the difference shall be repaid to the Tenant forthwith or, if any amounts due hereunder are outstanding, applied by the Landlord, at its sole discretion against outstanding amounts. Should the Term expire during the course of an Accounting Period, the Tenant shall thereafter be provided with a statement with respect to the matters set out herein prepared as of such date and adjustments will be made accordingly.
- (h) In the event that amounts become payable to the Landlord on account of Property Taxes pursuant to subsection 5.2(f) above, then upon written request of the Tenant, the Landlord shall provide the Tenant with a copy of the relevant tax bill(s) pertaining to the Premises (or excerpts thereof), together with sufficient information to permit the Tenant, acting reasonably, to verify the appropriateness of the Landlord's allocation of Property Taxes pursuant to subsection 5.2(g) above. Alternatively, the Landlord, at its option, may ask its auditors to review its books and records with respect to Property Taxes and the Landlord's auditors, forthwith following its inspection and review of the Landlord's books and records, shall provide to the Tenant a certificate setting out, in reasonable detail, sufficient information to permit the Tenant, acting reasonably, to verify the appropriateness of the Landlord's allocation of Property Taxes pursuant to subsection 5.2(g) above.
- (i) The Landlord covenants and agrees that to the extent the Landlord receives any payments on account of Property Taxes pursuant to subsection 5.2(f) above, the Landlord shall remit same to the appropriate taxing authority.

### **5.3 Municipal Charges**

The Tenant shall pay, to the appropriate authorities, before any fine, penalty, interest or costs accrue for the non-payment thereof, all development cost charges, building or development permit fees, inspection fees, licence fees and other municipal charges applicable to the Premises. In the event, however, that any such fees or charges are paid by the Landlord, whether on its own behalf or on behalf of the Tenant, the Tenant agrees to reimburse the Landlord with respect to same within thirty (30) days of demand therefor.

### **5.4 Tenant Not to Contest**

- (a) The Tenant agrees that it will not, in any manner whatsoever, directly or indirectly, on its own behalf or on behalf of any other party, without the prior written consent of the Landlord, take any measures or actions, initiate any claims, contestations, proceedings or appeals (collectively referred to herein and in subsection 5.4(b) below as "Actions"),

whether before the Regional Assessment Commission, the Assessment Review Board, the Ontario Municipal Board or any other similar or successor board, tribunal or administrative body, or before any court of competent jurisdiction, including any appellate court, to challenge, contest, obtain relief from or reductions to or to seek the elimination of any Property Taxes, or any business taxes, development charges or fees or any other fees, charges, levies, user fees, imposts, assessments, or any other sums or amounts which may be imposed by the City, as a municipal corporation or any other municipal corporation or board having jurisdiction, on the basis that the Airport is or was federal public property or a federally regulated undertaking.

- (b) Nothing in subsection 5.4(a) shall be construed to limit or otherwise restrict the rights of the Tenant to commence an Action to challenge, contest, obtain relief from or reductions to or to seek the elimination of any Property Taxes or any business taxes, development charges or fees or any other fees, charges, levies, user fees, imposts, assessments or any other sums or amounts in reliance upon any grounds other than upon the basis that the Airport is or was federal public property or a federally regulated undertaking.

## **ARTICLE 6: SECURITY**

### **6.1 Provide Security**

As security for the payment of rent hereunder and the performance of all of the obligations of the Tenant, the Tenant shall provide the security specified in Sections 6.2 or 6.3.

### **6.2 Form, Content and Amount**

The Tenant shall, upon execution of this Lease by the Tenant, deliver to the Landlord an irrevocable letter of credit issued in favour of the Landlord by a Canadian chartered bank acceptable to the Landlord, in form and content determined by the Landlord. The amount shall be equal to three (3) months' Annual Base Rent and three (3) months' Additional Rent for the Premises, all as reasonably estimated by the Landlord.

### **6.3 Alternate Security**

The Landlord may elect to accept a cash security deposit as alternative security to a letter of credit.

### **6.4 Drawings**

In the event the Tenant is in arrears of payment to the Landlord of any rent or any other sum payable by the Tenant under this Lease, the Landlord may, in addition to any other right or remedy, draw on the letter of credit to pay the arrears or deduct the arrears from the security deposit, as the case may be.

### **6.5 Renewal or Replacement**

- (a) The Tenant shall provide the Landlord with a renewal or replacement letter of credit at least sixty (60) days before the date on which any letter of credit expires and shall immediately after any drawing by the Landlord on a letter of credit, deposit an additional letter of credit with the Landlord in the amount paid by the issuer of the letter of credit to the Landlord, failing which, in either case, the Landlord may draw the full amount of the letter of credit and hold the funds as a security deposit pursuant to this Article 6.
- (b) The Tenant shall, immediately after the Landlord deducts arrears from any cash security deposit, deposit an additional cash security deposit in the amount of such arrears with the Landlord.

## **6.6 Increase or Decrease Amount**

The Landlord shall have the right, on no less than thirty (30) days prior written notice to the Tenant, to increase or decrease the amount of the security that the Tenant is required to maintain under this Article 6 so that such amount continues to represent the amount the Landlord estimates will be payable for Annual Base Rent or Revised Annual Base Rent, as the case may be, and Additional Rent for the Premises over a period of three (3) months.

## **6.7 Return of Security**

Within sixty (60) days following the expiration or sooner termination of the Term, provided that the Tenant has paid all amounts payable under this Lease, including all costs and expenses incurred by the Landlord in correcting or satisfying any default or fulfilling any obligation of the Tenant under this Lease and has otherwise fulfilled its obligations under this Lease, the Landlord shall release to the Tenant any letter of credit or cash security deposit which the Landlord then holds, without interest.

# **ARTICLE 7: REPRESENTATIONS OF TENANT**

## **7.1 Corporate Status**

The Tenant represents to the Landlord that the Tenant has been duly incorporated as a corporation with share capital, that it is authorized to carry on business in the Province of Ontario and that it is in compliance with all laws that may affect it and has the legal capacity and corporate power to enter into this Lease and to perform and meet any and all duties, liabilities and obligations as may be required of it under this Lease.

## **7.2 Outstanding Litigation**

The Tenant represents to the Landlord that to the best of its knowledge and belief, there are no actions, suits or proceedings pending or to the knowledge of the Tenant threatened against or adversely affecting the Tenant in any court or before or by any federal, provincial, municipal or other governmental department, commission, board, bureau or agency, Canadian or foreign, which might materially affect the financial condition of the Tenant or title to its property or assets.

## **7.3 Material Change**

The Tenant agrees to notify the Landlord in writing immediately of any material change in the conditions set out in subsections 7.1 and 7.2.

# **ARTICLE 8: USE AND OCCUPATION**

## **8.1 Use**

The Premises shall be used as a site for constructing the Improvements, including the Building. Subject to the provisions hereof and of sections 8.2 and 8.3 below, the Premises, including the Improvements, shall be used only for the following purposes (and for no other purpose or purposes whatsoever): (i) **[INSERT USES]**. Provided, however, to the extent that the Tenant (and all other parties occupying or using the Premises) provides any such services (or any other services) to other users of the Airport, the Tenant (and such other parties occupying or using the Premises, if any) shall first have obtained a valid and subsisting operating agreement and/or licence from the Landlord allowing the Tenant (or such other party) to provide such services. In this regard, the Tenant acknowledges that the Tenant may be required to pay separate and distinct fees to the Landlord under such operating agreements and/or licences, which fees, insofar as they are charged to the Tenant, shall be consistent with the fees payable by other tenants at the Airport offering similar services. Notwithstanding the foregoing, the Landlord agrees that fees charged to the Tenant under any such operating agreements and/or licences shall be based upon "market rates" and not "captive rates". In addition, the Tenant agrees:

- (a) to continuously, actively and diligently, operate, manage, and maintain the Premises, including the Improvements, in an up-to-date, first class and reputable manner (consistent with its obligations pursuant to subsection 12.1(a) below) and:
- (i) install in the Building, keep in good order and condition, fixtures and equipment of first class quality;
  - (ii) keep the Improvements at all times in a safe, neat, clean, orderly and first class condition, all to the reasonable satisfaction of the Landlord;
  - (iii) ensure that there shall be no open storage of any goods on the Premises and all garbage shall be contained within an enclosed structure in a location approved by the Landlord which garbage storage structure shall be maintained in a good state of repair at all times in order to provide for proper foreign object damage control;
  - (iv) all driveways, parking areas, aprons, taxiway access connections and all paved areas shall be maintained in a good state of repair at all times and shall be properly marked;
  - (v) ensure that all fencing, as may be required by the Landlord, shall be constructed and maintained at all times so as to ensure proper security in accordance with the Aerodrome Security Regulations and all other regulations under the Aeronautics Act;
- (b) to discontinue, at the request of the Landlord, acting reasonably, any conduct, business, practice, or operation in relation to the Premises that in the opinion of the Landlord, may harm the reputation of the Landlord or the Airport or reflect unfavourably on the development of the Premises or on the Airport as a whole; and
- (c) not to do or suffer any act in, over, upon or under the Premises or the Airport that may injure, impair or cause damage to the Airport or its operations.

## **8.2 Prohibited Uses**

Without limiting the generality of section 8.1 above, the Tenant agrees not to use or permit the Premises to be used for any of the following businesses or activities:

- (1) any unlawful or illegal purpose, activity or use, or any dangerous or harmful activity having regard to the health and safety of persons;
- (2) any activity which is unrelated to the ordinary and usual operations of the Tenant; and
- (3) any act outside of the ordinary and usual activity at a major international airport that constitutes a nuisance to any occupant of lands or premises adjoining or in the vicinity of the Premises or to the public generally or to the Landlord or to the City or any other occupant of any part of the Airport.

## **8.3 Additional Provisions**

In addition to the prohibitions set out in section 8.2 above and without limiting the generality of section 8.1, the Tenant further agrees:

- (a) not to permit any party (including itself) to occupy or use the Premises, including the Improvements, or any part thereof, for the purposes of:
- (i) a retail outlet;
  - (ii) offering vehicle rentals;
  - (iii) duty or tax free sales;
  - (iv) vehicle pay parking;
  - (v) the operation of a flight kitchen, air carrier commissary or restaurant;

- (vi) a taxi, bus or other ground transportation business; or
  - (vii) any non-aviation related activity;
- (b) not to allow the Premises, including the Improvements, or any part thereof, to be used for or occupied for:
- (i) the purpose of constructing or operating any Air Terminal Building and/or other building used for public passenger service facilities;
  - (ii) any purpose which is not consistent with the use of the Airport as an international airport; and
  - (iii) any use which is not a permitted use under any approved land use plan;
- (c) not to conduct advertising or promotions of any kind on or about the Airport without the prior written consent of the Airport Managing Director, which consent shall not be unreasonably withheld. The Tenant hereby acknowledges that the Landlord has entered into agreements with third parties regarding: (i) advertising rights within the Air Terminal Building and within any new air terminal building(s) which may be constructed at the Airport; and (ii) regarding outdoor advertising at certain specific locations. The Tenant agrees that save and except for advertising and displays erected, installed or placed within the Building and/or elsewhere upon the Premises (and with respect to which, the provisions of Section 19.2 below apply), it would be reasonable for the Landlord to withhold its consent to a request made pursuant to this paragraph (c) if to grant such consent would breach the Landlord's obligations to any such third parties.

#### **8.4 Reporting Obligations**

- (a) The Tenant, at its expense, agrees to prepare and maintain detailed, true and accurate records of its activities conducted at or from the Airport by the Tenant and separate records, in similar form, for other users of the Airport whose operations are processed or overseen by the Tenant. The Tenant further agrees, at its expense, to provide to the Airport Managing Director, in form satisfactory to the Airport Managing Director, a written report regarding the following activities and such other information as the Airport Managing Director, acting reasonably, may from time to time require:
- (i) total number of enplaned and deplaned passengers by destination;
  - (ii) total number of kilograms of enplaned and deplaned cargo; and
  - (iii) total number of aircraft landings and Maximum Certificated Take Off Weight (MCTOW) by aircraft type by the following categories:
    - ! domestic
    - ! transborder; and
    - ! international.

Such report shall be provided to the Airport Managing Director within ten (10) calendar days of the end of each and every month during the Term, or at such other times as the Airport Managing Director, from time to time, may designate.

- (b) The Landlord agrees that all commercially sensitive information reported to the Landlord by the Tenant pursuant to subsection 8.4(a) shall be held by the Landlord in strict confidence and shall not be disclosed except with the Tenant's permission or in aggregate form as a representation of total passenger, cargo, aircraft or other activity at the Airport or as may be required by law.

## **8.5 Additional Rights of the Landlord**

The Landlord reserves the right to grant licenses, rights of way or privileges to others on, over, under, through or across the Premises, provided however, that such licences, rights of way or privileges are in the nature of easements for services (for example, utilities and other like services) and provided further, that such licences, rights of way or privileges are not, in any material way, detrimental to the Tenant's operations (viewed reasonably), will not permanently damage or disrupt the Improvements, will not impose any cost upon the Tenant, and will not weaken, diminish or impair the rights and obligations of the parties under this Lease.

## **ARTICLE 9: ENVIRONMENTAL MATTERS**

### **9.1 Suitability**

- (a) The Landlord makes no representations or warranties in respect of the suitability of the Premises for the Tenant's use or proposed use, the state or condition of the Premises or any Environmental Matters in respect of the Premises. The Tenant acknowledges that the Premises are being delivered to the Tenant in an "as is" condition.
- (b) The parties acknowledge that in order to assist in the determination of the condition of the soil, surface water and the ground water of the Airport generally, the Landlord commissioned a letter dated April 9, 1997 (the "Environmental Letter") prepared by Golder Associates Ltd. ("Golder") which sets out the results of Golder's review of the environmental data presented in a series of four (4) reports prepared in connection with a 1996 environmental baseline study of the Airport completed by independent consultants retained by Public Works and Governmental Services Canada, XCG Consultants Ltd. The Tenant acknowledges receipt of a copy of the Environmental Letter and the 1996 baseline assessment referred to therein.
- (c) The Landlord and the Tenant agree that the purpose of the Environmental Letter and any assessments and/or other reports referred to in Section 9.1(d) below is to assist the parties to identify Environmental Matters creating Environmental Adverse Effects, if any, affecting the Premises prior to the Commencement Date.
- (d) The Tenant agrees that should it commission or otherwise cause any environmental assessments and/or other reports to be conducted in relation to the Premises at any time during the Term, it shall provide copies of such assessments and/or reports to the Landlord within ten (10) days of receipt thereof by the Tenant.

### **9.2 Tenant's Obligations**

- (a) The Tenant shall conduct its business and affairs on the Premises and at the Airport in a prudent and responsible manner and with all due care and due diligence with respect to Environmental Matters.
- (b) The Tenant shall clean-up all parts of the Airport, including the Premises, where, as a result of any acts or omissions of the Tenant and those for whom the Tenant is, in law, responsible, there has occurred, at any time during the Term, an Environmental Adverse Effect, including, without limiting the generality of the foregoing, where there has been a

release of a hazardous substance caused by the seeping, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of toxic, hazardous or special wastes or other chemical substances or dangerous goods, pollutants or other Environmental Contaminants into the Natural Environment, with all due care and due diligence. In connection therewith and to the extent the Tenant is responsible to clean-up all or any part of the Airport, including the Premises, the Tenant shall, at its own cost and expense, prepare all necessary studies, plans and proposals and submit same to the Landlord for the Landlord's prior approval, provide all bonds and other security required by all authorities having jurisdiction and carry out all required remedial work, and shall keep the Landlord fully informed and provide to the Landlord full information with respect to proposed plans and comply with the Landlord's reasonable requirements with respect to such plans. The Tenant further agrees that if the Landlord determines, in its own discretion, that the Landlord, or the Airport, or any portion(s) thereof, is placed in jeopardy by the need for any such work, the Landlord may itself undertake such work or any part thereof at the cost and expense of the Tenant.

- (c) The Tenant shall ensure that the design of any improvement on the Premises, including the Improvements, addresses and deals with any Environmental Matters which can be reasonably foreseen.
- (d) The Tenant shall comply with all Environmental Laws and Regulations.
- (e) The Tenant shall immediately notify the Landlord and provide to the Landlord such information as is available to the Tenant concerning any failure of the Tenant to comply with any of the requirement of any Environmental Laws and Regulations, or whether the Tenant is the subject of any pending or, to the knowledge of the Tenant after due enquiry, threatened environmental proceeding.
- (f) To the extent the Landlord is authorized or permitted to do so, upon written request received from the Tenant, the Landlord agrees to provide to the Tenant copies of all reports in its possession pertaining to the soil, surface water and ground water condition of the Premises. The Landlord does not in any way warrant the scope or accuracy of any information regarding Environmental Matters which it may disclose to the Tenant and no such information, nor the reliance thereon by the Tenant, shall in any way relieve the Tenant from its obligations to satisfy itself as to the Premises, nor its obligations to maintain the Premises under this Lease.
- (g) In the event any claim, demand, action or notice is made against the Tenant regarding its failure or alleged failure to comply with Environmental Laws and Regulations, the Tenant shall provide the Landlord with copies of all written claims, demands, notices or actions so made.
- (h) The Tenant shall, within three (3) months of the date of execution of this Lease, provide to the Landlord for the Landlord's approval, a written proposal of the Tenant's policy and procedures with respect to Environmental Matters, which shall include a separate environmental emergency response plan, and shall make such amendments as, in the Landlord's reasonable opinion, are from time to time required, and the Tenant shall carry out its operations in accordance with the approved policy and procedures. The Tenant's policy and procedures shall address, but are not limited to, fuel storage and handling, storage, transport, use and disposal of hazardous materials and special waste, water quality practice and waste management. The Tenant shall require any person it grants a right or privilege to under this Lease to comply with the Tenant's policy and procedures. In the event that from time to time, the Tenant amends its polices and procedures, the Tenant agrees, forthwith thereafter, to provide copies of such amended policies and procedures to the Landlord.

- (i) In the event that at any time during the Term there is an Environmental Adverse Effect arising out of the Tenant's operations and, in the reasonable opinion of the Landlord, it is necessary in order to minimize any damages, expenses, penalties and related fees or costs, arising from such Environmental Adverse Effect, the Landlord, in addition to any other rights and remedies under this Lease, upon such prior notice to the Tenant as the Landlord considers reasonable, may enter upon the Premises, including any Improvements, and take measures to minimize such damages, expenses, penalties and related fees and costs, and to ensure compliance with Environmental Laws and Regulations, all at the Tenant's expense.
- (j) Without limiting the generality of any other provisions of this Article 9, the Tenant shall not discharge from the Premises or permit to be discharged from the Premises or allow to pass from the Premises into the sewer systems, storm drains or surface drainage facilities on the Airport, any Environmental Contaminants or any other material or substance as may cause an Environmental Adverse Effect or which may be contrary to any sewer discharge bylaw of the City or other proper authority.

### **9.3 De-Icing Activities and Environmental Contaminants**

Notwithstanding any other provisions of this Article 9, the Tenant hereby agrees that it shall not engage in any de-icing or anti-icing activities from, at or on the Airport, including the Premises, or use, store, apply, transport, discharge, release or permit the presence of any Environmental Contaminants used for de-icing or anti-icing activities from at or on the Airport, including the Premises, or any part thereof, unless:

- (a) if the Tenant engages in its own de-icing or anti-icing activities, the Tenant's de-icing/anti-icing mitigation plan shall have been approved by the Airport Managing Director; and
- (b) if the Tenant engages in its own de-icing or anti-icing activities, if such activities are to be undertaken upon the Premises, the Tenant shall have installed all de-icing and anti-icing facilities and infrastructure as set forth in any approved glycol and de-icing/anti-icing mitigation plan and forming part of the Improvements necessary to control and contain the emission and discharge of Environmental Contaminants used during the course of de-icing/anti-icing activities in compliance with all Environmental Laws and Regulations.

If the Tenant does not engage in its own de-icing or anti-icing activities, the Tenant agrees to obtain such services only from licensed third-party service-providers authorized to offer de-icing and anti-icing services at the Airport.

### **9.4 Acknowledgement**

The Tenant recognizes that currently only propylene glycol can be used at the Airport as a permissible de-icing/anti-icing fluid and not ethylene glycol. The Tenant agrees not to change this practice without notice to the Landlord and without approval of the proper environmental authorities having jurisdiction at the Airport.

## **9.5 Inspection**

The Landlord shall, upon such prior written notice to the Tenant as the Landlord considers reasonable, be entitled to inspect the Premises, including the Improvements, to determine compliance with all Environmental Laws and Regulations. In this regard, the Landlord is entitled to gain access to the Premises, including the Improvements, on the understanding that the Landlord shall cause as minimal interference as possible upon the Tenant's operations when exercising this right of access.

## **9.6 Audit; Remedial Work**

The Tenant, at its sole expense, not later than six (6) months (but not more than twelve (12) months) prior to the end of the Term shall cause what its now commonly known as a Phase One environmental audit to be conducted to determine the environmental condition of the Premises. Such an audit shall be conducted by qualified experts chosen by the Tenant, which experts (and the scope of such Phase One audit) must receive the prior approval of the Landlord, which approval shall not be unreasonably withheld or delayed. In the event that any such audit demonstrates or suggests that further investigation is warranted due to a suspected Environmental Adverse Effect, the Tenant agrees, at its sole cost, to cause an extensive audit to be conducted by qualified experts chosen by the Tenant which experts (and the scope of such audit) must receive the prior approval of the Landlord, which approval shall not be unreasonably withheld or delayed. Copies of all audit results and reports shall be provided to the Landlord. The Tenant agrees that the soil and ground water of the Premises upon termination of this Lease must be in no worse condition than at the commencement of the Term. In addition, prior to the end of the Term (or as soon thereafter as is possible in the circumstances), the Tenant undertakes to complete all remedial work required to ensure that there are no Environmental Matters creating Environmental Adverse Effects affecting the Airport, including the Premises, during the Term, resulting from the acts or omissions of the Tenant and those for whom the Tenant is in law responsible, whether such Environmental Adverse Effects are disclosed by any such audit or otherwise.

## **9.7 Indemnity**

The Tenant shall indemnify and hold harmless the Landlord and the Region against any and all costs including fines, penalties or administrative costs that may be associated with any Environmental Matters creating an Environmental Adverse Effect or breaches of Environmental Laws and Regulations arising out of the use or operations of the Airport, including the Premises, by the Tenant or those for whom the Tenant is in law responsible, and any improvements thereon, including the Improvements (including all of the Landlord's and/or the City's costs of labour, materials and equipment based on cost recovery plus a reasonable premium as an administrative and overhead charge) and all related costs, damages, fines or penalties of any kind incurred by or assessed or charged to the Landlord and/or to the City arising out of any operations carried out on the Premises by the Tenant or by persons for whom the Tenant is, at law, responsible, in order to comply with Environmental Laws or Regulations or to remediate Environmental Adverse Effects to the extent that the Tenant is obliged to do so hereunder. The provisions of this Section 9.7 and the indemnity contained herein shall survive the expiration of this Lease to the extent that the Environmental Adverse Effect or breach of Environmental Laws and Regulations occurred during the Term.

## **9.8 Enquiries by Landlord**

The Tenant hereby authorizes the Landlord to make enquiries from time to time of any government or governmental agency with respect to the Tenant's compliance with Environmental Laws and Regulations pertaining to the Tenant, the Premises and any business conducted on or from the Premises, including any law pertaining to Environmental Matters and the protection of the environment; and the Tenant covenants and agrees that the Tenant will from time to time forthwith on demand provide to the Landlord such written authorization as may reasonably be required in order to facilitate the obtaining of such information.

## **9.9 Environmental Management Program/Noise Management Plan**

The Landlord hereby advises the Tenant that under the Head Lease, the Landlord is obligated to prepare and develop an ongoing Environmental Management Program and a Noise Management Plan. The Tenant agrees that it shall conduct its business and affairs on the Premises and at the Airport in a manner which shall be consistent with the Landlord's Environmental Management Program and the Noise Management Plan, provided that the Landlord's Environmental Management Program and the Noise Management Plan are not inconsistent with the Tenant's rights under this Lease.

## **9.10 Other Environmental Obligations**

The Tenant hereby agrees that all development, construction or redevelopment activity at the Airport undertaken by the Tenant shall:

- (a) comply with all Environmental Laws and Regulations and all regional and local municipal environmental standards, procedures, by-laws, regulations, directives, and requirements established from time to time by the City as a municipal government;
- (b) not be undertaken until all necessary environmental assessments, studies, and impact statements have been prepared and all necessary governmental approvals have been obtained; and
- (c) comply with all environmental requirements set forth in any Airport Master Plan in effect from time to time which shall be consistent with, reflective of and compatible with the environmental requirements of the City's official plan and the official plans of local municipal authorities, if any.

## **ARTICLE 10: ALTERATIONS, FIXTURES**

### **10.1 Tenant's Alterations**

- (a) The Tenant shall not make or cause to be made any alterations, additions or improvements, including the Improvements, or erect or cause to be erected the Building or any other buildings on the Premises without first obtaining the Landlord's written consent, which consent shall not be unreasonably withheld or delayed, and a Facility Alteration Permit.
- (b) When seeking a Facility Alteration Permit as required by this Section 10.1, the Tenant shall present to the Approving Authority plans and specifications of the proposed work with the applicable fees designated by the Approving Authority from time to time in application for a Facility Alteration Permit and may not commence work until the Tenant has received a Facility Alteration Permit from the Approving Authority.
- (c) The Tenant shall promptly pay all contractors, material suppliers and workmen so as to minimize the possibility of a lien attaching to the Premises or the Airport and should any claim of lien be made or filed the Tenant shall discharge the same in accordance with Section 16.3.
- (d) The Tenant shall post and keep posted all notices in connection with any work to be performed by or on behalf of the Tenant on the Premises in order to prevent any lien or claim of lien being noted or filed or otherwise constituting an encumbrance on any title of the Landlord, the City or TradePort, all in such form and locations as may be approved by the Landlord.
- (e) All work to be performed by or on behalf of the Tenant on the Premises shall be performed in accordance with the requirements, terms and conditions specified in the appropriate Facility Alteration Permit issued by the Approving Authority and in any consent given by the Landlord, by competent contractors and subcontractors.

- (f) The Tenant agrees that all working drawings and specifications supplied to contractors shall be consistent with the Facility Alteration Permit.
- (g) Before commencing excavation or any work on the Premises for the construction of any improvements, including the Improvements, the Tenant shall have:
  - (i) submitted to the Landlord the plans that relate to the portion of the work which the Tenant proposes to commence;
  - (ii) furnished proof of insurance acceptable to the Landlord; and
  - (iii) obtained from the contractor the indemnity, insurance and performance bonds required by the contract.
- (h) The Tenant shall perform and comply with the following covenants and requirements in the construction of any improvements, including the Improvements:
  - (i) all necessary permits and licences shall be obtained and all legal requirements pertaining to the conduct of the work shall be complied with;
  - (ii) the construction work shall be conducted expeditiously in a good and workmanlike manner and otherwise in accordance with the provisions of this Lease;
  - (iii) the Tenant shall properly supervise the work;
  - (iv) any contractor engaged on the work shall be required to observe all provisions of its contract with the Tenant, and to furnish and maintain all security, indemnity, insurance and performance bonds required by the contract; and
  - (v) the Landlord may require the Tenant at its own expense to submit at reasonable intervals certificates of the Tenant's Architects or Consultant of the standing of the work, the existence and extent of any faults or defects, the value of the work then done and to be done under any contract, the amount owing to any contractor and the amounts paid or retained by the Tenant on any contract, and the Tenant shall also, whenever requested by the Landlord, furnish copies or certificates furnished to it by contractors or by the Tenant's Architects or Consultant in connection with construction.
- (i) Without limiting the generality of the provisions of this Article 10, the Tenant shall, in all respects, cause the Improvements to be constructed and completed in accordance with then-current Land Development and Construction By-Law or Policies, a current copy of which is attached hereto as Schedule "E".
- (j) The Tenant shall obtain and deliver to the Landlord an irrevocable license in favour of each of the Landlord and the City to use any drawings, plans and specifications relating to any work performed by or on behalf of the Tenant on the Premises from the person who created such drawings, plans or specifications, thereby allowing the Landlord or the City, as the case may be, to complete the construction thereof in the event the Tenant fails to complete same. Such license shall expressly state that neither the Landlord nor the City shall be liable for any costs or expenses incurred or to be incurred in connection with the preparation of such drawings, plans or specifications or their subsequent use by the Landlord or the City in the circumstances contemplated herein, and that each of the Landlord and the City is entitled to use such drawings, plans and specifications for any purpose or purposes relating to the Premises whatsoever at any time without any further consent and without any further payment.
- (k) The Tenant shall supply the Landlord with two complete and accurate copies in such form as prescribed from time to time by the Landlord (which may include computer diskette) of the as-built drawings of any work performed by or on behalf of the Tenant no later than sixty (60) days following the completion of such work.

## 10.2 Ownership of Improvements

- (a) The Landlord and the Tenant agree that the Improvements which the Tenant shall construct upon the Premises are and shall be fixtures to the Premises. The Landlord and the Tenant further agree that ownership of and title to the Improvements shall revert to and shall become the absolute property of the Landlord upon the expiration or sooner termination of this Lease without compensation therefor to the Tenant. Notwithstanding the foregoing, the Improvements shall be deemed as between the Landlord and the Tenant during this Lease to be the separate property of the Tenant and not of the Landlord and accordingly, as between the Landlord and the Tenant, the Tenant shall be entitled to claim capital cost allowance with respect thereto under the Income Tax Act of Canada and/or other applicable legislation. Notwithstanding the foregoing, the Improvements shall be subject to and governed by all the provisions of this Lease applicable thereto and the Landlord's absolute right of property in the Improvements which shall arise upon the termination or expiration of this Lease and such right shall take priority over any other interest in the Improvements which may now or hereafter be created by the Tenant. The Tenant further agrees that title to the Improvements upon the expiration or sooner termination of this Lease shall be free and clear of all liens, mortgages and other encumbrances, including the interest of any Leasehold Mortgagee, and all dealings by the Tenant with the Improvements which in any way affect title thereto shall be made expressly subject to this right of the Landlord. In this regard, the Tenant agrees not to assign, encumber or otherwise deal with the Improvements separately from any permitted dealing with the leasehold interest under this Lease as provided for in Articles 13 and/or 14 to the intent that no person who does not at the same time hold a like interest in the Improvements shall hold or enjoy any interest in this Lease and that any assignment, transfer, mortgaging, encumbrancing, hypothecation, leasing, subletting, licensing or sub-licensing with respect to the Improvements shall be subject to the same requirements as specified in Articles 13 and/or 14 and for such purpose shall be deemed to be an assignment or sub-letting of this Lease whether in whole or in part.
- (b) The Landlord shall have the option, at any time within six (6) months after the expiry or early termination of this Lease, of requiring or compelling the Tenant, upon written notice, to remove the Improvements, or any portion thereof, erected on the Premises, and the Tenant shall be so bound to remove such Improvements and to fill up all excavations made in erecting or removing same, and to complete all remedial work, if any, required to satisfy the requirements of Section 9.6 above and to replace all surface soil and sod and leave the area upon which the said Improvements had stood in a neat and tidy condition, all of which is to be completed to the satisfaction of the Landlord, at the Tenant's own cost and expense, and without any right on the part of the Tenant to seek compensation for any reason whatsoever. This covenant shall survive the expiry or early termination of this Lease. Upon the removal of any of the said Improvements, title in the said Improvements so removed shall re-vest in the Tenant and the Landlord's interest in the said Improvements shall terminate at that time.
- (c) **Trade Fixtures**
- i) The Tenant covenants and agrees to maintain upon the Premises throughout the Term equipment and other trade fixtures (collectively, "Trade Fixtures") which are usual and appropriate for the Tenant's operations. The Tenant agrees that all Trade Fixtures shall be kept in good order and condition throughout the Term. The Tenant further agrees that during the Term, it shall not remove any Trade Fixtures from the Premises other than in the ordinary course of its business. Notwithstanding the foregoing, the Tenant may also remove Trade Fixtures from the Premises where the Tenant substitutes therefor Trade Fixtures which are at least equal in value and function to the Trade Fixtures being removed.
- ii) Provided that the Tenant has paid all rent and is not otherwise in default, beyond any applicable cure period, of any material obligations under this Lease, the Tenant shall be entitled, at the expiry or earlier termination of this Lease, to remove its Trade Fixtures from the Premises. In addition, the Tenant agrees that if the Landlord should request that the Tenant remove its Trade Fixtures from the Premises at the expiry or earlier termination of this Lease, the

Tenant shall remove same with all due dispatch. To the extent the Tenant removes any Trade Fixtures from the Premises, the Tenant shall repair all damage or injury caused to the Premises resulting from the installation and/or removal of same. The obligations set out herein shall survive the expiry or early termination this Lease.

iii) If within fifteen (15) days of the expiry or earlier termination of this Lease, the Tenant has not removed its Trade Fixtures or any of its other property from the Premises, the Landlord shall have no obligation with respect to same and may sell and/or destroy same and/or have same removed and/or stored at the expense of the Tenant and/or may dispose of same in any other manner whatsoever as the Landlord, acting reasonably, may determine. At the option of the Landlord, any Trade Fixtures or other property not removed from the Premises at the expiry or earlier termination of this Lease, shall become the absolute property of the Landlord, without payment of any compensation therefor to the Tenant, and may be dealt with by the Landlord in such manner as the Landlord determines.

**(d) Reserve the Right to Grant Rights**

The Tenant covenants to grant, upon the written request of the Landlord or of the City, easements, licenses, rights of way or privileges on, over, under, through or across the Premises or any part thereof, for the purpose of causing any services to be brought on, over, under, through or across any part of the lands comprising the Airport to provide services to any Air Navigation Facility, or any other facility operated by or on behalf of TradePort, the City or the Landlord, provided that in no event will the exercise of the Landlord's rights under this section be detrimental, in any material way, to the operations of the Tenant (viewed reasonably).

**10.3 Expropriation**

(a) If during the Term, title is taken to the whole or any part of the Airport (whether or not such part includes the Premises) by any competent authority under the power of eminent domain or by expropriation, which taking, in the reasonable opinion of the Landlord does not leave a sufficient remainder to constitute an economically viable facility, the Landlord may at its option, terminate this Lease on the date possession is taken by or on behalf of such authority. Upon such termination, the Tenant shall immediately deliver up possession of the Premises, rent shall be payable up to the date of such termination and the Tenant shall be entitled to be repaid by the Landlord any rent paid in advance and unearned or an appropriate portion thereof.

(b) In the event of any such taking referred to in paragraph (a) above which, in the reasonable opinion of the Landlord, does not leave a sufficient remainder to constitute an economically viable facility, the Tenant agrees that the Landlord shall be released from fulfilling its further obligations under this Lease. The Tenant further agrees that it shall have no claim upon the Landlord for the value of its property or the unexpired portion of the Term but the parties shall each be entitled to separately advance their claims for compensation for the losses of their respective interests and to receive and retain such compensation as may be awarded to each respectively. If an award of compensation made to the Landlord specifically includes an award for the Tenant, the Landlord shall account therefor to the Tenant.

**ARTICLE 11: UTILITIES, MUNICIPAL SERVICES AND OTHER SERVICES**

**11.1 Cost of Development**

The Landlord is not obliged to provide any Municipal Services or other services or facilities or make any repairs or alterations to the Premises.

**11.2 Utilities**

The Landlord is not obliged to provide any Utilities or other related services to the Premises. Further, except as otherwise specifically contemplated by this Lease, the Tenant is responsible for all costs relating to the provision and extension of Utilities to the Premises and for the use and

operation of the Utilities. The Tenant shall be responsible for all rates and charges for Utilities and related services provided to or servicing the Premises, including all utility rates and charges for gas, electricity, telephone, sewer, water and drainage and all local improvement charges relating thereto.

### **11.3 Municipal Services**

The Tenant shall, at its own cost, be responsible for the construction, installation and maintenance of Municipal Services to connect the Premises to the water and sanitary sewerage systems at the nearest approved point of connection. All drawings, plans and specifications for connecting to any Municipal Services shall be approved by the Landlord, the City and, where applicable, the local authorities, if any, having jurisdiction, before work is commenced and all work shall be performed under the supervision of the Landlord, the City and, where applicable, the local authorities, if any, having jurisdiction.

### **11.4 Drainage**

The Tenant, at its own cost, shall ensure that the surface drainage water on the Premises will be properly controlled and discharged into the Airport's storm drainage system in a sound and proper fashion and shall, at its own cost, be responsible for constructing storm drainage management facilities compatible with the Airport's field drainage channels; and all drawings, plans and specifications for the construction of storm drainage management facilities for the Premises shall comply with all the specifications, standards and requirements of the City and/or local authorities, if any, having jurisdiction and be subject to the prior approval of the Landlord, the City and/or local authorities, if any, having jurisdiction before installation.

### **11.5 Interceptors**

Grease, oil, glycol, de-icing/anti-icing fluids and other such ice control substances and sand interceptors shall be provided by the Tenant, at the Tenant's sole cost, if required by any governmental or other proper authority or by the Landlord, acting reasonably, and provided there is a legitimate need for same due to the Tenant's operations. All interceptors shall be of a type and capacity approved by the Landlord and/or the other appropriate authorities and shall be readily accessible for cleaning and inspection. Such interceptors shall be maintained by the Tenant, at the expense of the Tenant, in continuous, efficient operation at all times.

### **11.6 Garbage**

The Tenant shall, at its own cost, provide for the handling and off-Airport disposal of all trash, rubbish, waste material and other garbage to the satisfaction of the Landlord acting reasonably. Storage of crates, cartons, barrels or other similar items shall not be permitted to be in public view at the Airport, and shall be covered, protected or otherwise restrained.

### **11.7 Airport Security**

The Tenant acknowledges that the security obligations of the Landlord and the Tenant are established and governed by the Aeronautics Act and the Aerodrome Security Regulations thereunder. The Tenant shall comply with such Act and such Regulations and with the Landlord's security measures established from time to time, including but not limited to, measures relating to restricted area passes, personnel identification systems and security clearance procedures, and shall pay to the Landlord on demand all charges levied by the Landlord with respect to security measures, provided such charges are consistently applied to other Airport subtenants carrying on similar operations to the Tenant.

### **11.8 Interference with Air Navigation Facilities**

- (a) The Tenant shall not:
  - (i) conduct any operation,
  - (ii) erect or construct any building, structure, improvement or other work,
  - (iii) make any addition or alteration to any building, structure, improvement or other work,

- (iv) install any facility or equipment in, over or upon the Premises or any part thereof; or
- (v) do anything else,

which will, in any manner,

- A. interfere with any electronic signal from any Air Navigation Facility;
  - B. cause physical or electronic interference or hazard to the navigation of any aircraft;
  - C. obstruct the line of sight from the air traffic control tower or the flight service station to any part of the Airport and 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 movement;
  - D. violate any physical or other zoning requirements;
  - E. violate any safety-related standards, procedures, standards or recommended practices affecting aircraft safety or airport certification; or
  - F. adversely affect any Air Navigation Facility or any power system.
- (b) Upon receipt of written notice from the Landlord, Transport Canada, Nav Can or the City, the Tenant shall, at its own expense, immediately take all steps necessary to cease any activity causing any interference, obstruction or hazard and to rectify any problems arising in respect to matters referred to in subsection 11.8(a). Without limiting the generality of the foregoing, rectification may include, but shall not be limited to, discontinuing or modifying the Tenant's operations; removing rebuilding or repairing buildings, structures, improvements, facilities or equipment of the Tenant.
- (c) In addition to any other right Transport Canada or Nav Can may have, and in addition to any other remedies the Landlord may have pursuant to this Lease, the Landlord, Nav Can and/or Transport Canada, as the case may be, may enter upon the Premises and remove any building, structure, improvement, work or other matter or thing causing any such interference, obstruction or hazard at the Tenant's expense if the Tenant fails to fulfill its obligations pursuant to subsection 11.8(b) above. The Tenant shall forthwith reimburse the Landlord for all expenses and costs incurred in relation thereto. No such entry for such purpose shall be deemed to be a forfeiture or termination of this Lease and the Tenant shall permit such entry.

## **ARTICLE 12: MAINTENANCE AND REPAIRS**

### **12.1 Maintenance and Repair**

The Tenant shall, throughout the Term, at its own expense:

- (a) keep the Improvements, including the Building, in a good state of repair, consistent with the standards of a First Class Facility at an international airport. For the purposes hereof and for the purposes of section 12.6 below, a "First Class Facility" means a facility that is built and is renovated from time to time so as to ensure in that the Building is a good state of repair and in a condition satisfactory to the Landlord, acting reasonably. "Repair" (as used herein) shall include replacements and structural repairs. All repairs made by the Tenant shall be no less in quality and class to the original work. To the extent that repairs involve structural or major portions of the Building, all provisions of Article 10 shall apply thereto;
- (b) keep in good order and condition, reasonable wear and tear excepted, all chattels located in or about or serving the Premises; and

- (c) upon notice in writing from the Landlord, make and do all repairs and maintenance which it has herein covenanted to perform.

## **12.2 Landscaping and Paved Areas**

The Tenant shall, at its expense, maintain the landscaping and maintain and repair all paved areas on the Premises and shall keep the Premises neat and tidy at all times and free from any accumulation of water, snow and ice, all to the reasonable satisfaction of the Landlord.

## **12.3 View Repairs**

The Landlord, upon no less than twenty-four (24) hours prior notice, may enter upon the Premises at any reasonable time during business hours (and, without any prior notice at any time during any emergency or perceived emergency) to view the state of repair and the Tenant shall repair according to notice in writing from the Landlord so to do, subject to the exceptions contained in this Article 12 and subject to the terms and conditions of this Lease.

## **12.4 Landlord May Repair**

If the Tenant fails to repair or is not proceeding diligently to repair according to the terms and conditions of this Lease and upon notice from the Landlord within fourteen (14) days of receipt thereof, or forthwith in the event of an emergency, the Landlord may make such repairs without liability to the Tenant for any loss or damage that may occur to the Tenant's merchandise, fixtures or other property, or to the Tenant's business by reason thereof unless such loss or damage is caused by the negligence of the Landlord, its agents, employees, contractors or those for whom it is in law responsible, and upon completion thereof, the Tenant shall pay, on demand, as Additional Rent, the Landlord's costs of making such repairs together with an administration fee of 20% of such costs.

## **12.5 Inspection by Public Officials**

The Tenant agrees to co-operate with public officials who have the right to inspect the Premises and any improvements constructed therein or thereon.

## **12.6 Damage or Destruction**

- (a) In the event any of the Improvements are wholly or partially damaged or destroyed by fire or by any other peril, the Tenant shall give the Landlord prompt notice thereof. The Tenant shall, unless the Tenant and the Landlord agree otherwise, promptly, continuously and diligently, at its own expense, repair, replace, restore or reconstruct any such Improvements to a standard and quality consistent with that of a First Class Facility at an international airport. All repair, replacement, restoration and reconstruction shall meet or exceed the standards of all applicable laws and codes, and shall satisfy the requirements of this Lease. In the alternative, the Landlord, upon written notice, may terminate this Lease and all proceeds of insurance and all other monies payable in respect of such destruction or damage shall be paid to the Landlord.
- (b) Subject to subsections 12.4(a) above and 12.4(c) below, the partial destruction or damage or complete destruction by fire or other casualty of all or any part of the Improvements shall not terminate this Lease or entitle the Tenant to surrender the Premises in whole or in part or to demand any abatement or reduction of the Annual Base Rent or Revised Annual Base Rent, as the case may be, or other charges payable under this Lease, any law or statute now or in the future to the contrary notwithstanding.
- (c) If due to fire or other casualty, the Building is destroyed or damaged (herein called the "Event") and in the opinion of the Consultant as certified to the Landlord, the time required for the repair with due diligence of the destruction or damage to such Building exceeds one (1) year, then provided:
  - (i) the Event occurs within the last three (3) years of the Term;
  - (ii) the Tenant is not in default under this Lease;

(iii) the Tenant has obtained the prior written consent of all Leasehold Mortgagees; the Tenant shall have the right to terminate this Lease (the "Termination Option") on the following terms and conditions:

- (A) the Termination Option shall only be exercisable in the event that there is then in force and payable a policy or policies of insurance providing for the payment of the replacement cost of the Building, and that the proceeds thereof shall be equivalent to a payment being made on a replacement cost basis insurance policy, whether or not an insured shall rebuild the Building so damaged or destroyed (the "Insurance Proceeds"), and the Insurance Proceeds shall be paid whether or not the insured rebuilds the Building;
- (B) the Tenant shall have the right by written notice (the "Early Termination Notice") to elect to exercise the Termination Option within a period of ninety (90) days following the Event. In the event the Tenant elects to exercise the Termination Option, the Early Termination Notice must specify the date upon which this Lease shall be terminated (the "Effective Date of Early Termination");
- (C) in the event that the Tenant elects to exercise the Termination Option, then on or before the Effective Date of Early Termination, the Tenant shall assign all of the Insurance Proceeds to the Landlord, and pay to the Landlord, all deductible amounts under all insurance policies;
- (D) on the Effective Date of Early Termination, the Tenant shall deliver vacant possession of the Premises free and clear of any Leasehold Mortgages and encumbrances of any nature or kind whatsoever;
- (E) this Lease (and all of the Tenant's right, title and interest therein and thereto) shall be deemed to be terminated on the Effective Date of Early Termination provided that the provisions of this subsection 12.04(c) have been satisfied in full;
- (F) without limiting the generality of clause (E) above, prior to termination of this Lease, the Tenant shall pay to the Landlord all rent and other charges due and payable to the date of termination, in addition to the Insurance Proceeds, and shall pay to the Landlord all deductible amounts arising under any and all insurance policies maintained with respect to the Premises; and
- (G) without limiting the generality of clause (E) above, prior to termination of this Lease, the Tenant, unless otherwise requested by the Landlord, at the Tenant's sole cost, shall have demolished all or part of the Improvements and returned the lands comprising the Premises on which such Improvements stood to a vacant condition and shall have conducted the environmental audit(s) to be completed in the same manner as contemplated by section 9.6 and to remove and remediate all Environmental Contaminants in the same manner as contemplated by section 9.6 and section 10.2(b). Without limiting the generality of the foregoing, the Tenant, at its sole cost, shall reinstate the turf, remove or cause to be removed such Improvements, fill up or cause to be filled up all excavations made in erecting or removing the said Improvements and replace or cause to be replaced all surface soil and sod and leave the area upon which the said Improvements had stood in a neat and tidy condition. The Landlord agrees that to the extent that the Tenant is requested to demolish all or any portion of the Improvements under this clause (G), direct costs borne by the Tenant with respect to such demolition shall be reimbursed by the Landlord, to the extent that Insurance Proceeds have been received by the Landlord, upon receipt of appropriate accounts therefor from the Tenant.

## **ARTICLE 13: ASSIGNMENT OR SUBLETTING**

### **13.1 Consent to Assignment or Subletting**

This Lease, except as specifically provided herein, shall not be assigned, nor shall the Premises be sublet or licensed by the Tenant, whether in whole or in part, and whether by operation of law or otherwise, nor shall the Tenant part with possession of or permit the occupation or use of all or part of the Premises by any party not permitted hereunder (each such event being referred to herein as a "Transfer"), without the prior written consent of the Landlord, which consent may not be unreasonably withheld. In any event, the Tenant agrees that the Landlord shall not be asked to grant its consent to a Transfer unless:

- (i) the Tenant shall have furnished to the Landlord a true copy of the offer received from the proposed assignee, sublessee or other transferee and shall have furnished such information as is available to the Tenant regarding the reputation, financial standing and business of the proposed assignee, sublessee or other transferee;
- (ii) the Landlord is satisfied that the proposed assignee, sublessee or other transferee has or possesses the reputation, business expertise and background and the financial resources necessary to enable it to perform the covenants of the Tenant herein contained;
- (iii) the proposed assignee, sublessee or other transferee must expressly agree in writing with the Landlord to be bound by and perform the covenants of the Tenant contained in this Lease insofar as they relate to the premises being transferred;
- (iv) the proposed assignee, sublessee or other transferee must expressly agree in writing with the Landlord that throughout the Term, it shall ensure that landings and take-offs by aircraft using the Premises are not less frequent than the number of landings and take-offs by aircraft using the Premises during the twelve (12) month period immediately preceding the Transfer;
- (v) the proposed assignee, sublessee or other transferee must deliver to the Landlord a security deposit or a valid letter of credit issued by a recognized Canadian financial institution (which shall be open, unconditional and irrevocable) in a total amount of not less than the total amount of three (3) months' Annual Base Rent or Revised Annual Base Rent, as the case may be, and Additional Rent payable during the next three (3) months of the Term, all as reasonably estimated by the Landlord, calculated as and from the date upon which the proposed Transfer takes effect. The security deposit or the letter of credit, as the case may be, shall be in a form satisfactory to the Landlord and shall be held by the Landlord as security for the performance of the proposed assignee's, sublessee's or other transferee's obligations under the Lease and the provisions of Article 6 shall apply with respect thereto with all necessary changes being deemed incorporated herein; and
- (vi) the proposed assignee, sublessee or other transferee must demonstrate to the satisfaction of the Landlord that for the purposes of its operations, it requires access to the Airport's airside facilities.

### **13.2 Subsequent Assignment or Subletting; Joint and Several Liability**

- (a) The Tenant agrees that any written consent provided by the Landlord to a Transfer shall not constitute a waiver of requiring its written consent to any subsequent Transfer.

- (b) The Tenant agrees that upon any Transfer, the Tenant shall remain jointly and severally liable with the assignee, sublessee or other transferee thereunder for all obligations arising under this Lease and shall not be released from performing any of the terms, conditions and covenants of this Lease.

### **13.3 Change in Control**

If, after the date of execution of this Lease, any shares of any class of the Tenant are transferred by sale, assignment, operation of law or other disposition, or issued, cancelled or redeemed, so as to result in a change in effective voting or other control of the Tenant, or if any other steps are taken to effect a change in control of the Tenant, this will be considered an assignment by the Tenant of this Lease to which this Article 13 shall apply.

### **13.4 Assignment by the Landlord**

The Landlord, at any time and from time to time, may sell, transfer, lease, assign or otherwise dispose of the whole or any part of its interest in the Airport. Provided that the party acquiring such interest shall agree, so long as it holds such interest, to assume and to perform each of the covenants, obligations and agreements of the Landlord under this Lease in the same manner and to the same extent as if originally named as the Landlord in this Lease, the Landlord shall thereupon be released from all of its covenants and obligations under this Lease and the Tenant shall look solely to the Landlord's successor-in-interest.

### **13.5 Landlord's Consent**

The Tenant hereby specifically acknowledges and agrees that it shall be reasonable for the Landlord to withhold its consent to any request for consent to a Transfer made by the Tenant pursuant to Section 13.1 above where: (i) the purpose of any such Transfer is to permit an assignee, sublessee or other transferee to develop the Premises and/or construct the Improvements for and on behalf of the Tenant; and/or (ii) the proposed Transfer is being made within the first three (3) years of the Term.

## **ARTICLE 14: MORTGAGE**

### **14.1 Mortgage of Lease**

- (a) Subject to compliance with the provisions hereof and subject to the provisions set out in subsection 14.1(b) below, the Tenant shall have the right at any time and from time to time, subject to obtaining the prior written consent of the Landlord, which consent may not be arbitrarily, unreasonably or unduly withheld notwithstanding Section 23 of the Commercial Tenancies Act, to mortgage (whether by way of charge, assignment, sublease or otherwise, any of which may be contained in a deed of trust and mortgage or indenture supplemental thereto, or other similar instruments to secure bonds, debentures or other evidences on indebtedness) its interest in this Lease and its leasehold interest in the Premises, provided that the leasehold mortgagee thereunder (the "Leasehold Mortgagee") first agrees to enter into an agreement with the Landlord and the Tenant governing their respective rights and obligations. Such agreement shall be substantially in the form of the agreement attached hereto as Schedule "J" with such amendments as the parties, acting reasonably, may agree.
- (b) Without limiting the generality of paragraph (a) above, the Landlord agrees that the Tenant shall be entitled to assign the Lease as security (on such terms as are usual in similar circumstances) to the Tenant's lender (also referred to herein as the "Leasehold Mortgagee") for credit facilities being established in favour of the Tenant where such credit facilities are to be used by the Tenant to develop the Premises, which includes, without limitation, to construct the Improvements, provided that:
  - (i) the Tenant submits its request, in writing, to the Landlord, for the Landlord's prior consent, such consent not to be unreasonably withheld, no less than thirty (30) days prior to the date of the proposed assignment; and

- (ii) the Tenant and the Leasehold Mortgagee agree to enter into an agreement with the Landlord substantially in the form of agreement attached hereto as Schedule "J", with such amendments as the parties, acting reasonably, may agree.

#### **14.2 Status Statement**

Within ten (10) days after written request therefor by the Landlord, the Tenant shall deliver in a form supplied by the Landlord, a status statement or a certificate addressed to the Landlord, or to a proposed Mortgagee or to whomever the Landlord may otherwise direct, stating (if such is the case):

- (a) whether this Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease is in full force and effect as modified and identifying the modifications);
- (b) the Commencement Date and the date upon which an occupancy permit, if any, has been issued with respect to the Premises;
- (c) the date to which Annual Base Rent or Revised Annual Base Rent have been paid under this Lease and the amount thereof;
- (d) whether or not there is any existing or alleged default by any party under this Lease with respect to which a notice of default has been served and if there is any such default, specifying the nature and extent thereof;
- (e) whether there are any defences or counterclaims against enforcement of the obligations to be performed by the Tenant under this Lease; and
- (f) with reasonable particularity, details respecting the financial standing and corporate organization of the Tenant.

#### **14.3 Subordination and Attornment**

- (a) It is a condition of this Lease and the Tenant's rights granted hereunder that this Lease and all of the Tenant's rights granted hereunder are and shall at all times be subject and subordinate to any and all Mortgages from time to time in existence. Upon request, the Tenant shall subordinate the Lease and all of the Tenant's rights granted hereunder in such form as the Landlord and/or any Mortgagee may reasonably require to any and all Mortgages, and to all advances made or hereafter to be made upon the security thereof and, if requested, the Tenant shall attorn to the interests of the Mortgagee(s) [and/or any assignee of the interests of such Mortgagee(s)] thereunder. No such subordination shall have the effect of permitting any such Mortgagee to disturb the Tenant in its enjoyment of the Premises so long as the Tenant is not in default hereunder.
- (b) In the event that an agreement (such as an agreement with CIT, as contemplated by subsection 2.2(c)(ii) above) is entered into by the Landlord, the Tenant and a Mortgagee with respect to the parties' respective rights and obligations in respect of any Mortgages, such agreement (and not the provisions of paragraph (a) above) shall govern the parties' respective rights and obligations with respect thereto.

## **ARTICLE 15: INSURANCE AND INDEMNITY**

### **15.1 Comprehensive General Liability Insurance**

The Tenant shall take out and keep in force throughout the Term, and during such other time as the Tenant occupies the Premises, at its own cost, comprehensive general liability insurance and property damage insurance, including fire insurance against claims for personal injury, death, property damage, or third party or public liability claims or loss, from any cause, arising out of all occurrences, operations, or use of the Premises by the Tenant, or of the acts or omissions of the Tenant, its agents, servants or employees and all other persons in occupation or use of the Premises, indemnifying and protecting the Landlord and the Tenant to a limit of not less than Five Million Dollars (\$5,000,000.00), or such other amounts as the Landlord, acting reasonably, may require from time to time, inclusive, in respect of each accident or occurrence. Coverage shall include, but not be limited to the following: tenant's legal liability; environmental impairment liability; pollution legal liability coverage; hangar keepers' liability coverage, automobile liability for owned vehicles and non-owned automobile liability for non-owned vehicles; blanket contractual liability; completed operations liability and owners/operators protective liability in the event of construction, alteration or demolition operations on the Premises. In the event the Tenant sub-lets all or part of the Premises to a sub-tenant, the Tenant shall cause such sub-tenant to take out and keep in force the insurance required under this paragraph.

### **15.2 Automobile Insurance**

The Tenant shall take out and keep in force throughout the Term and during such other time as the Tenant occupies the Premises, at its own cost, standard owners form automobile policy for vehicles used in connection with the Tenant's operations, including third party liability insurance with a limit of not less than Five Million Dollars (\$5,000,000.00) per accident or occurrence or such other amount as the Landlord, acting reasonably, may require from time to time.

### **15.3 Broad Form Property Insurance**

The Tenant shall effect not later than upon completion of construction of the Building and the Improvements and shall keep in force throughout the Term and during such other time as the Tenant occupies the Premises, at its own cost and expense, insurance on the Building and all Improvements in the name of the Tenant without any rights of cross claim or subrogation against the Landlord from loss from:

- (a) fire or other perils as may from time to time be included in the standard fire insurance additional peril supplementary contract generally available in the Province of Ontario;
- (b) risks normally insured against in the Province of Ontario for a building of construction, location and use similar to the Building; and
- (c) risks which the Landlord may from time to time reasonably require to be insured against.

Insurance coverage shall be for the full replacement value of the Improvements, including the Building and all other buildings and the replacement value of fixtures (exclusive of the cost of foundations) and shall, in any case, be for an amount sufficient to prevent the Landlord being considered a co-insurer with the insured. The policies of insurance effected under this paragraph shall if required, include the interest of any Leasehold Mortgagees or encumbrancers of the Tenant's leasehold interest.

### **15.4 The Insureds**

The insurance policy or policies referred to herein, excepting the automobile policy, will name the Landlord, the City and TradePort as additional insureds, with loss payable to the Tenant, the Landlord, the City, TradePort and to any Leasehold Mortgagee, as their interest may appear. The policy shall contain a waiver of rights of subrogation against the Landlord, the City and TradePort and a cross-liability clause protecting said parties against claims by the Tenant as said parties were separately insured and will contain a clause that the insurer will not cancel or change or refuse to renew the insurance without giving the Landlord thirty (30) days' prior written notice.

The Tenant shall pay all premiums and costs of insurance required herein. All policies of insurance will be with insurers acceptable to the Landlord, acting reasonably, and in a form satisfactory to the Landlord, acting reasonably, and the Tenant will see that there is delivered to the Landlord certified copies of the policies and any renewals thereof together with proof of payment of the premiums therefor. If the Tenant fails to take out or keep in force any policy of insurance referred to herein the Landlord may do so and pay the premium and, in that event, the Tenant will pay to the Landlord forthwith the amount so paid as premium.

### **15.5 Cancellation of Insurance**

The Tenant shall immediately notify the Landlord of any cancellation or intended cancellation by the insurer of a policy herein. Each policy shall provide that no cancellation shall be effective without thirty (30) days' prior written notice by the insurer to the Landlord. If the insurance policy referred to herein is cancelled or threatened by the insurer to be cancelled, or the coverage thereunder reduced or threatened to be reduced by the insurer, and if the Tenant fails to remedy the condition giving rise to cancellation, threatened cancellation, reduction or threatened reduction of coverage within forty-eight (48) hours after notice thereof by the Landlord, the Landlord may immediately either:

- 15.5.1 re-enter the Premises, including the Improvements, whereupon Article 20 will apply [with the notice requirements set out in section 20.11 being deemed to have been satisfied], or
- 15.5.2 enter the Premises and Improvements and remedy the condition giving rise to the cancellation or reduction or threatened cancellation or reduction, and the Tenant will pay to the Landlord the cost thereof on demand as Additional Rent (failing which, the provisions of Article 20 below shall apply), and the Landlord will not be liable for damage or injury caused to property of the Tenant or others located on the Premises as a result of the entry.

### **15.6 Compliance**

The Tenant shall not do or omit to do or suffer anything to be done or omitted to be done on the Premises which will in any way impair or invalidate the insurance policies.

### **15.7 City**

If, during the Term, the City establishes new or amended insurance requirements which apply to the Premises under the Head Lease or otherwise, the Tenant agrees to amend or supplement the coverage identified herein and maintain, at its own cost, such amended or supplemented insurance coverage. Any such amendments or supplements to insurance coverage arising out of this section are to be determined by the Tenant and the Landlord, acting reasonably, and are to be consistent with the applicable new or amended insurance requirements established by the City.

## **ARTICLE 16: INDEMNITY**

### **16.1 Tenant's Indemnity**

The Tenant shall at all times, indemnify and save harmless the Landlord and TradePort (including their respective directors, officers, agents and employees) and the City (including its councillors, officers, agents and employees) of and from all loss and damage and all actions, claims, costs, demands, expenses, fines, liabilities and suits of any nature whatsoever for which the Landlord, TradePort or the City, as the case may be, shall or may become liable, incur or suffer by reason of a breach, violation or non-performance by the Tenant of any covenant, term or provision hereof or by reason of any builders' or other liens for any work done or materials provided or services rendered for alterations, improvements or repairs, made by or on behalf of the Tenant to the Premises, or by reason of any injury occasioned to or suffered by any person or damage to any property, by reason of any wrongful act or omission, default or negligence on the part of the Tenant or any of its agents, concessionaires, contractors, employees, invitees or licensees in or about the Airport. The Tenant's obligations under this section 16.1 shall survive the termination of this Lease, whether by effluxion of time or otherwise.

## **16.2 Personal Injury and Property Damage**

The Landlord and TradePort (including their respective directors, officers, agents and employees) and the City (including its councillors, officers, agents and employees) shall not, under any circumstances, be liable or responsible in any way for:

- (a) any personal injury or consequential damage of any nature whatsoever that may be suffered or sustained by the Tenant or any other person, or any property belonging to the Tenant or any other person while such property is on or about the Premises or the Airport:
  - (i) caused by failure, by reason of breakdown or other cause, to supply adequate drainage, snow or ice removal, or by interruptions of any utility or elevator or escalator or other services, or by steam, water, rain, snow, or other substances leaking into, issuing or flowing into any part of the Premises or from the water, steam, sprinkler or drainage pipes or plumbing of the Airport or from any other place or quarter;
  - (ii) caused by anything done or omitted to be done by any other tenant of the Airport;
  - (iii) however caused, if the Landlord or TradePort or their respective agents, contractors or employees enter upon the Premises in the case of an emergency; and
  - (iv) resulting in any way from any act or omission by any officer, agent or employee of the Approving Authority related to the Land Development and Construction By-Law or Policies;
- (b) any loss or damage of any nature whatsoever, however caused, to books, records, files, money, securities, negotiable instruments, papers or the valuables of the Tenant;
- (c) any business, economic or indirect loss or damage of the Tenant of any nature whatsoever, however caused; or
- (d) any loss against which the Tenant is obliged to insure against hereunder or has insured against.

## **16.3 Liens**

The Tenant, at its own expense, will pay, satisfy, discharge or vacate any construction liens or any other liens which may be registered against or otherwise affect the Airport or the Premises, including the Improvements, within sixty (60) days after the Tenant receives written notice of such claim. Provided, however, that if the Tenant disputes the validity of any claim for lien, the Tenant is entitled to defend against the claim in any proceedings thereto, after first paying into court the amount claimed and such costs as the court may direct and posting all such other security as would be required to vacate or discharge such claim provided that the Premises or Improvements shall not become liable to forfeiture or sale. The Landlord may, but is not obliged to, post security to vacate or to discharge any lien filed or registered if, in the Landlord's judgment, it is prudent to do so or if the Airport or the Premises or Improvements become liable to any forfeiture or sale. Any amount paid by the Landlord in so doing, together with all costs of the Landlord, shall be reimbursed to the Landlord by the Tenant.

## **16.4 City Not Responsible**

The Tenant acknowledges and agrees that in no event is the City liable or responsible in any way to the Tenant or any other person for any injury, loss, loss of profits, damages, consequential or indirect damages or for any claims resulting from any matter affecting any Airport infrastructure, whether or not the Airport infrastructure, as the case may be, was constructed by the City and whether or not the matter affecting the Airport infrastructure is caused or contributed to by any fault, default, negligence, act or omission of the City or any person for whom the City may be responsible in law.

## **ARTICLE 17: WASTE AND GOVERNMENT REGULATIONS**

### **17.1 Nuisance**

The Tenant shall not do or omit or permit to be done or omitted anything which could damage the Airport or injure or impede the business or operations of the Landlord or of other tenants or users of the Airport or which shall or might result in any nuisance in or about the Premises whether to the Landlord, any tenant of the Landlord or any other party, the whole as determined by the Landlord, acting reasonably. In any of the foregoing events, the Tenant shall forthwith remedy the same and if such thing or condition shall not be so remedied within the periods set out under this Lease, the Landlord may correct such situation at the expense of the Tenant and the Tenant shall pay such expense, together with an administration fee of 20% of such expense, to the Landlord, on demand, as Additional Rent.

### **17.2 Government Regulations**

The Tenant shall, at its own cost, in all respects abide by and comply with all applicable rules, regulations, by-laws and requirements of the Federal Government, Provincial Government, Municipal Government or any other governmental authority whatsoever that is now in force or which may hereafter be in force and with all local police, health or fire regulations or by-laws, in any manner affecting the Premises and the Improvements.

### **17.3 Fire Prevention**

The Tenant shall, at its own expense, take all precautions to prevent fire from occurring in or about the Premises, and shall observe and comply with all laws and regulations respecting fires at the Airport, and with all instructions given from time to time by the City and local authorities, if any, having jurisdiction with respect to fires, regulation, prevention and safety.

### **17.4 Management and Control by Landlord**

The Landlord has the exclusive right to manage, operate and control the Airport and from time to time to establish, modify and enforce the Hamilton International Airport Rules and Regulations in force from time to time regarding the use, occupancy, maintenance and operation of the Airport and the Premises situate thereon and the rules and regulations in all respects will be observed and performed by the Tenant, its officers, employees and invitees.

### **17.5 Aeronautics Act/Canadian Aviation Regulations**

The Tenant, its subtenants, officers, employees and agents, shall, at all times during the currency of this Lease, observe and comply with the provisions of the Aeronautics Act. Without limiting the generality of the foregoing, the Tenant shall ensure compliance with those aspects of the Aeronautics Act including, without limitation, the Canadian Aviation Regulations, concerning aircraft types, hours of operation, noise emission restrictions, security and safety. In addition, the Tenant shall ensure compliance with all directives, orders, stipulations and requirements issued by air traffic control personnel at the Airport.

### **17.6 Noise Management**

Without limiting any other obligations imposed upon the Tenant under this Lease, the Tenant agrees to abide by and comply with the requirements of:

- (a) Canadian Aviation Regulations 602.105 Noise Operating Criteria;
- (b) Canadian Aviation Regulations 602.150 Aircraft Noise Emissions Levels - Transition to Chapter 3 Aeroplanes; and
- (c) any other Ministerial Order or any other part of the Canadian Aviation Regulations or any other regulations or requirements under the Canadian Aviation Regulations concerning noise abatement procedures, noise control and aircraft noise restrictions

as may be amended from time to time.

## **ARTICLE 18: ACCESS BY LANDLORD**

### **18.1 Inspection**

The Landlord and the City, their agents, employees or servants, solely for the purposes of this Lease or as required under applicable statutes and regulations, shall have access for inspection purposes during normal business hours on not less than twenty-four (24) hours notice and in the presence of the Tenant or a representative of the Tenant, to any and every part of the Premises, Improvements, structures and facilities; and that in cases of emergency, the Landlord and the City, their officers, servants or agents, shall at all times and for all purposes have full and free access to the Premises, Improvements, structures and facilities.

### **18.2 Entry by the Landlord**

- (a) Except where the Landlord intends to terminate this Lease, no entry by or on behalf of the Landlord pursuant to Section 18.1 and no act on the Premises by or on behalf of the Landlord thereunder shall be deemed to be a forfeiture or termination of this Lease, and the Tenant shall permit such entry.
- (b) The Tenant further covenants with the Landlord to permit the City, its servants, officers, employees, agents and persons authorized by the City at all reasonable times during the Term, upon no less than twenty-four (24) hours prior notice, to obtain any information and any document and to extract therefrom in order to determine the extent of compliance by the Landlord and/or the Tenant with all applicable laws and the Tenant shall permit access for such purpose.

## **ARTICLE 19: TENANT RESTRICTIONS**

### **19.1 Dangerous Goods**

Goods of an explosive, dangerous, inflammable or noxious nature or character may only be stored upon the Premises or transported by the Tenant in the ordinary course of its operations if done so in full compliance with all applicable laws, regulations, and other requirements of all federal, provincial and municipal authorities.

### **19.2 Advertising and Displays**

Without limiting the generality of subsection 8.3(c) above respecting advertising, the Tenant agrees not to construct, erect, place or install on the Premises, including the Improvements, any poster, advertising, sign or display, electrical or otherwise, without first obtaining the consent in writing, of the Airport Managing Director, such consent not to be unreasonably withheld.

## **ARTICLE 20: DEFAULT, REMEDIES, TERMINATION**

### **20.1 Default**

If and whenever:

- (a) the Tenant shall be in default in the payment of any money, whether hereby expressly reserved or deemed as rent, or any part thereof, and such default shall continue for five (5) days following notice by the Landlord requiring the Tenant to pay the same; provided, however, should any such monetary default occur more than two (2) times in any twelve (12) month period, no such notice from the Landlord shall be required;

- (b) (i) the Tenant's leasehold interest hereunder, or any goods, chattels or equipment of the Tenant located upon the Premises, shall be taken or seized in execution or attachment, or if any writ of execution shall issue against the Tenant, or Tenant shall become insolvent or commit an act of bankruptcy or become bankrupt or take the benefit of any legislation or Act that may be in force for bankrupt or insolvent debtors or become involved in voluntary or involuntary winding up, dissolution or liquidation proceedings, or a receiver or receiver-manager shall be appointed for the affairs, business, property or revenues of the Tenant;
- (ii) the Tenant shall fail to commence, diligently pursue and complete the Tenant's work to be performed pursuant to this Lease or other agreement signed by the parties, or vacate or abandon the Premises, or fail or cease to operate or otherwise cease to conduct business from the Premises, or if the Tenant shall assign, sublet or otherwise transfer any interest in this Lease or with respect to the Premises other than as permitted by Article 13, or fail to cure a default under Article 14, or make a bulk sale of its goods and assets which has not been consented to by the Landlord in accordance with the requirements of this Lease or move or commence, attempt, or threaten to move its goods, chattels and equipment off of the Premises other than as permitted by this Lease;
- (iii) the Tenant shall not observe, perform and keep each and every of the covenants, agreements, stipulations, obligations, conditions and other provisions of this Lease to be observed, performed and kept by the Tenant; or
- (iv) any affiliated and/or related corporation to the Tenant (such as \_\_\_\_\_) fails to pay, when due, any amounts due to the Landlord on account of its operations at the Airport and/or otherwise fails to fulfill its obligations to the Landlord in connection therewith,

and such default continues, in the case of the Tenant's monetary payments, beyond the period stipulated in subsection 20.1(a) or, in the case of any other default, after fourteen (14) days following receipt of written notice from the Landlord requiring that the Tenant remedy, correct or comply or, in the case of any such default which would reasonably require more than fourteen (14) days to rectify, unless the Tenant shall commence rectification within the said fourteen (14) day notice period and thereafter promptly and diligently and continuously proceed with the rectifications of any such default, then, and in each of such cases, and at the option of the Landlord, the current month's Annual Base Rent or Revised Annual Base Rent, as the case may be, then due hereunder, together with Annual Base Rent and/or Revised Annual Base Rent, as the case may be, for the three (3) months next ensuing and Property Taxes for the then-current calendar year shall become immediately due and payable and/or this Lease may be terminated and the Term shall then immediately become forfeited and void, and the Landlord may without notice or any form of legal process whatever forthwith re-enter the Premises or any part thereof and in the name of the whole repossess and enjoy the same as of its former estate, anything contained herein to the contrary notwithstanding.

## **20.2 Landlord May Perform**

If the Tenant shall fail to observe, perform or keep any of the provisions of this Lease to be observed, performed and kept by the Tenant, subject to rectification within the period set out in subsection 20.1(b), the Landlord may, but shall not be obliged to, at its discretion and without prejudice, rectify the default of the Tenant, whether or not performance by the Landlord on behalf of the Tenant is otherwise expressly referred to in the applicable section of this Lease. For such purpose, the Landlord may make any payment and or do or cause to be done such things as may be required including, without limiting the generality of the foregoing, entry upon the Premises. Any such performance by or at the behest of the Landlord shall be at the expense of the Tenant and the Tenant shall pay to the Landlord, on demand, as Additional Rent, the cost thereof, together with an administration fee of 20% of such cost. In no event shall the provisions of this Section 20.2 be deemed to override any other provisions of this Lease dealing with specific matters.

### **20.3 Distress**

If and whenever the Tenant shall be in default in the payment of any moneys, whether hereby expressly reserved or deemed as rent, or any part thereof, the Landlord may, without notice or any form of legal process whatever, enter upon the Premises and seize, remove and sell the Tenant's goods, chattels and equipment therefrom and or seize, remove and sell any goods, chattels and equipment at any place to which the Tenant or any other person may have removed them, in the same manner as if they had remained and been distrained upon the Premises, all notwithstanding any rule of law or equity to the contrary.

### **20.4 Cost and Interest**

All costs, expenses and expenditures, including the legal costs incurred by the Landlord as a result of any default by the Tenant, shall forthwith on demand be paid by the Tenant as Additional Rent, together with interest, at the rate specified in Section 4.6, from the date any such costs, expenses and expenditures are incurred by the Landlord until the same are fully paid and satisfied.

### **20.5 Vacate Upon Termination, Survival**

At the termination of this Lease, whether by effluxion of time or otherwise, the Tenant shall vacate and deliver up possession of the Premises in the same condition as the Tenant is obliged to maintain the Premises and improvements thereon, subject to the exceptions from the Tenant's obligation to repair in accordance with subsection 12.6(c), and subject to the Tenant's rights and obligations in respect of removal in accordance with subsection 10.2(b), and shall surrender all keys to the Premises to the Landlord at the place then fixed for payment of rent and shall inform the Landlord of all combinations on locks, safes and vaults, if any, upon the Premises.

### **20.6 Additional Rights on Re-Entry**

If the Landlord shall re-enter the Premises or terminate this Lease, then:

- (a) notwithstanding any such termination or the Term thereby becoming forfeited and void, the provisions of this Lease relating to the consequences of termination shall survive;
- (b) the Landlord may use such force as it may deem necessary for the purpose of gaining admittance to and retaking possession of the Premises and the Tenant hereby releases the Landlord from all actions, proceedings, claims and demands whatsoever for or in respect of any such forcible entry or any loss or damage in connection therewith or consequential thereupon;
- (c) the Landlord may re-let the Premises or any part thereof for a term or terms which may be less or greater than the balance of the Term and may grant reasonable concessions in connection therewith; and
- (d) the Tenant shall pay to the Landlord on demand such reasonable expenses as the Landlord may incur or has incurred in connection with the re-entering, terminating, re-letting, collecting sums due or payable by the Tenant, realizing upon assets seized, including without limitation brokerage, legal fees and disbursements, and the expenses of keeping the Premises in good order, repairing the same and preparing them for re-letting.

### **20.7 Re-letting for Tenant's Account**

Whenever the Landlord becomes entitled to re-enter upon the Premises under any provision of this Lease, the Landlord, in addition to all other rights it may have, shall have the right as agent of the Tenant to enter the Premises and re-let them and to receive the rent therefor and as agent of the Tenant to take possession of any furniture or other property therein and to sell the same at public or private sale without notice and to apply the proceeds thereof and any rent derived from re-letting the Premises upon account of all sums due and to become due to the Landlord under this Lease and the Tenant shall be liable to the Landlord for the deficiency, if any.

## **20.8 No Waiver**

No provision of this Lease shall be deemed to have been waived by the Landlord unless a written waiver from the Landlord has first been obtained and without limiting the generality of the foregoing, no acceptance of rent subsequent to any default and no condoning, excusing or overlooking by the Landlord on previous occasions of any default nor any earlier written waiver shall be taken to operate as a waiver by the Landlord or in any way to defeat or affect the rights and remedies of the Landlord.

## **20.9 Remedies Cumulative**

No reference to or exercise of any specific right or remedy by the Landlord shall prejudice or preclude the Landlord from any other remedy, whether allowed at law or in equity or expressly provided for herein. No such remedy shall be exclusive or dependent upon any other such remedy, but the Landlord may from time to time exercise any one or more of such remedies independently or in combination. Without limiting the generality of the foregoing, the Landlord shall be entitled to commence and maintain an action against the Tenant to collect any rent not paid when due, without exercising the option to terminate this Lease pursuant to section 20.1.

## **20.10 Holding Over**

If the Tenant continues to occupy the Premises with or without the written consent of the Landlord after the expiration or other termination of the Term, then with or without any further written agreement, the Tenant shall be a monthly lessee at the aggregate of:

- (a) a minimum monthly rent equal to 125% of the monthly Annual Base Rent or Revised Annual Base Rent payable during the last month of the Term; and
- (b) all other amounts payable hereunder as herein provided;

and subject always to all of the other provisions in this Lease insofar as the same are applicable to a month to month tenancy, and a tenancy from year to year shall not be created by implication of law.

## **20.11 Waiver of Rights of Redemption**

The Tenant hereby expressly waives any and all rights of redemption or relief from forfeiture granted by or under any present or future laws in the event of the Tenant being evicted or dispossessed from the Premises for any cause, or in the event of the Landlord obtaining possession of the Premises or of the Tenant's goods and chattels on the Premises by reason of the default of the Tenant or otherwise.

## **ARTICLE 21: REMOVAL AND REPAIR**

### **21.1 Removal and Repair**

In the event of the termination of this Lease in accordance with the provisions of this Lease, except for re-entry under Article 20 hereof, the Tenant shall forthwith to the satisfaction of the Landlord, remove from the Premises and from the Improvements, all aircraft, motor or other vehicles, equipment, articles, materials, effects or things at any time brought or placed thereon or therein by the Tenant, except for such chattels of which removal may be specially provided elsewhere in this Lease; and the Tenant shall also, to the satisfaction of the Landlord, repair all and every damage and injury occasioned to the Airport and to the Premises by reason of such removal or in the performance thereof; but the Tenant shall not, by reason of any action taken, or things performed or required under this clause, be entitled to any compensation whatever; provided that, unless required by the Landlord, no goods, chattels, materials, effects or things owned or leased by the Tenant or any subtenant shall be removed from the Premises or the Airport until all rent due or to become due under this Lease is fully paid.

## **21.2 Surrender**

Except as otherwise expressly provided in this Lease, at the expiration or sooner termination of this Lease, the Tenant will surrender and deliver up to the Landlord vacant possession of the Premises and all Improvements and facilities located thereon in good condition and working order, free and clear of all encumbrances, liens and charges, and without compensation to the Tenant. The Tenant, at its own cost, will discharge and remove all mortgages, liens, encumbrances, charges, taxes, claims or adverse interests affecting the Premises, Improvements and facilities thereon, including the interests of all Leasehold Mortgagees.

## **ARTICLE 22: LAND USE PLANNING**

### **22.1 Land Use Planning/Zoning**

- (a) The Tenant acknowledges and accepts the circumstances that general municipal land use planning and regulatory authority affecting the Airport resides with the City as a municipal government, and/or with local authorities, if any, having jurisdiction, as the case may be, notwithstanding the federally-regulated status of the Airport, and the Tenant shall not complain or object to such municipal regulatory authority based on that status and hereby attorns to the authority of the City and/or such local authorities, if any concerning respective jurisdictions regarding municipal regulatory and land use planning and hereby agrees to adhere to general municipal and land use planning and regulation. Without limiting the generality of the foregoing, the Tenant agrees not to act inconsistently with any approved land use plan.
- (b) The Tenant shall fully comply with and shall ensure that all parties using the Premises fully comply with any zoning regulations enacted pursuant to the Aeronautics Act, including the Hamilton International Airport Zoning Regulations, as amended or replaced from time to time.
- (c) The Tenant shall observe and comply with applicable laws now or hereafter in force and do all things necessary to comply with, and to enable compliance by the Tenant with this Lease.
- (d) The Tenant shall deliver forthwith to the Landlord and to the City a copy of any written notice of non-compliance received by the Tenant with respect to any applicable law.

### **22.2 Harmonized Development**

The Tenant agrees that any development on the Premises will be in harmony with the overall planning of the City, as a municipality, and the overall planning of local authorities, if any, having jurisdiction and not inconsistent with any approved land use plan. The Tenant further agrees as follows:

- (i) to comply with all specified zoning restrictions on use of land, buildings and structures that are not inconsistent with any approved land use plan and Transport Canada requirements;
- (ii) to follow the Region's and local planning processes and procedures of general application, as if the Premises were a property other than a federally-regulated undertaking;
- (iii) to pay for municipal services provided by the City and local authorities, if any, having jurisdiction, in accordance with applicable municipal policy; and
- (iv) to comply with the Ontario Building Code and Ontario Fire Code and all other provincial and municipal construction and the codes, regulations and bylaws of general application designed to secure the health, safety, convenience and welfare of the inhabitants or

occupiers of buildings and structures as if the Premises were a property other than a federally-regulated undertaking.

### **22.3 Airport Land Use Plan**

The Landlord hereby advises the Tenant that under the Head Lease, the Landlord is obligated to prepare a Master Plan and a Land Use Plan with respect to the Airport development, which plans are to be submitted to the City for the City's consent and approval. The Landlord agrees that the Master Plan and the Land Use Plan shall be prepared so as to ensure that the Tenant's use of the Premises pursuant to this Lease shall remain a permitted use. The Tenant agrees to comply with the requirements of such plans provided that the requirements thereunder are not inconsistent with the requirements contemplated by this Lease.

## **ARTICLE 23: GENERAL PROVISIONS**

### **23.1 Relationship of Parties**

The provisions of this Lease shall not be deemed to create any relationship between the Landlord and the Tenant other than that of landlord and tenant as to the Premises. The Landlord does not in any way or for any purpose become a partner of or a member of a joint enterprise with the Tenant in regard to the Premises and its use and occupation by the Tenant.

### **23.2 Partial Invalidity**

If a term, covenant or condition of this Lease or the application thereof to any person or circumstances is held to any extent invalid or unenforceable, the remainder of this Lease or the application of the term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable will not be affected.

### **23.3 Number and Gender**

The necessary grammatical changes required to make the provisions of this Lease apply in the plural sense where the Tenant comprises more than one entity and to corporations, associations, partnerships, or individuals, males or females, in all cases will be assumed as though in each case fully expressed.

### **23.4 Headings and Captions**

The table of contents, article numbers, article headings, section numbers and section headings are inserted for convenience of reference only and are not to be considered when interpreting this Lease.

### **23.5 Divisions of this Lease**

All reference in this Lease to schedules, articles, sections and other subdivisions refer to those in this Lease unless otherwise indicated.

### **23.6 Obligations as Covenants**

Each obligation of the Landlord or the Tenant expressed in this Lease, even though not expressed as a covenant, is considered to be a covenant for all purposes.

### **23.7 Governing Law**

This Lease will be interpreted under and is governed by the laws of the Province of Ontario, and to the extent applicable, the federal laws of Canada.

### **23.8 Confidentiality**

The parties acknowledge that this Lease is intended to be a confidential agreement. Each of the parties agrees that without the prior written consent of the other, which consent shall not be

unreasonably withheld, and except as contemplated by Section 23.10 below, it shall not disclose the terms and conditions set out herein except on a "need to know" basis to its own bankers, accountants, employees, officers, directors, shareholders and other professional advisors or as may be required by law.

### **23.9 Joint and Several Liability**

If two or more individuals, corporations, partnerships or other business associations are the Tenant, the liability of each individual, corporation, partnership or other business association to perform all obligations hereunder is joint and several.

### **23.10 Registration**

- (a) Neither the Tenant, nor anyone on the Tenant's behalf or claiming under the Tenant, shall register this Lease against the Airport lands or any part thereof (including the Premises) without the prior written consent of the Landlord, which consent may be unreasonably withheld. The Landlord acknowledges that the Tenant shall, however, at the Tenant's expense, be entitled to register a notice of lease (in such form so as to satisfy minimum statutory requirements only) against that portion of the Airport lands comprising the Premises.
- (b) The notice of lease referred to in paragraph (a) above shall be prepared by the Tenant's solicitors, at the Tenant's sole expense and submitted to the Landlord for the Landlord's prior written approval, which approval shall not be unreasonably withheld. Forthwith following registration of any notice of lease, the Tenant agrees to provide the Landlord with a copy of such registered instrument.
- (c) The Tenant covenants that upon the expiration or sooner termination of this Lease, it shall, at the Tenant's expense, immediately thereafter, cause any and all registrations effected under this section 23.10 to be discharged and to provide copies of all such registered discharges to the Landlord. It is agreed by the Tenant that the foregoing covenant shall survive the expiration or sooner termination of this Lease.

### **23.11 Payment**

Any monies to be paid to the Landlord under the Lease shall be made payable to the Landlord and shall be forwarded to the Landlord at the address shown in subsection 1(a)(ii), or such other address as the Landlord may, from time to time, specify in writing.

### **23.12 Time to be of Essence**

Time shall be of the essence in this Lease, except as otherwise expressly specified in this Lease.

### **23.13 Notices**

- 23.13.1 A notice, demand, request, statement or other evidence required or permitted to be given under this Lease must be written and will be sufficiently given if delivered in person to either party, sent by facsimile transmission, or mailed by registered mail addressed as follows:

**To the Landlord - at the address set out in subsection 1.1(a)(ii) above; and**

**To the Tenant - at the address set out in subsection 1.1(b)(ii) above.**

- 23.13.2 Such addresses may be changed from time to time by giving notice as above provided.

23.13.3 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 by personal delivery, on the next-following business day if sent by facsimile, or on the fifth (5th) day after it was mailed.

23.13.4 In the event of any existing or threatened disruption in postal service, service by mail shall not be an acceptable means of delivery until five (5) days after normal postal service has resumed.

**23.14 Amendment to be in Writing**

No alteration, amendment, change or addition to this Lease will bind the Landlord or the Tenant unless in writing and signed by them.

**23.15 Compliance with the Planning Act**

It is an express condition of this Lease that the subdivision control provisions of the Planning Act, R.S.O., 1990, Chapter P.13, as from time to time amended or replaced, be complied with. Until all necessary consents are obtained, the Term of this Lease shall be deemed not to exceed a period of twenty-one (21) years less one (1) day. Consents, if required, shall be obtained by the Landlord, upon receipt of the Tenant's written request, at the Tenant's sole expense. The Landlord agrees, upon receipt of the Tenant's written request (which request shall also set out the Tenant's reasoning why under the Planning Act, such consent is required), to apply for such consent(s), to the extent any such application is necessary. Each party agrees to fully co-operate with the other to obtain all necessary consents.

**23.16 No Transfer on Bankruptcy**

Neither this Lease, nor any interest of the Tenant herein, nor any estate hereby created, shall pass or enure to the benefit of any trustee in bankruptcy or any receiver, or any receiver-manager or any assignee for the benefit of creditors of the Tenant or otherwise by operation of law.

**23.17 Successors and Assigns**

This Lease binds and benefits the parties and their respective heirs, executors, administrators, successors and assigns. No rights, however, benefit an assignee of the Tenant unless under Article 13 the assignment was consented to.

**23.18 Entire Agreement**

This Lease, including the attached schedules, shall be deemed to constitute the entire agreement between the Landlord and the Tenant hereto with respect to the subject matter hereof and shall supersede all previous negotiations, representations, and documents in relation thereto made by any party to this Lease.

**IN WITNESS WHEREOF** the parties hereto have executed this Lease by the signatures of their respective proper officers duly authorized for such purpose.

**HAMILTON INTERNATIONAL AIRPORT LIMITED**

PER: \_\_\_\_\_  
Name:  
Title:

(SEAL)

PER: \_\_\_\_\_  
Name:  
Title:

"I/We have authority to bind the Corporation."

[ TENANT ]

PER: \_\_\_\_\_

Name:

Title:

PER: \_\_\_\_\_

Name:

I/We have authority to bind the Corporation.”

**SCHEDULE "A"**

**DESCRIPTION OF AIRPORT LANDS**

**Firstly:**

Part of Lot 45, Concession 5, in the geographic township of Ancaster, designated as Part 1 on Plan 62R-11334.

SUBJECT TO an easement in favour of Ontario Hydro, as set out in Instrument No. 26343 ANC, designated as Part 5 on Plan 62R-7130.

SUBJECT TO a right-of-way as set out in Instrument No. 29626 CD, designated as part 7 on Plan 62R-7130.

SUBJECT TO an easement over Part of Lot 45, Concession 5, being Parts 4 and 5 on Plan 62R-7130 in favour of Ontario Hydro as set out in Instrument No. 35953.

Former Town of Ancaster, now City of Hamilton.

**Secondly:**

Part of Lots 46, 47, 48 and 49, Concession 5, in the geographic township of Ancaster;

Part of the Road Allowance between Lots 48 and 49, Concession 5, in the geographic township of Ancaster;

All of Lots 20 and 21, part of lots 18 and 19 and Part of Parcel B, Registered Plan No. 1230;

Part of Lots 1, 2, 3, 4 and 5, Concession 3, and part of Lots 1, 2, 3, 4 and 5, Concession 4, in geographic township of Glanford;

Part of the Road Allowance between the former Townships of Ancaster and Glanford;

all designated as Part 2 on Plan 62R-11334.

SAVE AND EXCEPT the buildings known as the Control Tower and the Aircraft Services Hangar located on the lands and premises described as Part of Lot 2, Concession 4 designated as Part 1 on Plan 62R-13672 (Control Tower) and on Part of Lot 3, Concession 4 designated as part 1 of Plan 62R-13931 (Aircraft Services Hangar);

SUBJECT TO a right-of-way over part of said Lots 4 and 5, Concession 4, in the geographic township of Glanford, designated as Parts 1, 2 and 3 on Plan 62R-6509 as set out in Instrument No. 267788 CD, now shown as Part 3 on Plan 62R-10716.

SUBJECT TO an easement over Part of Lot 5, Concession 3 designated as Part 4 on Plan 62R-8585 as set out in Instrument No. 195325CD.

Partly in the former Town of Ancaster  
Partly in the former Township of Glanbrook  
Now City of Hamilton

**Thirdly:**

Part of Lot 1, Concession 3 designated as Part 4 on Plan 62R-11334, in the geographic township of Glanford, and part of Lot 1, Concession 4 designated as Part 5 on Plan 62R-11334.

SUBJECT TO a right-of-way over part of said Lot 1, Concession 4 designated as Parts 5 on Plan 62R-11334, as set out in Instrument No. 216234 CD and being Part 3 on Plan 62R-6233.

RESERVING a right-of-way over part of said Lot 1, Concession 3 designated as Part 4 on Plan 62R-11334 for vehicular and pedestrian access to the cemetery located on Part 3, Plan 62R-11334, such right of way to benefit Part 3, Plan 62R-11334 as a dominant tenement and the Township of Glanbrook.

Former Township of Glanbrook, now City of Hamilton

**Fourthly:**

Part of Lot 5, Concession 3, in the geographic township of Glanbrook, designated as part 8 on Plan 62R-11334

SUBJECT TO an easement over said Part of Lot 5 designated as Part 8 on Plan 62R-11334 as set out in Instrument No. 9651.

Former Township of Glanbrook, now City of Hamilton.

**TOGETHER** with an easement over Lot 2, Concession 5 in the former Township of Glanbrook (formerly Township of Glanford) as set out in a Plan of Expropriation registered as Instrument No. 279 Misc.;

**TOGETHER** with an easement over Part of Lot 1, Concession 4 in the former Township of Glanbrook (formerly Township of Glanford) as set out in Instrument No. 9359;

**TOGETHER** with an easement over Part of Lot 2, Concession 4 in the former Township of Glanbrook (formerly Township of Glanford) as set out in Instrument No. 9141;

**TOGETHER** with an easement over Part of Lot 5, Concession 2 in the former Township of Glanbrook (formerly Township of Glanford) as set out in Instrument No. 8854;

**TOGETHER** with an easement over Part of Lots 1 and 2, Concession 3, and Part of Lot 3, Concession 3 in the former Township of Glanbrook (formerly Township of Glanford) as set out in Instrument No. 195325CD.

Former Township of Glanbrook, now City of Hamilton.

## SCHEDULE "B"

### DEFINITIONS

In this Lease, the words, phrases and expressions are used with the meanings defined as follows:

**"Additional Rent"** means all sums payable by the Tenant under this Lease other than Annual Base Rent or Revised Annual Base Rent, as the case may be;

**"Aeronautics Act"** shall mean the Aeronautics Act R.S.C. 1985 c. A-2, as amended from time to time, or any related or successor legislation of the Parliament of Canada regulating aviation, airports and aerodromes, together with the Canadian Aviation Regulations and all other rules, regulations, directives and orders as may be promulgated from time to time thereunder;

**"Airport Managing Director"** means the individual designated from time to time by the Landlord as the person responsible for managing the day to day operations of the Airport, whether referred to as the Airport Managing Director or by some other title;

**"Air Navigation Facilities"** means any navigation, weather, communication equipment, surveillance equipment, electronic landing aid and other equipment required for air navigation services, and all antennae and all associated cable ducting and telecommunications systems, cables or circuits, including co-axial cables, which are necessary to ensure the safe and efficient movement of aircraft, but excluding Visual Aids;

**"Air Terminal Building"** shall mean facilities, buildings and structures at the Airport utilized to facilitate passenger traffic at the Airport, both enplaned and deplaned, and related services, including baggage handling, customs and security clearance;

**"Airport" or "Airport Lands"** means the John C. Munro Hamilton International Airport, being comprised of the lands described in Schedule "A" attached hereto;

**"Airport Maintenance Charge" or "AMC"** means the charge charged by the Landlord to the Tenant in respect of Common Area Services provided by or at the request of the Landlord and/or TradePort at the Airport, which charge shall be compiled and calculated in accordance with the Landlord's AMC policy in effect from time to time in the manner contemplated by Transport Canada document AK-31-60-200, a copy of which is attached hereto as Schedule "H", as such document may be amended or superseded from time to time;

**"Annual Base Rent"** means the annual base rent calculated and payable by the Tenant to the Landlord in accordance with Schedule "F" of this Lease;

**"Appraiser"** means a person who is experienced, qualified and certified as an appraiser of commercial real estate in Ontario and is established in such business pursuant to accreditation issued by the Appraisal Institute of Canada or equivalent organization;

**"Approving Authority"** means any person or entity designated from time to time by the Landlord for the purpose of issuing Facility Alteration Permits;

**"Apron"** means that part of the Premises, if any, which is intended to accommodate the loading and unloading of passengers and cargo onto or from aircraft, the re-fueling, maintenance and parking of aircraft and any movement of aircraft, vehicles and pedestrians necessary for such purposes, but excludes the Manoeuvring Area;

**"Architects"** means \_\_\_\_\_ or such other architects as the Tenant may appoint in their stead from time to time hereunder, with the written approval of the Landlord, which approval may not be arbitrarily or unduly withheld;

**"Basic Terms"** means those terms set out in section 1.1, some of which are more particularly defined in this Schedule "B";

**"Building"** means the \_\_\_\_\_ being constructed on the Premises and shall have the shape, design, configuration, features, facilities and dimensions as more particularly described in the Drawings and Specifications, as same may be amended from time to time pursuant to the provisions of this Lease;

**"City"** means the City of Hamilton, in the Province of Ontario, as constituted under the City of Hamilton Act, 1999, its successors and assigns.

**"City of Hamilton Act, 1999"** means Schedule C, City of Hamilton Act, 1999, being part of the Fewer Municipal Politicians Act, 1999 S.O. 1999, Ch.14.

**"Commencement Date"** means the date set out in subsection 1.1(e)(ii);

**"Commercial Tenancies Act"** means the Commercial Tenancies Act, R.S.O. 1990, Chapter L.7, as from time to time amended or replaced;

**"Common Area Services"** means any services provided from time to time by the Landlord or TradePort to common areas of the Airport and, without limiting the generality of the foregoing, may include the following:

- (i) maintenance of access roads, sidewalks, curbs and grounds, including snow ploughing, snow removal, sanding and sweeping;
- (ii) maintenance of the general storm drainage system;
- (iii) all regularly scheduled testing, maintenance and replacement of the fire hydrants, piping systems and alarm systems, and systems related to detecting and extinguishing fires;
- (iv) maintenance of roads, road-bridges, culverts, fences, gates and traffic signs;
- (v) garbage disposal;
- (vi) pest control;
- (vii) provision of apron flood lighting and road lighting;
- (viii) maintenance, repair and replacement of water and sewer systems or facilities; and
- (ix) such other services as the Landlord deems advisable.

**"Completion Date"** means the date upon which the Improvements shall have been completed in accordance with this Lease;

**"Construction Period"** means the period, estimated by the Tenant, acting reasonably, commencing upon the Commencement Date and extending to the earlier of (i) the date upon which the Tenant occupies the Premises for the purposes of carrying on business; and (ii) the close of business, \_\_\_\_\_, \_\_\_\_\_;

**"Construction Program"** means the Tenant's construction plans, including the projected schedule for the completion of the Tenant's Improvements, copies of which shall be provided to the Landlord;

**"Consultant"** means \_\_\_\_\_ or such other person qualified and experienced in the management of construction projects as the Tenant may appoint in their stead, with the written approval of the Landlord, which approval may not be arbitrarily or unduly withheld;

**"Drawings and Specifications"** means the drawings and specifications of the Improvements which have been prepared by or at the request of the Architects and/or the Consultant in compliance with the provisions of this Lease, and without limitation, in compliance with the Hamilton International Airport Zoning Regulations, all local zoning requirements and the Ontario Building Code, and with all air traffic services line of site requirements and the navigational aids restrictions stipulated by all regulatory authorities, if any, and with the building location and setback requirements stipulated by all regulatory authorities, if any, with respect to adjacent buildings, lot lines, runways, taxiways, apron areas and Airport roadways. Such drawings and specifications shall be deemed annexed hereto as part of Schedule "D", without necessity of formal amendment to this Lease and shall consist of:

- (A) Specific and detailed site plans subject to such alterations or amendments as may be approved by the Landlord and/or all regulatory authorities, if any, which shall display:
  - (1) The location, dimensions and setbacks of all Improvements, including the Building, all Municipal Services and Utilities situated on the Premises, all related works, structures, aprons, paved areas, taxiways, lighting facilities, signs, de-icing and anti-icing facilities and infrastructure, vehicle parking, landscaped areas, walkways, security fences, airport roadway connections, facilities and other improvements to be constructed or located on the Premises;
  - (2) Planned elevation and cross-section views for the Improvements to be erected displaying:
    - (i) the height, massing and conceptual design of the proposed Improvements, including the Building, Municipal Services and Utilities situated on the Premises and all related works, structures, aprons, if any, paved areas, lighting facilities, signs, de-icing and anti-icing facilities and infrastructure, if any, vehicle parking, landscaped areas, airport roadway connections, walkways, security fences, facilities and other improvements;
    - (ii) the relationship of the proposed Improvements, including the Building, Municipal Services and Utilities situated on the Premises and all related works, structures, aprons, paved areas, taxiways, lighting facilities, signs, de-icing and anti-icing facilities and infrastructure, vehicle parking, landscaped areas, airport roadway connections, walkways, security fences, facilities and other improvements to adjacent buildings and exterior areas at the Airport;
    - (iii) the colour, texture, reflectivity and type of materials, window detail, construction details, architectural details and interior design;
    - (iv) landscaping, signs and parking facilities; and
    - (v) lot grading and grade elevation.
- (B) Working Drawings and Specifications with respect to the Improvements, including the Building, and all related works, structures, aprons, paved areas, lighting facilities, signs and the de-icing and anti-icing facilities and infra-structure, walkways, security fences, airport roadway connections, facilities and other improvements to be constructed or located on the Premises which shall be comprised of:
  - (i) construction plans, drawings and specifications;
  - (ii) architectural plans, drawings and specifications;
  - (iii) mechanical plans, drawings and specifications;

- (iv) electrical plans, drawings and specifications;
  - (v) structural plans, drawings and specifications; and
  - (vi) complete "As Built" plans, drawings and specifications in such format as the Landlord may request (ie. electronic - CADD format).
- (C) Extension Plans for Municipal Services and Utilities which shall comprise:
- (i) Municipal Services site plans displaying the proposed service extension route for water, sanitary sewer and storm water management facilities and surface drainage systems from the existing main systems at the Airport and to the Premises, including all service connection locations;
  - (ii) Utilities site plans displaying the proposed extension routes for hydro, gas and telephone cable services and other similar services from existing main utility systems at the Airport and to the Premises, including the location of all connection points, meters and transformers; and
  - (iii) engineering plans, and working drawings and specifications for the Utilities and Municipal Services extensions and systems.

**"Environmental Adverse Effect"** means an environmental effect arising as a result of a breach of any Environmental Laws and Regulations;

**"Environmental Contaminant"** means any hazardous or toxic substance or material, including without limitation, products of waste, contaminants, pollutants, dangerous substances, noxious substances, toxic substances, hazardous wastes and flammable, explosive or improperly handled materials, any de-icing or anti-icing liquids, fluids, vapours or other such substances utilized and applied to the wings, fuselage, tail or any other part of aircraft exterior surfaces as required pursuant to Air Regulations (SOR/90-757) and Air Navigation Orders (SOR/90-758 AND SOR/90-759) or any other such regulations, orders and directives as may be prescribed from time to time pursuant to the Aeronautics Act or such other applicable legislation including, without limitation, propylene and ethylene glycol;

**"Environmental Laws and Regulations"** means all environmental, health and safety laws, regulations, ordinances, directions, authorizations, permits and orders of any governmental authority (whether federal, provincial or local) applicable to the Premises and/or to the Airport generally, together with common law applicable thereto;

**"Environmental Matter"** means any activity, event or circumstances in respect of the environment, health or safety, including the release, escape, leaking, disposal or migration of any Environmental Contaminants;

**"Facility Alteration Permit"** means the Approving Authority's written authority which may be granted to the Tenant upon application and payment of the Approving Authority's current fee, if any, to conduct any alteration, new construction or improvement, or installation of equipment or fixtures upon the Premises, all in accordance with guidelines which may be issued from time to time by the Approving Authority and in accordance with the Land Development and Construction By-Law or Policies;

**"Force Majeure"** means an event causing a bona fide delay, notwithstanding the reasonable best efforts of the party delayed with respect thereto, in the performance of any obligation under this Lease arising from strike, lockout, riot, insurrection, war, fire, tempest, Act of God or lack of material; provided that, in the case of the Tenant, the Tenant notifies the Landlord forthwith after the Tenant becomes aware of the commencement of any event which is a cause of a "Force Majeure". Notwithstanding the foregoing, the parties agree that an event of Force Majeure does not include an event caused by one party's inability to pay moneys owing by such party when due;

**"Hamilton International Airport Rules and Regulations"** means all rules and regulations established from time to time by the Airport Managing Director, Nav Can and/or Transport Canada regulating activities from and at the Airport;

**"Head Lease"** means the lease agreement between the Region and the Landlord executed as of July 19, 1996, and amended by two Amending Agreements, the first of which is dated December 20, 1996 and the second of which is dated as of December 20, 1996, as may be further amended from time to time, setting forth the terms and conditions pursuant to which, the Landlord subleases the Airport from the City;

**"Improvements"** means the Building, the Apron, the Municipal Services and Utilities situated or to be situated on the Premises, together with all other works and structures, aprons, taxiways, taxiway accesses, paved areas, vehicle parking areas, lighting facilities, signs, de-icing and anti-icing facilities and infra-structure, airport roadway connections, facilities and other improvements, if any, to be constructed and located on the Premises as may be shown in Schedule "D" hereto and/or as may be more particularly described in the Drawings and Specifications;

**"Land Development and Construction By-Law and Policies"** means the standard policies for the issuing of Facility Alteration Permits and other matters related to land development and construction created or adopted either before or after the Commencement Date as a by-law or policies of the Landlord or TradePort and designated as such by the Landlord, all as amended from time to time, together with all rules and regulations referred to therein;

**"Lease"** means this sublease of the Premises, as same may be amended from time to time;

**"Leasehold Mortgagee"** shall have the meaning set forth in Article 14 of this Lease;

**"Maneuvering Area"** means that part of the Airport intended to be used for the taking-off and landing of aircraft and for the movement of aircraft associated with taking-off and landing, but excludes aprons and taxiway accesses;

**"Market Rent"** means the highest fixed Annual Base Rent or Revised Annual Base Rent, as the case may be, estimated in terms of lawful money of Canada which the Premises (without reference to the value of the Improvements thereon but having regard to its then-current use), would bring, if offered for lease on the open market, assuming for the purpose of such calculation that:

- (a) a reasonable time is permitted to find a willing tenant;
- (b) neither the landlord nor the tenant is acting under compulsion;
- (c) both the landlord and tenant have full knowledge of the purpose for which the Premises are to be utilized;
- (d) the then-current use of the Premises represents the highest and best use thereof; and

- (e) the tenant shall be responsible for all costs, expenses, payments and expenditures so as to secure to the landlord a net rent free and clear from all deductions, abatement or set-off throughout the term, all to the extent consistent with the terms of this Lease;

**"Market Rent Appraisal"** means a written opinion of Market Rent obtained from an Appraiser;

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

**"Mortgage"** means any mortgagee, charge, debenture, mortgage of leasehold interest, assignment, sublease or other encumbrance granted as security by the Landlord and/or TradePort and charging the Landlord's and/or TradePort's interest in the Airport, or any part thereof, and includes all renewals, modifications, consolidations, replacements and extensions thereof;

**"Mortgagee"** means any mortgagee, assignee, debenture-holder, trustee or other security-holder or secured party named in any Mortgage;

**"Municipal Services"** means water, sanitary sewers and storm water management facilities or surface drainage systems including connections, drains, laterals, pumping facilities and related facilities;

**"Natural Environment"** means the air, land, subsoil, surface water, ground water, marine water and any combination thereof;

**"Nav Can"** means the entity providing air navigation services at the Airport, its successors and assigns, whether Nav Canada or some other entity;

**"Notice of Revised Annual Base Rent"** has the meaning ascribed to it in subsection 2.02.01 of Schedule "F" to this Lease;

**"Percentage Rent"**, as referred to in Section 4.12, means the rent payable by the Landlord and/or by TradePort to the City and defined as Percentage Rent under the Head Lease;

**"Premises"** as at the Commencement Date, shall have the meaning set forth in subsection 1.1(c)(i), and thereafter, "Premises" shall mean the Premises as same may be reconfigured and/or reconstituted from time to time in accordance with the provisions of this Lease;

**"Prime Rate"** means the rate established from time to time by the Bank of Montreal (or such other bank as the Landlord, from time to time, may designate) as the rate per annum of interest charged on Canadian Dollar business loans in the City of Hamilton for demand loans made in Canadian funds to Canadian customers and referred to by the said bank as its prime rate;

**"Property Taxes"** means, with respect to the Premises, all taxes, rates, duties and assessments (including frontage, water, snow and sewer taxes and rates) imposts, charges or levies, whether general or special, ordinary or extraordinary, foreseen or unforeseen, of every nature or kind whatsoever and whether in existence on the Commencement Date or not, that are lawfully levied, imposed, rated, charged or assessed against the Premises, or any part thereof, from time to time by any taxing authority, whether federal, provincial, municipal, school or otherwise, and includes any taxes or other amounts which are imposed instead of, or in addition to, such Property Taxes (whether of the foregoing character or not and whether in existence on the Commencement Date or not), and any such Property Taxes imposed against the Landlord on account of its interest in the Premises, or any part thereof, and Property Taxes which are imposed against the Tenant as a holder or occupier of the whole or any part of the Premises; provided, however, Property Taxes

does not include any taxes which are personal to the Landlord such as the Landlord's income taxes and capital taxes;

**"Region"** means The Regional Municipality of Hamilton-Wentworth, its successors and assigns;

**"Registry Office"** means the Land Registry Office, Land Registry Division of Wentworth (No. 62) at Hamilton, Ontario;

**"Renewal Terms"** means, to the extent this Lease is renewed pursuant to subsection 3.5, collectively, the First Renewal Term, the Second Renewal Term, the Third Renewal Term and the Fourth Renewal Term; [*Note to Draft: May require amendment*]

**"Rent Adjustment Date"** means the date of commencement of the second five (5) year period of the Term and thereafter, the date of commencement of each Subsequent Period. Upon the Rent Adjustment Date, the applicable Revised Annual Base Rent shall become effective;

**"Restricted Area of the Airport"** means an area to which access by persons or vehicles requires the presentation of valid identification;

**"Revised AMC"** means the then-current AMC (determined on a per square metre per annum basis) payable during each Subsequent Period established pursuant to Schedule "F" hereof;

**"Revised Annual Base Rent"** means the annual base rent payable during each Subsequent Period established pursuant to Schedule "F" hereof;

**"Statement of Market Rent"** means a statement prepared by the Landlord or the Tenant, as the case may be, setting out that party's opinion with respect to Market Rent, which opinion shall be based upon a Market Rent Appraisal prepared for or commissioned by such party;

**"Subsequent Period"** means each five (5) year period during the Term following the completion of the first five (5) years, that is to say, years 6 to 10 inclusive and years 11 to 15 inclusive and, to the extent this Lease is renewed pursuant to subsection 3.5, the First Renewal Term, the Second Renewal Term, the Third Renewal Term and the Fourth Renewal Term, respectively; [*Note to Draft: May require amendment*]

**"Substantial Completion"** or **"Substantially Completed"** means substantial completion of the construction of the Improvements as defined in subsection 1.2(a) of Schedule "E";

**"Tenant"** means the party described in subsection 1.1(b) and its successors and permitted assigns;

**"Term"** means the period of time set out in subsection 3.1, as such period of time may be extended or renewed (if this Lease is renewed pursuant to section 3.5);

**"Transport Canada"** means Her Majesty the Queen in Right of Canada, as represented by the Minister of Transport;

**"Utilities"** means hydro, gas, and telephone cable service or such other service utilities as may be necessary for the use and operation of the Improvements on the Premises; and

**"Visual Aids"** means approach lights, runway lights and signs and any other similar physical instruments for the safe and efficient operation and control of aircraft.

**SCHEDULE "C**

**SKETCH/PLAN OF THE PREMISES**

**SCHEDULE "D"**

**DRAWINGS AND SPECIFICATIONS**

- To be delivered by the Tenant to the Landlord
- See definition of "Drawings and Specifications" at page 3 of 7, Schedule "B" to this Lease.

## SCHEDULE "E"

### LAND DEVELOPMENT AND CONSTRUCTION BY-LAW OR POLICIES

#### 1.1 **General**

The Tenant shall cause all Improvements to be constructed and completed expeditiously and in a good, skillful and competent manner consistent with the standards of a First Class Facility (as defined by subsection 12.1(a) of the Lease) at an international airport and in accordance with all requirements of the Drawings and Specifications, and the provisions of the Lease, and in particular:

- (a) shall cause construction of the Improvements to commence not later than \_\_\_\_\_ days following execution of this Lease;
- (b) subject to Force Majeure, shall cause the Improvements to be Substantially Completed, in accordance with section 1.2 below, not later than [NEED TO INSERT TENANT'S ESTIMATED DATE], subject to extensions of time granted pursuant to section 1.3 below;
- (c) subject to Force Majeure, shall cause the Improvements to be fully completed in accordance with all the provisions of this Lease with reasonable promptitude not later than [NEED TO INSERT OUTSIDE DATE] (the "Completion Date"), subject to extensions of time granted pursuant to section 1.3 below;
- (d) shall cause the Drawings and Specifications to be prepared and completed by the Architect or the Consultant for the approval of the Landlord and all regulating authorities, if any, with respect to the construction of the Improvements; and
- (e) shall retain the Architects and the Consultant throughout the Construction Period.

#### 1.2 **Substantial Completion of Improvements and Completion Date**

- (a) For the purposes hereof, the Improvements shall be deemed to have been Substantially Completed upon the occurrence of any of the following:
  - (i) the Architects or Consultant certifies to the Landlord and/or to the Tenant that the Improvements have been completed in all material respects in a good, skillful and competent manner in accordance with all provisions of the Lease and the Drawings and Specifications except for any requirements contained in the Drawings and Specifications which have been waived or varied by the Landlord and/or all regulatory authorities, if any, in writing, and for faults and defects which, in the opinion of the Architects or Consultant, are minor and the correction of which is not required in the opinion of the Architects or Consultant; or
  - (ii) substantial completion shall have been achieved in accordance with the applicable provisions of the Construction Lien Act; or
  - (iii) upon issuance by the City (or other appropriate authority) or an occupancy permit (or other like authorization) with respect to the use and occupation of the Improvements by the Tenant.
- (b) For the purposes hereof, the Completion Date is the date upon which all of the following conditions have been fulfilled:
  - (i) the Improvements have been Substantially Completed pursuant to subsection 1.2(a);

- (ii) the Lease has not been terminated and there is no existing material breach by the Tenant of any obligation under the Lease;
  - (iii) the Premises shall be completely landscaped in accordance with the Drawings and Specifications;
  - (iv) there are no liens or other claims outstanding in respect of the construction of the Improvements except for claims for completion payments by contractors not exceeding any amounts which the Tenant is required to retain under the provisions of the Construction Lien Act or is required or permitted to retain under the provisions of the Lease; and except for amounts required or permitted to be so retained, all accounts for work and materials which could give rise to any claim for a construction lien or other claim against the Premises or the Improvements have been paid, and
  - (v) all interior finishing, partitioning, flooring and painting shall be completed.
- (c) For the purpose of establishing the Completion Date, the Landlord (but not the Tenant) has the right to waive any of the conditions set out in this section 1.2, in whole or in part, but no waiver of the conditional nature of any of the foregoing provisions relieves the Tenant of its obligation to perform its covenants hereunder.

### **1.3 Extensions of Time for Construction of Improvements**

If the Tenant has been delayed in constructing the Improvements by reason of an event of Force Majeure, then the Tenant may at any time before the dates specified in section 1.1 (b) and/or (c) apply to the Landlord to extend the time for compliance with the requirements of said sections 1.1 (b) and/or (c) in which event, the Landlord shall grant to the Tenant an extension of the time required to complete the Improvements equal to the length of time estimated by the Tenant, acting reasonably, required to Substantially Complete and/or to fully complete the Improvements, as the case may be, with reasonable diligence.

### **1.4 Contracts for Construction of Improvements**

- (a) The Tenant shall retain the services of the Consultant, who shall provide site management, consultation, project planning and scheduling services, administrative, technical and supervisory services and such other services as are usually provided by consultants and project managers in relation to projects of a similar nature. The Tenant shall, upon the Landlord's written request, provide to the Landlord copies of the construction contracts, including labour agreements, which the Tenant enters into for the construction of the Improvements, together with copies of any indemnity, insurance, guarantees, performance bonds and other security given by the contractor(s).
- (b) The Tenant shall submit for approval by the Landlord and all regulatory authorities, if any, the Drawings and Specifications for each phase of construction of the Improvements. All working drawings and specifications supplied to contractors shall be consistent with the Drawings and Specifications.
- (c) The Tenant shall ensure that all construction contracts entered into with respect to the implementation and construction of the Improvements shall contain a term requiring the contractor(s) to indemnify and save harmless the Landlord, the City and TradePort, their respective ministers, officers, employees, councillors and agents from and against all claims, demands, losses, damages and costs of any kind based upon any injury or loss of property arising from any wilful or negligent act, omission or delay on the part of each contractor, its directors, officers, employees or agents in carrying out the contract.

**1.5 Commencement of Construction of Improvements**

Before commencing excavation or any work on the Premises for the construction of the Improvements, the Tenant shall have:

- (a) submitted to the Landlord and all regulatory authorities, if any, the parts of the Drawings and Specifications that relate to the portion of the work which the Tenant proposes to commence;
- (b) furnished satisfactory proof of the insurance required by sections 1.7, 1.8 and 1.9 below;
- (c) obtained from the contractor(s) the indemnities, insurance, guarantees, performance bonds and other security required by the contract(s); and
- (d) obtained all building permits and other authorizations from the City and all other regulatory authorities, if any.

**1.6 Duties of Tenant in Construction**

The Tenant shall perform and comply with the following covenants and requirements in the construction of the Improvements:

- (a) the Improvements shall be constructed in all respects in accordance with the provisions of the Lease, including the Drawings and Specifications, except in so far as any requirements have been waived or varied by the Landlord and/or regulatory authorities, if any, in writing;
- (b) the construction work shall be conducted expeditiously in a good, skillful and competent manner and otherwise in accordance with the provisions of the Lease;
- (c) the work site for the construction of the Improvements shall at all times during construction be enclosed by a secure fence, and be kept under surveillance, by a security guard or otherwise, so as to prevent unauthorized entry to the work site or to the Restricted Area of the Airport;
- (d) the Tenant, through the Consultant and/or Architects, shall properly supervise the work;
- (e) any contractor(s) engaged on the work shall be required to observe all provisions of its contract and to furnish and maintain all security, indemnities, insurance, guarantees, performance bonds and other security required by the contract(s);
- (f) the Landlord shall at all reasonable times have access to the Premises for inspection purposes and to put the Tenant, the Architects or the Consultant on notice, in writing, of any default or non-compliance with the Drawings and Specifications, or the Lease, and the Tenant shall forthwith deal with and remedy any default or non-compliance;
- (g) the Landlord may require the Tenant at its own expense to submit at reasonable intervals, certificates of the Architects or Consultant of the standing of the work, the existence and extent of any faults or defects, the value of the work then done and to be done under any contract, the amount owing to any contractor and the amounts paid or retained by the Tenant on any contract, and the Tenant shall also, whenever requested by the Landlord, furnish copies of certificates furnished to it by contractors or by the Architects and/or the Consultant in connection with the construction;
- (h) the Tenant shall when due pay all proper accounts for work done or materials furnished under all contracts which it has entered into relating to the construction of the Improvements, but this shall not prevent the Tenant from retaining any amounts claimed

due which the Architects has not certified to be due, or which are properly and reasonably retained to secure the performance of any work or the correction of any defect or which in the opinion of the Architects are reasonably retained in anticipation of damages arising from any contractor's default, or which are required to be retained under provisions of the Construction Lien Act;

- (i) the Improvements shall be Substantially Completed to the extent required by subsection 1.2(a) on or before the expiration of the date stipulated in subsection 1.1(b), or as the date may be extended pursuant to section 1.3;
- (j) the Tenant shall complete all work consisting of finishing the interior of space and all other work necessary for the Completion of the Improvements and cause subsection 1.2(b) to be complied with on the Completion Date or as the date may be extended pursuant to section 1.3;
- (k) the Tenant shall construct the Improvements in a manner which shall provide for minimal disruption to Airport operations and activities, and all construction access roads on the Airport to the Premises shall be approved in writing by the Airport Managing Director and shall be utilized by the Tenant and its contractors in compliance with the Airport Rules and Regulations. Furthermore, all cranes utilized for construction purposes shall comply with Transport Canada's and/or NavCan's requirements, if any, the Airport Rules and Regulations and the Hamilton International Airport Zoning Regulations, and shall be erected only with the permission of the Airport Managing Director;
- (l) the Tenant shall obtain building permits and other related authorizations from the City or other appropriate authorities with regard to the construction Improvements by the Tenant to the Premises or any enlargement or expansion thereof under this Lease;
- (m) the Tenant shall construct the Improvements, or any enlargement or other alteration thereof in conformity with the following standards:
  - (i) the standards contained in the zoning and building by-laws and regulations of the relevant municipal authority having jurisdiction in effect at the time of such construction, enlargement or other alteration,
  - (ii) the standards contained in the Ontario Building Code, and
  - (iii) without limiting the foregoing, the standards contained herein shall include those of the Building Department, Fire Department, Engineering Department and Planning Department of the relevant authority having jurisdiction;
- (n) The Tenant shall pay or cause to be paid any or all local improvement charges, development charges, building permit fees and all other fees and charges and all other municipal fees and charges as may be required for the purposes of constructing the Improvements all in accordance with the by-laws, policies of general application and requirements of the City and any other relevant authority having jurisdiction;
- (o) The Tenant shall ensure that all legal or control survey monuments are protected and not disturbed, damaged, or destroyed during construction or maintenance which may take place on the Premises; and
- (p) The Tenant shall control all refuse, debris and construction materials on the Premises so as to ensure the Premises are maintained in an orderly, safe and efficient state during construction of the Improvements and shall take all measures to prevent foreign object damage with respect to the Airport.

**1.7 Liability and Property Insurance during Construction**

(a) The Tenant shall effect or shall cause its contractor or contractors to effect prior to the commencement of construction of the Improvements, and maintain and keep in force until the insurance required under Article 15 of the Lease has been effected, the following insurance coverage:

**(i) Wrap-Up Liability Insurance Coverage**

protecting all of the Landlord, the City, the Tenant, TradePort, the Architects and the Consultant, all contractors retained by the Tenant and all subcontractors retained by such contractors in connection with the construction of the Improvements (without any rights of cross claim or subrogation against the Landlord, the Region and TradePort) against claims for personal injury, death or property damage or other third party or public liability claims arising from any accident or occurrence upon, in or about the Premises or anywhere on the Airport directly connected with the construction of the Improvements, and to an amount of not less than Five Million Dollars (\$5,000,000.00) per claim or occurrence; and

**(ii) Broad Form Builders' Risk Coverage**

protecting all of the Landlord, the Tenant, the City, TradePort and the Architects and/or Consultant, all contractors retained by the Tenant and all subcontractors retained by such contractors in connection with the construction of the Improvements from loss or damage (without any rights of cross claim or subrogation against the Landlord, the City and TradePort) to the Improvements and all fixtures, equipment, improvements and building materials on the Premises from time to time, both during and after construction (but which may be by policies effected from time to time covering the risk during different phases of construction) against fire, all other perils from time to time customarily included in the usual extended coverage endorsements upon fire policies applicable to similar properties during construction and effected in the Province of Ontario by prudent owners, and other perils as the Landlord may reasonably require to be insured against to the full replacement value thereof at all times (to be computed upon a replacement cost basis with deduction only of the cost of excavation and foundations and of the value of building materials from time to time on the site but not incorporated in the Improvements if and to the extent the building materials are at the risk of the contractor or contractors and not at the risk of the Tenant) and in any event in an amount sufficient to prevent the Landlord, the City and TradePort from being deemed co-insurers.

(b) For the purposes of subsection 1.7(a)(i), "insurance coverage" includes, but is not limited to the following: non-owned automobile liability for any non-owned vehicles to be used in connection with the operation of the business, blanket contractual liability, lessees' legal liability, owners' and contractors' protective liability for any contingent liability which may develop as a result of any accident caused by the negligence of a contractor, completed operations liability for any injury or damage arising out of improperly performed operations or out of warranty which may occur after operations are completed.

(c) Despite subsection 1.7(a)(i), insurance coverage for completed operations liability shall be maintained and kept in force continuously until twenty-four (24) months following the Completion Date.

(d) The proceeds of insurance which may become payable under any policy of insurance effected pursuant to subsection 1.7(a)(ii) shall be payable to a trustee, and shall be available to finance repair and reconstruction.

(e) All the provisions of Article 15 of the Lease respecting insurance which are of general application apply to the insurance during construction of the Improvements required by this paragraph.

### 1.8 Professional Liability and Liability and Property for Tenant's Architects

The Tenant shall ensure that the Architects, the Consultant and any engineer or other consultant retained by the Tenant in relation to the construction of the Improvements shall purchase and maintain in force, at its own expense, including the payment of all deductibles, the following insurance coverage, which coverage shall be in a form and with an insurance company acceptable to the Landlord and be specific to the project and the construction of the Improvements only, each in the amount of not less than One Million Dollars (\$1,000,000.00), per claim or occurrence with a certificate of such coverages originally signed by an authorized agent of the insurance company issuing the coverages and a certified copy of these coverages being delivered by the Tenant to the Landlord prior to the commencement of any services by the Architects or the Consultant in relation to the construction of the Improvements:

- (a) Professional Liability coverage; and
- (b) Liability and Property coverage with:
  - (i) The Landlord, the City and TradePort, all contractors retained by the Tenant and all sub-contractors retained by such contractors in connection with the construction of the Improvements added as additional insureds,
  - (ii) Provisions for cross-liability as between the Architects and the Consultant and the Landlord, the City and TradePort, all contractors retained by the Tenant and all sub-contractors retained by such contractors in connection with the construction of the Improvements, blanket contractual liability, owner's/contractor's protective liability, completed operations liability, contingent employer's liability, premises and operations liability, broad form property damage liability, occurrence property damage liability, and personal injury liability arising out of false prosecution, libel, slander, defamation of character, invasion of privacy or wrongful eviction, and
  - (iii) Thirty (30) days' prior written notice of any cancellation, termination, expiry or material change to the coverage.

### 1.9 Automobile Insurance

The Tenant shall effect or shall cause its contractor or contractors and the Architects and/or Consultant or any consultant retained by the Tenant in relation to the construction of the Improvements to effect prior to the commencement of construction of the Improvements, and maintain and keep in force until the Completion Date, for all vehicles used or operated by any of them in connection with the construction of the Improvements, third party liability insurance coverage, with a limit of not less than Five Million Dollars (\$5,000,000.00) for each accident.

### 1.10 Actions on Part of Tenant

The Tenant agrees not to knowingly do anything, omit to do anything or permit anything to be done or omitted to be done which would invalidate, adversely affect or limit any insurance coverage maintained by the Landlord or by TradePort with respect to the Airport.

### 1.11 Liens

- (a) The Tenant acknowledges that neither the Landlord, nor TradePort, nor the City, is nor should they be held to be accountable as "owner" (as that term is defined in the Construction Lien Act, as amended or other successor legislation) with respect to the construction of any of the Improvements. Without limiting the generality of the foregoing, the Tenant acknowledges and agrees that any Improvements and all alterations

or repairs made to the Premises at the request of the Tenant and shall not be deemed to have been made at the request of the Landlord, TradePort or the City.

- (b) The Tenant covenants to indemnify and save harmless the Landlord, TradePort, the City and each person for whom the Landlord and the City may, in law, have responsibility, of and from any claims and costs incurred by them or by such person as a result of construction builders liens being filed against the title to the Airport or the Premises or the leasehold interest therein by or on behalf of any worker, materialman, contractor or subcontractor of the Tenant or of anyone holding any interest in the Premises or any part thereof through or under the Tenant.
- (c) The provisions of paragraphs (a) and (b) above are in addition to and must be read in conjunction with the provisions respecting liens set out in section 16.3 of the Lease.

## SCHEDULE "F"

### ANNUAL BASE RENT

#### **ARTICLE 1.00 - First Five (5) Year Period**

##### **1.01 Annual Base Rent:**

During the first \_\_\_\_\_ ( ) year period of the Original Term, the Annual Base Rent shall be based upon a land lease rate of \_\_\_\_\_ Dollars and \_\_\_\_\_ Cents (\$ \_\_\_\_\_) per square metre per annum, being equal to \$ \_\_\_\_\_ per annum (or \$ \_\_\_\_\_ per month). It is acknowledged by the parties that the land lease rate referred to herein includes, as a component thereof, an amount on account of the AMC.

Annual Base Rent calculated as aforesaid is payable monthly in accordance with subsection 4.2 of this Lease and is subject to adjustment as provided in subsections 1.02 and 1.04 below.

##### **1.02 Rate per Metre:**

The Annual Base Rent amount referred to in subsection 1.01 above is based upon the land lease rates referred to therein applied to an estimated ground area taken to measure \_\_\_\_\_ square metres. The Landlord and Tenant acknowledge and agree that \_\_\_\_\_ square metres represents an estimate of the ground area comprising the Premises, which estimate shall be verified by way of a reference plan of survey of the Premises to be prepared in accordance with subsection 1.03(a) below.

##### **1.03 Surveys:**

- (a) The Tenant agrees, at its sole cost and expense, to cause a reference plan of survey of the Premises tied into the existing Airport survey control monuments to be prepared by a qualified Ontario Land Surveyor and registered in the appropriate Land Titles or Land Registry Office. Notwithstanding the foregoing, such reference plan of survey shall not be registered until a draft plan has been submitted to the Landlord for the Landlord's prior review and approval. Following the registration thereof, the Tenant agrees to provide not fewer than five (5) original copies of the registered reference plan of survey referred to in Section 1.02 above to the Landlord.
- (b) The Tenant agrees, at its sole cost and expense, to cause a plan of survey prepared by a qualified Ontario Land Surveyor to be completed indicating the location and dimensions of all Improvements, including all facilities, structure, infrastructure, and utility corridors contained in, on or about the Premises within two (2) months of the effective date of Substantial Completion of the Improvements or upon such other date as may be determined by the Airport Managing Director. The plan of survey is to be prepared in accordance with the standards set by the Landlord, acting reasonably, and is to be provided to the Landlord in a digital format, together with no less than five (5) original copies thereof.

##### **1.04 Adjustment:**

In the event the reference plan of survey prepared in accordance with subsection 1.03(a) above provides that the total ground area of the Premises is greater than \_\_\_\_\_ square metres, then the Annual Base Rent amount shall be automatically and retroactively adjusted upward at the land lease rate per square metre referred to in subsection 1.01 above for each square metre the total ground area of the Premises as provided in the survey is greater than \_\_\_\_\_ square metres. In the event the aforesaid survey provides that the total ground area of the Premises is less than \_\_\_\_\_ square metres, then the Annual Base Rent amount shall be automatically and retroactively adjusted downward at the land lease rate per square metre referred to in subsection 1.01 above for each square metre the total ground area of the Premises as provided in the survey is less than \_\_\_\_\_ square metres. In the event an adjustment to the Annual Base Rent amount results in a retroactive increase in the monthly rental amount payable hereunder, such amount shall be paid by the Tenant to the Landlord on the first (1st) day of the month immediately

following the date of the survey or, where the aforesaid adjustment to the Annual Base Rent amount results in a retroactive decrease in the monthly rent payable hereunder, the Tenant shall receive a credit equal to the total decrease in monthly rent, which credit shall be applied against future monthly rent payable by the Tenant until such credit is exhausted.

#### **ARTICLE 2.00 - Subsequent Five (5) Year Periods**

##### **2.01 Base Rent Adjustment Date:**

The Annual Base Rent or the Revised Annual Base Rent, as the case may be, shall be recomputed and adjusted throughout the Term on the terms and conditions herein provided. Subject to subsection 2.02.02 below, the Annual Base Rent shall first be recomputed and adjusted as at the end of the \_\_\_\_\_ (\_\_\_\_) year of the Original Term for the second five (5) year period of the Term (being the first Subsequent Period) with effect on the first Base Rent Adjustment Date (being \_\_\_\_\_, \_\_\_\_\_). Thereafter, subject to subsection 2.02.02 below, the Revised Annual Base Rent shall be adjusted on the Base Rent Adjustment Date for each remaining Subsequent Period. It is agreed by the Landlord and the Tenant that the Revised Annual Base Rent shall be recomputed and adjusted to reflect the then-current Market Rent of the Premises and to include, as a component thereof, an amount equal to the then-current Revised AMC.

##### **2.02 Notice:**

2.02.01 The Landlord shall give to the Tenant, at least one hundred and twenty (120) days prior to the next successive Base Rent Adjustment Date, a notice (the "Notice of Revised Annual Base Rent") indicating the Revised Annual Base Rent payable as of and from such Base Rent Adjustment Date for the next successive Subsequent Period. Subject to subsections 2.02.02 and 2.05 below, if no Notice of Revised Annual Rent is given in the manner contemplated hereunder, the then-current Annual Base Rent or the then-current Revised Annual Base Rent, as the case may be, shall continue to be payable during the next-successive Subsequent Period.

2.02.02 Any failure or neglect by the Landlord to give the Notice of Revised Annual Base Rent referred to in subsection 2.02.01 above shall not render void the right of the Landlord to recompute and adjust Annual Base Rent or Revised Annual Base Rent, as the case may be. In the event that the Landlord has failed or neglected to give the Tenant the Notice of Revised Annual Base Rent at least one hundred and twenty (120) days prior to the said next successive Base Rent Adjustment Date, the Landlord, at any time, may give to the Tenant a notice (which, for the purposes of this Article 2.00 is also referred to as a "Notice of Revised Annual Base Rent") indicating the Revised Annual Base Rent payable as of and from the next successive Base Rent Adjustment Date, which date, for the purpose of this subsection 2.02.02, shall be deemed to be the date specified as such by the Landlord and which is to be no less than sixty (60) days following the date of receipt by the Tenant of such Notice of Revised Annual Base Rent. Notwithstanding that any date may be deemed to be a Base Rent Adjustment Date pursuant to this subsection 2.02.02, thereafter the Landlord shall be entitled to recompute and adjust Annual Base Rent or Revised Annual Base Rent, as the case may be, on the next regularly scheduled Base Rent Adjustment Date.

##### **2.03 Right to Dispute by Tenant:**

The Revised Annual Base Rent set out in the Notice of Revised Annual Base Rent shall be effective on the Base Rent Adjustment Date in question unless the Tenant disputes the Revised Annual Base Rent therein set out in the manner prescribed in subsection 2.04 below.

2.04 **Dispute and Statement by Tenant:**

If the Landlord gives the Tenant a Notice of Revised Annual Base Rent, the Tenant may dispute the Revised Annual Base Rent therein set out within the fifteen (15) days next following the receipt by the Tenant of such Notice of Revised Annual Base Rent, by advising the Landlord, in writing, of such intention to so dispute and by giving to the Landlord, within the forty-five (45) days next following such fifteen (15) day period, a Statement of Market Rent supported by a Market Rent Appraisal attached thereto.

2.05 **No Notice of Revised Annual Base Rent:**

If the Landlord fails or neglects to give the Tenant a Notice of Revised Annual Base Rent pursuant to subsection 2.02.01 above, the Tenant may, not less than ninety (90) days prior to the next successive Base Rent Adjustment Date, give the Landlord a Statement of Market Rent supported by a Market Rent Appraisal attached thereto.

2.06 **No Statement of Market Rent:**

If the Tenant fails or neglects to give the Landlord a Statement of Market Rent pursuant to subsections 2.04 or 2.05, the Revised Annual Base Rent effective upon the next successive Base Rent Adjustment Date shall be either:

- 2.06.1 in the case of failure or neglect under subsection 2.04, the Revised Annual Base Rent set out in the Notice of Revised Annual Base Rent sent in respect thereof, or
- 2.06.2 in the case of failure or neglect under subsection 2.05, the Revised Annual Base Rent then payable under this Lease, subject to the rights of the Landlord under subsection 2.02.2.

2.07 **Right to Dispute by Landlord:**

If the Tenant gives the Landlord a Statement of Market Rent pursuant to subsections 2.04 or 2.05, the Market Rent therein set out, together with an amount equal to the then-current Revised AMC shall be deemed to be the Revised Annual Base Rent on the next Base Rent Adjustment Date unless the Landlord disputes the Market Rent set out in the Tenant's Statement of Market Rent in the manner prescribed in subsection 2.08 below.

2.08 **Dispute and Statement by the Landlord:**

If the Tenant gives the Landlord a Statement of Market Rent pursuant to subsections 2.04 or 2.05, the Landlord may dispute such Market Rent as therein set out by, within the twenty-five (25) days next following the receipt by the Landlord of such Statement of Market Rent, advising the Tenant in writing of such intention to so dispute and by giving to the Tenant, within the forty-five (45) days next following such twenty-five (25) day period, a Statement of Market Rent supported by a Market Rent Appraisal attached thereto. The Tenant acknowledges that the Landlord shall be entitled to submit as its Market Rent Appraisal the most recent appraisal in the Landlord's possession prepared with respect to the Premises, which appraisal may have been prepared on an Airport-wide basis.

2.09 **Appointment of Appraisers:**

- (a) If the Landlord disputes the Tenant's Statement of Market Rent pursuant to subsection 2.08, the parties shall, within the fifteen (15) days next following the receipt of the Landlord's Statement of Market Rent by the Tenant, each appoint an Appraiser who shall meet with or otherwise contact the Appraiser appointed by the other party, which Appraisers shall agree upon a Market Rent within the thirty (30) days next following the later of the two appointments.

- (b) In the event the Appraiser appointed by the Tenant is of the opinion, acting reasonably and in good faith, that the appraisal submitted by the Landlord pursuant to Section 2.08 above does not, in a material way, reflect then-current conditions, such Appraiser shall advise the Landlord, in writing, of its opinion and the Landlord, upon receipt thereof, shall be entitled to submit to the Tenant a replacement appraisal with respect to the Premises and/or a report or other materials to amend or supplement the original appraisal.

**2.10 Failure to Appoint Appraiser by One Party:**

If either party fails to appoint an Appraiser pursuant to subsection 2.09 above, the Revised Annual Base Rent to be effective upon the Base Rent Review Adjustment Date shall be the Market Rent set out in the Statement of Market Rent given by the party not in default of such appointment, together with an amount equal to the then-current Revised AMC.

**2.11 Failure to Appoint Appraisers by Both Parties:**

If both parties fail to appoint an Appraiser pursuant to subsection 2.09, the Revised Annual Base Rent to be effective upon the Base Rent Adjustment Date shall be the Market Rent set out in the Landlord's Statement of Market Rent given to the Tenant pursuant to subsection 2.08, together with an amount equal to the then-current Revised AMC or, in the alternative, the Tenant may elect, by written notice delivered within fifteen (15) days of the fifteen (15) day period referred to in subsection 2.09 above, to have the Market Rent determined by arbitration pursuant to subsection 3.09 below.

**2.12 Adjustment**

If Appraisers are appointed pursuant to subsection 2.09 above, then until such time that the Revised Annual Base Rent is established pursuant to the terms of this Lease, the Tenant shall continue to pay to the Landlord, as base rent, by monthly instalments, an amount equal to then-current monthly instalments of Annual Base Rent or Revised Annual Base Rent, as the case may be. When the Revised Annual Base Rent is determined, the Tenant shall pay to the Landlord the amount by which the Revised Annual Base Rent exceeds the amount of base rent actually paid by the Tenant during such period or, if the amount of base rent actually paid by the Tenant was more than that which should have been paid, the Landlord shall refund to the Tenant the amount of such overpayment within thirty (30) days of such determination; provided, however, to the extent the Tenant is then in default of any obligations under this Lease, the Landlord shall be entitled to apply such overpayment to amounts then-due and/or next-coming due under the Lease. No interest is payable on the amount payable to the Landlord if it is paid within ten (10) days of such determination.

**ARTICLE 3 - Arbitration of Rental Disputes**

**3.01 Appraisers' Agreement on Market Rent:**

If the Appraisers appointed by the parties pursuant to subsection 2.09 meet or otherwise contact each other and agree upon a Market Rent within the thirty (30) days next following the later of such appointments, the Market Rent so determined, together with an amount equal to the then-current Revised AMC shall be established as the Revised Annual Base Rent for the Subsequent Period in question to be effective upon the Base Rent Adjustment Date referable to it.

**3.02 Failure of Appraisers to Meet:**

If the Appraisers appointed by the parties pursuant to subsection 2.09 fail to meet or otherwise contact each other within the thirty (30) days next following the later of such appointments, the

Revised Annual Base Rent to be effective upon the Base Rent Adjustment Date in question shall be the Market Rent set out in the Landlord's Statement of Market Rent given to the Tenant pursuant to subsection 2.08, together with an amount equal to the then-current Revised AMC or, in the alternative, the Tenant may elect, by written notice delivered within fifteen (15) days of the aforesaid thirty (30) day period, to have the Market Rent determined by arbitration pursuant to subsection 3.09 below.

**3.03 Appointment of Third Appraiser:**

If the Appraisers appointed by the parties meet or otherwise contact each other within the thirty (30) days next following the later of such appointments but fail to agree upon a Market Rent, the Appraisers shall, within the fifteen (15) days next following such thirty (30) day period, agree upon and appoint a Third Appraiser ("Third Appraiser"), who shall act as an arbitrator and shall determine a Market Rent based on the Market Rent Appraisals of the Appraisers referred herein within the thirty (30) days next following such appointment.

**3.04 President of Appraisal Institute:**

If the Appraisers appointed by the parties cannot agree upon a Market Rent and fail to appoint a Third Appraiser who accepts the assignment pursuant to subsection 3.03, either party may, within the fifteen (15) days next following the expiration of fifteen (15) day period allocated to the Appraisers for the appointment of the Third Appraiser, request the President of the Appraisal Institute of Canada or its successor, or if that Institute or successor ceases to exist, some similar appraisal organization, within the fifteen (15) days next following such request, to appoint a Third Appraiser who shall determine a Market Rent within the thirty (30) days next following such appointment.

**3.05 Decision by Third Appraiser:**

If the Third Appraiser is appointed pursuant to subsections 3.03 or 3.04, the Revised Annual Base Rent effective upon the Base Rent Adjustment Date in question shall be either the Market Rent as determined by the Third Appraiser, together with an amount equal to the then-current Revised AMC or if the Third Appraiser fails to determine the Market Rent within the thirty (30) days next following his appointment, the Revised Annual Base Rent effective upon the Base Rent Adjustment Date in question shall be deemed to be the Market Rent set out in the Landlord's Statement of Market Rent given to the Tenant pursuant to subsection 2.08, together with an amount equal to the then-current Revised AMC or, in the alternative, the Tenant may elect, by written notice delivered within fifteen (15) days of the aforesaid thirty (30) day period, to have the Market Rent determined by arbitration pursuant to subsection 3.09 below.

**3.06 Failure to Appoint Third Appraiser:**

If a Third Appraiser is not appointed pursuant to subsections 3.03 or 3.04, the Revised Annual Base Rent effective upon the Base Rent Adjustment Date in question shall be the Market Rent set out in the Landlord's Statement of Market Rent given to the Tenant pursuant to subsection 2.08, together with an amount equal to the then-current Revised AMC or, in the alternative, the Tenant may elect, by written notice delivered within fifteen (15) days of the time periods referred to therein to have the Market Rent determined by arbitration pursuant to subsection 3.09 below.

**3.07 Fees of Third Appraiser:**

Any and all fees for the selection of, and services rendered by the Third Appraiser shall be payable equally between the Landlord and the Tenant.

3.08 **Time of the Essence:**

Time is of the essence to the foregoing appraisal process unless the parties shall otherwise agree, in writing.

3.09 **Arbitration**

In the event that pursuant to subsections 2.11, 3.02, 3.05 or 3.06 above, the Tenant elects to have the Market Rent determined by arbitration, the Tenant shall give written notice of such intention to the Landlord and within thirty (30) days of the delivery of such notice, the parties shall meet and choose a single arbitrator to make such determination, failing which, the Tenant, within fifteen (15) days of the aforesaid thirty (30) day period, may apply to the senior judge of the Superior Court of Ontario at Hamilton, Ontario to name an arbitrator or to such other person as the said senior judge may designate. If the Tenant does not apply to the said senior judge to name an arbitrator or abandons any such application, the Revised Annual Base Rent effective on the Base Rent Adjustment Date shall be deemed to be the Market Rent set out in the Landlord's Statement of Market Rent given to the Tenant pursuant to subsection 2.08, together with an amount equal to the then-current Revised AMC. The costs of arbitration under this subsection 3.09 shall be borne by the Tenant unless the arbitrator shall determine otherwise. Such arbitration shall be carried out in accordance with the Arbitrations Act of Ontario (as such Act may be amended from time to time or as it may be replaced with similar legislation). The parties hereto agree that the decision of such arbitration shall be final and binding and that the Market Rent established thereby, together with an amount equal to the then-current Revised AMC, shall constitute the Revised Annual Base Rent.

**ARTICLE 4.00 – AMC Adjustment**

4.01 **AMC Adjustment**

The AMC may be recomputed and adjusted throughout the Term on the terms and conditions herein provided. Subject to subsection 4.02 below, the AMC shall be reviewed by the Landlord and, if appropriate, given the parameters of the definition of the AMC under this Lease, shall be recomputed and adjusted for the \_\_\_\_\_ ( ) year period of the Term commencing \_\_\_\_\_, \_\_\_\_\_ and ending \_\_\_\_\_, \_\_\_\_\_, such adjustment to be effective on \_\_\_\_\_, \_\_\_\_\_ (the "AMC Adjustment Date"). Thereafter, subject to subsection 4.03 below, the AMC shall be reviewed and may be recomputed and readjusted for each subsequent five (5) year period, such adjustment to be effective on the first (1<sup>st</sup>) day of \_\_\_\_\_ with respect to such five (5) year period (such date also being referred to as a "AMC Adjustment Date"). The AMC, as recomputed and readjusted in the manner contemplated hereunder, is sometimes referred to in this Lease as the "Revised AMC".

4.02 **Considerations**

(a) The Landlord shall be entitled to recompute and adjust the AMC in the manner contemplated by subsection 4.01 above in accordance with the Landlord's Airport Maintenance Charge policy in effect from time to time. The Landlord and the Tenant agree that the AMC shall be calculated to reflect the Landlord's actual and anticipated costs associated with providing the Common Area Services. In this regard, the Landlord agrees to act prudently and in good faith when calculating same.

(b) The Landlord and the Tenant agree that notwithstanding that the definition of the AMC hereunder is currently based upon Transport Canada document AK-31-60-200, a copy of which is attached hereto as Schedule "H", it may be appropriate for the Landlord to develop an AMC policy which more clearly defines the scope of the Common Area Services to be provided at the Airport. The Landlord agrees to consult with the Tenant, and with other major tenants at the Airport, to develop an AMC policy which, fairly and equitably, meets the needs of the Airport.

**SCHEDULE "G"**  
**ADDITIONAL PROVISIONS**  
**[ INSERT ADDITIONAL PROVISIONS - IF ANY ]**

**SCHEDULE "H"**

**TRANSPORT CANADA DOCUMENT NO. AK-31-60-200**

**SCHEDULE "I"**

ProForma Agreement – Newcourt

Draft dated July 11, 2000

**SUBORDINATION AND ATTORNMENT AGREEMENT**

THIS AGREEMENT is made as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

AMONG:

**HAMILTON INTERNATIONAL AIRPORT LIMITED**

***(formerly YHM AIRPORT SERVICES LIMITED)***

(hereinafter called the "Landlord")

- and -

**CIT FINANCIAL LTD.**

***(formerly NEWCOURT CAPITAL INC.)***

(hereinafter called the "Lender")

- and -

**[TENANT]**

(hereinafter called the "Tenant")

WHEREAS the City of Hamilton [formerly, The Regional Municipality of Hamilton-Wentworth] (the "City") is the owner in fee simple of the lands and premises more particularly described in Schedule "A" attached hereto (collectively, the "Airport Lands");

AND WHEREAS by a Lease Agreement dated and executed the 19th day of July, 1996 and amended by two amending agreements dated December 20, 1996 (collectively, the "Head Lease") between the City and TradePort International Corporation ("TradePort"), TradePort, together with its subsidiaries, became the manager and operator of John C. Munro Hamilton International Airport (the "Airport") and the tenant of the Airport;

AND WHEREAS by a Notice of Lease dated the 20th day of December, 1996 and registered in the Land Registry Office for the Land Registry Division of Wentworth on the 20th day of December, 1996 as Instrument No. VM236907, notice with respect to the Head Lease was registered on title to the Airport Lands;

AND WHEREAS TradePort has entered into certain financing arrangements with the Lender;

AND WHEREAS as security for such financing arrangements, TradePort has, amongst other things, mortgaged and charged the Head Lease and TradePort's right, title and interest thereunder in and to the Airport Lands pursuant to a Demand Debenture dated the 29th day of November, 1999 and registered on the 29<sup>th</sup> day of November, 1999 in the Registry Office for the Registry Division of Wentworth (No. 62) Hamilton as Instrument No. VM246883 and the Landlord has granted a further Demand Debenture dated the 29th day of November, 1999 registered in the Registry Office for the Registry Division of Wentworth (No. 62) Hamilton as Instrument No. VM246884 (together, the "Mortgage");

AND WHEREAS the Landlord, a wholly owned subsidiary of TradePort, has been established by TradePort to enter into agreements regarding the use and occupancy of the Airport;

AND WHEREAS by a Sublease dated as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (the "Sublease"), the Landlord did demise and sublease unto the Tenant those lands and premises more particularly described therein (the "Premises") upon the terms and conditions set out therein;

AND WHEREAS as a wholly-owned subsidiary of TradePort, the Landlord has the authority and capacity to sublease the Premises in the manner contemplated by the Sublease;

AND WHEREAS the Lender, at the request of the Landlord and the Tenant, has agreed to enter into this agreement;

NOW THEREFORE in consideration of the sum of TWO (\$2.00) DOLLARS now paid by each party to the other and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by each party hereto), the parties hereby covenant and agree as follows:

#### **Article One - Recitals**

1.01 The Landlord represents and warrants to the Lender and the Tenant that the recitals set out above are true and correct.

#### **Article Two - Agreements**

2.01 The Tenant acknowledges and agrees that the Sublease is and shall at all times continue to be subject and subordinate in each and every respect to the Mortgage (and any renewal, modification, extension, substitution, replacement and/or consolidation thereof) and to the rights and remedies of the Lender created thereby and that the Mortgage constitutes a prior encumbrance ranking ahead of and in priority to the Sublease. The Tenant further acknowledges and agrees that the Lender is authorized and empowered from time to time, without notice to the Tenant, to give and make such indulgences, settlements and compromises as the Lender may deem proper with respect to the Mortgage and all other documents and instruments executed in connection therewith, without in any manner affecting or impairing the subordination provided for herein.

2.02 The Tenant acknowledges and agrees that in the event of the appointment pursuant to the Mortgage, whether by the Lender or by a court of competent jurisdiction, of an agent, receiver or a receiver and manager to manage the affairs of the Landlord at the Airport, or the exercise by the Lender of any other remedies under the Mortgage, the Tenant will attorn to the Lender. At the request of the Lender, the Tenant will promptly attorn to any assignee of the Mortgage or any successor in title to the Lender.

2.03 So long as the Tenant is not in default (beyond any period given to the Tenant in the Sublease to cure such default) in performing the terms, covenants, conditions and agreements contained in the Sublease on its part to be kept and performed, and provided further, that the Tenant, if requested by the Lender to do so, has attorned to the Lender or as requested by the Lender in the manner contemplated by Paragraph 2.02 above, the Lender acknowledges and agrees that the Tenant shall be entitled to peacefully and quietly have, hold and enjoy the Premises on the terms of the Sublease without interruption or disturbance from the Lender or any person or other party claiming by, through or under the Lender, including any assignee or successor in title to the Lender throughout the term demised by the Sublease, including every renewal or extension thereof, provided that the Lender shall not be:

- (a) liable to the Tenant for or be bound by any claims, demands, rights of set-off, abatement of rent or defaults under the Sublease which the Tenant has against the Landlord thereunder; or
- (b) liable for any act or omission of the Landlord; or
- (c) bound or prejudiced by any amendment, modification, waiver or agreement which alters the Sublease or reduces the obligations of the Tenant thereunder, unless in each case the Lender has consented thereto in writing.

2.04 If the interest of the Landlord under the Sublease is transferred by reason of power of sale or other proceeding for enforcement under the Mortgage, at such time as the party acquiring the interest of Landlord as a result of any such action or proceeding (herein called the "Purchaser") acquires such interest, the Tenant acknowledges and agrees that it shall be bound to the Purchaser and the Lender shall cause the Purchaser to enter into an agreement in favour of the Tenant (a) confirming that it is acquiring the Landlord's interest in the Airport Lands or the Premises subject to the Sublease for the balance of the term thereof remaining, including any extensions or renewals thereof which may be effected in accordance with any option therefor in the Sublease to the extent that such extensions or renewals are binding upon the Lender hereunder and (b) agreeing to be bound by the Sublease and the obligations of the Landlord thereunder from the date it succeeds to the interest of the Landlord. Subject to receipt of such agreement executed by the Purchaser and the obligations of the Landlord thereunder from the date it acquires the Landlord's interest in the Airport Lands or the Premises, the Tenant does hereby attorn to the Purchaser as its landlord, said attornment to be effective and self-operative without the execution of any further instruments upon the Purchaser succeeding to the interest of the Landlord under the Sublease; the Tenant shall promptly, on request, enter into an agreement to the foregoing effect with a Purchaser.

2.05 Should the Lender or its agent cease to be the owner of, or in possession of, the interest of the Landlord under the Sublease or should a Purchaser acquire the Landlord's interest under the Sublease pursuant to Section 2.04 above, the Tenant agrees that the Lender shall thereafter be forever released from any and all future duties and obligations arising under the Sublease. Should the Lender assign its interest in the Mortgage, the Lender shall cause the assignee to be bound by the terms of this agreement, and the Tenant agrees that the Lender shall thereafter be forever released from its future obligations under this agreement. The Tenant shall promptly, on request, execute an agreement substantially in the form hereof with any assignee of the Lender's interest in the Mortgage.

2.06 The Tenant hereby covenants and agrees that within ten (10) days of receipt of written request therefore by the Lender, it shall deliver, in a form to be supplied by the Lender, a status statement or certificate addressed to the Lender or any person designated by the Lender stating (if such is the case) the matters set out in Section 14.2 of the Lease. The Tenant agrees to contemporaneously deliver a copy of any such statement(s) directly to the Landlord.

### **Article Three - Notice of Default**

3.01 The Tenant agrees with the Lender that in the event of any default, breach or non-performance by the Landlord of the Landlord's obligations under the Sublease, where such default, breach or non-performance entitles the Tenant to cancel or determine the term of the Sublease, then prior to exercising such right:

- (a) the Tenant shall first give the Lender written notice specifying such default, breach or non-performance; and
- (b) the Lender shall have the right to remedy such default, breach or non-performance within a period of thirty (30) consecutive days (including holidays and weekends) from the date of receiving notification thereof from the Tenant; provided, however, if the default, breach or non-performance is not capable of being remedied within thirty (30) days, then the Lender shall have such longer time as would reasonably suffice for the remedying of such default, breach or non-performance provided the Lender has commenced to remedy same within the aforesaid thirty (30) day period and thereafter continues to proceed to remedy same with reasonable diligence. Provided however that, notwithstanding the foregoing, the Tenant hereby agrees

that in no event shall the Lender be liable for the performance of any term, covenant, condition or agreement of the Landlord occurring prior to the Lender becoming a mortgagee in possession or realizing on its security by entering into ownership, possession or control of the Airport and/or the Premises, which does not result in a continuing default.

3.02 In the event the Lender fails to remedy a default, breach or other event of non-performance by the Landlord during the time periods contemplated by Paragraph 3.01 above, or, by reason of the last sentence of Paragraph 3.01(b) above, the Lender is not required to remedy a default, breach or other non-performance by the Landlord, the Tenant shall be entitled thereafter to exercise all rights and remedies available to it under the Sublease or at law without further notice to the Lender.

#### **Article Four - Registration; Confidentiality**

4.01 The parties agree that this agreement shall remain in full force and effect as long as the Mortgage is outstanding and that no action by the Lender other than the granting of a full discharge of the Mortgage shall be a release of any obligations hereunder. After the Mortgage has been fully discharged, the parties acknowledge and agree that this instrument shall be void and of no further effect.

4.02 The parties acknowledge that the financial terms of the Sublease are to be held in confidence. Notwithstanding the foregoing, the parties acknowledge and agree that the Lender may provide to any proposed assignee of the Mortgage or any proposed purchaser of the Landlord's interest in the Airport Lands or the Premises such information concerning the Sublease (including its financial terms) as, in the opinion of the Lender, may be relevant or useful or as may be required by law, provided that each recipient of such information shall agree not to disclose such information to any third party, other than its own bankers, permitted assigns, accountants, employees, officers, directors, shareholders and other professional advisors or as may be required by law. The parties agree that the Tenant may cause the registration of notice of the existence of this agreement, including therein such minimal particulars as may be required by the appropriate land registry office for registration purposes, against the title to that portion of the Airport Lands comprising the Premises, such notice to be in a form acceptable to the Landlord, acting reasonably.

#### **Article Five - Notice**

5.01 All communications provided for or permitted hereunder shall be in writing, personally delivered to an officer of the addressee or sent by registered mail (except during a postal disruption or threatened postal disruption), or sent by facsimile, telegram or other similar means of prepaid recorded communication to the applicable address set forth below (or to such other address as any party hereto may from time to time designate to the others in such manner):

To the Landlord: Hamilton International Airport Limited  
John C. Munro Hamilton International Airport  
Air Terminal Building  
9300 Airport Road  
Mount Hope, Ontario  
L0R 1W0  
Attention: Vice President, Finance and DFO  
Facsimile No.: (905)679-2100

To the Lender: CIT Financial Ltd.  
207 Queens's Quay West  
Suite 700  
Toronto, Ontario M5J 2A7  
Attention: \_\_\_\_\_  
Facsimile No.: (416) \_\_\_\_\_

and to:

Attention: Senior Vice-President, Legal  
Facsimile No.: (416) \_\_\_\_\_

To the Tenant: [address]  
Attention:  
Facsimile No.:

Any communication personally delivered shall be deemed to have been validly and effectively given on the date of such delivery. Any communication sent by registered mail shall be deemed to have been validly and effectively given on the fifth (5th) business day following the day on which it was sent. Any communication sent by facsimile, telegram or other means mentioned above shall be deemed to have been validly and effectively given on the business day next following the day on which it was sent.

#### **Article Six - Interpretation**

6.01 References. All references herein to articles, sections, subsections, paragraphs, subparagraphs, clauses and schedules (unless otherwise specified) are to articles, sections, subsections, paragraphs, subparagraphs and clauses of schedules to this agreement.

6.02 Headings. The insertion of headings are for convenience of reference only and shall not affect the interpretation of this agreement.

6.03 Number and Gender. Words importing the singular include the plural and vice versa and words importing gender include all genders.

6.04 Governing Law. This agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

6.05 Amendment. No amendment of this agreement shall be binding unless in writing and signed by the parties.

6.06 Severable. If any provision of this agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected.

6.07 Successors and Assigns. This agreement shall be binding upon and enure to the benefit of the parties and their respective successors and permitted assigns.

#### 6.08 Counterparts and Facsimile Delivery

- (a) This agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute one and the same agreement.
- (b) Any counterpart of this agreement shall be validly and effectively delivered if delivered by facsimile transmission to the parties' respective solicitors (with originals to be exchanged thereafter).

IN WITNESS WHEREOF the parties have executed this agreement as of the date first written above.

#### **HAMILTON INTERNATIONAL AIRPORT LIMITED**

By: \_\_\_\_\_  
Name:  
Title:

(seal)

By: \_\_\_\_\_  
Name:  
Title:  
I/We have authority to bind the Corporation.

**CIT FINANCIAL LTD.**

By: \_\_\_\_\_  
Name:  
Title:

(seal)

By: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the Corporation

**[TENANT]**

By: \_\_\_\_\_  
Name:  
Title:

(seal)

By: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the Corporation.

**SCHEDULE "J"**

**AGREEMENT BETWEEN LANDLORD, TENANT AND LEASEHOLD MORTGAGEE**

THIS AGREEMENT is made as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

AMONG:

**HAMILTON INTERNATIONAL AIRPORT LIMITED**

(hereinafter called the "Landlord")

OF THE FIRST PART

- and -

**[LENDER]**

(hereinafter called the "Lender")

OF THE SECOND PART

- and -

**[TENANT]**

(hereinafter called the "Borrower")

OF THE THIRD PART.

WHEREAS by an agreement executed the 19<sup>th</sup> day of July, 1996, as amended by two amending agreements, the first of which is dated December 20, 1996 and the second of which is dated as of December 20, 1996 (collectively the "TradePort Agreement") between The Regional Municipality of Hamilton-Wentworth (the "Region") and TradePort International Corporation ("TradePort"), TradePort, together with its subsidiaries, became the manager and operator of John C. Munro Hamilton International Airport (the "Airport");

AND WHEREAS the Landlord, a wholly-owned subsidiary of TradePort, has been established by TradePort to enter into agreements regarding the use and occupancy of the Airport and has the power and authority to bind TradePort in respect of the matters herein contained;

AND WHEREAS as of and from January 1, 2001, pursuant to Section 5 of the City of Hamilton Act, 1999, the Region was dissolved and all of the assets and liabilities of the Region, including all contractual benefits and obligations under the Head Lease, became assets and liabilities of the City of Hamilton (the "City");

AND WHEREAS by a sublease dated as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, (the "Sublease"), the Landlord did demise and sublease unto \_\_\_\_\_ (the "Borrower") those lands and premises more particularly described therein (the "Mortgaged Premises") upon the terms and conditions set out therein;

AND WHEREAS by a Notice of Sublease dated the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ and registered in the Land Registry Office for the Land Registry Division of Wentworth (the "R.O.") on the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ as Instrument No. \_\_\_\_\_, notice with respect to the Sublease was registered on title to the Mortgaged Premises;

AND WHEREAS the Lender is about to enter, or has entered into, certain financing transactions with the Borrower;

AND WHEREAS as security for such financing transactions, the Lender requires the Borrower, amongst other things, to mortgage and charge the Sublease and the Borrower's right, title and interest thereunder in and to the Mortgaged Premises pursuant to a mortgage of leasehold estate dated as of the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, which mortgage of leasehold estate was registered on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ in the R.O. as Instrument No. \_\_\_\_\_ (the "Mortgage"), conditional upon the Landlord entering into this agreement with the Lender;

NOW THEREFORE in consideration of the sum of TWO (\$2.00) DOLLARS now paid by each party to the other and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by each party hereto), the parties hereby covenant and agree as follows:

**Article One - Consent**

1.01 The Landlord hereby consents to the granting by the Borrower of the Mortgage and to the charge created thereby upon the Sublease and upon the Borrower's right, title and interest thereunder in and to the Mortgaged Premises.

**Article Two - Landlord's Agreement**

2.01 Notwithstanding any provision, stipulation or agreement contained in the Sublease, in the event of the appointment pursuant to the Mortgage, whether by the Lender or by a court of competent jurisdiction, of an agent, receiver or a receiver and manager to manage the affairs of the Borrower at the Airport, or the exercise by the Lender of any other remedies under the Mortgage, the Landlord shall not exercise its right to re-enter or to take possession of the Mortgaged Premises and the term of the Sublease shall not become cancelled or determined, provided the Sublease is forthwith brought into good standing by the Lender and the covenants of the Borrower contained in the Sublease are thereafter performed when due.

2.02 Provided the Sublease has been brought into good standing by the Lender and the covenants of the Borrower contained in the Sublease are being performed when due by the Lender, its agent, receiver or receiver manager, as the case may be, the Lender, its agent, receiver or receiver manager, as the case may be, shall have the right to enforce its security under the Mortgage in any lawful way and without limitation, to enter upon and occupy the Mortgaged Premises and, subject to obtaining the prior written consent of the Landlord, which consent shall not be unreasonably withheld, the Lender shall also have the right to assign the Sublease or the Replacement Sublease (as defined in Subparagraph 3.01(c) below) to a third party transferee (the "Transferee").

2.03 In the event the Lender proposes to assign the Sublease or the Replacement Sublease to a Transferee pursuant to Paragraph 2.02 above or Subparagraph 3.01(c) below, the Lender agrees that the Landlord shall not be asked to grant its consent (and it shall be reasonable for the Landlord to withhold its consent) unless:

- (i) the Lender shall have furnished to the Landlord a true copy of the offer or term sheet setting out the terms of the proposed transaction as between the Lender and the proposed Transferee and shall have furnished such information as is available regarding the reputation, financial standing and business of the proposed Transferee;

- (ii) the Landlord is satisfied that the proposed Transferee has or possesses the business expertise or will engage the necessary parties with such expertise, and the financial resources necessary to enable it to perform the covenants of the Borrower contained in the Sublease or the Replacement Sublease, as the case may be;
- (iii) the proposed Transferee must expressly agree in writing with the Landlord that throughout the Term, it shall ensure that landings and take-offs by aircraft using the Premises are no less frequent than the number of landings and take-offs of aircraft using the Premises during the twelve (12) month period immediately preceding the Transfer;
- (iv) the proposed Transferee must expressly agree in writing with the Landlord to be bound by and perform the covenants of the Borrower or the Lender, as the case may be, contained in the Sublease or the Replacement Sublease, as the case may be; and
- (v) the proposed Transferee must demonstrate to the satisfaction of the Landlord, acting reasonably, that for the purposes of its operations, it requires access to the Airport's airside facilities.

2.04 In the event the Sublease or the Replacement Sublease, as the case may be, is assigned by the Lender to a Transferee, whether under Paragraph 2.02 above or Subparagraph 3.01(c) below, with any required consent, the Landlord agrees that as of and from the date of such assignment, the Lender shall be relieved of any further obligations arising under the Sublease or the Replacement Sublease, as the case may be.

### **Article Three - Notice of Default**

3.01 The Landlord agrees with the Lender that in the event of any default, breach or non-performance by the Borrower or by the Lender, its agent, receiver or receiver manager, as the case may be, of the Borrower's obligations under the Sublease, where such default, breach or non-performance entitles the Landlord to cancel or determine the term of the Sublease, then prior to exercising such right:

- (a) the Landlord shall first give the Lender written notice specifying such default, breach or non-performance;
- (b) in the case of a default or breach in the payment of rent or other amounts due under the Sublease, the Lender shall be given the right to remedy such default within a period of fifteen (15) consecutive days (including holidays and weekends) from the date of receiving notification thereof from the Landlord; and
- (c) in the case of any other default, breach or non-performance, the Lender shall have the right to remedy such default, breach or non-performance within a period of thirty (30) consecutive days (including holidays and weekends) from the date of receiving notification thereof from the Landlord; provided, however, if the default, breach or non-performance is not capable of being remedied within thirty (30) days, then the Lender shall have such longer time as would reasonably suffice for the remedying of such default, breach or non-performance provided the Lender commenced to remedy same within the aforesaid thirty (30) day period and thereafter continues to proceed to remedy same with reasonable diligence. In the event of a default, breach or non-performance by the Borrower under the Sublease not capable of being remedied by the Lender, such as bankruptcy or insolvency or the appointment of an agent, receiver or a receiver and manager (by a party other than the Lender), the Landlord agrees that should the Lender otherwise bring and maintain the Sublease in good standing, such default, breach or non-performance shall be deemed to be

remedied. In addition, the Landlord agrees that if any trustee in bankruptcy of the Borrower were to disclaim the Sublease, the Landlord will so notify the Lender in writing and, if requested in writing by the Lender within thirty (30) consecutive days (including holidays and weekends) of the date of delivery of such notice, the Landlord agrees to grant to the Lender a new sublease of the Mortgaged Premises on the same terms and conditions as those contained in the Sublease for a term equal to the balance of the unexpired term of the Sublease (a "Replacement Sublease"). In such an event, the Landlord agrees that the Lender, subject to obtaining the Landlord's prior written consent, which consent shall not be unreasonably withheld, shall have the right to make an assignment of the Replacement Sublease to a third party transferee (also referred to as a "Transferee") upon the terms and conditions contemplated by Paragraphs 2.02, 2.03, 2.04 and 2.05 above.

3.02 In the event the Lender does not remedy a default, breach or other event of non-performance during the time periods contemplated by Paragraph 3.01 above, then notwithstanding the provisions of Paragraphs 2.01 and/or 2.02 above, the Landlord shall be entitled thereafter to exercise all rights and remedies available to it under the Sublease or at law without further notice to the Lender.

3.03 Where the Lender provides written notice to the Borrower with respect to any default, breach or non-performance by the Borrower of the Borrower's obligations under the Sublease, the Lender agrees to provide a copy of such notice concurrently to the Lender.

#### **Article Four - Registration; Confidentiality**

4.01 The Landlord and the Borrower agree that this agreement shall remain in full force and effect as long as the Mortgage is outstanding and that no action by the Lender other than the granting of a full discharge of the Mortgage shall be a release of any obligations hereunder. After the Mortgage has been fully discharged, the Lender acknowledges that this instrument shall be void and of no further effect.

4.02 The Lender and Borrower agree that this agreement shall not be registered against the title to the Airport Lands or against the Mortgaged Premises. The parties acknowledge that this agreement is intended to be a confidential agreement. Each of the parties agrees that without the prior written consent of the Landlord, which consent may be unreasonably withheld, it shall not disclose the terms and conditions set out herein except on a "need to know" basis to its own bankers, accountants, employees, officers, directors, shareholders and other professional advisors or as may be required by law.

4.03 (a) Notwithstanding Paragraph 4.02 above, the Landlord agrees that the Lender or the Borrower (the "Registering Party") may register notice of the existence of this agreement (in such form so as to satisfy the minimum statutory requirements only required by the appropriate land registry office for registration purposes), against title to the Mortgaged Premises, such notice to be in a form acceptable to the Landlord.

(b) The notice referred to in paragraph (a) above shall be prepared by the Registering Party's solicitors, at the Registering Party's sole expense, and submitted to the Landlord for the Landlord's prior written approval, which approval shall not be unreasonably withheld. Forthwith following registration of any such notice, the Registering Party agrees to provide the Landlord with a copy of such registered instrument.

- (c) The Registering Party covenants that once a full discharge of the Mortgage has been granted by the Lender, it shall, at the Registering Party's expense, immediately thereafter, cause any and all registrations effected under this Paragraph 4.03 to be discharged and to provide copies of all such registered discharges to the Landlord. It is agreed by the Registering Party that the foregoing covenant shall survive the expiration or sooner termination of this agreement.

**Article Five - Notice**

5.01 All communications provided for or permitted hereunder shall be in writing, personally delivered to an officer of the addressee or sent by registered mail (except during a postal disruption or threatened postal disruption), or sent by facsimile, telegram or other similar means of prepaid recorded communication to the applicable address set forth below (or to such other address as any party hereto may from time to time designate to the others in such manner):

To the Landlord: Hamilton International Airport Limited  
John C. Munro Hamilton International Airport  
Air Terminal Building  
9300 Airport Road, Suite 2206  
Mount Hope, Ontario  
L0R 1W0  
Attention: Vice President, Finance and CFO  
Facsimile No.: (905) 679-2100

To the Lender:

Attention:  
Facsimile No.:

To the Borrower:

Attention:  
Facsimile No.:

Any communication personally delivered shall be deemed to have been validly and effectively given on the date of such delivery. Any communication sent by registered mail shall be deemed to have been validly and effectively given on the fifth (5<sup>th</sup>) business day following the day on which it was sent. Any communication sent by facsimile, telegram or other means mentioned above shall be deemed to have been validly and effectively given on the business day next following the day on which it was sent.

### Article Six - Status of Lease

6.01 The Landlord hereby confirms that to the best of its knowledge and belief, as of the date of this agreement:

- (a) the Sublease is valid and is a subsisting Sublease in full force and effect;
- (b) the rent and other moneys due and payable under the Sublease are not in arrears; and
- (c) the Borrower is not in default of any material obligations under the Sublease.

### Article Seven - Interpretation

7.01 References. All references herein to articles, sections, subsections, paragraphs, subparagraphs, clauses and schedules (unless otherwise specified) are to articles, sections, subsections, paragraphs, subparagraphs and clauses of schedules to this agreement.

7.02 Headings. The insertion of headings are for convenience of reference only and shall not affect the interpretation of this agreement.

7.03 Number and Gender. Words importing the singular include the plural and vice versa and words importing gender include all genders.

7.04 Governing Law. This agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

7.05 Amendment. No amendment of this agreement shall be binding unless in writing and signed by the parties.

7.06 Severable. If any provision of this agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected.

7.07 Successors and Assigns. This agreement shall be binding upon and enure to the benefit of the parties and their respective successors and permitted assigns.

7.08 Counterparts and Facsimile Delivery

- (a) This agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute one and the same agreement.
- (b) Any counterpart of this agreement shall be validly and effectively delivered if delivered by facsimile transmission to the parties' respective solicitors (with originals to be exchanged thereafter).

IN WITNESS WHEREOF the parties have executed this agreement as of the date first written above.

HAMILTON INTERNATIONAL AIRPORT  
LIMITED

By: \_\_\_\_\_  
Name:  
Title:  
(seal)

By: \_\_\_\_\_  
Name:  
Title:

"I/We have authority to bind the Corporation."

[LENDER]

By: \_\_\_\_\_  
Name:  
Title:  
(seal)

By: \_\_\_\_\_  
Name:  
Title:

"I/We have authority to bind the Corporation"

[TENANT/BORROWER]

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

"I/We have authority to bind the Corporation"

**SCHEDULE "K"**

**FORM OF CERTIFICATE - CITY**

To: City of Hamilton (the "City")

Re: Sublease dated as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ (the  
"Sublease") Between Hamilton International Airport Limited and  
\_\_\_\_\_ (the "Tenant")

Reference is made to the Sublease whereby Hamilton International Airport Limited ("HIAL") has subleased to the undersigned those premises situate at the John C. Munro Hamilton International Airport more particularly described therein, a sketch/plan with respect to which (showing the approximate location thereof) is attached hereto (the "Premises").

The undersigned hereby certifies to the City as follows:

1. the Sublease constitutes the whole of the legal relationship between HIAL and the undersigned in relation to the Premises;
2. the Sublease is in good standing; and
3. there exists no outstanding claims in respect of the Sublease.

Dated this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

[ TENANT ]

By: \_\_\_\_\_  
Name:  
Title:

(seal)

By: \_\_\_\_\_  
Name:  
Title:

"I/We have authority to bind the Corporation"