COR/2018/00264

May 23, 2018

s. 40(1) Dear 

Re: Your request for access to information under Part II of the Access to Information and Protection of Privacy Act (Our File: TW/149/2017)

On December 8, 2017, the Department of Transportation and Works received your request for access to the following records:

Please provide details on the agreement or contract between the Government of Newfoundland & Labrador and Provincial Airlines regarding the latest acquisition and occupancy of Government Air Services Hangar #3 located at St. John’s International Airport.

I am pleased to inform you that a decision has been made by the Deputy Minister of Transportation and Works to provide access to some of the requested information.

Access to the remaining records, and/or information contained within the records, has been refused in accordance with the following exceptions to disclosure, as specified in the Access to Information and Protection of Privacy Act (the Act):

Subsection 39(1)(a)(ii) - (1) The head of a public body shall refuse to disclose to an applicant information (a) that would reveal (ii) commercial, financial, labour relations, scientific or technical information of a third party;

Subsection 39(1)(b) - (1) The head of a public body shall refuse to disclose to an applicant information (b) that is supplied, implicitly or explicitly, in confidence; and

P.O. Box 8700, St. John’s, NL, Canada, A1B 4J6
Subsection 39(1)(c)(iii) - (1) The head of a public body shall refuse to disclose to an applicant information (c) the disclosure of which could reasonably be expected to (iii) result in undue financial loss or gain to any person, or

Subsection 40(1) - The head of a public body shall refuse to disclose personal information to an applicant where the disclosure would be an unreasonable invasion of a third party’s personal privacy.

The following pages have been removed:
Pages 56 – 101 - s.39(1)(a)(ii), s. 39(1)(b), s.39(1)(c)(iii)

As required by 8(2) of the Act, we have severed information that is unable to be disclosed and have provided you with as much information as possible. In accordance with your request for a copy of the records, the appropriate copies have been enclosed.

Please be advised that you may appeal this decision and ask the Information and Privacy Commissioner to review the decision to provide partial access to the requested information, as set out in section 42 of the Act (a copy of this section of the Act has been enclosed for your reference). A request to the Commissioner must be made in writing within 15 business days of the date of this letter or within a longer period that may be allowed by the Commissioner. Your appeal should identify your concerns with the request and why you are submitting the appeal.

The appeal may be addressed to the Information and Privacy Commissioner is as follows:

Office of the Information and Privacy Commissioner
2 Canada Drive
P. O. Box 13004, Stn. A
St. John’s, NL. A1B 3V8
Telephone: (709) 729-6309
Toll-Free: 1-877-729-6309
Facsimile: (709) 729-6500

You may also appeal directly to the Supreme Court Trial Division within 15 business days after you receive the decision of the public body, pursuant to section 52 of the Act (a copy of this section of the Act has been enclosed for your reference).

Please be advised that responsive records will be published following a 72 hour period after the response is sent electronically to you or five business days in the case where records are mailed to you. It is the goal to have the responsive records posted to the Completed Access to Information Requests website within one business day following the applicable period of time. Please note that requests for personal information will not be posted online.
If you have any further questions, please contact me by telephone at (709) 729-5351 or by email at Deanne Adams@gov.nl.ca.

Sincerely,

[Signature]

Deanne Adams
ATIPP Coordinator
Department of Transportation and Works
Enclosures
Disclosure harmful to business interests of a third party

39. (1) The head of a public body shall refuse to disclose to an applicant information

(a) that would reveal

(i) trade secrets of a third party, or

(ii) commercial, financial, labour relations, scientific or technical information of a third party;

(b) that is supplied, implicitly or explicitly, in confidence; and

(c) the disclosure of which could reasonably be expected to

(i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party,

(ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied,

(iii) result in undue financial loss or gain to any person, or

(iv) reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour relations dispute.

(2) The head of a public body shall refuse to disclose to an applicant information that was obtained on a tax return, gathered for the purpose of determining tax liability or collecting a tax, or royalty information submitted on royalty returns, except where that information is non-identifying aggregate royalty information.

(3) Subsections (1) and (2) do not apply where

(a) the third party consents to the disclosure; or

(b) the information is in a record that is in the custody or control of the Provincial Archives of Newfoundland and Labrador or the archives of a public body and that has been in existence for 50 years or more.
Disclosure harmful to personal privacy

40. (1) The head of a public body shall refuse to disclose personal information to an applicant where the disclosure would be an unreasonable invasion of a third party's personal privacy.

(2) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy where

(a) the applicant is the individual to whom the information relates;

(b) the third party to whom the information relates has, in writing, consented to or requested the disclosure;

(c) there are compelling circumstances affecting a person's health or safety and notice of disclosure is given in the form appropriate in the circumstances to the third party to whom the information relates;

(d) an Act or regulation of the province or of Canada authorizes the disclosure;

(e) the disclosure is for a research or statistical purpose and is in accordance with section 70;

(f) the information is about a third party's position, functions or remuneration as an officer, employee or member of a public body or as a member of a minister's staff;

(g) the disclosure reveals financial and other details of a contract to supply goods or services to a public body;

(h) the disclosure reveals the opinions or views of a third party given in the course of performing services for a public body, except where they are given in respect of another individual;

(i) public access to the information is provided under the Financial Administration Act;

(j) the information is about expenses incurred by a third party while travelling at the expense of a public body;

(k) the disclosure reveals details of a licence, permit or a similar discretionary benefit granted to a third party by a public body, not including personal information supplied in support of the application for the benefit;

(l) the disclosure reveals details of a discretionary benefit of a financial nature granted to a third party by a public body, not including

(i) personal information that is supplied in support of the application for the benefit, or
(ii) personal information that relates to eligibility for income and employment support under the *Income and Employment Support Act* or to the determination of income or employment support levels; or

(m) the disclosure is not contrary to the public interest as described in subsection (3) and reveals only the following personal information about a third party:

(i) attendance at or participation in a public event or activity related to a public body, including a graduation ceremony, sporting event, cultural program or club, or field trip, or

(ii) receipt of an honour or award granted by or through a public body.

(3) The disclosure of personal information under paragraph (2)(m) is an unreasonable invasion of personal privacy where the third party whom the information is about has requested that the information not be disclosed.

(4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy where

(a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;

(b) the personal information is an identifiable part of a law enforcement record, except to the extent that the disclosure is necessary to dispose of the law enforcement matter or to continue an investigation;

(c) the personal information relates to employment or educational history;

(d) the personal information was collected on a tax return or gathered for the purpose of collecting a tax;

(e) the personal information consists of an individual's bank account information or credit card information;

(f) the personal information consists of personal recommendations or evaluations, character references or personnel evaluations;

(g) the personal information consists of the third party's name where

(i) it appears with other personal information about the third party, or

(ii) the disclosure of the name itself would reveal personal information about the third party; or

(h) the personal information indicates the third party's racial or ethnic origin or religious or political beliefs or associations.
(5) In determining under subsections (1) and (4) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body shall consider all the relevant circumstances, including whether

(a) the disclosure is desirable for the purpose of subjecting the activities of the province or a public body to public scrutiny;

(b) the disclosure is likely to promote public health and safety or the protection of the environment;

(c) the personal information is relevant to a fair determination of the applicant's rights;

(d) the disclosure will assist in researching or validating the claims, disputes or grievances of aboriginal people;

(e) the third party will be exposed unfairly to financial or other harm;

(f) the personal information has been supplied in confidence;

(g) the personal information is likely to be inaccurate or unreliable;

(h) the disclosure may unfairly damage the reputation of a person referred to in the record requested by the applicant;

(i) the personal information was originally provided to the applicant; and

(j) the information is about a deceased person and, if so, whether the length of time the person has been deceased indicates the disclosure is not an unreasonable invasion of the deceased person's personal privacy.
Access or correction complaint

42. (1) A person who makes a request under this Act for access to a record or for correction of personal information may file a complaint with the commissioner respecting a decision, act or failure to act of the head of the public body that relates to the request.

(2) A complaint under subsection (1) shall be filed in writing not later than 15 business days

(a) after the applicant is notified of the decision of the head of the public body, or the date of the act or failure to act; or

(b) after the date the head of the public body is considered to have refused the request under subsection 16 (2).

(3) A third party informed under section 19 of a decision of the head of a public body to grant access to a record or part of a record in response to a request may file a complaint with the commissioner respecting that decision.

(4) A complaint under subsection (3) shall be filed in writing not later than 15 business days after the third party is informed of the decision of the head of the public body.

(5) The commissioner may allow a longer time period for the filing of a complaint under this section.

(6) A person or third party who has appealed directly to the Trial Division under subsection 52 (1) or 53 (1) shall not file a complaint with the commissioner.

(7) The commissioner shall refuse to investigate a complaint where an appeal has been commenced in the Trial Division.

(8) A complaint shall not be filed under this section with respect to

(a) a request that is disregarded under section 21;

(b) a decision respecting an extension of time under section 23;

(c) a variation of a procedure under section 24; or

(d) an estimate of costs or a decision not to waive a cost under section 26.

(9) The commissioner shall provide a copy of the complaint to the head of the public body concerned.
Direct appeal to Trial Division by an applicant

52. (1) Where an applicant has made a request to a public body for access to a record or correction of personal information and has not filed a complaint with the commissioner under section 42, the applicant may appeal the decision, act or failure to act of the head of the public body that relates to the request directly to the Trial Division.

(2) An appeal shall be commenced under subsection (1) not later than 15 business days

(a) after the applicant is notified of the decision of the head of the public body, or the date of the act or failure to act; or

(b) after the date the head of the public body is considered to have refused the request under subsection 16 (2).

(3) Where an applicant has filed a complaint with the commissioner under section 42 and the commissioner has refused to investigate the complaint, the applicant may commence an appeal in the Trial Division of the decision, act or failure to act of the head of the public body that relates to the request for access to a record or for correction of personal information.

(4) An appeal shall be commenced under subsection (3) not later than 15 business days after the applicant is notified of the commissioner’s refusal under subsection 45 (2).
MUTUAL LICENCE AGREEMENT

BETWEEN

THE HONOURABLE THE MINISTER OF TRANSPORTATION AND WORKS [HANGAR 3]

AND

PAL AVIATION PROPERTIES LIMITED [COUGAR HANGAR]

ST. JOHN'S INTERNATIONAL AIRPORT

M\textsc{c}INNES COOPER
10 Fort William Place
5\textsuperscript{th} Floor
P.O. Box 5939
St. John's, NL A1C 5X4
THIS MUTUAL LICENCE AGREEMENT made at St. John's, in the Province of Newfoundland and Labrador this day of June, 2017.

BETWEEN

THE HONOURABLE THE MINISTER OF TRANSPORTATION AND WORKS for and on behalf of Her Majesty the Queen in right of Newfoundland and Labrador (hereinafter called "DTW")

OF THE ONE PART;

AND

PAL AVIATION PROPERTIES LIMITED, registered to do business in the Province of Newfoundland & Labrador and having its Head Office at Hangar No. 1, St. John's International Airport, St. John's, NL (hereinafter called "PAL")

OF THE OTHER PART;

WHEREAS:

DTW is possessed, pursuant to the DTW Head Lease, of certain lands and premises known as Hangar 3 and as shown in Schedule "A" attached hereto and has agreed to issue to PAL a licence to occupy the PAL Space on the terms and conditions hereinafter appearing;

AND WHEREAS:

PAL is possessed, pursuant to the PAL Head Lease, of certain lands and premises known as the Cougar Hangar as shown in Schedule "B" attached hereto and has agreed to issue to DTW a licence to occupy the DTW Space on the terms and conditions hereinafter appearing;

Definitions

1. When used in this Agreement (including the recitals), the following terms shall have the following meanings:

(i) "DTW Head Lease" means a lease from Her Majesty the Queen in right of Canada to DTW dated March 21, 1994 as renewed by an Agreement effective October 1, 1998 in respect of certain lands and premises known as Hangar 3 (shown in Schedule "C");

(ii) "DTW Licence" means the terms and conditions of this Agreement in respect of the use and occupation by DTW of the DTW Space;

(iii) "DTW Space" means certain space in the Cougar Hangar as shown in Schedule "D" attached hereto and where DTW is the licensee;

(iv) "Head Lease" means either the DTW Head Lease or the PAL Head Lease or both as may be required by the provision;
(v) "Licence" means either the DTW Licence or the PAL Licence or both, as may be required to the provision;

(vi) "PAL Head Lease" means a sub-lease from Cougar Helicopters Inc., dated April, 2017 in respect of certain lands and premises known as the Cougar Hangar (as shown in Schedule "E"),

(vii) "PAL Licence" means the terms and conditions of this Agreement in respect of the use and occupation by PAL of the PAL Space;

(viii) "PAL Space" means certain space in Hangar 3 as shown in Schedule "A" attached hereto where PAL is the licensee;

(ix) "Spaces" means the DTW Space and the PAL Space;

(x) "Term" means the period commencing on the date of execution until June 29, 2021.

Licence

2. Subject to the terms and conditions hereinafter appearing, DTW hereby permits PAL to occupy and use the PAL Space for the purpose of carrying on its aviation business including the storage and maintenance of aircraft;

3. Subject to the terms and conditions hereinafter appearing, PAL hereby permits DTW to occupy and use the DTW Space for the purpose of operating its Air Services;

4. The licence fee for each Licence shall be $1 if demanded and the mutual covenants contained herein. Each party shall continue to be liable for the rents and other amounts payable under their respective Head Lease.

5. PAL agrees that where there is a rental increase ("Revised Rent") in respect of the DTW Head Lease, PAL will pay to the St. John's International Airport Authority, the difference of the current rent and the Revised Rent where the Revised Rent does not exceed $9.50 per square foot for rental period of February 1, 2018 to April 1, 2018.

6. Each party confirms and acknowledges that it has been provided a copy of the other's Head Lease. Neither party shall do anything that would result in a breach of the terms of either Head Lease. An offending party shall be liable for all costs incurred to remedy any such breach.

7. The parties have agreed as follows:

(i) That DTW shall have possession of an area of space in the Cougar Hangar in the arrangement as identified on the diagram attached as Schedule "D"

(ii) That 10 parking spaces for staff vehicles shall be available to DTW as identified in the diagram attached at Schedule "G";

(iii) That DTW shall have the use of an area of ramp space in accordance with the area identified as the "Gov't Air Service Ramp Allocation" on the diagram attached
as Schedule "H" which ramp space may be used for the parking of water bomber aircraft.

8. PAL agrees to provide and continue to provide snow-clearing services to the DTW Space and the PAL Space in accordance with any practices, arrangements or agreements in existence at the time of execution of this Agreement.

9. The parties shall be responsible for the cleaning of their respective Spaces.

10. Each party shall only be responsible for regular maintenance for their respective Spaces and for any damage to their Space that they or persons for which they are responsible for may cause.

11. DTW will provide some security monitoring to the exterior of the PAL Space. PAL is responsible to arrange any further security services as they may require.

12. DTW will provide maintenance and fuel of furnaces at the PAL Space.

13. Each party is responsible for the supply and use of a dumpster in their respective Spaces.

14. Neither party shall assign their licence nor part with the possession of their respective spaces other than in accordance with the terms of this Agreement.

15. Each party agrees that no changes, modifications, renovations, or other leasehold improvements shall be made to the PAL Space or the DTW Space without the prior written consent of the parties to this Agreement.

16. All leasehold improvements made by either party in accordance with section 11 of this Agreement shall remain with the affected property and neither party shall have a claim against the other party or the St. John's International Airport Authority in respect thereof.

Indemnification and Insurance

17. (i) Each party shall indemnify the other against any and all manner of claims, damages, losses, costs or charges whatsoever occasioned to, suffered by or imposed upon the DTW or PAL by the other, directly or indirectly in respect of any matter or in connection with or arising out of the occupancy or use of the respective premises and includes the party's invitees, servants, or agents or out of any operations in connection with the occupancy or use of the same by DTW or PAL, its invitees, servants, or agents or in respect of any accident, damage or injury to a third party from or on account of the same provided that such claims, damages, losses, costs, or charges are not a result of the acts, omissions or negligence of the other party, its invitees, servants, or agents;

(ii) PAL shall maintain and keep in force a Commercial General Liability Insurance Policy in a minimum amount of two million dollars ($2,000,000.00), for the purpose of the indemnification provided in (i)

(iii) PAL shall include in the Policy (mentioned in sub-section (i) a Tenant Legal Liability Rider in a minimum amount of one hundred thousand dollars ($100,000.00), which will compensate the DTW for damage to the premises caused by or resulting from
negligence of PAL, its licensees, invitees, servants or agents. A copy of this policy shall be provided to DTW;

(iv) PAL agrees to maintain sufficient insurance (tenant insurance policy) in connection with any liability which may arise from its use and/or occupation of the premises and shall be solely responsible for insuring any contents or leasehold improvements owned by or placed upon the premises by the PAL, its servants, agents, licensees or invitees;

(v) PAL shall name the DTW as an additional insured under all policies of insurance and which policies shall contain cross liability provisions.

(vi) Each party shall be liable for any environmental damage that they may cause on their respective spaces (including adjacent aprons) and including damage resulting from refueling operations. Each party shall obtain from third party refuelers a copy of their Hangar Keepers Insurance Certificate with loss payable to the other party;

18. Neither party shall sell, assign, transfer, sub-licence, or otherwise dispose of this Agreement or any part thereof, or any right or privilege hereby given without the prior consent in writing of the other party, and any such purported sale, assignment, transfer, sub-licence or other disposition without such consent is and shall be void ab initio;

19. Neither party shall be responsible to the other party or any other person claiming by or through them for the loss of any articles left in the custody of the other party or for the loss of any goods or merchandise left on the premises. This provision shall survive termination.

Termination

20. This Agreement may be terminated during the Term by either party by providing 90 days' written notice to the other.

21. Where either the DTW Licence or the PAL Licence expires or is terminated or cancelled in accordance with this Agreement, both Licence's shall terminate at the same time.

22. On the expiry of the Term, the effective date of termination provided in section 16 or upon cancellation of either Head Agreement, the parties shall remove their equipment and leave the respective property in a clean condition, satisfactory to the other party (reasonable wear and tear excepted) with full compliance with their obligations under their licence;

23. If a party fails to comply with the provisions of subsection 18, the non-offending party may have such chattels, equipment and supplies removed and stored and the premises cleaned and repaired, all at the expense of the other party;

24. Any notice required by or affecting this Agreement may be served upon PAL by registered mail at the following address:

PAL Aviation Properties Limited
Hangar No. 1, St. John's International Airport
P.O. Box 29030, St. John's, NL A1A 5B5
SECTION

“B”
Potential copyright material

If you wish to obtain a copy please contact the ATIPP Office at (709) 729-7072 or atippoffice@gov.nl.ca.
SECTION

“C”
THIS AGREEMENT made at St. John's, Newfoundland, this 23rd day of October, 1998.

BETWEEN:

THE ST. JOHN'S INTERNATIONAL AIRPORT AUTHORITY, a corporation duly incorporated under the federal laws of Canada,

(hereinafter referred to as the "Authority")

OF THE ONE PART

AND:

HER MAJESTY THE QUEEN IN RIGHT OF NEWFOUNDLAND, as represented by the Honourable The Minister of Works, Services and Transportation,

(hereinafter referred to as "Newfoundland")

OF THE OTHER PART

WHEREAS Newfoundland has transferred the administration and control of crown land situate at the St. John's Airport, as more particularly described in Schedule "A" attached hereto, to Her Majesty the Queen in Right of Canada (hereinafter called "Canada") for an airport subject to terms and conditions as outlined in an Order of Council between Newfoundland and Canada dated the 15th day of October, 1998 (the "Transfer");

AND WHEREAS the Transfer is subject to a Lease (No. YT0807-1) made between Newfoundland and Canada on the 27th day of May, 1998 (the "Lease"), which Lease shall be effective until the 30th day of September, 2033, and which Lease provides Newfoundland with a certain parcel of land and a building on that land, as more particularly described in Schedule "B" attached hereto (the "Air Services Facility"), subject to certain terms and conditions outlined therein;
AND WHEREAS Newfoundland acknowledges that Canada will assign the operation and control of the St. John’s Airport to the Authority subject to the terms and conditions outlined in the Agreement to Transfer dated September 18, 1998, and all the schedules attached thereto;

AND WHEREAS the Authority agrees that it shall provide a further 25 year term to Newfoundland for Lease, beyond the present term to the 30th day of September 2033, and further agrees to an option for an additional 20 years, to the year 2078, if Newfoundland so requests, and provided that the Authority continues to operate and control the St. John’s Airport.

NOW THEREFORE in consideration of the mutual covenants and agreements contained in this Agreement and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereto agree as follows:

1. Prior to the expiration of the Lease and at the request of Newfoundland, the Authority agrees to enter into an Agreement with Newfoundland with respect to the leasing by Newfoundland of the Air Services Facility;

2. Any agreement between the Authority and Newfoundland shall be subject to the terms and conditions of the Agreement to Transfer and Schedules attached thereto between the Authority and Canada;
3. Newfoundland and the Authority shall negotiate in good faith the terms and conditions of an agreement with respect to the Air Services Facility;

4. Should the Authority require the Air Services Facility to be used for other purposes with respect to the operation of the St. John's Airport, the Authority shall provide to Newfoundland a comparable parcel of land and comparable building at the St. John's Airport which will have access to all airport facilities including aprons, runways, taxiways and all related amenities in a similar and like manner now enjoyed by Newfoundland for its Air Services Facility and, further, that Newfoundland shall pay only airport maintenance charges with respect to the Air Services Facility or any comparable land thereto;

5. Newfoundland shall use the Air Services Facility for purposes of airport operations and, in the event that Newfoundland no longer requires the Air Services Facility for this purpose, it shall surrender the Lease and any amendments or related agreements thereto;

6. The parties agree to execute such further agreements as are necessary to give effect to this Agreement; and
7. Newfoundland shall not assign or sub-lease the Lease or any amendments or related agreements thereto to any third party without the written approval of the Authority.

IN WITNESS WHEREOF the parties hereto affixed their seals at the day and year first before written.

SIGNED, SEALED AND DELIVERED in the presence of:  

THE ST. JOHN'S INTERNATIONAL AIRPORT AUTHORITY

SIGNED, SEALED AND DELIVERED in the presence of:

MINISTER OF WORKS, SERVICES AND TRANSPORTATION
Schedule "B"

All that certain parcel of land situate and being at St. John's, electoral district of St. John's East, province of Newfoundland and shown on Transport Canada plan dated December 15, 1992, and being more particularly shown as follows,

Commencing at a point said point being Control Mon. no. 6803105, thence north 42 degrees, 49 minutes, 59 seconds west, 1356.496 m., to the principal point of beginning;

thence by lands of H.M. in right of Canada, south 03 degrees, 29 minutes, 50 seconds east, 31.12 m.;

thence by lands of H.M. in right of Canada, south 86 degrees, 49 minutes, 30 seconds west, 62.49 m.;

thence by lands of H.M. in right of Canada, thence north 03 degrees, 29 minutes, 50 seconds west, 11.26 m.;

thence by lands of H.M. in right of Canada, thence south 86 degrees, 30 minutes, 10 seconds west, 98.50 m.;

thence by lands of H.M. in right of Canada, north 03 degrees, 34 minutes, 60 seconds west, 79.58 m.;
thence by lands of H.M. in right of Canada, north 86 degrees, 30 minutes, 10 seconds east, 98.37 m.

thence by lands of H.M. in right of Canada and lands leased to General Aviation Inc. south 03 degrees, 29 minutes, 50 seconds east, 40.28 m.

thence by lands leased to General Aviation Inc., north 86 degrees, 18 minutes east, 62.72 m., to the point of beginning. The above described parcel contains in all an area of 11010.63 square meters, more or less. All bearings being referred to the Three Degree Modified Transverse Mercator Projection System, Zone 1, Central Meridian, 53 degrees, West Latitude.
Potential copyright material

If you wish to obtain a copy please contact the ATIPP Office at (709) 729-7072 or atippoffice@gov.nl.ca.
SUPPLEMENTAL AGREEMENT

AGREEMENT BETWEEN:

Her Majesty the Queen in Right of Canada
represented by the Minister of Transport

and

St. John’s Airport

THE PROVINCE OF NEWFOUNDLAND AND LABRADOR
Represented by The Honourable The Minister of Works, Services and Transportation

1. To amend a portion of the PAYMENT CLAUSE identified as 12 (1) (a) (i) by striking out the Clause in its entirety and substituting therefor the following:

(i) TWENTY-THREE THOUSAND SEVEN HUNDRED EIGHTY-TWO DOLLARS AND NINETY-TWO CENTS ($23,782.92) per annum, for occupancy of the said land, payable in advance in monthly instalments of ONE THOUSAND NINE HUNDRED EIGHTY-ONE DOLLARS AND NINETY-ONE CENTS ($1,981.91) each;

Each and every instalment to be payable on the first day of each and every month, commencing on the first day of October 1998.
Notice of Revised Annual Rent - Land Lease

Pursuant to Clause 12 (3) (a) of the Memorandum of Understanding dated the 21st day of March 1994, identified as No. YT0507 by the Department of Transport, and entered into between:

Her Majesty the Queen in Right of Canada as represented by the Minister of Transport (as Lessor)

and

The Province of Newfoundland and Labrador

Minister of Works, Services and Transportation
(as Lessee)

the Lessor gives notice that the Revised Annual Rent for the period commencing on the 1st day of October 1998, ("Rent Review Date") and ending on the 30th day of September 2003, shall be:

$23,782.92 for annual rent, and

$ 1,211.16 for the airport maintenance charge

FURTHER TO THIS NOTICE:

The Lessee AGREES to the above-noted Revised Annual Rent, such agreement evidenced by signature of the Lessee's duly authorized representative.

Signature

Name  Barbara Nakelam

Office  Deputy Minister

Date  April 27, 1998
SUPPLEMENTAL AGREEMENT

AIRCRAFT/ Airport:
St. John's Newfoundland

FILE NO.: 1P 0578
5156-3

AUTOMATIC DATE DÉTENUE EN VOSCUE: 01/09/98

EFFECTIVE DATE: DÉTENUE EN VOSCUE: 09/10/01

PLATE NO.: 1426477

AGREEMENT ENTIERE:

It is hereby agreed to the terms and conditions hereof by the Government of Canada, represented by the Minister of Transport, and the Province of Newfoundland and Labrador, represented by the Honourable Minister of Works, Services and Transportation.

AIRPORT MANAGER
St. John's Airport

LEGAL NAME, NON-Legal:

THE PROVINCE OF NEWFOUNDLAND AND LABRADOR
Represented by The Honourable The Minister of Works, Services and Transportation

ADDRESS: ADDRESS:
P.O. Box 8700
St. John's, Newfoundland
A1B 4K6

PHONE NO.: (709) 729-4422

THE PARTIES AGREE AS FOLLOWS: LES PARTIES CONGÉDIE DE CE G adoption:

1. To amend a portion of the PAYMENT CLAUSE identified as 12 (i) (a) (f) by striking out the Clause in its entirety and substituting therefor the following:

(a) for the term commencing the first day of October, 1998 and ending on the thirtieth day of September 2003:

(i) TWENTY-THREE THOUSAND SEVEN HUNDRED EIGHTY-TWO DOLLARS AND NINETY-TWO CENTS ($23,782.92) per annum, for occupancy of the said land, payable in advance in monthly instalments of ONE THOUSAND NINE HUNDRED EIGHTY-ONE DOLLARS AND NINETY-ONE CENTS ($1,981.91) each;

Each and every instalment to be payable on the first day of each and every month, commencing on the first day of October 1998.

ALL OTHER CONDITIONS, COVENANTS AND PROHIBITIONS OF THE ORIGINAL AGREEMENT REMAIN UNCHANGED.
TOUTES LES AUTRES CONDITIONS, STIPULATIONS ET DISPOSITIONS PRÉVUES À L'ENTETE ORIGINALE DÉMÉNENT INCHANGÉES.

IN WITNESS WHEREOF, the parties hereto have executed this Supplemental Agreement.
EN PÔUR DE QUI:

For the Leaseholders

For the Leaseholders

May 27, 1998

WITNESS:}

[Signature]

[Signature]

[Signature]
Notice of Revised Annual Rent - Land Lease

Pursuant to Clause 12 (3) (a) of the Memorandum of Understanding dated the 31st day of March 1994, identified as No. Y76007 by the Department of Transport, and entered into between:

Her Majesty the Queen in Right of Canada as represented by the Minister of Transport (as Lessor)

and

The Province of Newfoundland and Labrador

Minister of Works, Services and Transportation (as Lessee)

the Lessor gives notice that the Revised Annual Rent for the period commencing on the 1st day of October 1998, ("Rent Review Date") and ending on the 30th day of September 2003, shall be:

$28,782.92 for annual rent, and

$1,211.16 for the airport maintenance charge

FURTHER TO THIS NOTICE:

The Lessee AGREES to the above-noted Revised Annual Rent, such agreement evidenced by signature of the Lessee's duly authorized representative.

Signature

Name

Office

Date

Barbara Newlon

Deputy Minister

April 27, 1998
May 27, 1998

Ms. Lily Green
Program Co-ordinator
Government of Newfoundland and Labrador
Department of Works, Services and Transportation
Accommodations and Realty Services
6th Floor, West Block
Confederation Building
St. John’s, Newfoundland
A1C 5W8

Dear Ms. [Redacted]

Re: Supplemental Agreement - MOA YT807-1
Land and Hangar #3
St. John’s Airport, St. John’s, NF

Enclosed for your retention is the fully executed duplicate original of Supplemental Agreement No. YT0807-1. This Supplemental Agreement is effective 1 October 1998, and pertains to the land you are leasing in connection with Hangar #3 at St. John’s Airport, St. John’s, Newfoundland.

Thank you for your promptness in executing this document.

Yours truly,

[Redacted]

COMMERICAL DEVELOPMENT OFFICER

ST. JOHN’S AIRPORT
P.O. BOX 5670
ST. JOHN’S, NEWFOUNDLAND
A1C 5W8

Attachment: [Redacted]

cc: MKC - Moncton
April 30, 1998

Commercial Development Officer
St. John’s Airport
St. John’s, Newfoundland
A1C 5W8

Dear [Redacted]

Re: M.O.A. No. YT0807
Land and Hangar # 3
St. John’s Airport

Attached are two copies of the “Notice of Revised Annual Rent Land Lease”, signed where indicated.

I will arrange to have the rental adjusted for October 1, 1998.

Any further questions please contact me at 729-4422.

Yours very truly,

LILY GREEN
Program Co-ordinator

LG/tp

Enclosures
GOVERNMENT OF
NEWFOUNDLAND AND LABRADOR

Department of Works, Services
and Transportation

Realty & Accommodation Services Division

Mr. Don Osmond
Assistant Deputy Minister (Works)

Please find attached, document(s) which require the Deputy Minister's attention and signature.

If you have any questions or require further information, please contact me at your convenience.

MARTIN BALODIS, P. Eng.
Director of Leasing & Accommodations

Encl.

NOTES:

Notice of Lease Increase for Department of
the Secretary - Attached copy of lease

[Signature]

P.O. Box 8700, 6th Fl., West Block, Confederation Building, St. John's, Newfoundland A1B 4V7 T-1 (709) 729-2400 Fax (709) 729-3623

1997-2003

Increase of $2,631.70 effective Oct 1/98

[Signature]

Deemed to be reasonable increase.
30 March 1998

BY HAND

Province of Newfoundland & Labrador
Dept. of Works, Services & Transportation
P.O. Box 8700
St. John's, Newfoundland
A1C 4J6

Attention: Ms. Lily Green - Accommodations Branch

Dear Ms. Green:

RE: M.O.A. No. YT0807
   Land & Hangar #3 for aviation operation
   St. John's Airport, St. John's, NF

We are writing to advise you of the revised annual rent for the land you occupy, at St. John's Airport. A real estate appraisal was recently completed and the value of the land was estimated at $2.16/M² for land rent, and the $0.11/M² for Airport Maintenance Charge (AMC), remains unchanged.

The resulting annual rent commencing October 1, 1998, will be $24,994.08.

We are attaching two (2) copies of "Notice of Revised Annual Rent - Land Lease," and would appreciate if you would have them duly signed, and returned to this office.

Should you wish to have more information, please contact the undersigned.

Sincerely,

[Redacted]

COMMERCIAL DEVELOPMENT OFFICER

ST. JOHN'S AIRPORT
ST. JOHN'S, NEWFOUNDLAND
A1C 5W8

Attachment:
Notice of Revised Annual Rent - Land Lease

Pursuant to Clause 12 (3) (a) of the Memorandum of Understanding dated the 21st day of March 1994, identified as No. YT0807 by the Department of Transport, and entered into between:

Her Majesty the Queen in Right of Canada as represented by the Minister of Transport (as Lessor)

and

The Province of Newfoundland and Labrador

Minister of Works, Services and Transportation (as Lessee)

the Lessor gives notice that the Revised Annual Rent for the period commencing on the 1st day of October 1998, ("Rent Review Date") and ending on the 30th day of September 2003, shall be:

$23,782.92 for annual rent, and

$ 1,211.16 for the airport maintenance charge

FURTHER TO THIS NOTICE:

The Lessee AGREES to the above-noted Revised Annual Rent, such agreement evidenced by signature of the Lessee's duly authorized representative.

Signature

Name  Barbara Wakelam

Office  Deputy Minister

Date  April 27, 1998
(2) For the purposes of this Clause, annual market rent means an annual rent for the Premises, determined for any Revised Rental Period, within the time hereinafter provided, such determination to be based upon:

(a) the product, of

(i) the appraised market value of the land portion of the premises, based upon the assumption that such land is vacant land, free from encumbrances and immediately available for new development; such value is based on its highest and best use without regard to the existence of the lease or the building or any other improvement then standing thereon; multiplied by

(ii) a percentage rate of return equal to the latest available published average yield prevailing on Government of Canada three to five year bonds for the 12 most recent calendar months. The monthly rates are published as Table F1 in the Monthly Bank of Canada Review.

(b) a fixed annual sum of ONE DOLLAR ($1.00) for the building and additional improvements.

(3) Canada shall give a Notice of Revised Annual Rent to the Province, at least one hundred and eighty (180) days prior to the Rent Revision Date, which is to be effective upon such date and thereafter for the next five (5) year term of this Agreement. The Notice of Revised Annual Rent shall set out the annual rent based on the then current market value of the land portion of the Premises multiplied by the percentage rate of return as set out in subclause (2)(a)(ii) herein together with a fixed annual sum of ONE DOLLAR ($1.00) for the building and additional improvements. Subject to subclause (3)(c) herein, the annual rent set out in such Notice of Revised Annual rent shall be the annual rent payable until the next following Rent Revision Date.

Any failure to give such Notice of Revised Annual Rent within the time stated herein shall not render void the right of Canada to require the determination of Revised Annual Rent as herein provided, save and except in the event that such Notice of Revised Annual Rent is not given to the Province at least one hundred and eighty (180) days prior to the Rent Revision Date, then any Revised Annual Rent determined herein shall commence and be effective one hundred and eighty (180) days from when the delayed Notice of Revised Annual Rent was given.

(b) Where Canada has issued a Notice of Revised Annual Rent to the Province pursuant to subclause (3)(a) herein, the Province shall pay the annual rent therein set out from and after the date of commencement of the Revised Rental Period, or one hundred and eighty (180) days after issuing of such Notice of Revised Annual Rent, notwithstanding that the Province may be disputing the market value of the land used in the determination of the revised annual rent, as herein set out in subclause (3)(c) or (3)(d). Once the annual rent is agreed upon or so determined Canada shall, where such annual rent is less than the amount paid from the commencement of the Revised Rental Period, credit such overpayment and any interest at the rate of (6.98%) due on those monies to future rent coming due immediately following the date of agreement upon, or determination of, the annual rent for the Revised Rental Period. In order to reflect prevailing interest rates, Canada may review and adjust the interest rate from time to time.
MEMORANDUM OF AGREEMENT

between

THE GOVERNMENT OF CANADA, represented herein by the Minister of Transport

AND

THE PROVINCE OF NEWFOUNDLAND, represented herein by the Honourable the Minister of Works, Services and Transportation

Date of Authority ........................................ P.C. 1992-1837, August 27, 1992
Date of Memorandum of Agreement .................. 1994 MAR 21
Public Work Concerned ................................. St. John's Airport, Newfoundland
Description .................................................. 11,010.63 m², more or less, or land together with Transport Canada's Hangar No. 3, situated thereon, all comprised in St. John's Airport, Newfoundland; to be used as a site for aviation operation which includes such activity as storage and maintenance of Province's aircraft and other aviation uses, as permitted by Transport Canada.

Beginning of Term ....................................... October 1, 1993
End of Term ............................................... September 30, 2033 (40 years)

FILE NO. - N° DU Dossier ................................. 5156-A177-45

CANCELS AND SUPersedES LEASE NO. 86959
TABLE OF CONTENTS

SECTION I - INTERPRETATION
1. DEFINITIONS
2. SINGULAR AND PLURAL
   MASCULINE AND FEMININE
3. CAPTIONS AND HEADINGS
4. ENTIRE AGREEMENT
5. TIME
6. BINDING EFFECT
7. MEMBERS OF THE HOUSE OF COMMONS
8. PROVISION SEPARATELY VALID

SECTION II - PERMISSION, DURATION, PAYMENTS, COMMON AREA
MAINTENANCE CHARGE
9. PERMISSION
10. DURATION
11. CANCELLATION AGREEMENT
12. PAYMENT
13. ARBITRATION
14. PAYMENTS
15. COMMON AREA MAINTENANCE CHARGE
16. REALTY TAXES

SECTION III - "AS IS" CONDITION, USE OF PREMISES, RIGHT OF
PROPERTY IN ADDITIONAL IMPROVEMENTS
17. "AS IS" CONDITION
18. USE OF PREMISES
19. RIGHT OF PROPERTY IN ADDITIONAL FIXTURES
SECTION IV - UTILITIES AND SANITATION, OBJECTIONABLE GOODS, DRAINAGE AND DISCHARGE OF MATERIALS, ELECTRONIC INTERFERENCE, COMPLIANCE WITH LAWS

20. UTILITIES AND SANITATION
21. OBJECTIONABLE GOODS
22. DRAINAGE AND DISCHARGE OF MATERIALS
23. ELECTRONIC INTERFERENCE
24. COMPLIANCE WITH LAWS

SECTION V - MAINTENANCE AND REPAIRS BY PROVINCE, ALTERATIONS, ADDITIONS AND REPLACEMENTS, DAMAGE OR DESTRUCTION

25. MAINTENANCE AND REPAIRS BY PROVINCE
26. ALTERATIONS, ADDITIONS AND REPLACEMENTS
27. DAMAGE OR DESTRUCTION

SECTION VI - INSURANCE
28. INSURANCE

SECTION VII - DEFAULT AND RE-ENTRY, REMEDIES GENERALLY
29. DEFAULT AND RE-ENTRY
30. REMEDIES GENERALLY

SECTION VIII - NO CLAIM OR DEMAND AGAINST CANADA, INDEMNIFICATION OF CANADA, NON-WAIVER
31. NO CLAIM OR DEMAND AGAINST CANADA
32. INDEMNIFICATION OF CANADA
33. NON-WAIVER

SECTION IX - REMOVAL OF CHATTELS BY PROVINCE, END OF TERM
34. REMOVAL OF CHATTELS BY PROVINCE
35. END OF TERM
SECTION X - GENERAL

36. ACCESS TO PREMISES

37. RIGHT OF CANADA TO GRANT LICENCES

38. NUISANCE

39. NOTICES TO CANADA AND PROVINCE
THIS MEMORANDUM OF AGREEMENT made this 24th day of
March, 1994,

BETWEEN:

HER MAJESTY THE QUEEN, in right of Canada, represented by the
Minister of Transport (hereinafter called "Canada"),

OF THE FIRST PART;

AND

THE PROVINCE OF NEWFOUNDLAND, represented by the
Honourable the Minister of the Department of Works, Services and
Transportation (hereinafter called the "Province")

OF THE SECOND PART.

WHEREAS:

A. The Province is desirous of occupying and using certain lands comprising an area of
11,010.63 square metres, more or less (hereinafter called the "said lands") shown
outlined in Drawing No. A177.A007.NC38 attached to and forming part of this
Agreement, with "Canada's Existing Building situated heron and identified as Hangar
No. 3, forming part of St. John's Airport (hereinafter called the "airport") at or in the
vicinity of St. John's, Newfoundland, are owned and operated by "Canada".

B. The Province has renovated and made improvements upon the building on the said lands.

C. The parties hereto have agreed to enter into this Agreement.

NOW THEREFORE WITNESSES
DEFINITIONS

1. In this Agreement,

(a) "Airport Manager" means the Airport Manager of the Airport and includes any person authorized to act on behalf of such Airport Manager.

(b) "commencement date" means the date on which the term of this Agreement begins;

(c) "the Building" means the building in existence, at the commencement date, upon the lands described and shown in drawing No. A177.A007.N038 hereto attached, and fixtures and improvements, including landscaping, associated therewith;

(d) "First Rental Period" means the period beginning on the commencement date and ending on the day before the fifth (5th) anniversary of the date of commencement of this Agreement;

(e) "Canada" includes any person authorized by the Minister of Transport to act on his behalf;

(f) "Minister" means the Minister of Transport or any person authorized to act on behalf of the Minister of Transport;

(g) "Additional Improvements" - shall mean any and all buildings, structures, improvements, repairs and alterations constructed or to be constructed on the Premises at anytime after the commencement date.

(h) "Rent Revision Date" means any of the chronologically numbered succession of anniversaries of the commencement date, within the term of this Agreement, the number of which in such succession is a multiple of five;

(i) "Revised Rental Period" means any period commencing on a Rent Revision Date and expiring on

(i) the day before the next following Rent Revision Date, or

(ii) the day on which this Agreement expires or is otherwise determined, whichever first occurs.

(j) "Appraiser" shall mean a person who holds the designation Accredited Appraiser Canadian Institute ("AACI"), from the Appraisal Institute of Canada, or one holding a comparable designation from some other Nationally recognized professional appraisal organization, or a person employed in the Public Service of Canada, in such capacity.

(k) "Common Area Maintenance Charge" shall mean the Province's proportionate share of Canada's costs of maintaining and servicing common areas. The term "common areas" is specifically defined in Clause 14.(2)(a).
(I) "Absolute Net Agreement" - shall mean an agreement wherein Canada has absolutely no financial obligations. All cash flow is revenue to Canada, and the Province has absolute responsibility for all expenses related to the property including but not limited to repair, operating and maintenance expenses, property taxes as appropriate, share of common area maintenance charge, and structural maintenance.

SINGULAR AND PLURAL
MASCULINE AND FEMININE

2. Whenever in this Agreement the context so requires or permits, the singular number shall be read as if the plural was expressed and the masculine gender as if the feminine or neuter, as the case may be, were expressed.

CAPTIONS
AND HEADINGS

3. The captions and headings in this Agreement are for convenience of reference only, and shall not affect the scope, intent, or interpretation of any provision.

ENTIRE AGREEMENT

4. The Province acknowledges that there are no covenants, representations, warranties, agreements or conditions expressed or implied, collateral or otherwise forming part of or in any way affecting or relating to this Agreement save as expressly set out in this Agreement and that this Agreement constitutes the entire agreement between Canada and the Province and may not be modified except as herein explicitly provided or by subsequent agreement in writing of equal formality executed by the Province and Canada.

TIME

5. Time shall in all respects be of the essence in each and every of the terms, covenants and conditions in this Agreement.

BINDING EFFECT

6. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their successors in office.

MEMBERS OF THE HOUSE OF COMMONS

7. No member of the House of Commons of Canada shall be admitted to any share of this Agreement or to any benefit to arise therefrom.
PROVISION SEPARATELY VALID

8. If any covenant, obligation, agreement, term or condition of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such covenant, obligation, agreement, term or condition to persons or circumstances other than those in respect of which it is held invalid or unenforceable, shall not be affected thereby and each covenant, obligation, agreement, term and condition of this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.
SECTION II
PERMISSION, DURATION, PAYMENT,
PAYMENTS, COMMON AREAS,
PAYMENT OF TAXES

PERMISSION
9. Canada does hereby grant permission unto the Province to occupy and use all and singular that parcel of land situated, lying and being comprised at St. John's Airport in the Province of Newfoundland as more clearly shown in Drawing No. A177.A007.N038 hereto attached, together with the Building, the said lands and Building being hereinafter together called the "Premises".

DURATION
10. That this Memorandum of Agreement shall continue in force and effect between the parties hereto for a term or period of forty (40) years, commencing on the first day of October, 1993 and then to be complete and ended.

CANCELLATION OF AGREEMENT
11. That the Agreement dated the nineteenth day of June, 1970 bearing No. 86959 in the records of Transport Canada, granted by Her Majesty the Queen, represented therein by the Minister of Transport, to Her Majesty the Queen in Right of the Province of Newfoundland represented therein by the Minister of Supply and Services, IS HEREBY CANCELLED AND SUPERSEDES, BY THESE PRESENTS, as of, from and after the thirtieth day of September, 1993.

PAYMENT
12. (1) That the Province shall pay all rentals identified in Clauses 12 (1)(a), 12 (2)(b) and 15 (1)(a) herein, during the currency of this Memorandum of Agreement to Canada for and in respect of the said land and building, in advance, through the Honourable the Receiver General for Canada for the time being, in lawful money of Canada, the annual sums as follows:

(a) for the term commencing the first day of October, 1993 and ending on the thirtieth day of September, 1998:

   i) TWENTY THOUSAND NINE HUNDRED TWENTY DOLLARS AND TWENTY CENTS ($20,920.20) per annum, for occupancy of the said land, payable in advance, in monthly instalments of ONE THOUSAND SEVEN HUNDRED FORTY-THREE DOLLARS AND THIRTY-FIVE CENTS ($1,743.35) each;

   Each and every instalment to be payable on the first day of each and every month, commencing on the first day of October, 1993.

(b) for each Revised Rental Period, an annual market rent, determined as hereinafter provided.
(2) For the purposes of this Clause, annual market rent means an annual rent for the Premises, determined for any Revised Rental Period, within the time hereinafter provided, such determination to be based upon:

(a) the product, of

(i) the appraised market value of the land portion of the premises, based upon the assumption that such land is vacant land, free from encumbrances and immediately available for new development; such value is based on its highest and best use without regard to the existence of the lease or the building or any other improvement then standing thereon; multiplied by

(ii) a percentage rate of return equal to the latest available published average yield prevailing on Government of Canada three to five year bonds for the 12 most recent calendar months. The monthly rates are published as Table F1 in the Monthly Bank of Canada Review.

(b) a fixed annual sum of ONE DOLLAR ($1.00) for the building and additional improvements.

(3) (a) Canada shall give a Notice of Revised Annual Rent to the Province, at least one hundred and eighty (180) days prior to the Rent Revision Date, which is to be effective upon such date and thereafter for the next five (5) year term of this Agreement. The Notice of Revised Annual Rent shall set out the annual rent based on the then current market value of the land portion of the Premises multiplied by the percentage rate of return as set out in subclause (2)(a)(ii) herein together with a fixed annual sum of ONE DOLLAR ($1.00) for the building and additional improvements. Subject to subclause (3)(c) herein, the annual rent set out in such Notice of Revised Annual rent shall be the annual rent payable until the next following Rent Revision Date.

Any failure to give such Notice of Revised Annual Rent within the time stated herein shall not render void the right of Canada to require the determination of Revised Annual Rent as herein provided, save and except in the event that such Notice of Revised Annual Rent is not given to the Province at least one hundred and eighty (180) days prior to the Rent Revision Date, then any Revised Annual Rent determined herein shall commence and be effective one hundred and eighty (180) days from when the delayed Notice of Revised Annual Rent was given.

(b) Where Canada has issued a Notice of Revised Annual Rent to the Province pursuant to subclause (3)(a) herein, the Province shall pay the annual rent therein set out from and after the date of commencement of the Revised Rental Period, or one hundred and eighty (180) days after issuing of such Notice of Revised Annual Rent, notwithstanding that the Province may be disputing the market value of the land used in the determination of the revised annual rent, as herein set out in subclause (3)(c) or (3)(d). Once the annual rent is agreed upon or so determined Canada shall, where such annual rent is less than the amount paid from the commencement of the Revised Rental Period, credit such overpayment and any interest at the rate of (6.98%) due on those monies to future rent coming due immediately following the date of agreement upon, or determination of, the annual rent for the Revised Rental Period. In order to reflect prevailing interest rates, Canada may review and adjust the interest rate from time to time.
(c) The Province may dispute the market value of the land used in the determination of the Revised Annual Rent as herein set out by, within the fifteen (15) days next following the giving of such Notice of Revised Annual Rent, advising Canada in writing of such intention to so dispute and by giving to Canada, within the sixty (60) days next following such fifteen (15) day period, a Counter Statement of the Market Value of the land, supported by an appraisal. The statement so presented must reflect the same effective date as Canada's Statement of Revised Annual Rent.

(d) If the Province gives Canada a Counter Statement of the Market Value of the land, the parties shall, within fifteen (15) days next following the Province's Counter Statement of Market Value of the land to Canada, meet with the other to determine the Market Value of the land within the next fifteen (15) days. If Canada and the Province cannot agree on the Market Value of the land then within the next seven (7) days either may notify the Executive Vice-President of the Appraisal Institute of Canada (AIC) or his equivalent who shall appoint an AIC Appraiser within fifteen (15) days.

(e) The AIC Appraiser shall determine the Market Value based on the land solely on Canada and Province's Statements of Market Value of the land and written summary of arguments provided by Canada and Province within thirty (30) days of appointment.

(f) The AIC Appraiser's determination of the Market Value of the land together with reasons of decision shall be provided to Canada and Province and such determination shall be binding on Canada and the Province.

(g) Any and all fees for services rendered by the AIC Appraiser shall be shared equally by Canada and the Province.

(h) If Canada does not issue a Notice of Revised Annual Rent pursuant to subclause (3)(a) herein, the Province may, not less than one hundred and fifty (150) days prior to the date of commencement of the Revised Rental Period, issue to Canada a notice (hereinafter called the “Province’s Notice of Revised Annual Rent”) setting out an annual rent for such Revised Rental Period. The Province’s Notice of Revised Annual Rent shall set out the Market Value of the land and the rate of return as calculated in accordance with subclause (2) (a) (ii) herein.

Subject to subclause (3)(i) herein the annual rent set out in such Province’s Notice of Revised Annual Rent shall be the annual rent payable in and for such Revised Rental Period.

(i) Where the Province issues a Notice of Revised Annual Rent Canada may dispute the value of the land by giving Notice to the Province within a period of fifteen (15) days next following the giving of the Province’s Notice. In such event, the Province and Canada will commence the discussions pursuant to subclause (3)(d) herein.

(j) If neither Party has issued a Notice of Revised Annual Rent with respect to any Revised Rental Period, the annual rent payable in and for such Revised Rental Period shall, subject to the rights of Canada under subclause (3)(a) herein be the annual rent payable in and for the year immediately preceding such Revised Rental Period.
ARBITRATION

13. (1) If at any time or times the Market Value for the land is subject to dispute by the Province, pursuant to Clause 12 (3)(d) of this Agreement, or by Canada, pursuant to Clause 12 (3)(i) of this Agreement, the Market Value for such Rent Revision Period shall be settled and determined in accordance with Commercial Arbitration Act (hereinafter called the "Act") and Commercial Arbitration Code (hereinafter called "the code") by one arbitrator, who shall be a member of the Appraisal Institute of Canada.

(2) The arbitration proceedings shall be conducted and the arbitration award given in the City of St. John's, Newfoundland.

(3) The arbitration award pursuant to Clause 12 (3)(i) shall be final and binding on both parties hereto.

(4) The provisions of Clauses 12 (3)(c) and 12 (3)(d)

(a) shall be deemed to be an Arbitration Agreement within the provisions of the Code, and

(b) shall be subject to the Act, as amended or re-enacted from time to time, and any regulations thereunder.

PAYMENTS

14. (1) The annual rent, payable by the Province to Canada, under Clause 12 hereof, for the First Rental Period, shall be paid, in equal monthly instalments, in advance, on the first (1st) day of each and every month, in each and every year, of the First Rental Period.

(2) The annual rent, payable by the Province to Canada, under Clause 12 hereof, for each Revised Rental Period, shall be paid, in equal monthly instalments, in advance, on the First (1st) day of each and every month, in each and every year, of such Revised Rental Period.

(3) The Province shall make all the rental payments payable hereunder by cheque in favour of the Receiver General of Canada, delivered to

Transport Canada
P.O. Box 42
Moncton, N.B.
E1C 8K6

(4) When rent or any other amount payable hereunder by the Province to Canada shall be in arrears, such amount shall bear interest at the rate of 8.60 percent per annum (0.720 percent per month compounded) retroactive from the date any such amount is due and payable, until paid, and Canada shall have all remedies for the collection of such interest, if unpaid after demand, as in the case of rent in arrears, but this stipulation for interest shall not prejudice or affect any other remedies of the Province under this Agreement. In order to reflect prevailing interest rates, Canada may review and adjust the interest rate from time to time.
(5) In the event that the amount of rent at any time payable hereunder is subject to a revision which is dependent upon a computation or determination to be made pursuant to any provision of this clause but which has not yet been made, and if consequently the amount of the revision of rent cannot yet be ascertained, (as, for example, rent under Clause 12 (2) before the determination of the applicable annual market rent) the Province shall, pending the making of the computation, continue to pay rent by monthly instalments equal to the monthly instalments payable in the period immediately preceding the date from which such revision of rent is to be computed or determined, and when revised rent has been ascertained the Province shall pay to Canada the amount by which the rent as recomputed exceeds the amount actually paid during the period between the revision and the computation or Canada shall credit the Province, against future rent, with any overpayment. No interest shall be payable by the Province on the amount so paid to Canada if it is paid within ten days of ascertainment.

(6) Any sums, costs, expenses or other amounts from time to time due and payable by the Province to Canada, under the provisions of this Agreement, including sums payable by way of indemnity, and whether expressed or be rent or may at the option of Canada be treated as and deemed to be rent, in which event Canada shall have all the remedies for the collection of such sums, when in arrears, as are available to Canada for the collection of rent in arrears.

COMMON AREA MAINTENANCE CHARGE

15. (1) The Province covenants and agrees to pay to Canada, in lawful money of Canada,

(a) for the First Rental Period, a common area maintenance charge of ONE THOUSAND TWO HUNDRED ELEVEN DOLLARS AND SIXTEEN CENTS ($1,211.16) per annum, payable in monthly instalments of ONE HUNDRED DOLLARS AND NINETY-THREE CENTS ($100.93) in advance, on the first of each and every month, in each and every year, of the First Rental Period commencing on the first day of October, 1993.

(b) for each Revised Rental Period, a common area maintenance charge, determined as hereinafter provided, payable in equal monthly instalments, in advance, on the first (1st) day of each and every month, in each and every year, of such Revised Rental Period.

(2) (a) The expression "common areas" as used in this Agreement shall apply to Canada's roadways, storm drainage systems, landscaped areas, walkways and other facilities from time to time available for the use or benefit of tenants of premises in the Airport and tenants' invitees. The cost of maintaining such common areas shall include (without limiting the generality of the foregoing), the cost of operating, lighting, cleaning, snow removal, supervising, repairs to and replacements of curbs, walkways, landscaping, drainage and landscaping facilities as may from time to time be or become necessary. The manner in which the common areas and facilities shall be maintained and the expenditures therefore is and shall be made in the sole discretion of Canada.

(b) The Province's common area maintenance charge shall from time to time be determined by Canada upon such basis as Canada may (from time to time) consider equitable, having regard to the area of the Premises and operations of the Province. Canada agrees that no distinction will be made between the Province and other airport access commercial tenants regarding the common area maintenance charge unless the Premises and operations of the Province draw upon and wear the common areas and facilities in an amount beyond that of the other similarly situated or comparable airport access commercial tenants.
REALTY TAXES

16. The Province shall pay or cause to be paid all rates, taxes and assessments, of whatsoever description, that may at any time during the term of this Lease by lawfully imposed and become due and payable upon, or in respect of the Premises, or any part thereof, or in respect to the Province's use or occupation thereof.
SECTION III

AS IS CONDITION,

USE OF PREMISES,

RIGHT OF PROPERTY IN FIXTURES

"AS IS" CONDITION

17. The Province accepts the Premises in an "as is" condition and any improvements made to the Premises by the Province at any time during the currency of this Agreement, to make the Premises suitable for the operations of the Province hereunder, shall be at the risk, cost and expense of the Province and to the satisfaction of Canada and the Province hereby acknowledges that it has carried out such inspections of the Premises as it deems necessary.

USE OF PREMISES

18. The Province shall use the premises solely for aviation purposes relative to the Province's operations which includes such activities as storage and aircraft maintenance of the Province's aircrafts and other aviation uses, as permitted by Canada, and for no other purpose whatsoever.

It is understood and agreed by both parties that if the Province wishes to undertake any other activity or activities that are not relative to the Province's operations, the prior authorization of Canada, in writing, is required and that such additional undertaking will permit Canada to charge additional rent. Such authorization may take the form of a Supplemental Agreement.

The Province hereby covenants, to provide all information necessary to establish such a rent, and that the Province its officers, employees and successors, shall abide and adhere to the above requirements, as may be amended.

RIGHT OF PROPERTY IN ADDITIONAL IMPROVEMENTS

19. (1) Subject to subclauses (2) of this Clause, all buildings and fixed improvements which the Province may construct upon the Premises from time to time, are and shall thereupon be fixtures to the Premises and are intended to be and become the absolute property of Canada upon the expiration or termination of this Agreement, but however, as between the parties to this Agreement only, the Province shall be entitled to treat such improvements as the property of the Province and not of Canada during the term of this Agreement; nevertheless, Canada shall have the option, upon the expiration or other termination of this Agreement, of requiring or compelling the Province upon written notice, to remove such improvements, and the Province shall be so bound to remove and shall, as nearly as possible, restore the Premises to its original condition, at its own cost and expense and without any right on the part of the Province to seek compensation for any reason whatsoever.

(2) All buildings and improvements referred to in this clause shall be subject to the provisions of this Agreement applicable thereto notwithstanding subclause (1) of this Clause.
SECTION IV

UTILITIES AND SANITATION,

OBJECTIONABLE GOODS,

DRAINAGE AND DISCHARGE OF MATERIALS,

ELECTRONIC INTERFERENCE, COMPLIANCE WITH LAWS

UTILITIES AND SANITATION

20. (1) The Province shall at the cost and expense of the Province, be responsible for the installation and maintenance of the connecting system to Canada's water, sanitary sewage and storm sewage systems at the nearest point of connection; the plans and specifications for connecting to such services shall be approved by Canada before work is commenced and the work in connection therewith be performed under the supervision of a designated officer of Canada.

(2) The Province shall construct improvements on the Premises in such manner that the surface drainage water on the Premises will be discharged into Canada's drainage system, and plans for the construction of storm drainage services shall be subject to the approval in writing, of Canada prior to installation of such services, for compatibility with the field drainage channels serving the Premises, all at the cost and expense of the Province.

(3) The Province shall, at the cost and expense of the Province, provide complete and proper arrangements for the adequate sanitary handling and disposal away from the Airport of all trash, garbage and other refuse on or in connection with the Province's operations under this Agreement, all to the satisfaction of Canada. Piling crates, cartons, barrels or other similar items shall not be permitted in a public area on the Airport.

(4) The Province shall be responsible at the cost and expense of the Province for making arrangements for all utilities not supplied by Canada and the plans and specifications for installation thereof must be approved by Canada and the work performed under the supervision of a designated officer of Canada.

OBJECTIONABLE GOODS

21. The Province shall not by itself, nor by any person or persons acting for it, or with its permission, bring, keep, store, offer for sale, give away or otherwise use, handle or dispose of any merchandise, goods, materials, effects or things, in, upon or about the Premises, or any part thereof, which may by Canada for any reason be deemed objectionable.

DRAINAGE AND DISCHARGE OF MATERIALS

22. (1) The Province shall not do, cause or permit to be done any act or thing in the Premises which may damage, injure or impair the operation of any drainage system, sanitary sewer system, or any facility provided for the protection of the general public or the operation of the Airport, all to the satisfaction of Canada.

(2) If required, grease traps or interceptors shall be provided by the Province and maintained by the Province, at the expense of the Province, in continuous efficient operation at all times.
(3) The Province shall not discharge, cause or permit to be discharged or howsoever to pass into the sewer systems of the Airport or elsewhere any deleterious material, noxious, contaminated or poisonous substances, all as determined by Canada; it being understood and agreed that in the event of a discharge or escape of such deleterious material, noxious, contaminated or poisonous substance in and under the control of the Province, the cost incurred in the clean-up to the satisfaction of Canada, shall be to the Province's account.

ELECTRONIC INTERFERENCE

23. (1) The Province shall not conduct any operation or install any facility on the Premises or any building on the Premises in a manner that will cause physical or electronic interference or hazard to the navigation of aircraft.

(2) Upon notice given by or on behalf of Canada of any interference or hazard arising out of or incidental to the operations or installations of the Province, the Province shall at its own cost and expense immediately take all steps, including such discontinuance or modification of the Province’s operations or removal, rebuilding or repair of the Province’s installations, as may be necessary to remove the interference or hazard to the satisfaction of Canada.

COMPLIANCE WITH LAWS

24. (1) The Province shall procure and maintain, at its own cost and expense, such licences, permits or approvals from Federal, Provincial, Municipal or other Government authorities, and such private permits as may be necessary to enable it to furnish the services and conduct the operations provided for in this Agreement.

(2) The Province shall in all respects comply with all applicable statutes, regulations, and by-laws, in any manner affecting the Premises including without limitation all regulations and directives regarding aeronautics, all federal environmental protection statutes and regulations and by-laws and any regulations thereto and applicable Providential, Territorial and Municipal or local environmental protection statutes and regulations and by-laws.

(3) The Province shall comply with all directives of the Airport Manager, relating to the use, maintenance, repair and/or relocation of roads, sewer, water and electrical service facilities, garbage disposal and removal, security and all other matters arising within the boundaries of the Airport, given to the Province personally, by mail or by means of a sign or signs posted within the boundaries of the Airport.
SECTION V
MAINTENANCE AND REPAIRS BY PROVINCE,
ALTERATIONS, ADDITIONS AND REPLACEMENTS,
DAMAGE OR DESTRUCTION,
LIENS

MAINTENANCE AND REPAIRS BY PROVINCE

25. (1) The Province shall, at all times during the term of this Agreement, at its sole cost and in the same manner and to the same extent as a prudent owner, keep and maintain the Premises including the Building and any additional improvements in good order and repair (which shall include, without limitation, periodic painting and decorating) as determined by Canada, and shall make all needed repairs and replacements with due diligence and dispatch. Such repairs and replacements shall be in all respects to a standard at least substantially equal in quality of materials and workmanship to the original work and materials in the Building or additional improvements, as the case may be, being repaired and replaced and shall meet the requirements of the insurance underwriters. The Province shall not commit or suffer waste or injury to the Premises, the Building or any additional improvements, or any part thereof. The Province agrees not to call upon Canada at any time during the term of this Agreement to make any repairs to or replacements of any part of the Building or any additional improvements, or any alteration, addition, change, substitution or improvement thereof or thereto, whether structural or otherwise, this being an Absolute Net Agreement. The intention of this Agreement is that the rent required to be paid by the Province shall be paid without any deduction, abatement or setoff whatsoever and that all expenses, costs, payments and outgoings incurred in respect of the construction, care, maintenance, operation, repair, replacement, alteration, addition, change, substitution and improvement of or to the Premises, the Building and any additional improvements, or of any part thereof shall be borne by the Province and that the rent herein provided shall be absolutely net to Canada and free of all abatement, setoff, or deduction of realty taxes, charges, rates, assessments, expenses, costs, payments or outgoings of every nature arising from or related to the Premises or any improvements thereon and that the Province shall pay all such taxes, charges, rates, assessments, expenses, costs, payments and outgoings.

ALTERATIONS, ADDITIONS AND REPLACEMENTS

26. (1) Subject to subclause (2) of this Clause, the Province may, as long as this Agreement is in good standing, from time to time make any alterations and additions to the Premises.

(2) The Province shall not make any alterations to the said premises or facilities or services connected therewith or add any facilities or services, prior to receiving an approved Facility Alteration Permit, duly executed by or on behalf of the Airport Manager. Upon receipt of the approved Facility Alteration Permit, the Province agrees to make the alterations at the Province's cost, in accordance with the requirements, terms and conditions specified in the Facility Alteration Permit, and thereafter maintain the said alterations at the cost of the Province and to the satisfaction of the Airport Manager.
(3) The Province shall cause all work done in connection with any change, alteration or additions of or to the building, structures, or improvements on the Premises to be done promptly and in a good workmanlike manner and in accordance with the plan and specifications therefor approved by Canada and with all applicable building and zoning by-laws and with all applicable laws, orders, rules, regulations and requirements of all Federal, Provincial and Municipal Governments and Agencies having jurisdiction.

DAMAGE OR DESTRUCTION

27. (1) The Province covenants and agrees that in the event of damage to or partial destruction of the Building the Province shall either

(a) replace any and all parts of the Building, destroyed with a new structure or structures in accordance with any agreement which may be made by it with Canada, or

(b) repair or replace such damage or destruction in the absence of any such agreement.

(2) The Province covenants and agrees that in the event of complete or substantially complete destruction of the Building, as the case may be, occurring at any time up to but not after the commencement of the last Revised Rental Period, the Province shall reconstruct such Building so destroyed.

(3) Any replacement, repair or reconstruction of any part of the Building or any part thereof pursuant to the provisions of subclause (1) of this Clause, shall be made or done in compliance with the provisions of Clause 25 hereof.

(4) Notwithstanding the provisions of subclause (1) of this Clause, if complete destruction or serious damage of the Building should occur during the last Revised Rental Period by reason of any happening insured against as required by Clause 27 hereof, and provided the proceeds of such insurance is payable to Canada as if Canada were the Province and the policy or policies of insurance are so endorsed, the Province may at its option decline to repair, reconstruct or replace the Building and such declining shall determine the tenancy. In such event the Province shall at its expense, clear the Premises and any insurance monies or other monies available by reason of the fire or other casualty causing such destruction or damage shall be paid to Canada for Her own use absolutely.

(5) Notwithstanding any damage or the complete or partial destruction by fire or otherwise of the Building, the Province shall remain or continue liable for the payment of rentals and other monies reserved by the provisions of this Agreement as though no damage or complete or partial destruction had occurred, unless this Agreement is terminated as in this clause provided, in which event the Province's obligation to make such payments shall cease.
SECTION VI
INSURANCE

28. (1) The Province shall place and at all times maintain during the currency of this Agreement public liability and property damage insurance against claims for personal injury, death or damage to property arising out of any of the operations of the Province under this Agreement, or of any of the acts or omissions of the Province or any of his employees or servants; such insurance shall be with a company or companies acceptable to Canada and all policies for such insurance shall be in an amount and in a form satisfactory to Canada.

(2) The Province shall place and shall at all times maintain during the currency of this Agreement, insurance against fire with respect to any improvements, buildings or structures situated, constructed, brought or placed upon the said land by the Province during the term of this Agreement, and any renewals hereof and all policies for such insurance shall be in an amount and in a form satisfactory to Canada.

(3) The Province shall submit to Canada one of the following documents:

(a) the policy or policies,
(b) certified copies thereof,
(c) a Certificate of Insurance, or
(d) an affidavit from its insurance company confirming that proper insurance coverage is in place;

(4) The Province shall not do or omit to do or suffer anything to be done or omitted to be done on the said land which will in any way impair or invalidate such policy or policies.

(5) Every policy shall contain a provision that written notice of cancellation shall be given to the Minister.

(6) Any and all policies of insurance referred to in subclause (1) of this Clause shall be written in the name of the Province with loss payable to Canada and the Province, as their respective interests may appear, subject to the provisions of Clause 26 of this Agreement; and shall contain a subrogation clause to the effect that any release from liability entered into by the insured, prior to any loss, shall not affect the right of Canada to recover.
SECTION VII
DEFAULT AND RE-ENTRY,
REMEDIES GENERALLY

DEFAULT AND RE-ENTRY

29. (1) It is expressly agreed that:

(a) if the Province shall be in default in the payment of rent or amounts collectable hereunder as rent, whether lawfully demanded or not, and such default shall continue for a period of 15 days after the rent has become due and payable; or

(b) if the Province shall be in default of any of its covenants or agreements hereunder (other than its covenants to pay rent or amounts collectable hereunder as rent) and such default shall continue for a period of 30 days (or such longer period as may be reasonably necessary to cure such default considering the nature thereof) after notice by Canada to the Province specifying with reasonably particularity the nature of such default and requiring the same to be remedied; or

(c) if the default set out in the notice given to the Province by Canada pursuant to subclause (1)(b) herein reasonably requires more time to cure than the thirty (30) day period referred to in that paragraph and the Province has not commenced remediing or curing the same within the thirty (30) day period or; in the opinion of Canada fails to diligently complete the same within a reasonable time.

Then the current month's rent together with the rent for the three months next ensuing shall immediately become due and payable, and at the option of Canada the term hereby granted shall become forfeited and void, and Canada may without notice or any form of legal process whatsoever forthwith re-enter upon the Premises, or any part or parts thereof, in the name of the whole and repossess and enjoy the same as of its former estate, anything contained in any statute or law to the contrary notwithstanding.

REMEDIES GENERALLY

30. Mention in this Agreement of any particular remedy of Canada in respect of the default by the Province does not preclude Canada from any other remedy in respect thereof, whether available at law or in equity or by statute or expressly provided for in this Agreement. No remedy shall be exclusive or dependent upon any other remedy, but Canada may from time to time exercise any one or more of such remedies generally or in combination, such remedies being cumulative and not alternative.
SECTION VIII

NO CLAIM OR DEMAND AGAINST CANADA,
INDEMNIFICATION OF CANADA,
NON-WAIVER

NO CLAIM OR DEMAND AGAINST CANADA

31. (1) The Province shall not have any claim or demand against Canada or officers, servants of Canada for detriment, damage or injury of any nature whatsoever or howsoever caused to any person or property, unless such damage or injury is due to the negligence of an officer or servant of Canada while acting within the scope of his duties or employment.

(2) Without limiting or restricting the generality of subclause (1) of this Clause, the Province shall not have nor make any claim or demand, nor bring any action or suit or petition against Her Majesty the Queen, in right of Canada, for any damage which the Province may sustain by reason of any temporary suspension, interruption or discontinuance, in whole or in part, from whatever cause arising in services supplied by Canada hereunder to the Premises.

INDEMNIFICATION OF CANADA

32. The Province shall indemnify and save harmless Her Majesty the Queen in right of Canada from and against and be responsible for all claims and demands, loss, costs, damages, actions, suits or other proceedings by whomsoever made, brought or prosecuted in any manner based upon, occasioned by or attributed to the execution of this Agreement or any action taken or things done or maintained by virtue hereof, or the exercise in any manner of rights arising hereunder, except claims for damage resulting from the negligence of any officer or servants of Her Majesty while acting within the scope of their duties or employment.

NON-WAIVER

33. No condoning, excusing or overlooking by Canada of any default, breach or non-observance by the Province at any time or times in respect of any covenant, or condition herein contained shall operate as a waiver of Canada's rights hereunder in respect of any continuing or subsequent default, breach or non-observance, or so as to defeat or affect in any way the rights of Canada herein in respect of any such continuing or subsequent default or breach and no waiver shall be inferred from or implied by anything done or omitted by Canada save only express waiver in writing.
SECTION IX

REMOVAL OF CHATTELS BY PROVINCE,

END OF TERM

REMOVAL OF CHATTELS BY PROVINCE

34. Canada may on any termination of this Agreement, request the Province to forthwith remove from the Premises all goods and chattels at any time brought or placed thereon by the Province, and the Province shall to the satisfaction of Canada repair all and every damage and injury occasioned to the Premises by reason of such removal or in the performance thereof, but the Province shall not, by reason of any action taken or things performed or required under this Clause be entitled to any compensation whatever. If the Province fails to so remove all or any portion of the Province’s chattels, within ten days next following any such request made by Canada, then Canada may, at Her sole option, remove and dispose of all such chattels, or any of them, not removed from the Premises and charge the cost of such removal and disposal to the Province which the Province hereby agrees to pay.

END OF TERM

35. Upon the expiration or other termination of the term of this Agreement, the Province shall, except as otherwise expressly provided for herein, quit and surrender to Canada the Premises, clean and in good order and condition, ordinary wear excepted. The Province’s obligation to observe or perform this covenant shall survive the expiration or other termination of the term of this Agreement. If the last day of the term of this Agreement, falls on Sunday, this Agreement shall expire on the business day immediately preceding.
SECTION X

GENERAL

ACCESS TO PREMISES

36. (1) Canada's officers, servants or agents shall have full and free access for inspection purposes during normal business hours and in the presence of the Province or representative of the Province to any and every part of the Premises and shall have access therein for the purpose of inspecting the same and for viewing the state of repairs; it being expressly understood and agreed however that in cases of emergency, Canada's officers, servants or agents shall at all times and for all purposes have full and free access to the Premises.

(2) Canada, her servants or agents and invitees shall have full and free access during normal business hours and in the presence of the Province or representative of the Province to any and every part of the Premises for the purpose of showing the Premises to interested parties during the last (12) months of this Agreement.

(3) The Province shall permit General Aviation (St. John's) Inc. or its successors, heirs and assigns access to their leased area through the Province's parking lot and the routing of this access must be mutually agreed to by both parties and to the satisfaction of the Airport Manager.

RIGHT OF CANADA TO GRANT LICENCES

37. This Agreement is granted strictly subject to the right of Canada to grant licences, at any time during the currency of this Agreement, covering the right and privilege or permission to construct, lay, maintain, operate and replace water mains, sewers, gas pipelines, oil pipelines, underground and overhead transmissions, electrical lines and telephone lines, and cables on, under, over and across the Premises and for Her Majesty, Her agents, servants and contractors, with vehicles, equipment and machinery to enter upon the Premises at any time for the purposes of installing, maintaining and replacing aids to navigation without interference from the Province and the reasonable and prudent exercise of such right shall not be deemed to constitute an interference with the Province's exclusive possession of the Premises or constitute a derogation from the Agreement hereby granted.

NUISANCE

38. The Province shall not do, suffer or permit to be done any act or thing upon or above the Premises which is or would constitute a nuisance to the occupiers of any lands or premises adjoining or in the vicinity of the Premises or to the public generally.
NOTICES TO CANADA AND PROVINCE

39. (1) Whenever in this Agreement it is required or permitted that notice or demand be given or served by either party to this Agreement to or on the other, such notice or demand will be in writing and will be validly given or sufficiently communicated if forwarded by registered mail, or by telegram or telex as follows:

To Canada:

Regional Director General
Airports Group
Transport Canada
P.O. Box 42
Moncton, N.B.
E1C 8K6

or such other address as Canada may advise the Province in writing.

To the Province:

Department of Works, Services and Transportation
P.O. Box 8700
St. John's, Newfoundland
A1B 4J6

or such other address as the Province may advise Canada in writing.

(2) If any question arises as to whether any notice was or was not communicated by one party to the other, it shall be deemed to have been effectively communicated or given on the day received or on the fifth day after it was mailed or sent, whichever is earlier.

This Memorandum of Agreement is not written as a formal or legal document, but is only a definite expression and record of the Agreement concluded between Transport Canada and the Government of Newfoundland and Labrador.
IN WITNESS WHEREOF the parties have executed this Agreement as of the day and year
first above written.

EXECUTED on behalf of Transport
Canada in the presence of:

s. 40(1)
(Witness)

for Minister of Transport
D.M. WHYTE
Regional Manager
Commercial Development & Marketing

EXECUTED on behalf of Works, Services & Transportation in the presence of:

s. 40(1)

for Minister of Works,
Services & Transportation
SECTION

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