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OPERATING AND OPTION AGREEMENT

THIS AGREEMENT made as of the 21st day of March, 1997.

BETWEEN:

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

OF THE FIRST PART

AND:

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

OF THE SECOND PART

WHEREAS the Minister and the Airport Operator have entered into an Agreement to Transfer ("Agreement to Transfer") which has been executed as of even date;

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

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

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

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

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

ARTICLE 1 - DEFINITIONS AND INTERPRETATION

Section 1.01 Definitions

1.01.01 In this Agreement capitalized words have the meaning ascribed below:

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

"**Agreement**" means this Operating and Option Agreement, as amended from time to time and includes the schedules and recitals;

"**Airport**" means Oshawa Airport;

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

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

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

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

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

"**Closing Date**" means the 21st day of March, 1997, or any other day as the Minister and the Airport Operator may agree as the date on which the Closing shall take place;

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

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

"Option to Purchase" means the option to purchase in favour of Her Majesty conferred by subsection 3.03.01, the terms of which are set out in Schedule "B"

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

"Transfer Date" means the day immediately following the Closing Date commencing at 0:00 hour; and

"Transferee" means the Person to whom a transfer is made.

Section 1.02 Subdivisions

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

Section 1.03 Number and Gender

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

Section 1.04 Headings

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

Section 1.05 Accounting Terms and Principles

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

this Agreement, be interpreted and applied in accordance with generally accepted accounting principles and generally accepted auditing standards in Canada as they exist from time to time.

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

Section 1.06 Business Day

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

Section 1.07 Schedules

- 1.07.01. The documents attached hereto as Schedules "A" - Legal Description of Airport Lands; "B" - Option to Purchase; and "C" - Table of Allocations, form an integral part of this Agreement as fully as if they were set forth herein *in extenso*.
- 1.07.02 All capitalized words and phrases used in any of the Schedules annexed hereto will have the same meanings as defined in this Agreement.
- 1.07.03 Notwithstanding subsection 1.07.01, in the event of any inconsistency or conflict between either a Schedule or any provision contained therein, and this Agreement or any provision of this Agreement, this Agreement or the provision of this Agreement prevails to the extent of the inconsistency or conflict.

Section 1.08 Statutes, Regulations and Rules

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

Section 1.09 Governing Law

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

Section 1.10 Construed Covenants

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

Section 1.11 Extended Meanings

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

- (a) the Airport Operator shall have obtained from such other Person, a covenant, obligation or agreement in terms which are no less stringent; and
- (b) in the event of a breach of such covenant, obligation or agreement by such other Person, the Airport Operator shall have used diligent efforts to enforce such covenant, obligation or agreement, including the initiation and continuance and prosecution of legal proceedings with due diligence.

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

1.11.03 In this Agreement, "includes" means "includes, without limitation"; "including" means "including, without limitation"; "construct" means "construct or erect"; "construction" means "construction or erection"; "alterations" means "alterations, adjustments, changes, repairs, renewals, restorations, additions, reconstructions, replacements, modifications,

improvements, betterments, and installations"; "any" means "any and all"; "Airport Operator shall not permit" means "Airport Operator shall not cause, suffer or permit"; "law" means "law, by-law, regulation, order, decision and rule"; and "Airport Operator agrees" or "Airport Operator acknowledges" means "Airport Operator expressly acknowledges and agrees".

ARTICLE 2 - OPERATION

Section 2.01 Operation of Airport

- 2.01.01 The Airport Operator undertakes, by and through its officers, servants, employees, agents, contractors or subcontractors, on its own behalf and not on behalf of Her Majesty, as of the Transfer Date, for the term of this Agreement, to continuously, actively, diligently and carefully manage, operate, and maintain the Airport, as an Aerodrome open to the public, in accordance with this Agreement and the *Aeronautics Act*, R.S.C. 1985, c. A-2, and Regulations made thereunder.
- 2.01.02 For the purposes of Subsection 2.01.01, the Airport Operator may fulfil its obligation to manage, operate and maintain all or part of the Airport in any manner it determines appropriate, including but not limited to, entering into a lease or contract with a Person (the "contractor") to operate the Airport as an undertaking, provided that:
- (a) the Airport Operator shall have obtained from such contractor covenants, obligations or agreements with respect to the management, operation and maintenance of the Airport in terms which are no less stringent than this Agreement, and
 - (b) any breach of such covenants, obligations or agreements by such contractor shall constitute a breach of a covenant, obligation or agreement of this Agreement and be treated as such, and
 - (c) the Airport Operator shall remain liable to Her Majesty in respect of its obligations hereunder.
- 2.01.03 The Airport Operator shall keep, perform or observe all of the covenants, agreements, provisions, conditions or provisos in any of the other Instruments on the part of the Airport Operator to be kept, performed, or observed.

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

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

2.01.05 Notwithstanding any provision contained in this agreement or the Instruments, the Airport Operator shall not enter into any leases, licences, concession agreements that have a term exceeding twenty years in total, including options to renew or extensions, without the prior written consent of Her Majesty, which may be unreasonably withheld.

ARTICLE 3 - TERMINATION OF OPERATIONS

Section 3.01 Definitions

3.01.01 For the purpose of this Article 3:

"Airport Assets" means the Airport Lands and any and all items of stock, utensils, implements, chattels, furniture, fixtures, equipment and assets transferred to the Airport Operator by Her Majesty on the Transfer Date which are still used in Airport Operations on the date the Notice is given;

"Airport Operations" means the management, maintenance or operation of the Airport as a certified airport (or aerodrome) open to the public;

"Crown Costs" means costs incurred by Her Majesty in connection with the sale of the Airport Assets;

"Decision to Open Pickering Airport" means a decision to develop the Pickering Lands by an entity with authority to undertake the development of the Pickering Lands which, in the opinion of both Her Majesty and the Airport Operator is of sufficient commitment to believe that the Pickering Airport will be opened within five years.

"Direct Costs" means the following costs, as approved by Her Majesty, incurred by the Airport Operator in order to sell the Airport Assets: including legal fees and disbursements, appraisers' fees, survey costs, real estate brokers' fees, any environmental studies and environmental remediation required by environmental laws applicable to the Airport Lands for the intended purpose of the Airport Lands after transfer, those decommissioning costs required in order to remove the infrastructure and restore the Airport Lands to enable the Airport Assets to be sold for their Market Value and the costs necessary to remove the airport zoning from title to the lands in the vicinity of the Airport Lands;

"Gross Proceeds" means the total sale price arising from an agreement of purchase and sale for the Airport Assets that is accepted in accordance with this agreement and includes any unexpended proceeds or deemed proceeds arising from the sale or deemed sale of a Significant Chattel or a portion of the Airport Lands in accordance with Article 4;

"Market Value" means the most probable price which a property or other assets should bring in a competitive and open market under all conditions requisite to a fair sale for highest and best use, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- (a) buyer and seller are typically motivated;
- (b) both parties are well-informed or well-advised, and acting in what they consider their best interest;
- (c) a reasonable time is allowed for exposure in the open market;
- (d) payment is made in terms of Canadian Dollars or in terms of financial arrangements comparable thereto; and

- (e) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

"Net Special Proceeds" means the difference between the Gross Proceeds if any, and the Total Special Costs;

"Net Regular Proceeds" means the difference between the Gross Proceeds if any, the Crown Costs and the Direct Costs;

"Notice" means a notice given in accordance with subsection 3.02.01 of this agreement;

"Notice of Deemed Sale" means a notice given in accordance with subsection 3.10.01;

"Regular Sale" has the meaning ascribed in subsection 3.02.03;

"Special Sale" has the meaning ascribed in subsection 3.02.02;

"Tenancies" means all tenancies with the Airport Operator with tenants whose main business activities require access to the airside portion of the Airport Lands or land adjacent to the airside portion of the Airport Lands or to the main terminal on the Airport Lands and the term "Tenant" or "Tenants" has a corresponding meaning;

"Tenant Termination Costs" means any costs approved by Her Majesty which the Airport Operator is legally liable to pay in order to terminate or relocate any Tenancies in order to enable the Airport Asset to be sold for their Market Value;

"Total Special Costs" means the total of the Crown Costs, Direct Costs, and Tenant Termination Costs;

"Pickering Airport" means any certified airport or aerodrome open to the public for passenger which may be situate on the Pickering Lands;

"Pickering Decision Date" means the date of a Decision to Open the Pickering Airport;

"Pickering Lands" means any lands located in the Town of Pickering acquired by Her Majesty now or in the future for possible airport purposes.

Section 3.02 Termination of Operations - Generally

- 3.02.01 The Airport Operator may cease Airport Operations, provided the Airport Operator first gives the Minister six (6) months prior written notice of its intention to abandon that function. The notice must specify the reason for the decision within the context of this Agreement and specify the type of sale (Special Sale, Regular Sale or Option to Purchase).
- 3.02.02 If the reason for the Airport Operator's decision to cease Airport Operations is that, in the opinion of the Airport Operator, the Airport is no longer viable due to a Decision to Open the Pickering Airport or due to the opening of the Pickering Airport, then the Airport Operator may sell the Airport Assets (the "Special Sale") in accordance with the provisions contained herein and allocate the proceeds in accordance with subsection 3.06 or the Airport Operator may request that Her Majesty exercise Her Option to Purchase, provided it first gives Notice.
- 3.02.03 If the Airport Operator wishes to cease Airport Operations for any reason other than the Decision to Open the Pickering Airport or the actual opening of the Pickering Airport, then the Airport Operator may sell the Airport Assets (the "Regular Sale") in accordance with the provisions herein and allocate the proceeds of sale in accordance with the provisions of subsection 3.07 or the Airport Operator may request that Her Majesty exercise Her Option to Purchase provided it first gives Notice.
- 3.02.04 Notwithstanding anything in this Agreement, If the Airport Operator is in default of this Agreement or any of the Instruments at any time and fails to cure such default or take reasonable steps toward curing such default after receiving notice in writing from Her Majesty in accordance with Subsection 8.01.01, then Her Majesty may exercise Her Option to Purchase.
- 3.02.05 The Airport Operator will not enter into any new agreement or extend or renew any existing agreement or further encumber the Airport Lands or chattels after the Pickering Decision Date without prior written consent of Her Majesty.

Section 3.03 Option to Purchase

- 3.03.01 If the Airport Operator gives Notice that it intends to cease Airport Operations, Her Majesty shall have an Option to Purchase the Airport Assets in accordance with the terms and conditions contained in this Agreement and in Schedule "B".

- 3.03.02 Notwithstanding the foregoing, Her Majesty agrees that She will not exercise the Option to Purchase if the Airport Operator gives Notice that the Airport Assets are to be sold by a Special Sale or Regular Sale, provided the Airport Operator is not in default of this Agreement or any of the Instruments.
- 3.03.03 For greater certainty, nothing in this Agreement or any of the Instruments shall oblige Her Majesty to exercise Her Option to Purchase.

Section 3.04 Valuation of Airport Assets

- 3.04.01 Subsections 3.04 and 3.05 apply if the Airport Assets are to be sold by Special Sale or Regular Sale.
- 3.04.02 Forthwith after giving a Notice and in any event no later than ten (10) business days, Her Majesty and the Airport Operator shall jointly select an appraiser to determine within thirty (30) days the Market Value of the Airport Assets. If Her Majesty and the Airport Operator cannot agree on the appointment of an appraiser, then each shall select an appraiser and the two selected appraisers shall appoint a third.
- 3.04.03 The three appraisers will then attempt to reach an agreement within thirty days of the appointment of the third as to the Market Value of the Airport Assets. If unanimous agreement cannot be reached, the agreement of two of the three appraisers shall govern.
- 3.04.04 If two of the three appraisers cannot agree, and the lowest of the three opinions is not less than ten per cent (10%) lower than the value in the highest of the three, then the Market Value contained in the three opinions shall be added together and the total divided by three. The resulting quotient shall be the Market Value. The determination of the Market Value arrived at in this matter shall be conclusive for all purposes.
- 3.04.05 Any appraiser appointed or selected must be a member of the Appraisal Institute of Canada (or any successor organization) unless the parties agree otherwise.

Section 3.05 Conduct of Sale

- 3.05.01 Once the Market Value of the Airport Assets has been determined, the Airport Assets shall forthwith be listed for sale. The Airport Operator agrees to diligently pursue the public sale of the Airport Assets for the Market Value and to keep Her Majesty informed of its efforts.

3.05.02 The Airport Operator shall provide Her Majesty with a copy of any offer it receives for the Airport Assets and shall not accept any offer without Her Majesty's consent in writing. The Airport Operator shall ensure it allows Her Majesty seven (7) clear business days within which to determine whether or not to consent to the acceptance of an offer.

3.05.03 An offer shall not be accepted unless both parties agree. However, if the Airport Operator receives a *bone fide* offer for the Market Value or greater of the Airport Assets and either the Airport Operator or Her Majesty is willing to accept the offer, then the other party shall be deemed (in the case of the Airport Operator) to have accepted the offer and (in the case of Her Majesty) to have consented to the offer, unless the non-accepting party can demonstrate a *bone fide* business reason why the offer should not be accepted, or unless the offer contains terms that are outside of the usual terms contained in an offer to purchase real property or chattels, as the case may be.

Section 3.06 Division of Proceeds - Special Sale

3.06.01 In the case of Special Sale, the Gross Proceeds shall be applied in the following order of priority: Crown Costs, Direct Costs and Tenant Termination Costs.

3.06.02 The Net Special Proceeds shall be allocated between Her Majesty and the Airport Operator in accordance with the formula contained in Table I on Schedule "C" of this Agreement.

Section 3.07 Division of Proceeds - Regular Sale

3.07.01 In the case of a Regular Sale, the Gross Proceeds shall be applied to in the following order of priority: the Crown Costs and Direct Costs.

3.07.02 The Net Regular Proceeds shall be allocated between Her Majesty and the Airport Operator in accordance with the formula contained in Table II on Schedule "C" of this Agreement.

Section 3.08 Approval of Costs Incurred

3.08.01 If the Airport Operator wishes to obtain clarification on whether the Direct Costs or Tenant Termination Costs will be approved by Her Majesty, the Airport Operator should submit the proposed costs to Her Majesty for approval before they are actually incurred.

3.08.02 If Her Majesty is of the opinion that any Direct Costs or Termination Costs are not reasonable, Her Majesty may approve only a portion of such cost. If the Airport Operator disagrees with Her Majesty's decision, the parties agree to appoint an independent appraiser or other expert qualified in the field to resolve the disagreement. If the parties cannot agree on the appointment of an expert, they shall each appoint one and the two experts will appoint a third. The three experts shall then attempt to reach an agreement. If an agreement cannot be reached, the decision of two of the three shall govern.

Section 3.09 Tenant Termination Costs

3.09.01 The Airport Operator agrees to use its best efforts to minimize the Tenant Termination Costs. The Airport Operator agrees that, wherever possible it will attempt to make provision for the amount of compensation payable in the event of an early termination of a lease with any new Tenants or any renewals of existing tenancies and will before executing any lease greater than five years, advise Her Majesty in writing of how the issue of compensation will be dealt with in the lease and afford Her Majesty a reasonable opportunity to provide comments.

Section 3.10 Deemed Sale

3.10.01 If any time after two years of the Notice the Airport Operator is not proceeding diligently to sell the Airport Assets or if any time after five years of the Notice no offer to purchase the Airport Assets has been accepted, then Her Majesty may advise the Airport Operator in writing that:

- (a) a sale of the Airport Assets will be deemed to take place on a specified closing date (the "Deemed Sale Date") no sooner than three months from the date that the Notice of Deemed Sale is given; or
- (b) the allocation of proceeds shown on Table 1 or Table II (as the case may be) will be frozen as of the date that such written notice is given.

3.10.02 The Airport Assets shall be deemed to be sold on the Deemed Sale Date for the Market Value as determined by an appraisal conducted in accordance with subsection 3.04.

3.10.03 If the Airport Assets were to have been sold by Special Sale then the provisions of subsection 3.06 shall apply to a deemed sale (herein the

"Deemed Special Sale"), except that the Total Special Costs will be deemed to have been incurred (the "Deemed Total Special Costs") and the Airport Operator will be required to pay to Her Majesty the amount owing to Her Majesty in accordance with the allocation on Table I contained in Schedule "C".

- 3.10.04 If the Airport Assets were to have been sold by way of Regular Sale, the provisions of subsection 3.07 shall apply to a deemed sale (herein the "Deemed Regular Sale"), except that the Crown Costs and Direct Costs shall be deemed to have been incurred (the "Deemed Costs") and the Airport Operator will be required to pay to Her Majesty the amount owing to Her Majesty in accordance with the allocation on Table II contained in Schedule "C".
- 3.10.05 Upon payment to Her Majesty of the amounts owing under subsections 3.10.03 and 3.10.04 the Airport Operator may retain the Airport Assets and Her Majesty's interest in the Airport Assets shall be extinguished.
- 3.10.06 Her Majesty agrees to discuss reasonable payment provisions for the Airport Operator in the event of a Deemed Sale.

Section 3.11 Monies Owing Her Majesty

- 3.11.01 Any amount due to the Minister pursuant to this Agreement shall constitute a debt due to the Crown which the Airport Operator must repay on demand. The Minister may, in his sole discretion, in addition to any other remedies available to him, set-off such amount against any amount payable by Her Majesty to the Airport Operator. The rights of the Minister under this subsection survive the termination of the Agreement.

Section 3.12 Deficit

- 3.12.01 If the Total Special Costs (in the case of a Special Sale), the Crown Costs and Direct Costs (in the case of a Regular Sale) exceed the Gross Proceeds, then the Airport Operator shall be responsible for the difference and may retain the Airport Assets and the interest of Her Majesty in the Gross Proceeds or Airport Assets shall be extinguished.

Section 3.13 Public Purpose

- 3.13.01 The parties agree to enter into separate negotiations if either party wants to retain the Airport Assets or any portion thereof for a public purpose.

Section 3.14 Security Interest in Proceeds

- 3.14.01 The Airport Operator hereby grants to Her Majesty by way of mortgage, charge, assignment and transfer a security interest in any and all proceeds arising from the sale of the Airport Assets, including any accretions thereto and substitutions therefor. The security interest granted secures payment and satisfaction of all obligations, liability and indebtedness of the Airport Operator to Her Majesty under this Agreement or any of the Instruments.
- 3.14.02 The Airport Operator hereby authorizes Her Majesty to file such financing statements and other documents and to take such steps as She deems necessary to perfect and continue the security interest herein granted.

ARTICLE 4 - DISPOSITION OF LAND AND CHATTELS

Section 4.01 Definition

- 4.01.01 For the purposes of this Article "**Significant Chattel**" means a chattel listed in Schedule "A" to the Bill of Sale made as of the Closing Date between Her Majesty and the Airport Operator which, if it had remained the property of Her Majesty would have had on the day of sale or other disposition, a listed depreciated book value of one hundred thousand dollars (\$100,000) or greater.

Section 4.02 Airport Operator's Ability to Deal with Land and Chattels

- 4.02.01 Subject to Article 3 and notwithstanding Section 14.09, the Airport Operator may, from time to time during the term of this Agreement, sell or otherwise dispose of any portion of the Airport Lands or any chattels (including a Significant Chattel) which is not necessary for the management, maintenance or operation of the Airport as an undertaking.
- 4.02.02 Where, during the term of this Agreement, the Airport Operator proposes to dispose of any portion of the Airport Lands or any Significant Chattel, the Airport Operator, prior to entering into any binding agreement,
- (a) shall send a notice to the Minister setting out in sufficient detail a description of the Airport Lands or the Significant Chattel it proposes to dispose of, and

- (b) may request a meeting with the Minister to ascertain what the Minister might determine to be the deemed proceeds of disposition, as provided for in Subsection 3.02.03.

4.02.03 If any portion of the Airport Lands or any Significant Chattel is disposed of during the term of this Agreement, the Airport Operator shall credit to a separate revenue account,

- (i) in respect of any portion of the Airport Lands, the greater of the entire proceeds of disposition less disbursements and the fair market value of the land, based on its highest and best use, as determined by the Minister acting reasonably (the "deemed proceeds of disposition of part of the Airport Land"), and
- (ii) in respect of the Significant Chattel, the greater of the entire proceeds of disposition and an amount equivalent to the listed depreciated book value of the Significant Chattel if it had remained the property of Her Majesty (the "deemed proceeds of disposition of the Significant Chattel")

and the aforesaid proceeds of disposition or deemed proceeds of disposition shall be used solely on account of airport operations (including any operating deficit) or for capital improvements in support of airport operations.

4.02.04 If, during the term of this Agreement, the Airport Operator fails to apply the proceeds of disposition or the deemed proceeds of disposition in accordance with the provisions of Subsection 4.02.03 the Airport Operator shall remit the entire sum to the Minister.

4.02.05 If, at the end of the term of this Agreement, the Airport Operator has not expended the entire proceeds of disposition or the deemed proceeds of disposition in accordance with Subsection 4.02.03, the Airport Operator shall be entitled to retain the balance of such sum and apply it in any manner as it determines appropriate.

ARTICLE 5 - REMEDIAL WORK

Section 5.01 Definitions

5.01.01 For the purposes of this Article;

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

"Hazardous Substance" means:

- (a) any substance, howsoever defined in any Applicable Provincial Environmental Law, which is hazardous to persons, animals, plants and which affects the soil of or the water in, on, over or under the Airport, or
- (b) the asbestos which is present in any buildings situate thereon, and for which Remedial Work is required;

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

Section 5.02 Her Majesty's Obligation

- 5.02.01 Subject to Section 5.03, Her Majesty covenants to perform or have performed any Remedial Work in respect of Hazardous Substances identified in the Environmental Baseline Study Report.
- 5.02.02 The parties further agree that the Minister's obligations herein are for the exclusive benefit of the Airport Operator and successors and permitted assigns and shall not be for the benefit of any other Person.

Section 5.03 Limitations on Her Majesty's Liability

- 5.03.01 Notwithstanding the definition of Hazardous Substance, the parties agree that:
 - (a) the Applicable Provincial Environmental Laws shall be those laws in existence immediately prior to the Transfer Date in respect of lands zoned industrial/commercial; and
 - (b) Her Majesty's obligations under this Article are restricted to a Hazardous Substance listed in the Environmental Baseline Study Report, accepted by the Airport Operator pursuant to Article 8 of the Agreement to Transfer, and present in the soil of or the water

in, on, over or under the Airport Lands or any buildings situate thereon immediately prior to the Transfer Date.

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

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

Section 5.04 Performance of Remedial Work

5.04.01 If the Remedial Work for which Her Majesty is responsible has not be completed prior to the Transfer Date, the Airport Operator shall provide to Her Majesty and Her officers, servants, employees, agents, contractors, subcontractors and consultants access to the Airport Lands at any time or times during reasonable hours and without cost in order to perform such Remedial Work.

ARTICLE 6 - RIGHT OF ENTRY

Section 6.01 Right of Entry

6.01.01 The Airport Operator agrees that Her Majesty and Her agents, employees or contractors may enter upon the Airport Lands and any buildings situate thereon at any time or times during reasonable hours, with machinery or equipment, for the purpose of carrying out the Remedial Work pursuant to Subsection 5.04.01 provided that by the exercise of such rights Her Majesty shall:

- (i) indemnify and save harmless the Airport Operator from all claims and demands resulting from the negligent exercise of the said right of entry; and
- (ii) Her Majesty shall repair and make good or pay compensation for any damage done to the Airport Lands and buildings resulting from the negligent exercise of the right of entry.

ARTICLE 7 - DEBTS DUE TO THE CROWN

Section 7.01 Debts Due to the Crown

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

ARTICLE 8 - DEFAULT

Section 8.01 Default

- 8.01.01 If, during the term of this Agreement the Airport Operator:
 - (a) fails to operate the Airport in accordance with Article 2,
 - (b) subject to Subsection 2.01.02, sells, leases, converts or otherwise disposes of any portion of the Airport Lands, or any Significant Chattel, and fails to apply the proceeds of disposition or the deemed proceeds of disposition in accordance with this Agreement,
 - (c) becomes bankrupt or insolvent, goes into receivership or takes the benefit of any statute from time to time relating to bankrupt or insolvent debtors, or is required to wind up or dissolve by any order or resolution unable to meet its liabilities as they become due,

- (d) is convicted of any offence against the law, order or regulation of Canada or duly constituted authority thereof or the conditions of any licence, or of being an accessory to any such offence, and if such offence is committed in connection with the management, operation or maintenance of the Airport, or
- (e) is in default of any provision of this Agreement or any other Instrument and such default shall continue for a period of ninety (90) days after notice by Her Majesty to the Airport Operator specifying the nature of the default and requiring the default to be remedied.

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

ARTICLE 9 - ARBITRATION

Section 9.01 Arbitration

- 9.01.01 Any dispute or difference between the parties hereto arising under this Agreement or any of the Instruments except a dispute or difference involving a question of law may be referred to an arbitration tribunal for an award and determination by written submission signed by either the Minister or the Airport Operator.
- 9.01.02 The parties hereto agree that the award and determination of the arbitration tribunal shall be final and binding on both parties hereto.
- 9.01.03 The arbitration tribunal shall be governed by the Commercial Arbitration Code referred to in the *Commercial Arbitration Act*, R.S.C. 1985, c. C-34.6.

Section 9.02 Arbitration Tribunal

- 9.02.01 The arbitration tribunal shall consist of three (3) arbitrators, one (1) appointed by each of the parties hereto and the third appointed by the first two (2) arbitrators.
- 9.02.02 The arbitration tribunal shall decide the dispute or difference in accordance with the laws in force in the Province of Ontario. The arbitration tribunal shall not be authorized to decide *ex aequo et bono* or as *amiable compositeur*.

Section 9.03 Proceedings

- 9.03.01 The proceedings shall take place in the Province of Ontario, unless the parties hereto agree otherwise.
- 9.03.02 The language to be used in the proceedings is English unless the parties hereto agree otherwise.
- 9.03.03 All written communication shall be delivered to the parties hereto in the manner provided for in Subsection 14.05.01.

Section 9.04 Obligations During Arbitration

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

ARTICLE 10 - NO PARTNERSHIP, JOINT VENTURE OR AGENCY

Section 10.01 No Partnership, Joint Venture or Agency

- 10.01.01 Her Majesty and the Airport Operator expressly disclaim any intention to create a partnership, joint venture or joint enterprise. It is understood, acknowledged and agreed that nothing contained in this Agreement nor any acts of Her Majesty or the Airport Operator shall constitute or be deemed to constitute Her Majesty and the Airport Operator as partners, joint venturers or principal and agent in any way or for any purpose. The Airport Operator shall not represent or hold itself out to be an agent of Her Majesty. No party hereto shall have any authority to act for or to assume any obligations or responsibility on behalf of the other party hereto.
- 10.01.02 The Airport Operator hereby agrees to indemnify Her Majesty for any liability that Her Majesty incurs by virtue of being found, in respect of the management, operation or maintenance of the Airport, to be liable with the Airport Operator as a partner of or joint venturer with the Airport Operator or as a principal of the Airport Operator. For greater certainty, the foregoing indemnity shall not apply to any claim or liability arising as a result of the act or omission of Her Majesty or Her agent other than those specific acts or omissions that are the basis for the finding that Her Majesty or Her agent is a partner of, joint venturer with the Airport Operator or principal of the Airport Operator.

ARTICLE 11 - RIGHT TO CHARGE

Section 11.01 Right to Charge

- 11.01.01 Nothing in this Agreement shall prohibit, restrict, or affect the right of the Minister to assess or impose on the Airport Operator or any other Person:
- (a) any charge or fee which the Minister has the power under any law to assess or impose;
 - (b) any charge or fee with respect to any service provided by the Minister; and
 - (c) any charge or fee with respect to or related to the Minister's position as a regulator.
- 11.01.02 Nothing in this Agreement precludes the Airport Operator and its successors and permitted assigns from charging and taking whatever lawful action the Airport Operator deems appropriate in order to charge and collect any unpaid landing fees, general terminal fees and other user charges.
- 11.01.03 The Airport Operator covenants to give not less than 60 days advance public notice through appropriate local media of its intention to impose any airport user charges or any planned increases in airport user charges (excluding rent). The notice shall include an explanation of the justification for such imposition of or increase in the airport user charges.

ARTICLE 12 - OFFICIAL LANGUAGES - [INTENTIONALLY DELETED]

ARTICLE 13 - TERM

Section 13.01 Effective Date and Term of the Agreement

- 13.01.01 This Agreement shall take effect as of 00:00 a.m. on the Transfer Date and shall terminate at midnight, March 21, 2047, unless it is earlier terminated by mutual consent or by the Minister pursuant to Article 7.

ARTICLE 14 - GENERAL PROVISIONS

Section 14.01 Entire Agreement

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

Section 14.02 Agreement to Supersede

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

- (a) it has not been induced to enter into this Agreement or any of the Instruments by any representations not set forth in this Agreement or any of the Instruments;
- (b) it has not relied on any such representations;
- (c) it has conducted its own due diligence examinations in order to satisfy itself of the full, true and plain disclosure of the facts;
- (d) no such representations shall be used in the interpretation or construction of this Agreement or any of the Instruments; and
- (e) no claims, including loss of profits and consequential damages arising as a result of, or from any such representations shall accrue to or be pursued by it and Her Majesty shall have no liability for any such claims.

14.02.02 The Disclosure of Information Agreement entered into by the parties hereto as of the 26th day of May, 1995 shall remain in full force and effect during the term of this Agreement but only in respect of matters in

existence as of the Transfer Date and insofar as the provisions of that Agreement are not inconsistent with the provisions of this Agreement or any of the other Instruments.

Section 14.03 House of Commons

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

Section 14.04 Time of Essence

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

Section 14.05 Notice

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

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

Regional Director, Programs
Ontario Region
Transport Canada - Airports Group
Suite 300, 4900 Yonge Street
North York, Ontario
M2N 6A5

Telephone: (416) 952-0489
Facsimile: (416) 952-0516

or to such other address or facsimile number or addressed to such other person as the Minister may, from time to time, designate in writing to the Assignee; and

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

The Corporation of the City of Oshawa
City Clerk's Office
50 Centre Street South
Oshawa, Ontario
L1H 3Z7

Telephone: (905) 436-5639
Facsimile: (905) 436-5697

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

14.05.02 Any notice or other communication will be considered to have been received:

- (a) in the case of facsimile, on actual receipt, and
- (b) in all other cases, on the date of delivery.

If the postal service is interrupted, or threatened to be interrupted, or is substantially delayed, any notice shall be delivered personally or by facsimile.

Section 14.06 Amendment

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

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

Section 14.07 Waiver

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

14.07.02 No covenant or condition of this Agreement may be waived by any party hereto except by the written consent of that party, and forbearance or indulgence by that party in any regard whatsoever and no matter how long shall not constitute a waiver of the covenant or condition and until performed or waived in writing that party shall be entitled to invoke any remedy available to that party under this Agreement or by law, despite the forbearance or indulgence.

Section 14.08 Severability

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

Section 14.09 Assignment, Successors and Assigns

- 14.09.01 The Airport Operator shall not
- (i) assign its rights and obligations contained in this Agreement, or
 - (ii) subject to Subsection 2.01.02, and Article 4 transfer, lease or otherwise dispose of the Airport
- without the prior written consent of the Minister, which consent may be unreasonably withheld.
- 14.09.02 Notwithstanding any assignment by Her Majesty or any permitted assignment by the Airport Operator of their respective benefits under this Agreement, Her Majesty and the Airport Operator shall, unless otherwise stated, each remain liable to the other in respect of its obligations hereunder.
- 14.09.03 No rights shall enure to the benefit of any transferee or assignee of the Airport Operator unless the transfer of assignment is permitted or consented to by Her Majesty.
- 14.09.04 Nothing expressed or implied in this Agreement or in any of the Instruments is intended to or shall be construed to confer on or to give any Person, other than the parties hereto and the successors and assigns of Her Majesty and the successors and permitted assigns of the

Airport Operator, any rights or remedies under or by reason of this Agreement or any of the Instruments.

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

HER MAJESTY THE QUEEN IN
RIGHT OF CANADA



Witness



Donald J. MacLean,
Regional Director, Programs
Ontario Region

THE CORPORATION OF
THE CITY OF OSHAWA



Witness

Per: 
Nancy L. Diamond
Mayor



Witness

Per: 
Brian Suter
City Clerk

SCHEDULE "A"

This is Schedule "A" to the Operating Agreement between Her Majesty the Queen in right of Canada and **The Corporation of the City of Oshawa** dated the 21st day of March, 1997.

Legal Description of Airport Lands

Part of Lots 15 and 16, Concession 3 and part of the road allowance between Lots 14 and 15, Concession 3 and part of Lots 1, 2, 3, 4, 7 and 8 and all of Lot 9 and part of the road allowances between Lots 1 and 2, Lots 1 and 7, Lots 2 and 7, Lots 3 and 7, and Lots 7 and 8, Gamble's Plan (now registered as Plan H-50001) designated as Part 1 on Plan 4OR-12222.

Together with an easement over part of Lot 1 Gamble's Plan (now registered as Plan H-50001) as set out in Instrument No. 19817 registered on January 30, 1947.

Excluding the building known as the control tower located within Part 1 on Plan 4OR-16709.

City of Oshawa (formerly Township of East Whitby, County of Ontario) Regional Municipality of Durham.

SCHEDULE "B"

TERMS OF HER MAJESTY'S OPTION TO PURCHASE

This Schedule "B" contains the terms and conditions of Her Majesty's Option to Purchase as set out in Subsection 3.03 of this Agreement

ARTICLE 1 - DEFINITIONS AND INTERPRETATION

Section 1.01 Definitions

1.01.01 In this Schedule "B" capitalized words and phrases used herein shall, unless specifically defined in this Schedule have the meanings set out in the body of this Agreement, except that the definition of "Instrument of Grant" has the meaning ascribed in the Agreement to Transfer. For greater certainty, the provisions contained in Subsection 1.02 through 1.11.03 and the general provisions contained in Articles 10 and 14 of the main body of this Agreement apply to this Schedule.

1.01.02 In this Agreement

"Agreement" means this Operating and Option Agreement, as amended from time to time and includes the Schedules thereto, including this Schedule "B";

"Agreement to Transfer" means the agreement to transfer in respect of the Oshawa Airport, dated of even date, and entered into between Her Majesty and the Airport Operator, as amended from time to time, including the Schedules attached thereto from time to time, as the same may be amended, changed or supplemented from time to time.

"Existing Revenue Agreements" has the meaning ascribed thereto in Subsection 1.01.02 of the Assignment, Assumption and Indemnity Agreement, dated of even date, and entered into between Her Majesty and the Airport Operator, as amended from time to time, including the Schedules attached thereto from time to time, as the same may be amended, changed or supplemented from time to time;

"Schedule" means this Schedule "B".

ARTICLE 2 - OPTION TO PURCHASE

Section 2.01 Consideration

2.01.01 In consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Airport Operator hereby grants to Her Majesty exclusive, irrevocable Options to Purchase, for the purchase price of One Dollar (\$1.00) each, all, one or any combination of:

- (a) the Airport Lands or any portion thereof,
- (b) all such chattels and consumable stock owned and used by the Airport Operator in connection with the management, operation or maintenance of the Airport,

free of all encumbrances, leases and occupancy agreements, except:

- (i) conditions, provisos, restrictions, exceptions and reservations, including royalties, contained in the Instrument of Grant or Bill of Sale;
- (ii) registered rights of way in favour of utilities and public authorities; and
- (iii) Existing Revenue Agreements.

2.01.02 Her Majesty's right to exercise this Option to Purchase is subject to Subsection 3.03 in the main body of this Operating and Option Agreement.

ARTICLE 3 - EXPIRY OF OPTION TO PURCHASE

Section 3.01 Expiry of Option to Purchase

3.01.01 In respect of the Airport Lands and the chattels and consumable stock, this Option to Purchase is exercisable by notice in writing to the Airport Operator on or before midnight on the 21st day of March, 2047, after which time the Option to Purchase shall be null and void.

ARTICLE 4 - NOTICE TO HER MAJESTY

Section 4.01 Notice - Termination of Operations

- 4.01.01 If neither the Airport Operator nor its tenant, during the term of this Agreement, any longer intends to continuously, actively and diligently manage, operate and maintain on the Airport Lands a certified airport (registered aerodrome) open to the public, the Airport Operator shall give Notice to the Minister in accordance with Subsection 3.02.01 of the main body of this Agreement.

Section 4.02 Deemed Notice

- 4.02.01 Where the Airport Operator is in breach of Subsection 3.02.01 of the main body of this Agreement, Her Majesty may exercise the aforesaid Option to Purchase upon becoming aware that neither the Airport Operator nor its tenant is any longer continuously, actively and diligently managing, operating and maintaining a certified airport (registered aerodrome) open to the public, and subject to the first ninety (90) days notice from Her Majesty to the Airport Operator as set out in Section 8.01 of the main body of this Agreement, the Airport Operator shall be deemed to have given notice to the Minister on the date of expiration of the first ninety (90) days notice set out in Section 8.01.

Section 4.03 Time to Exercise Option to Purchase

- 4.03.01 Notwithstanding Article 3 of this Schedule, where the Minister is given Notice by the Airport Operator under Subsection 3.02.01 of the main body of this Agreement or is deemed to have been given notice under Section 4.02 of this Schedule, Her Majesty shall have six (6) months from the date of receipt of the notice, or such further period as provided for by Article 5 of this Schedule, to exercise the Option to Purchase.

ARTICLE 5 - EXTENSION OF TIME

Section 5.05 Extension of Time

- 5.01.01 Where the cumulative time necessary
- (a) to prepare the environmental baseline study required under Section 6.02 or Section 6.04 of this Schedule, and

- (b) to effect any Remedial Work undertaken pursuant to Section 6.03 or Section 6.04 of this Schedule

is longer than six (6) months, the time for exercising any of the Options to Purchase set out in Section 3.01 of this Schedule shall be extended for a period of time which is equivalent to the number of days, in excess of six (6) months, taken to complete the work provided for in Paragraphs (a) and (b) plus 15 days.

ARTICLE 6 - ENVIRONMENT

Section 6.01 Definitions

6.01.01 In this Schedule

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

"Hazardous Substance" means:

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

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

and for which Remedial Work is required;

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

Section 6.02 Environmental Baseline Report

6.02.01 Where the Minister is given notice under Section 4.01 or is deemed to have been given notice under Section 4.03 of this Schedule, Her Majesty may request the Airport Operator to commission an environmental baseline study and have prepared, at the expense of the Airport Operator, an environmental baseline report (the Report) of the Airport

Lands and the buildings situate thereon, to be completed within six (6) months of the date of notice or deemed notice and to be effective as of the date of the Report.

- 6.02.02 Where Her Majesty requests, in writing, a Report pursuant to Subsection 6.02.01 of this Schedule the parties agree to meet to set the terms and conditions of the environmental baseline study.
- 6.02.03 If the parties fail to agree on the terms and conditions of the environmental baseline study within thirty (30) days of the Minister notifying the Airport Operator pursuant to Subsection 6.02.02, of this Schedule the applicable terms and conditions of the environmental baseline study shall be the terms and conditions as agreed to by the parties with respect to the conduct of the Environmental Baseline Study Report defined in the Agreement to Transfer.
- 6.02.04 Upon completion of the environmental baseline study and the preparation of the Report, the Airport Operator shall forward a copy forthwith to the Minister.
- 6.02.05 The Report shall be *prima facie* evidence between the parties as to the existence of any Hazardous Substances affecting the soil of or the water in, on, over or under the Airport Lands and the buildings situate thereon, and the quantity thereof immediately prior to the Closing Date, notwithstanding the effective date of the Report.

Section 6.03 Airport Operator to Perform

- 6.03.01 The Airport Operator shall, forthwith upon receipt of the Report, at its own cost and expense, perform or have performed any Remedial Work for which the Airport Operator is responsible.
- 6.03.02 Notwithstanding the definitions of Hazardous Substance and Applicable Provincial Environmental Laws, the parties agree that:
- (a) the Applicable Provincial Environmental Laws shall be those laws in existence immediately prior to the Closing Date in respect of lands zoned industrial/commercial; and
 - (b) the Airport Operator's obligations under this Article are restricted to a Hazardous Substance listed in the Report completed in accordance with Article 6.02 of this Schedule, and present in the soil of or the water in, on, over or under the Airport Lands or any buildings situate thereon immediately prior to the Closing Date.

Section 6.04 Her Majesty May Perform

- 6.04.01 If the Airport Operator fails to commission the environmental baseline study or fails to have the Report prepared in accordance with Subsection 6.02.01 of this Schedule, then Her Majesty may commission such environmental baseline study and have the Report prepared all at the cost and expense of the Airport Operator and the cost and expense so incurred by Her Majesty shall constitute a debt owing by the Airport Operator to Her Majesty and may be so recovered.
- 6.04.02 If the Airport Operator fails to promptly commence and diligently complete any Remedial Work it is required to perform pursuant to Section 6.03 of this Schedule, Her Majesty Her agents, servants, employees, contractors and subcontractors, may upon thirty (30) days written notice to the Airport Operator enter onto the Airport Lands or the buildings situate thereon and perform any such Remedial Work at the cost and expense of the Airport Operator and the cost and expense so incurred by Her Majesty shall constitute a debt owing by the Airport Operator to Her Majesty and may be so recovered.

Section 6.06 Survival of Covenants

- 6.06.01 The obligations of the Airport Operator hereunder relating to Hazardous Substance referred to in this Article 6 shall survive the Closing Date and the transfer of title to Her Majesty.

ARTICLE 7 - RIGHT OF ENTRY

Section 7.01 Right of Entry

- 7.01.01 The Airport Operator agrees that Her Majesty and Her agents, employees or contractors may enter upon the Airport Lands or any buildings situate thereon at any time or times during reasonable hours, either before or after the date any Option to Purchase contained herein is exercised, with machinery or equipment, for the purpose of:
- (a) obtaining soil and conducting other tests of the Airport Lands and the buildings situate thereon;
 - (b) carrying out the environmental baseline study or preparing the Report pursuant to Subsection 6.04.01 of this Schedule; and

- (c) carrying out the Remedial Work pursuant to Subsection 6.04.02 of this Schedule

provided that by the exercise of such rights Her Majesty shall:

- (i) indemnify and save harmless the Airport Operator from all claims and demands resulting from the negligent exercise of the said right of entry; and
- (ii) if the Option to Purchase is not exercised, Her Majesty shall repair and make good or pay compensation for any damage done to the Airport Lands and the buildings situate thereon resulting from the negligent exercise of the right of entry.

ARTICLE 8 - BINDING CONTRACT

Section 8.01 Binding Contract

- 8.01.01 Upon the exercise of any Option to Purchase by Her Majesty in the manner aforesaid, this Agreement and the notice exercising the Option to Purchase shall then become a binding contract of sale and purchase between the parties and shall be completed upon the terms herein provided.

- 8.02.02 The Option to Purchase and the contract of sale and purchase resulting from the exercise of any Option to Purchase are subject to the *Federal Real Property Regulations*, SOR/ 92-502, as amended, and any Regulations amending or replacing those Regulations and any other Regulations applicable to the purchase of land by Her Majesty in force at the time any Option to Purchase is exercised.

ARTICLE 9 - EXAMINATION OF TITLE

Section 9.01 Examination of Title

- 9.01.01 Her Majesty shall have one hundred and twenty (120) days from the date of exercising the Option to Purchase to examine the title to the Airport Lands at the expense of Her Majesty and the Airport Operator shall take all such action as may be necessary to ensure that the title of the lands shall be free and clear of all encumbrances, leases and occupancy agreements with the exception of those items set out in Paragraphs 2.01.01(i), (ii) and (iii) of this Schedule.

- 9.01.02 For greater certainty, if any valid objection to the title is made in writing by Her Majesty to the Airport Operator, which the Airport Operator shall be unable to remove and which Her Majesty will not waive, the contract resulting from the exercise of the Option to Purchase shall, notwithstanding any intermediate actions or negotiations in respect of such objections, be null and void and the sum of One Dollar (\$1.00) paid as consideration for the granting of the Option to Purchase shall be returned to Her Majesty by the Airport Operator without interest.

ARTICLE 10 - CLOSING

Section 10.01 Closing

- 10.01.01 The transaction resulting from the exercise of the Option to Purchase shall be completed within one hundred and eighty (180) days after the date of exercise of the Option to Purchase (hereinafter called the "Closing Day"), good title to the Airport Lands in accordance with Section 10.01 of this Schedule, to be obtained through the Deputy Minister of Justice.
- 10.01.02 On the Closing Day the Airport Operator will deliver to the Minister a duly executed and registrable instrument of conveyance of the Airport Lands in fee simple (the "Transfer") or a duly executed and registrable Bill of Sale of the chattels and consumable stock to Her Majesty the Queen in Right of Canada, free of all encumbrances save and except those set out in Paragraphs 2.01.01(i), (ii) and (iii) of this Schedule.

ARTICLE 11 - INDEMNIFICATION

Section 11.01 Indemnification

- 11.01.01 The Airport Operator shall indemnify and save harmless Her Majesty, Her successors and assigns, against and from all actions, suits, damages, losses, charges, expenses, claims and demands whatsoever (including necessary legal costs) which may hereafter be brought or made against Her Majesty or which Her Majesty may sustain, pay or incur at the instance of Persons other than Her Majesty as the result of or in connection with or arising out of the failure of the Airport Operator to perform any covenants, conditions and agreements to be observed and performed by the Airport Operator pursuant to this Agreement.

ARTICLE 12 - FURTHER ACTS

Section 12.01 Further Acts

- 12.01.01 The Airport Operator will execute and deliver such documents and do such further acts and deeds as may be required to give effect to the Option to Purchase and the contract of sale and purchase which may result from it.

ARTICLE 13 - RULE AGAINST PERPETUITIES

Section 14.01 Rule Against Perpetuities

- 14.01.01 Notwithstanding anything to the contrary contained in this Agreement, any right of either party to acquire any interest in property or to extend the term of this Agreement in circumstances where such acquisition or extension would be subject to the rule of law known as the rule against perpetuities shall cease, determine and be at an end not later than the expiration of twenty-one (21) years after death of the last surviving lineal descendant of Her Majesty Queen Elizabeth II living on the date hereof.

Her Majesty and the Airport Operator by executing the main body of this Agreement have agreed to be bound by the terms and conditions of this Schedule "B".

SCHEDULE "C"

This is Schedule "C" to the Operating Agreement between Her Majesty the Queen in right of Canada and The Corporation of the City of Oshawa dated the 21st day of March, 1997.

Table of Allocations

Table I - Division of Proceeds - Special Sale (Subsection 3.06)

<u>Years</u>	<u>Airport Operator</u>	<u>Her Majesty</u>
1 - 5 <i>2002</i>	0%	100%
6 - 10 <i>2007</i>	2%	98%
11 - 15 <i>2012</i>	3%	97%
16 - 20 <i>2017</i>	5%	95%
21 - 25 <i>2024</i>	8%	92%
26 - 30 <i>2030</i>	12%	88%
31 - 35 <i>2035</i>	18%	82%
<i>2037</i> 36 - 40 <i>2040</i>	28%	72%
41 - 45	42%	58%
46 - 50	65%	35%
51 onward	100%	0%

Table II - Division of Proceeds - Regular Sale (Subsection 3.07)

<u>Years</u>	<u>Airport Operator</u>	<u>Her Majesty</u>
1 - 5	0%	100%
6 - 10	0%	100%
11 - 15	0%	100%
16 - 20	0%	100%
21 - 25	8%	92%
26 - 30	12%	88%
31 - 35	18%	82%
36 - 40	28%	72%
41 - 45	42%	58%
46 - 50	65%	35%
51 onward	100%	0%