

THE CORPORATION OF THE CITY OF PETERBOROUGH

BY-LAW NUMBER 08-013

**BEING A BY-LAW TO AUTHORIZE A LEASE OF PREMISES AT
THE PETERBOROUGH MUNICIPAL AIRPORT FROM FLYING
COLOURS CORP.**

THE CORPORATION OF THE CITY OF PETERBOROUGH BY THE
COUNCIL THEREOF HEREBY ENACTS AS FOLLOWS:

1. That the Mayor and Clerk be hereby authorized to execute an agreement between the Corporation of the City of Peterborough and Flying Colours Corp. in the form attached hereby as Schedule "A", and to affix the Seal of the Corporation thereto.

By-law read a first, second and third time this 21st day of January 2008.

(Sgd.) D. Paul Ayotte, Mayor

(Sgd.) Nancy Wright-Laking, City Clerk

SCHEDULE "A"

THIS LEASE is dated the 11th day of January, 2008.

IN PURSUANCE OF THE SHORT FORMS OF LEASES ACT (ONTARIO)

B E T W E E N:

FLYING COLOURS CORP.

("Landlord")

OF THE FIRST PART;

- and -

**THE CORPORATION OF THE CITY OF
PETERBOROUGH**

("Tenant")

OF THE SECOND PART.

**ARTICLE 1
Leased Premises and Term**

Section 1.1 Leased Premises

The Landlord leases to the Tenant, and the Tenant leases from the Landlord, certain premises at the Peterborough Airport in Peterborough, Ontario, as legally described in Schedule "A" attached hereto, together with any improvements erected thereon and used in connection therewith and all appurtenances thereto from time to time (all of which are collectively hereinafter referred to as the "Leased Premises").

The Leased Premises shall include a building containing a leaseable area of approximately four thousand (4,000) square feet, as well as the exclusive use of twenty (20) parking spaces, in the locations shown on Schedule "B". The exact leaseable area of the building shall be determined by the Landlord's consultant, calculated in accordance with BOMA standards. Such exact area shall be used for all calculations of Basic Rent and Additional Rent.

Section 1.2 Grant and Term

- (a) The term of this Lease (the "Term") shall be for a period of three (3) years to be computed from February 1, 2008 (the "Commencement Date") to January 31, 2011.

Anything in this Lease to the contrary notwithstanding, the Landlord shall not be deemed in default with respect to the performance of any of the terms, covenants and conditions of this Lease if same shall be due to any strike, lockout, civil commotion, war-like operation, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulations or controls, inability to obtain any material, service or financing, through act of God or other cause beyond the control of the Landlord (providing such cause is not due to the wilful act or neglect of the Landlord). Under such circumstances, the rent reserved and covenanted to be paid herein shall not commence until the possession of the Leased Premises is given or the Leased Premises are available for occupancy by the Tenant, and no such failure to give possession as aforesaid shall in any way affect the validity of this Lease or the obligations of the Tenant hereunder.

Section 1.3 Extension of Term

Subject to the following terms hereof, the Term of this Lease shall be extended indefinitely for additional one (1) year periods (commencing on the day after the expiry date of this Lease), provided that, as preconditions to the Term being extended:

- (a) the Tenant shall have duly and regularly performed all of the covenants, terms and conditions on its part to be performed in this Lease;
- (b) the Tenant shall not have given written notice to the Landlord, at least six (6) months prior to the expiry of the original Term, or each one (1) year renewal term, as applicable, that it does not wish to extend the Lease; and
- (c) in the event the Lease has been extended for at least a fourth one (1) year term, the Landlord shall not have given written notice to the Tenant that it does not wish to extend the Lease prior to the first day of the fourth one (1) year renewal term, or each subsequent (1) year renewal term, as applicable

The said extended terms shall be on the terms and conditions set out in this Lease, save and except that: (i) Basic Rent shall be payable at the fair market value for the Leased Premises based on the value of comparable premises as agreed to by the Landlord and the Tenant each extension year; (ii) the Tenant will pay Additional Rent (including Operating Costs) and (iii) the Tenant shall be responsible for the maintenance and repair obligations of the Landlord as outlined in Article 7.

In the event that the Landlord and the Tenant are unable to agree upon the extent or amount of a maintenance and repair obligation, or the amount of Basic Rent or Additional Rent to be paid by the Tenant during any of the said extensions to the term by a date which is three (3) months prior to the expiry of the original Term hereof, or each one (1) year renewal term, as applicable, then the determination of such extent or amount shall be submitted to arbitration, the cost of which shall be borne equally by the parties. Any such arbitration shall be conducted by the arbitrators, one to be appointed by the Landlord, one to be appointed by the Tenant and the two arbitrators so appointed shall appoint a third arbitrator. When payable, the Basic Rent and Additional Rent shall be based on an annual charge per square foot of the area of the Leased Premises in accordance with the Landlord's consultant's certificate of area referred to in Section 1 above.

ARTICLE 2

Rent

Section 2.1 Covenant to Pay

During the initial (3) years of the Term, the Tenant shall not be responsible for any Basic Rent or Additional Rent. If the Term is extended for one or more renewal terms, the Tenant shall pay Basic Rent, Additional Rent (including Operating Costs), and shall be responsible for the maintenance and repair obligations of the Landlord outlined in Article 7, unless otherwise negotiated by the parties.

Section 2.2 Basic Rent

If the Term is extended the Tenant will pay the Landlord the annual Basic Rent, as determined pursuant to Section 1.3.

The foregoing Basic Rent is not inclusive of Goods and Services Tax payable pursuant to the Excise Tax Act (Canada) as amended from time to time ("GST") and the Tenant shall pay the applicable GST as Additional Rent on the same date as the monthly instalments of Basic Rent are due.

Section 2.3 Rent Past Due

If the Tenant fails to pay any Rent when due, the unpaid amounts will bear interest from the due date to the date of payment at an annual rate of five (5) percentage points above the minimum lending rate charged to prime commercial borrowers at that time by the Landlord's chartered bank, calculated and compounded monthly.

Section 2.4 **Ground Rent and Servicing Costs**

The parties acknowledge and agree that, during the initial three (3) year term of this lease, the Landlord shall be entitled to a reduction in the rent and servicing costs payable to the Tenant under the ground lease between the parties dated January 11, 2008, which reduction shall be calculated on the proportion that the area of the Leased Premises bears to the total area governed by the ground lease.

ARTICLE 3 Taxes

Section 3.1 **Taxes Payable by the Tenant**

(a) The Tenant will pay to the Landlord, in accordance with Section 3.3, all Taxes levied, rated, charged or assessed against the Leased Premises.

(b) The Tenant will reimburse the Landlord for each Rental Year and at the times and in the manner specified by the Landlord, the full amount of any Taxes in the nature of a business transfer tax, value-added tax, sales tax or any other tax levied, rated, charged or assessed in respect of the Rent payable by the Tenant under this Lease or in respect of the rental of space by the Tenant under this Lease.

Section 3.2 **Business Taxes and Other Taxes of the Tenant**

The Tenant will pay to the lawful taxing authorities all business taxes, personal property taxes, licence fees or other similar rates and assessments levied or assessed against or in relation to the Tenant's business, assets and improvements in the Leased Premises.

Section 3.3 **Payment of Taxes**

(a) The amounts payable by the Tenant under Sections 3.1 may be estimated (and estimates may be revised) by the Landlord and the Tenant agrees to pay the Landlord such amounts, as estimated, in monthly instalments in advance, together with Basic Rent.

(b) Within one hundred and eighty (180) days after the end of the period for which the estimated payments have been made, the Landlord will determine and advise the Tenant of the exact amount of Taxes, and, if necessary, an adjustment will be made between the parties within fifteen (15) days after the Tenant has been advised of the actual amounts.

ARTICLE 4 Utilities and Heating

Section 4.1 **Charges for Utilities**

The Tenant will pay for the cost of all water, gas, electricity, telephone, and any and all other utilities used or consumed in, or, any other charges levied or assessed on or in respect to, the Leased Premises, and for all fittings, machines, apparatus or other things leased in respect thereof, and for all work or services performed by any corporation or commission in connection with such public or private utilities.

Section 4.2 **Heat**

The Tenant shall heat, at its own expense the Leased Premises to a degree sufficient to protect the Leased Premises and their contents from damage by cold or frost.

ARTICLE 5
Use of the Leased Premises

Section 5.1 Use of the Leased Premises

The Tenant will use the Leased Premises solely for operation of an airport terminal, and the Tenant will not use or permit, or suffer the use of the Leased Premises or any part of it for any other business or purpose.

Section 5.2 Nuisance

The Tenant shall not use or permit to be used any part of the Leased Premises for any dangerous, noxious or offensive trade or business and will not cause or maintain any nuisance in, at, or on the Leased Premises.

Section 5.3 Observance of Law

The Tenant will, at its expense, and subject to Section 7.3:

- (a) comply with all provisions of law and other requirements of all governmental bodies which pertain to or affect the Leased Premises or require or govern the making of any repairs, alterations or other changes of or to the Leased Premises or the Tenant's use of it; and
- (b) obtain all necessary permits, licences and approvals relating to the use of the Leased Premises and the conduct of business therein.

Section 5.4 Hazardous Substances

- (a) The Tenant shall not cause or permit any Contaminants to be used, stored, generated or disposed of in, on, or about the Leased Premises except in compliance with all applicable federal, provincial or municipal statutes, laws, by-laws or regulations.
- (b) The Tenant shall indemnify and hold harmless the Landlord from any and all claims, damages, fines, judgements, penalties, costs, expenses or liabilities (including, without limitation, any and all sums paid for settlement of claims, legal fees, consultant and expert fees) arising during or after the Term resulting from the Tenant's breach of the provisions of paragraph 5.4(a), or in connection with the use, storage, generation or disposal of Contaminants by the Tenant in, on or about the Leased Premises.

ARTICLE 6
Insurance and Indemnity

Section 6.1 Tenant's Insurance

- (a) The Tenant will, at its expense, maintain in the names of the Tenant, the Landlord and the Mortgagee (if applicable) as their respective interests may appear, the following insurance:
 - (i) "All Risks of Direct Physical Loss or Damage" insurance including flood and earthquake coverage, in an amount equal to the full replacement cost of all improvements installed by or on behalf of the Tenant, and equipment and chattels in or serving the Leased Premises or for which the Tenant is legally liable;
 - (ii) Comprehensive General Liability Insurance, to include personal injury liability, contractual liability, employers' liability, non-owned automobile liability and owners' and contractors' protective insurance coverage. The policies will (1) be written on a comprehensive basis with inclusive limits of not less than \$5,000,000 for bodily injury to any one or more persons, or property damage, and such higher limits as the Landlord, acting reasonably, or the Mortgagee requires from time to time; and (2) contain a severability of interests and cross-liability clauses;

- (iii) broad form boiler and machinery insurance on a blanket and replacement basis with limits for each accident in an amount not less than the full (new) replacement cost of the buildings and improvements comprising the Leased Premises and of all boilers, pressure vessels, air conditioning equipment and miscellaneous electrical apparatus owned or operated by the Tenant or by others (other than the Landlord) on behalf of the Tenant in the Leased Premises or relating to or serving the Leased Premises;
 - (iv) Business interruption insurance;
 - (v) Plate glass insurance;
 - (vi) Tenant's "all risk" legal liability insurance for the replacement cost value of the Leased Premises;
 - (vii) Any other forms of insurance as the Landlord, acting reasonably, or the Mortgagee requires from time to time.
- (b) The Tenant's policies will:
- (i) where applicable, contain the Mortgagee's standard mortgage clause;
 - (ii) be taken out with insurers reasonably acceptable to the Landlord and in a form reasonably satisfactory to the Landlord;
 - (iii) be non-contributing with and apply only as primary and not as excess to any other insurance available to the Landlord;
 - (iv) not be invalidated as respects the interests of the Landlord and the Mortgagee by reason of any breach or violation of any warranties, representations, declarations or conditions contained in the policies; and
 - (v) contain an undertaking by the insurers to notify the Landlord and the Mortgagee in writing not less than thirty (30) days prior to any material change, cancellation or termination.

The Tenant agrees that certificates of insurance in a form acceptable to the Landlord will be delivered to the Landlord within thirty (30) days after the placing of the required insurance.

- (c) If there is damage or destruction to the leasehold improvements in the Leased Premises, the Tenant will use the insurance proceeds for the sole purpose of repairing or restoring them.

Section 6.2 Increase in Insurance Premiums

If (a) the occupancy of the Leased Premises; (b) the conduct of business on the Leased Premises; or (c) any acts or omissions of the Tenant on the Leased Premises results in any increase in premiums for the insurance carried by the Landlord with respect to any part of the Leased Premises, the Tenant will pay the increase in premiums within five (5) days after invoices for additional premiums are rendered by the Landlord.

Section 6.3 Cancellation of Insurance

If any insurance policy in respect of the Leased Premises cancelled or threatened by the insurer to be cancelled, or the coverage reduced by the insurer by reason of the use and occupation of the Leased Premises and if the Tenant fails to remedy the condition giving rise to cancellation, threatened cancellation or reduction of coverage within 48 hours after notice by the Landlord, the Landlord may, at its option, either (a) exercise its rights of re-entry including termination under Article 13, or (b) at the Tenant's expense, enter upon the Leased Premises and remedy the condition giving rise to the cancellation, threatened cancellation or reduction.

Section 6.4 **Loss or Damage**

The Landlord is not liable for any death or injury arising from or out of any occurrence in, upon, at, or relating to the Leased Premises or damage to property of the Tenant or of others wherever located. The intent of this Section is that the Tenant (and all other Persons having business with the Tenant) is to look solely to its insurers to satisfy any claim which may arise on account of death, injury, loss or damage, irrespective of its cause.

Section 6.5 **Landlord's Insurance**

The Landlord shall at all times throughout the Term carry insurance covering the Leased Premises against damage by fire and extended perils as well as public liability and property damage and any other form of insurance which the Landlord or any Mortgagee requires in amounts against such perils which a prudent landlord would insure, including, without limitation rental income insurance.

Notwithstanding the Landlord's covenant to insure, the Tenant is not relieved of any liability arising from or contributed to by its negligence or its wilful acts or omissions, no insurable interest is conferred upon the Tenant under the Landlord's insurance policies, and the Tenant has no right to receive proceeds from the Landlord's insurance policies.

Section 6.6 **Indemnification of the Landlord**

The Tenant will indemnify the Landlord and save it harmless from and against all loss (including loss of rentals), claims, actions, damages, costs, liability and expense in connection with loss of life, personal injury, damage to property (including any equipment, machinery, services and improvements) or any other loss or injury arising from or out of this Lease, or any occurrence on the Leased Premises, or the Tenant's occupancy of the Leased Premises, or occasioned wholly or in part by any act or omission of the Tenant or by anyone permitted to be on the Leased Premises by the Tenant. The Tenant's indemnity, however, will not extend to any matters to the extent contributed to by the negligence of the Landlord or those from whom the Landlord is in law responsible. If the Landlord is, without fault on its part, made a party to any litigation commenced by or against the Tenant, then the Tenant will protect, indemnify and hold the Landlord harmless and pay all expenses and reasonable legal fees incurred or paid by the Landlord in connection with the litigation. The Tenant will also pay all costs and legal fees (on a solicitor and his client basis) that may be incurred or paid by the Landlord in enforcing the terms, covenants and conditions in this Lease.

ARTICLE 7 Maintenance, Repairs and Alterations

Section 7.1 **Maintenance and Repairs**

Subject to the Tenant's obligations in the following Section 7.2, the Landlord shall, at its sole cost and expense and at all times throughout the initial three (3) years of the Term of this Lease, keep and maintain the whole of the Leased Premises and every part thereof (including, without limitation, all glass, equipment, machinery and fixtures therein and all appurtenances thereof and improvements thereto) in good order, repair and first class condition, as would a prudent owner, reasonable wear and tear excepted. Without in any way limiting the generality of the foregoing, during the initial three (3) year Term of this Lease, the Landlord shall promptly make all needed repairs or replacements in and to the interior of the Leased Premises, reasonable wear and tear excepted, including, without limitation, ordinary as well as extraordinary, foreseen as well as unforeseen, it being understood, confirmed and agreed by the Landlord that the Tenant shall not at any time during the initial three (3) years of the Term of this Lease be required or called upon to make any repairs or replacements in and to the Leased Premises of any nature or kind whatsoever save as set out in Section 7.2.

Section 7.2 **Initial Maintenance and Repairs by Tenant**

During the initial three (3) year Term of this Lease, the Tenant shall perform routine maintenance of an operating nature within the Leased Premises, and shall repair any damage to the Leased Premises which is occasioned by the negligent act or omission of the Tenant or its invitees.

Section 7.3 **Landlord's Approval of the Tenant's Repairs**

During the Term of this Lease, any repairs, alterations, replacements, decorations or improvements ("Alterations") made by the Tenant to any part of the Leased Premises will be performed:

- (i) at the Tenant's expense;
- (ii) in a good and workmanlike manner;
- (iii) in accordance with drawings and specifications approved by the Landlord;
and
- (iv) subject to the reasonable regulations, controls and inspection of the Landlord.

Any Alterations made by the Tenant without the prior consent of the Landlord or not made in accordance with the drawings and specifications approved by the Landlord will, if requested by the Landlord, be promptly removed by the Tenant at the Tenant's expense.

Section 7.4 **Removal and Restoration by the Tenant**

(a) All alterations, decorations, additions and improvements made by the Tenant, or made by the Landlord on the Tenant's behalf (other than the Tenant's Trade Fixtures) immediately become the property of the Landlord upon affixation or installation and will not be removed from the Leased Premises at any time unless permitted or required by the Landlord. The Landlord is under no obligation to repair, maintain or insure these alterations, decorations, additions or improvements. At the expiration or sooner termination of the Term, the Tenant shall peaceably surrender and yield up vacant possession of the Leased Premises with all improvements, erections and appurtenances which at any time or times during the Term shall be made, placed or erected therein or thereon to the Landlord in as good condition and repair as the Tenant is required to maintain the Leased Premises throughout the Term. The Tenant shall surrender all keys for the Leased Premises to the Landlord at the place then fixed for the payment of Rent and shall inform the Landlord of all combinations of any locks, safes and vaults of any kind in the Leased Premises. The Tenant shall remove, at its sole cost and expense, all of the Tenant's Trade Fixtures, and shall repair, at its sole cost and expense, all damage to the Leased Premises caused by such removal. In the event the Tenant does not remove its Trade Fixtures within thirty (30) days of the expiration of the Term, the Landlord may at its option, remove any and all of such items from the Leased Premises and charge back to the Tenant all costs relating thereto including the cost of any damage to the Leased Premises caused by their removal. The Tenant's obligation to observe and perform the covenant contained in this Section shall survive the expiration or sooner termination of the Term.

Section 7.5 **Tenant to Discharge all Liens**

If any construction or similar lien is made, filed or registered against title to the Leased Premises (or part of it) or against the Tenant's leasehold interest, as a result of any work, materials or services supplied or performed by or on behalf of the Tenant or otherwise in respect of the Leased Premises, the Tenant will immediately discharge it at the Tenant's expense. If the Tenant fails to discharge the lien, then in addition to any other right or remedy of the Landlord, the Landlord may elect to discharge the lien by paying the amount claimed to be due, and any additional amounts as may be required at law or otherwise, into Court or directly to the lien claimant and the amount paid by the Landlord and all costs and expenses including all solicitor's fees incurred as a result of the lien including without limitation procuring its discharge will be immediately paid by the Tenant to the Landlord.

Section 7.6 Signs and Advertising

The Tenant will have the right to install signage on the Leased Premises in accordance with applicable law. All such signs will remain the property of the Tenant and will be maintained by the Tenant at its sole cost and expense. At the expiration or earlier termination of the Term, the Tenant will remove its sign(s) from the Leased Premises and will promptly repair all damage caused by the removal.

ARTICLE 8 Operating Costs

Section 8.1 Operating Costs

(a) In each year of the Term, the Tenant will pay to the Landlord in addition to Basic Rent, as further Additional Rent, the Landlord's costs incurred in connection with maintaining, insuring, repairing, replacing, restoring, supervising and administering the Leased Premises as set out herein ("Operating Costs").

(b) Operating Costs shall exclude or have deducted from them as the case may be:

- (i) such of the Operating Costs as are recovered from insurance proceeds, to the extent such recovery represents reimbursements for costs previously included in Operating Costs;
- (ii) interest on debt and capital retirement of debt;
- (iii) any payment in respect of the Landlord's income taxes, business taxes, corporation taxes, capital taxes, mortgage payments or land rent;
- (iv) the cost of any repairs or replacements due to faulty construction or design, improper materials or workmanship or structural defects or weaknesses;
- (v) the cost of any repairs or replacements to the Structure;
- (vi) any damages to person or property as a result of the negligent or wilful acts or omissions of the Landlord or those for whom the Landlord is in law responsible; and
- (vii) the cost of major resurfacing (as opposed to patching and sealing) of the existing asphalt.

(b) The amounts payable by the Tenant pursuant to the preceding paragraph may be estimated by the Landlord for such period or periods as the Landlord may determine from time to time, and the Tenant shall pay to the Landlord the amount so estimated in monthly instalments in advance during such period together with all other rental payments provided for in this Lease. At the end of the period for which such estimated payments have been made, the Landlord shall deliver to the Tenant a statement of the actual amounts and costs referred to in this Article, and if necessary, an adjustment shall be made between the parties hereto. If the Tenant shall have paid in excess of such actual amounts, the excess shall be refunded by the Landlord within a reasonable period of time after delivery of the said statement. If the amount the Tenant has paid is less than such actual amounts, the Tenant agrees to pay to the Landlord any such extra amount or amounts with the next monthly payment of Basic Rent.

(c) Notwithstanding anything contained in this Section 8, it is acknowledged and agreed that no Operating Costs shall be payable by the Tenant during the initial three year term of this lease, as set out in Section 1.2 hereof.

ARTICLE 9
Damage and Destruction

Section 9.1 Destruction of the Leased Premises

- (a) If the Leased Premises are destroyed or damaged as a result of fire or other casualty, then if:
- (i) the Leased Premises are rendered wholly or partially untenable, this Lease will continue in effect and the Landlord will commence diligently to restore the Leased Premises to the extent only of the insurance proceeds actually received by the Landlord, and Rent will abate entirely or proportionately, as the case may be, to the portion of the Leased Premises rendered untenable from the date of the destruction or damage until the Landlord has completed its restoration work; or
 - (ii) the Leased Premises are not rendered untenable in whole or in part, this Lease will continue in effect, the Rent and other amounts payable by the Tenant will not abate and the Landlord will commence diligently to restore the Leased Premises to the extent required by this Section 9.1(a).
- (b) Notwithstanding Section 9.1(a), if the Leased Premises are damaged or destroyed by any cause whatsoever, and if, in the opinion of the Landlord's architect, reasonably arrived at, the Leased Premises cannot be rebuilt or made fit for the purposes of the Tenant within one hundred and twenty (120) days of the damage or destruction, the Landlord, instead of rebuilding or making the Leased Premises fit for the Tenant in accordance with Section 9.1(a) may, at its option, elect to terminate this Lease by giving the Tenant, within thirty (30) days after the damage or destruction, notice of termination, and thereupon Rent will be apportioned and paid to the date of damage or destruction.
- (c) Once the Landlord has substantially completed its restoration work the Tenant will complete all work required to fully restore the Leased Premises for business. Nothing in this Section 9.1 requires the Landlord to rebuild the Leased Premises in the condition and state that existed before the damage, but the Leased Premises, as rebuilt, will have reasonably similar facilities and services to those in the Leased Premises prior to the damage.

ARTICLE 10
Transfer and Sale

Section 10.1 Transfer

- (a) The Tenant will not assign this Lease(a "Transfer") by or in favour of any Person (the "Transferee") without the prior written consent of the Landlord which consent will not be unreasonably withheld. However, notwithstanding any statutory provisions to the contrary, it will not be considered unreasonable for the Landlord to take into account whether in the Landlord's opinion the financial background, business history and capability of the Transferee is satisfactory in deciding whether to grant or withhold its consent.

The consent by the Landlord to any Transfer will not constitute a waiver of the necessity for consent to any subsequent Transfer. This prohibition against a Transfer includes a change in the direct or indirect effective voting control of the Tenant from the Person(s) holding voting control at the date of this Lease and also includes an assignment by operation of law.

- (b) If there is a Transfer, the Landlord may collect Rent from the Transferee, and apply the net amount collected to the Rent required to be paid pursuant to this Lease, but no acceptance by the Landlord of any payments by a Transferee will be a waiver of this covenant, or the acceptance of the Transferee as the Tenant, or a release of the Tenant from the further performance by the Tenant of its covenants or obligations. Any documents evidencing the Transfer will be prepared by the Landlord or its solicitors, and all legal costs will be paid by the Tenant to the Landlord or its solicitors as Additional Rent. Notwithstanding a Transfer, the Tenant will be jointly and severally liable with the Transferee on this Lease and will not be released from performing any of its obligations.

(c) If the Tenant receives consent under Section 10.1(a), it will be subject to the conditions that the Transferee enter into a written agreement directly with the Landlord to be bound by all of the terms contained in this Lease.

ARTICLE 11

Access

Section 11.1 Right of Entry

It shall be lawful for the Landlord and its agent(s) at all reasonable times during the Term to enter the Leased Premises to inspect the condition thereof. Where an inspection reveals that repairs or replacements are necessary, the Landlord shall give to the Tenant notice in writing, and immediately thereafter the Tenant will forthwith proceed to make all necessary repairs or replacements in a good and workmanlike manner and to the satisfaction of the Landlord, so as to complete same within the time or times provided for in the notice delivered by the Landlord as aforesaid. The failure by the Landlord to give notice shall not relieve the Tenant from any of its obligations to repair or replace in accordance with the provisions hereof. Provided further, that if the Tenant refuses or neglects to repair promptly and to the reasonable satisfaction of the Landlord, the Landlord may, but shall not be obligated to, make such repairs or replacements without liability to the Tenant for any loss or damage which may occur to the Tenant's property or to the Tenant's business by reason thereof and upon completion, the Tenant shall forthwith pay upon demand the Landlord's cost for making any such repairs or replacements plus a sum equal to fifteen percent (15%) thereof for overhead, as Additional Rent. The Tenant agrees that the making of any repairs or replacements by the Landlord pursuant to this Section 11.1 is not a re-entry or a breach of any covenant for quiet enjoyment contained in this Lease.

ARTICLE 12

Status Statement, Attornment and Subordination

Section 12.1 Status Statement

Within ten (10) days after written request by the Landlord, the Tenant will deliver in a form supplied by the Landlord, a status statement or a certificate to any proposed purchaser, assignee, lessor or mortgagee, or to the Landlord, which will contain such acknowledgments and information as is customarily called for in status statements and estoppel certificates delivered in conjunction with commercial tenancies.

Section 12.2 Subordination and Attornment

(a) This Lease and the Tenant's rights hereunder are, and will at all times be subordinate to all mortgages, trust deeds or the charge or lien resulting from, or any instruments of, any financing, refinancing or collateral financing (collectively, a "Mortgage") or any renewals or extensions thereof from time to time in existence against the Leased Premises or any part thereof. Upon request, the Tenant will subordinate this Lease in such form as the Landlord requires to any Mortgage and, if requested, the Tenant will attorn to the holder of the Mortgage (a "Mortgagee").

(b) The Tenant will, if possession is taken under, or any proceedings are brought for possession under or the foreclosure of, or in the event of the exercise of the power of sale under, any Mortgage, attorn to the Mortgagee or the purchaser upon any such foreclosure, sale or other proceeding and recognize the Mortgagee or the purchaser as the Landlord under this Lease.

(c) The Landlord shall, if required by the Tenant, use its best efforts to obtain from each Mortgagee a non-disturbance agreement between such Mortgagee and the Tenant setting out that in the event the Mortgagee enforces its rights under the Mortgage and takes possession of the Leased Premises or otherwise sells the Leased Premises, the Mortgagee and any purchaser from the Mortgagee shall honour, observe and be bound by the Lease provided the Tenant is not in continuing, material default of its obligations hereunder.

ARTICLE 13
Default

Section 13.1 Right to Re-enter

If and whenever:

- (a) the Tenant fails to pay any Rent on the day or dates appointed for payment (provided the Landlord first gives five (5) days' written notice to the Tenant of the Tenant's failure); or
- (b) the Tenant fails to observe or perform any other of the terms, covenants or conditions of this Lease to be observed or performed by the Tenant (other than the terms, covenants or conditions set out below in subparagraph (c) for which no notice shall be required), provided the Landlord first gives the Tenant thirty (30) days' written notice of the Tenant's failure, or such longer period of time as is reasonable given the nature of the work necessary to cure the default, and the Tenant within the thirty (30) day period fails to commence diligently and thereafter to proceed diligently to cure its failure; or
- (c) the Tenant becomes bankrupt or insolvent or takes the benefit of any act now or hereafter in force for bankrupt or insolvent debtors or files any proposal or makes any assignment for the benefit of creditors or any arrangement or compromise; a receiver or a receiver-manager is appointed for all or a portion of the Tenant's property; any steps are taken or any action or proceedings are instituted by the Tenant or by any other party to dissolve, wind-up or liquidate of the Tenant or its assets; the Tenant abandons the Leased Premises, or sells or disposes of the Tenant's Trade Fixtures, goods or chattels of the Tenant or removes them from the Leased Premises so that there would not in the event of such sale or disposal be sufficient trade fixtures, goods or chattels of the Tenant on the Leased Premises subject to distress to satisfy all Rent due or accruing hereunder for a period of at least three months; the Leased Premises become and remain vacant for a period of five (5) consecutive days; the Tenant effects or permits a Transfer without the Landlord's consent where required; this Lease or any of the Tenant's assets are taken under any writ of execution; or re-entry is permitted under any other terms of this Lease, then the Landlord, in addition to any other rights or remedies available to it, has the immediate right of re-entry upon the Leased Premises and it may repossess the Leased Premises and enjoy them as of its former estate and may expel all Persons and remove all property from the Leased Premises and such property may be removed and sold or disposed of by the Landlord as it deems advisable or may be stored in a public warehouse or elsewhere at the cost and for the account of the Tenant, all without service of notice or resort to legal process and without the Landlord being considered guilty of trespass or becoming liable for any loss or damage which may be occasioned.

Section 13.2 Right to Relet

- (a) If the Landlord elects to re-enter the Leased Premises, or if it takes possession pursuant to legal proceedings or pursuant to any notice provided for by law, it may either terminate this Lease or it may without terminating this Lease make any alterations and repairs as are necessary in order to relet the Leased Premises. Upon each reletting all rent received by the Landlord will be applied, first to the payment of any indebtedness other than Rent due hereunder; second, to the payment of any costs and expenses of reletting including brokerage fees and solicitor's fees and the costs of alterations and repairs; third, to the payment of Rent due and unpaid hereunder; and the residue, if any, will be held by the Landlord and applied in payment of future Rent as it becomes payable hereunder. No re-entry or taking possession of the Leased Premises will be construed as an election on its part to terminate this Lease unless a written notice of that intention is given to the Tenant.
- (b) If the Landlord terminates this Lease, in addition to other remedies available, it may recover from the Tenant all damages the Landlord incurs by reason of the Tenant's breach, including the cost of recovering the Leased Premises, all solicitor's fees and including the worth at the time of the termination of the excess, if any, of the amount of Rent required to be paid pursuant to this Lease for the remainder of the Term over the Rent payable to the Landlord upon a re-leasing of the Leased Premises if applicable for the remainder of the Term and otherwise over the reasonable rental value of the Leased Premises for the remainder of the Term, all of which amounts will be immediately due and payable by the Tenant to the Landlord. In any of the events referred to in Section 13.1, in addition to all other rights, the full amount of the current month's instalment of Basic Rent and Additional Rent, together with the next three months' instalments of Basic Rent and Additional Rent, all of which will be deemed to be accruing due on a day-to-day basis, will immediately

become due and payable as accelerated rent, and the Landlord may immediately distrain for the same, together with any arrears then unpaid.

Section 13.3 Expenses

If legal action is brought for recovery of possession of the Leased Premises, for the recovery of Rent or any other amount due under this Lease, or because of the breach of any other of the Tenant's obligations, the Tenant will pay to the Landlord all expenses incurred therefor, including a solicitor's fee (on a solicitor and his client basis), unless a court otherwise awards.

Section 13.4 Waiver of Exemption from Distress

The Tenant agrees that notwithstanding anything contained in Commercial Tenancies Act, or any statute or provision subsequently passed to take the place of or amend the Act, none of the goods and chattels of the Tenant which are on or have at any time been on the Leased Premises will be exempt from levy by distress for Rent in arrears by the Tenant.

Section 13.5 Landlord's Rights

If the Tenant fails to pay any Rent when due, the Landlord, after giving five (5) days' notice in writing to the Tenant, may, but will not be obligated to, pay all or any part of the same. If the Tenant is in default in the performance of any of its other covenants or obligations under this Lease, the Landlord may, but will not be obligated to, after giving such notice as it considers sufficient (or without notice in the case of an emergency), perform or cause to be performed any of the unperformed covenants or obligations. All expenses incurred and expenditures made by the Landlord plus a sum equal to ten percent (10%) representing the Landlord's overhead will be paid by the Tenant as Additional Rent within ten (10) days after receipt of an invoice on account thereof.

Section 13.6 Remedies Generally

(a) Mention in this Lease of any particular remedy of either party does not preclude that party from any other remedy, whether available at law or in equity or by statute or expressly provided for in this Lease. No remedy will be exclusive or dependent upon any other remedy, and the remedies are cumulative and not alternative.

ARTICLE 14 Miscellaneous

Section 14.1 Rules and Regulations

The Rules and Regulations adopted by the Landlord including, without limitation, those set out in Schedule "C", are made a part of this Lease, and the Tenant will observe them. The Landlord reserves the right to amend or supplement the Rules and Regulations applicable to the Leased Premises as in the Landlord's judgment are needed for the safety, care, cleanliness and efficient operation of the Leased Premises. Notice of the Rules and Regulations and amendments and supplements, if any, will be given to the Tenant and the Tenant will thereupon observe them provided that they do not contradict any terms, covenants and conditions of this Lease.

Section 14.2 Definitions

Throughout this Lease capitalized terms shall have the meaning set out in Schedule "D" attached unless otherwise defined in the Lease.

Section 14.3 **Intent and Interpretation**

(a) Net Lease

The Tenant acknowledges that it is intended that this Lease is a completely carefree net lease to the Landlord, except as expressly herein set out, that the Landlord is not responsible during the Term for any costs, charges, expenses and outlays of any nature whatsoever arising from or relating to the Leased Premises, or the use and occupancy thereof and the Tenant will pay all charges, impositions, costs and expenses of every nature and kind relating to the Leased Premises except as expressly herein set out.

(b) Obligations as Covenants and Severability

Each obligation or agreement of the Landlord or the Tenant expressed in this Lease, even though not expressed as a covenant, is considered to be a covenant for all purposes. If any provision of this Lease is or becomes invalid, void, illegal or unenforceable, it shall be considered separate and severable from the Lease and the remaining provisions shall remain in force and be binding upon the parties as though such provision had not been included.

(c) Entire Agreement and Amendment or Modification

This Lease and the Schedules, and Riders, if any, attached together with the Rules and Regulations set forth all covenants, promises, agreements, conditions or understandings, either oral or written, between them. No alteration or amendment to this Lease will be binding upon the Landlord or the Tenant unless in writing and signed by the Tenant and by two representatives of the Landlord.

(d) Governing Law

This Lease will be construed in accordance with and governed by the laws of the Province of Ontario.

(e) Time of the Essence

Time is of the essence of this Lease and of every part of it.

(f) More than One Tenant

If there is at any time more than one Tenant or more than one Person constituting the Tenant, their covenants shall be considered to be joint and several and shall apply to each and every one of them. If the Tenant is or becomes a partnership, each Person who is a member, or shall become a member, of such partnership or its successors shall be and continue to be jointly and severally liable for the performance of all covenants of the Tenant pursuant to this Lease, whether or not such Person ceases to be a member of such partnership or its successor.

Section 14.4 **Overholding--No Tacit Renewal**

If the Tenant remains in possession of the Leased Premises after the end of the Term without having signed a new lease or extending the Term pursuant to Section 1.3 hereof, there is no tacit renewal of this Lease or the Term, notwithstanding any statutory provisions or legal presumptions to the contrary, and the Tenant will be deemed to be occupying the Leased Premises as a tenant from month-to-month at a monthly Basic Rent equal to 125% of the monthly amount of Basic Rent payable in the event the Tenant exercised its extension right under Section 1.3, and otherwise, upon the same terms, covenants and conditions as are set forth in this Lease (including the payment of Additional Rent) so far as these are applicable to a monthly tenancy.

Section 14.5 **Waiver**

The waiver by either party of any breach of the other is not deemed to be a waiver of any preceding breach by the Tenant regardless of the Landlord's knowledge of the preceding breach at the time of acceptance of the Rent. No term, covenant or condition of this Lease is deemed to have been waived by the Landlord unless the waiver is in writing by the Landlord.

All Rent to be paid by the Tenant to the Landlord will be paid without any deduction, abatement, set-off or compensation whatsoever (except for the Basic Rent to the extent it may be abated pursuant to Section 9.1), and the Tenant hereby waives the benefit of any statutory or other rights in respect of abatement, set-off or compensation in its favour at the time hereof or at any future time.

Section 14.6 Accord and Satisfaction

No payment by the Tenant or receipt by the Landlord of a lesser amount than the monthly payment of Rent stipulated is deemed to be other than on account of the earliest stipulated Rent, nor is any endorsement or statement on any cheque or any letter accompanying any cheque or payment as Rent deemed an acknowledgement of full payment of accord and satisfaction, and the Landlord may accept and cash any cheque or payment without prejudice to the Landlord's right to recover the balance of the Rent due or to pursue any other remedy provided in this Lease.

Section 14.7 Force Majeure

Notwithstanding anything in this Lease, if either party is bona fide delayed or hindered in or prevented from the performance of any term, covenant or act required hereunder by reason of strikes, labour troubles; inability to procure materials or services; power failure; restrictive governmental laws or regulations; riots; insurrection; sabotage; rebellion; war; act of God; or other reason whether of a like nature or not which is not the fault of the party delayed in performing work or doing acts required under the terms of this Lease, then the performance of that term, covenant or act is excused for the period of the delay and the party delayed will be entitled to perform that term, covenant or act within the appropriate time period after the expiration of the period of the delay. However, the provisions of this Section do not operate to excuse the Tenant from the prompt payment of Rent.

Section 14.8 Notices

Any notice, demand, request or other instrument which may be or is required to be given under this Lease will be delivered in Person or sent by registered mail postage prepaid and will be addressed (a) if to the Landlord, to: Flying Colours Corp., R.R #5, Peterborough Airport, Peterborough, Ontario, K9J 6X6, Attention: Mr. John Gillespie, Fax: (705) 742-9394; and (b) if to the Tenant, at the Leased Premises. Any notice, demand, request or consent is conclusively deemed to have been given or made on the day upon which it is delivered, or, if mailed, then four (4) business days (excluding Saturdays, Sundays and statutory holidays) following the day of mailing, as the case may be. Either party may give written notice of any change of its address and thereafter the new address is deemed to be the address of that party for the giving of notices. If the postal service is interrupted or is substantially delayed, any notice, demand, request or other instrument will be delivered.

Section 14.9 Registration

Neither the Tenant nor any one on the Tenant's behalf or claiming under the Tenant will register this Lease. If either party intends to register a document for the purpose only of giving notice of this Lease or of any assignment or sublease of this Lease, then, upon request, both parties will join in the execution of a short form or notice of this Lease which will (i) be prepared by the Landlord or its solicitors at the Tenant's expense, and (ii) only describe the parties, the Leased Premises and the Commencement Date and the expiration date of the Term, and any option to extend the Term.

Section 14.10 Accrual of Basic Rent and Additional Rent

Rent will be considered as annual and accruing from day-to-day and where it becomes necessary for any reason to calculate Rent for an irregular period of less than one year, an appropriate apportionment and adjustment will be made.

Section 14.11 Quiet Enjoyment

If the Tenant pays the Rent and observes and performs all its terms, covenants and conditions, the Tenant will quietly hold and enjoy the Leased Premises for the Term without interruption by the Landlord, unless otherwise permitted under the terms of this Lease.

Section 14.12 Assignment and Enurement

The rights and liabilities created by this Lease extend to and bind the respective heirs, executors, administrators, successors and assigns of the Landlord and the Tenant. No rights, however, shall enure to the benefit of any Transferee unless the provisions of Article 10 are complied with.

IN WITNESS WHEREOF the parties hereto have signed and sealed this Lease.

DATED at Peterborough this 11th day of January, 2008.

SIGNED, SEALED AND DELIVERED)	FLYING COLOURS CORP.
In the presence of)	(Landlord)
)	
)	Per:_____
)	
)	Per:_____
)	
)	THE CORPORATION OF THE
)	CITY OF PETERBOROUGH
)	(Tenant)
)	
)	Per:_____
)	
)	Per:_____

SCHEDULE "A"

LEGAL DESCRIPTION OF LEASED PREMISES

Parts 3, 4, 5 and 6 on 45R- _____.

[NTD: To be updated once plan is registered.]

SCHEDULE "B"

LOCATION OF PARKING SPACES

The Twenty(20) parking spaces shall be located in Parts 3 and 5 of 45 R- _____.

[NTD: To be updated once plan is registered.]

SCHEDULE "C"

RULES AND REGULATIONS

- (a) The Tenant will not place or permit any debris, garbage, trash or refuse to be placed or left outside of the Leased Premises.
- (b) The Tenant, its agents, servants, contractors, invitees or employees, will not bring in or take out, position, construct, install or move any safe or other heavy machinery or equipment or anything liable to injure or destroy any part of the Leased Premises without first obtaining the written consent of the Landlord. The Landlord will have the right to prescribe the weight permitted and the position thereof, and the use and design of planks, skids or platforms, to distribute weight. All damage done to the Leased Premises by moving or using any heavy equipment or office equipment or furniture will be repaired at the expense of the Tenant. Safes and other heavy equipment and machinery will be moved only upon steel bearing plates.
- (c) The Tenant will not place or cause to be placed any additional locks upon any doors of the Leased Premises without the approval of the Landlord and subject to any conditions imposed by the Landlord.
- (d) The Tenant will not permit or allow any odours, vapours, steam, water, vibrations, noises or other undesirable effects to emanate from the Leased Premises or any equipment or installation therein which in the Landlord's opinion, are objectionable.
- (e) The Tenant will not install any equipment which will exceed or overload the capacity of any utility, electrical or mechanical facilities in the Leased Premises, as determined by the Landlord. If any equipment installed by the Tenant requires additional utility, electrical or mechanical facilities, the Landlord may, in its sole discretion, if they are available, elect to install them at the Tenant's expense.

SCHEDULE "D"

DEFINITIONS

1. **"Additional Rent"** means all sums of money or charges required to be paid by the Tenant under this Lease (except Basic Rent) whether or not designated "Additional Rent" or payable to the Landlord.
2. **"Contaminants"** means any contaminant, pollutant, dangerous or potentially dangerous, noxious or toxic substance, hazardous waste, flammable, explosive or radioactive material, asbestos, polychlorinated biphenyls and any other substances declared to be hazardous, toxic, contaminants, pollutants or dangerous goods in any applicable federal, provincial or municipal statute, law, by-law or regulation.
3. **"Landlord"** means the party of the First Part and includes the Landlord and its duly authorized representatives. In any Section of this Lease that contains exculpatory language in favour of the Landlord, "Landlord" also includes the directors, officers, servants, employees and agents of the Landlord.
4. **"Person"**, if the context allows, includes any Person, firm partnership or corporation, or any group of Persons, firms, partnerships or corporations or any combination thereof.
5. **"Rent"** means all Basic Rent and Additional Rent. All Rent is payable without prior demand and without any deduction, abatement or set-off.
6. **"Rental Year"** means a period of time consisting of consecutive periods of 12 calendar months unless otherwise stipulated by the Landlord.
7. **"Taxes"** means all real property taxes, rates, duties and assessments (including local improvement taxes, impost charges or levies assessed after the Commencement Date), whether general or special, that are levied, rated, charged or assessed against the Leased Premises from time to time by any lawful taxing authority, whether federal, provincial, municipal, school or otherwise, and any taxes or other amounts which are imposed in lieu of, or in addition to, any such real property taxes whether of the foregoing character or not and whether in existence at the Commencement Date or not, and any such real property taxes levied or assessed against the Landlord or the owners on account of its interest in the Leased Premises or any part thereof, or their ownership thereof, as the case may be, and any business transfer tax, value-added tax, sales tax or any tax levied, rated, charged or assessed in respect of Rent payable by the Tenant under this Lease or in respect of the rental of space by the Tenant under this Lease.
8. **"Tenant"** means the party of the Second Part. Any reference to "Tenant" includes, where the context allows, the servants, employees, agents, invitees and licensees of the Tenant and all others over whom the Tenant may reasonably be expected to exercise control.
9. **"Tenant's Trade Fixtures"** means the trade fixtures of the Tenant including, without limitation, certain restaurant equipment and fixtures (Exhaust Hood and suppression system, etc.) which are located on the Leased Premises.