

AGREEMENT OF PURCHASE AND SALE

This agreement (this "*Agreement*") dated _____, 2010 between _____ (the "*Purchaser*") and **FTI Consulting Canada Inc.**, in its capacity as court-appointed receiver of all the assets, undertakings and properties of **Skyservice Airlines Inc.** ("*Skyservice*") acquired for or used in relation to a business carried on by Skyservice (the "*Vendor*"), provides for the purchase of the Purchased Assets (as defined herein) For good and valuable consideration, the receipt and adequacy of which are acknowledged, the Purchaser and Vendor agree as follows:

1. **Definitions.** For the purposes of this Agreement:

"**Approval and Vesting Order**" means an order of the Court approving this Agreement, exempting this Agreement from the application of the Bulk Sales Act (Ontario) and vesting all right, title and interest of Skyservice in the Purchased Assets to the Purchaser on closing free and clear of all Liens (save and except for the Permitted Encumbrances).

"**Buildings**" means, collectively, all buildings, structures, improvements, erections, appurtenances and fixed equipment located on, in or under the Lands, and "**Building**" means any one of the Buildings.

"**Chattels**" means the inventory, supplies, equipment, machinery, furnishings, furniture, chattels and all other tangible personal or movable property owned by Skyservice and used exclusively in connection with the ownership, operation, maintenance or management of the Lands and Buildings, in each case to the extent the same are located on the Lands.

"**Contracts**" means the existing contracts and agreements entered into by or on behalf of Skyservice or by which Skyservice is bound, in each case with third parties, with respect exclusively to the ownership, development, maintenance, repair and operation of the Lands and Buildings, which are listed and more particularly set out in Schedule A, in each case to the extent the same are assignable, but excluding any insurance policies, Leases, Permitted Encumbrances and any property management contract or contracts with respect to the Lands and Buildings.

"**Court**" means the Ontario Superior Court of Justice.

"**Excluded Assets**" means the property and assets listed and described in Schedule B.

"**Lands**" means the land and premises municipally known as 31 Fasken Drive, Toronto, Ontario, as more particularly described in Schedule C to this Agreement.

"**Leases**" means, collectively, leases, offers to lease, agreements to lease, renewals of leases, and other rights or licences granted by Skyservice or its predecessors in title to possess or occupy space within the Lands and Buildings, together with all security, guarantees and indemnities of the tenants' obligations thereunder, entered into prior to the date hereof, including, without limitation, the lease agreement dated as of June 1, 2009 between Fly Park Inn Inc., as tenant, and Skyservice, as landlord (the "*Fly Park Inn Lease*"), in each case as amended, renewed or otherwise varied to the date hereof, and "**Lease**" means any one of the Leases.

"**Liens**" means any mortgage, charge, pledge, hypothec, security interest, assignment, lien (statutory or otherwise), easement, title retention agreement or arrangement, conditional sale, deemed or statutory trust, restrictive covenant or other encumbrance of any nature or any other arrangement or condition which, in substance, secures payment or performance of an obligation.

"**Permitted Encumbrances**" means the Liens and encumbrances listed and described in Schedule D.

"**Purchased Assets**" means the Lands, the Buildings, Skyservice's interest in the Leases, the Chattels and the Assignable Contracts, but excluding the Excluded Assets.

2. **Purchase, Purchase Price, Closing Date, Escrow Agreement and Auction Process.**

(a) Subject to the terms of this Agreement, the Purchaser agrees to purchase and the Vendor agrees to sell the Purchased Assets on the terms and conditions set out in this Agreement and for the purchase price (the "*Purchase Price*") of \$_____, payable as to \$_____ (being 15% of the Purchase Price) pursuant Section

2(b) to be held as a deposit (the "*Deposit*") in an interest bearing account or term deposit at a Schedule 1 Canadian Chartered Bank with interest to accrue to the benefit of the Purchaser and the balance, subject to the specific adjustments in Section 13, payable to the Vendor, or as it may direct, by cash or bank draft on the Closing Date (as defined below). If this Agreement is not completed because: (i) the Vendor does not waive the condition set out in Section 4(b) hereof; (ii) as of the Closing Date, the representation and warranty of the Vendor set out in Section 8 of this Agreement is untrue or any of the terms, covenants or conditions of this Agreement to be complied with or performed by the Vendor on or prior to the Closing Date has not been complied with or performed in all material respects; (iii) the Vendor is unable to obtain the Approval and Vesting Order by the date set out in this Agreement, the Deposit, together with all interest accrued thereon, will be returned to the Purchaser within 3 Business Days. If this Agreement is not completed for any other reason, the Deposit, together with all interest accrued, shall be retained by the Vendor. This transaction will be completed on the date (the "*Closing Date*") which is 3 Business Days after the date on which the Approval and Vesting Order is issued or such earlier date as the Purchaser and Vendor may agree.

- (b) Unless the Vendor is satisfied, in its sole and unfettered discretion, of the financial capabilities of the Purchaser to pay the balance of the Purchase Price and complete the transactions contemplated by this Agreement, which satisfaction will be evidenced by written notice of the Vendor to the Purchaser on or prior 2:00 pm on August 3, 2010, the Purchaser shall deposit the Deposit and the balance of the Purchase Price in escrow with the Vendor by 2:00 p.m. on August 4, 2010 pursuant to an escrow agreement between the Purchaser and the Vendor, in a form satisfactory to the Purchaser and Vendor, acting reasonably, which agreement shall include, without limitation, release of the escrowed funds representing the Purchase Price upon joint direction of the Purchaser and the Vendor on the Closing Date and release of the Deposit pursuant to the terms of this Agreement.
- (c) The Purchaser acknowledges that this Agreement has been entered into pursuant to a marketing and auction process set out in the Second Report of the Receiver dated June 10, 2010 (Court File No. CV-10-8647-00CL) and that the Purchaser acknowledges receipt and review of such report which is available at [http://cfcanada.fticonsulting.com/skyservice/docs/Court%20Report%20-%20Second%20\(Fasken%20LSA\).pdf](http://cfcanada.fticonsulting.com/skyservice/docs/Court%20Report%20-%20Second%20(Fasken%20LSA).pdf).
- (d) The Vendor and the Purchaser shall use reasonable efforts to agree prior to the Closing Date on an allocation of the Purchase Price between the Lands, the Buildings and the Chattels, provided that such agreement shall in no event be a condition of the closing of the transactions contemplated by this Agreement. If the Vendor and the Purchaser do not agree on an allocation, each shall nonetheless file its tax returns with the relevant revenue authorities based on its own reasonable allocation.

3. **Purchaser's Conditions.** The Purchaser's obligation to carry out the transactions contemplated by this Agreement is subject to the satisfaction or waiver by the Purchaser of each of the following conditions by the date specified, which conditions are for the sole benefit of the Purchaser and which may be waived by the Purchaser in its sole discretion:

- (a) **Closing Date.** As of the Closing Date, the representations and warranties of the Vendor set out in this Agreement will be true and accurate and of the same effect as if made on and as of the Closing Date, and all the terms, covenants and conditions of this Agreement to be complied with or performed by the Vendor on or prior to the Closing Date will have been complied with or performed in all material respects.
- (b) **Approval and Vesting Order.** On or before the Closing Date, the Court shall have granted the Approval and Vesting Order, and the operation and effect of the Approval and Vesting Order shall not have been stayed, reversed or dismissed at the time of closing and no appeals of such Approval and Vesting Order shall be pending.

If the condition set out in Section 3(b) is not satisfied or waived on or before the date that is fifteen (15) days after the Acceptance Date (as defined herein), the Purchaser may terminate this Agreement by notice in writing to the Vendor, in which event the Deposit, together with all interest accrued thereon, shall, subject to Section 2 of this Agreement, be returned to the Purchaser and the Vendor's and the Purchaser's obligations under this Agreement shall be null and void and of no further force or effect whatsoever.

4. **Vendor's Conditions.** The Vendor's obligation to carry out the transactions contemplated by this Agreement is subject to the satisfaction or waiver by the Vendor of each of the following conditions by the date specified, which conditions are for the sole benefit of the Vendor and which may be waived by the Vendor in its sole discretion:

- (a) **Approval and Vesting Order.** On or before the Closing Date, the Court shall have granted the Approval and Vesting Order, and the operation and effect of the Approval and Vesting Order shall not have been stayed, reversed or dismissed at the time of closing and no appeals of such Approval and Vesting Order shall be pending.

If the condition set out in Section 4(a) is not satisfied or waived on or before the date that is fifteen (15) days after the Acceptance Date, the Vendor may terminate this Agreement by notice in writing to the Purchaser, in which event the Deposit, together with all interest accrued thereon, shall, subject to Section 2 of this Agreement, be returned to the Purchaser and the Vendor's and the Purchaser's obligations under this Agreement shall be null and void and of no further force or effect whatsoever.

5. **Liability of FTI.** The Purchaser acknowledges that, notwithstanding any provision to the contrary herein, FTI Consulting Canada Inc. ("FTI") has entered into this Agreement solely in its capacity as court-appointed receiver of all of the assets, undertakings and properties of Skyservice and not in its personal or corporate capacity and that FTI shall in no circumstances incur any personal liability whatsoever in connection with this Agreement.

6. **As Is, Where Is.** The Purchaser acknowledges and agrees that:

- (a) on the Closing Date, title to the Purchased Assets shall be subject to the Permitted Encumbrances;
- (b) in entering into this Agreement, except as set forth in this Agreement, the Purchaser has relied and will continue to rely entirely and solely upon its own inspections and investigations with respect to the Purchased Assets, including without limitation, the physical and environmental condition of the Lands and Buildings, and the review of the documentation made available to the Purchaser pursuant to this Agreement, and the Purchaser acknowledges that it is not relying on any information furnished by the Vendor or any other person or entities on behalf of or at the direction of the Vendor in connection therewith; and
- (c) the Vendor is selling the Purchased Assets on an "as is, where is" basis as they shall exist on the Closing Date and no adjustments shall be made for any changes in the condition of any Purchased Assets (other than the specific adjustments in Section 13 below). The Purchaser further acknowledges that it has entered into this Agreement on the basis that the Vendor does not warrant, covenant or guarantee title to the Purchased Assets and that the Purchaser has conducted such inspections of the condition of and title to the Purchased Assets, and the nature and quantum of the claims against the Purchased Assets, in each case as it deemed appropriate and has satisfied itself with regard to these matters; no representation, warranty or condition is expressed or can be implied as to title, description, fitness for purpose, merchantability, condition, assignability, collectability, quantity, outstanding amount, value or quality of, or in respect of any Purchased Assets or any other matter or thing whatsoever concerning the Purchased Assets or the right of the Vendor to sell same, save and except as expressly represented or warranted herein; and without limiting the generality of the foregoing, any and all conditions, warranties or representations expressed or implied pursuant to the *Sale of Goods Act* (Ontario) do not apply hereto and are hereby waived by the Purchaser. The risk of loss of the Purchased Assets shall remain with the Vendor until the Closing Date and any property, liability and other insurance shall remain the responsibility of the Vendor until the transfer/vesting of the Purchased Assets on the Closing Date.

The Vendor shall have no obligations or responsibility to the Purchaser after the Closing Date with respect to any matter relating to the Purchased Assets or the condition thereof save as otherwise expressly provided in this Agreement. The provisions of this Section 6 shall not merge on, but shall survive, closing on the Closing Date.

7. **Contracts.** The Vendor shall assign to the Purchaser on the Closing Date only such Contracts that do not contain a restriction prohibiting the assignment thereof and such Contracts that contain a restriction prohibiting the assignment thereof but where consent from the counterparty is obtained by the Closing Date (the "Assignable Contracts"). The costs of obtaining such consents shall be borne by the Purchaser. The Vendor will be under no obligation to assign to the Purchaser Contracts that contain a restriction prohibiting the assignment thereof but where consent is not obtained from the counterparty by the Closing Date.

8. **Vendor's Representations.** The Vendor covenants, represents and warrants to and in favour of the Purchaser that:

(a) **Section 116.** Skyservice is not now, and will on the Closing Date not be, a non-resident of Canada within the meaning of Section 116 of the *Income Tax Act* (Canada).

9. **Vendor's Deliveries.** The Vendor will provide to the Purchaser within 3 Business Days after the date of execution and acceptance of this Agreement:

(a) Copies of all plans of survey, plans, specifications and drawings for the Lands and Buildings that, in the actual knowledge of the Vendor, are in the Vendor's possession or control. The Vendor shall make reasonable inquiries with the current Skyservice employees.

(b) Authorizations addressed to such governmental offices, officials and authorities as the Purchaser may reasonably request (such request to be made not more than one day after the date of execution of this Agreement) authorizing disclosure to the Purchaser's solicitors of any matters relating to the Purchased Assets. Such authorizations shall not contain requests for any inspections other than the Purchased Assets.

(c) Copies of all documents that, in the actual knowledge of the Vendor, are in the possession or control of the Vendor pertaining to the environmental status of the Lands and Buildings, including all audits, permits, test reports or certificates of approval in respect of any environmental matters in connection with the Lands and Buildings. The Vendor shall make reasonable inquiries with the current Skyservice employees.

(d) Copies of the Leases (including, without limitation, the Fly Park Inn Lease) and the Contracts pertaining to the Lands and Buildings that, in the actual knowledge of the Vendor, are in the Vendor's possession or control. The Vendor shall make reasonable inquiries with the current Skyservice employees.

10. **Interim Period.** From the date of this Agreement until the Closing Date (the "*Interim Period*"), the Vendor will allow the Purchaser, its representatives and advisers reasonable access to the Purchased Assets during normal business hours at times arranged by appointment with the Vendor to inspect the Purchased Assets, subject to restrictions, if any, contained in the Leases. The Purchaser hereby indemnifies the Vendor with respect to any damage or claim that results from the Purchaser's access. The Vendor will not enter into any leases, agreements or other instruments affecting the Lands, Buildings or Chattels during the Interim Period without the prior written consent of the Purchaser, which will not be unreasonably withheld or delayed. The Vendor will provide the Purchaser with all information it may reasonably require to decide whether to provide its consent to any such matters.

11. **Permitted Encumbrances.** The Purchaser shall:

(a) accept title to the Purchased Assets and subject to the Permitted Encumbrances;

(b) satisfy itself as to the due compliance with the provisions of such Permitted Encumbrances;

(c) strictly observe, perform and adhere to the covenants, obligations and restrictions imposed on the owner of the Purchased Assets as set out in the Permitted Encumbrances.

12. **Approval and Vesting Order.** The Vendor agrees that it will diligently apply to the Court for the Approval and Vesting Order. The Purchaser shall promptly provide to the Vendor all such information and assistance within the Purchaser's power as the Vendor may reasonably require to obtain the Court's approval, including without limitation, such information as the Vendor may require to reasonably evaluate the Purchaser's financial ability to perform its obligations under this Agreement.

13. **Adjustments.** Realty taxes, local improvement rates and charges, water and assessment rates and all current rents, including current basic rent and current additional rent and other charges for the Lands and Buildings, prepaid rents to the extent actually received by the Vendor (and interest accrued thereon, if any) after March 31, 2010 (being the date on which FTI Consulting Canada Inc. was appointed court-appointed receiver of all the assets, undertakings and properties of Skyservice acquired for or used in relation to a business carried on by Skyservice), security deposits to the extent actually received by the Vendor (and interest accrued thereon, if any) after March 31, 2010, prepaid amounts (to the extent actually received by the Vendor after March 31, 2010) or current amounts payable under Assignable Contracts on closing, operating costs, utilities, fuel and all other items normally adjusted between a vendor and purchaser in respect of the sale of property similar to the Lands and Buildings will be apportioned and adjusted as of the Closing Date (the day itself to be apportioned to the Purchaser). All right, title and benefit in and to any realty tax refunds or reassessments with respect to the Lands and Buildings for the period commencing on the Closing Date shall be transferred and assigned by the Vendor to the Purchaser on closing. The Vendor and the Purchaser shall jointly direct the municipality to pay any refund or reassessment of realty taxes for the 2010 calendar year to the Vendor and the parties shall readjust the amount of any such refund or reassessment payment between them after the conclusion of any assessment appeal based upon their respective pro rata entitlements thereto (net of any fee payable to any consultant). Notwithstanding the foregoing, the aggregate amount of any adjustments or readjustments pursuant to the undertaking described in Section 15(e) shall not exceed \$100,000 in favour of the Purchaser. Any insurance maintained by the Vendor will not be transferred as of the Closing Date but will remain the responsibility of the Vendor until the Closing Date. The solicitor for the Vendor will deliver a statement of adjustments to the solicitor for the Purchaser not less than 3 Business Days prior to the Closing Date.

14. **Taxes.** The Purchaser shall pay all applicable taxes in addition to the Purchase Price. No goods and services tax or harmonized sales tax will be paid by the Purchaser to the Vendor with respect to the purchase by the Purchaser of the Purchased Assets if the Purchaser provides to the Vendor on or prior to the Closing Date a certificate and indemnity of the Purchaser (a) indicating the Purchaser's registration number for the purposes of the Goods and Services Tax or Harmonized Sales Tax imposed under the Excise Tax Act (Canada) and (b) indemnifying the Vendor for failure of the Purchaser to pay such applicable taxes in connection with the purchase of the Purchased Assets (whether arising from a reassessment or otherwise) and failure to file any returns or other documents required to be filed by the Purchaser with the relevant taxing authorities in connection with the purchase of the Purchased Assets.

15. **Closing Arrangements and Vendor's Deliveries.** Subject to the terms and conditions of this Agreement, this Agreement will be completed at 10:00 a.m. (Toronto time) on the Closing Date at the offices of McCarthy Tetrault LLP in Toronto, Ontario. On the Closing Date, the Vendor will deliver to the Purchaser the following documents:

- (a) Approval and Vesting Order. The Approval and Vesting Order. The Vendor shall be responsible for the cost of obtaining and registering the Approval and Vesting Order.
- (b) Transfer. The transfer of the Lands, in registerable form, as contemplated by and in accordance with the Approval and Vesting Order. The Purchaser shall be responsible for all costs and expenses (including land transfer tax) relating to the registration of such transfer.
- (c) General Conveyance. A general conveyance of the Purchased Assets, which shall include an assignment and assumption of the Leases, Assignable Contracts and Permitted Encumbrances.
- (d) Certificate. A Certificate of the Vendor certifying that Skyservice is not a non-resident within the meaning of S. 116 of the Income Tax Act (Canada) and that the representations and warranties of the Vendor contained in this Agreement are true and accurate as of the Closing Date.
- (e) Undertaking. An undertaking to adjust and readjust any items properly adjustable pursuant to this Agreement for a period of 60 days following the Closing Date.
- (f) Keys. A set of keys and entry devices with respect to the Lands and Buildings and the combination of any locks or vaults to the extent same are in the possession or control of the Vendor.
- (g) Vacant Possession. Subject to the Leases, vacant possession of the Lands and Buildings.
- (h) Other. Such other transfers, assignments and documents relating to the completion of this Agreement as the Purchaser may reasonably require (which transfers, assignments and documents shall be prepared by the Purchaser at its sole cost).

16. **Closing Deliveries of the Purchaser.** Subject to the terms of this Agreement, the Purchaser will on the Closing Date deliver to the Vendor the balance of the Purchase Price (plus any applicable taxes that the Vendor is required by applicable law to collect from the Purchaser) by bank draft payable to the Vendor, or as the Vendor may in writing direct; an undertaking to readjust; the GST or HST certificate referred to in Section 14 and such other documentation relating to the completion of this Agreement as the Vendor may reasonably require.

17. **Risk.** All Buildings will be and remain until the Closing Date at the risk of the Vendor. Until completion of this Agreement, the Vendor will maintain its current insurance on the Lands and Buildings. Pending completion, the Vendor will hold all insurance policies, if any, and the proceeds from any such policies in trust for the parties as their interests may appear. In the event of damage to the Lands and Buildings in excess of 25% of the replacement cost to the Lands and Buildings, the Purchaser may either terminate this Agreement and have the Deposit and other monies paid under this Agreement by the Purchaser returned together with any accrued interest or, at its option where the proceeds of any insurance are available, take the proceeds of any insurance and complete the purchase.

18. **General.** Time will in all respects be of the essence of this Agreement. Any tender of documents or money may be made upon the Vendor or the Purchaser or upon their respective solicitors and money may be tendered by certified cheque or bank draft. This Agreement will be binding upon and enure to the benefit of the Vendor and the Purchaser and their respective successors and assigns. The Purchaser shall not have the right to assign this Agreement to any corporation or person without the consent of the Vendor, provided the Purchaser shall be entitled to assign this Agreement to an Affiliate (as defined in the *Business Corporations Act* (Ontario)) of the Purchaser; if such assignment is consented to by the Vendor or is made to an Affiliate of the Purchaser, such assignee shall agree in writing with the Vendor to be bound by the Purchaser's obligations under this Agreement; provided that upon such assignment, the Purchaser will not be released from its obligations under this Agreement. This Agreement shall merge on Closing except for Sections 2, 5, 6, 10, 11, 13, 14, 18 and 22. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same agreement. Counterparts may be executed either in an original, email or fax form and the parties agree to adopt any signature received by facsimile as original signatures, provided however that any party providing its signature in such manner promptly forwards to the other party an original of the signed copy of this Agreement which was so emailed or faxed. This Agreement will be governed and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and will be treated in all respects as an Ontario contract. The use of headings in this Agreement is for convenience of reference only and will not affect the meaning or construction of this Agreement. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter of this Agreement and supersedes all prior agreements, warranties or representations, discussions and negotiations with respect to this Agreement, whether oral or written. If the time limited for the performance or completion of any matter in this Agreement does not fall on a day that the public offices for registering documents to be delivered pursuant to this Agreement are open for business (a "Business Day"), the time so limited will extend to the next following Business Day. The parties will promptly do, execute, deliver or cause to be done, executed and delivered all further acts, documents and things to carry out the true intent of this Agreement. The parties hereto have jointly participated in the negotiation and drafting of this Agreement. In the event of an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumptions or burdens of proof shall arise favouring any party hereto by virtue of the authorship of any of the provisions of this Agreement. As used in this Agreement, the word "including" means without limitation. The headings and captions used in this Agreement or in any Schedule or Exhibit hereto are for convenience of reference only. Except as expressly set forth herein, all amounts payable hereunder and set forth in this Agreement are expressed in Canadian dollars. No waiver of or amendment to any provision of this Agreement, or any rights or obligations of any party hereto, will be effective except pursuant to a written instrument signed by all of the parties hereto. Any waiver will be effective only for the specific purpose stated in such writing. If any provision of this Agreement is held to be unenforceable, in whole or in part, the remainder of the provision shall be amended to achieve as closely as possible the economic effect of the original term and all other provisions shall continue in full force and effect.

19. **Electronic Registration.** The Vendor and the Purchaser acknowledge that the electronic registration system (the "*Teraview Electronic Registration System*" or "*TERS*") is operative in the land registry office where the Lands are located and, accordingly, the following provisions shall prevail, namely:

- (a) the Vendor's solicitors and the Purchaser's solicitors shall each be obliged to be authorized TERS users and in good standing with the Law Society of Upper Canada, and they are hereby authorized by the parties hereto to enter into a document registration agreement in the form adopted by the Joint LSUC-CBAO Committee on Electronic Registration of Title Documents on March 29, 2004 or any successor version thereto (the "*Document Registration Agreement*" or "*DRA*"), together with the additional requirement that the registering solicitor shall also be obliged to provide the non-registering solicitor with a copy of the registration report printed by TERS upon the registration of the electronic documents, as evidence of the registration thereof, within one Business Day

following the Closing Date. It is understood and agreed that the DRA shall outline or establish the procedures and timing for completing the transactions contemplated by this Agreement electronically, and shall be executed by both the Vendor's solicitors and the Purchaser's solicitors and exchanged by courier or facsimile transmission between such solicitors (such that each solicitor has a photocopy or faxed copy of the DRA duly executed by both solicitors) by no later than one Business Day before the Closing Date;

- (b) the delivery and exchange of the closing documents and the balance of the Purchase Price, and the release thereof to the Vendor and the Purchaser, as the case may be:
- (i) shall not occur contemporaneously with the registration of the transfer/deed for the Lands and other closing documents, if any, to be registered electronically; and
 - (ii) shall be governed by the DRA, pursuant to which the solicitor receiving any closing documents, or the balance of the Purchase Price, will be required to hold the same in escrow, and will not be entitled to release the same except in strict accordance with the provisions of the DRA;
- (c) each of the parties agrees that the delivery of any of the closing documents not intended or required to be registered against title to the Lands shall, unless the parties otherwise agree, be by way of delivery of originally signed copies thereof on the Closing Date to the other party or its solicitor; and
- (d) notwithstanding anything contained in this Agreement or in the DRA to the contrary, it is expressly understood and agreed by the parties hereto that an effective tender shall be deemed to have been validly made by either party (in this Section called the "*Tendering Party*") upon the other party (in this Section called the "*Receiving Party*") when the solicitor for the Tendering Party has:
- (i) delivered all applicable closing documents and/or the balance of the Purchase Price to the Receiving Party's solicitor in accordance with the provisions of this Agreement and the DRA;
 - (ii) advised the solicitor for the Receiving Party in writing that the Tendering Party is ready, willing and able to complete the transactions contemplated by this Agreement in accordance with the terms and provisions of this Agreement; and
 - (iii) completed all steps required by TERS in order to complete the transactions contemplated by this Agreement that can be performed or undertaken by the Tendering Party's solicitor without the co-operation or participation of the Receiving Party's solicitor, and specifically when the Tendering Party's solicitor has electronically "signed" the transfer/deed(s) and any other closing document, if any, to be registered electronically for completeness and granted "access" to the Receiving Party's solicitor (but without the Tendering Party's solicitor releasing the same for registration by the Receiving Party's solicitor).

20. **Planning Act.** This Agreement will be effective to create an interest in the Lands only if the provisions of the Planning Act (Ontario) are complied with.

21. **Notice.** Any notice, certificate, consent, waiver, amendment or other written communication required or permitted to be given under the Agreement will be in writing made by the parties or their respective solicitors and will be effectively given and made if delivered personally or by facsimile communication:

- (a) in the case of the Vendor, addressed to it at:

c/o FTI Consulting Canada Inc.
TD Waterhouse Tower
79 Wellington Street
Suite 2010
Toronto, ON M5K 1G8
Attention: Nigel Meakin
Facsimile No. (416) 649-8101

and at:

c/o FTI Consulting Canada Inc.
Suite 500
900 West Hastings Street
Vancouver, BC V6C 1E5
Attention: Jamie Engen
Facsimile No. (604) 696-5571

with a copy to:

McCarthy Tétrault LLP
Box 48, Suite 5300
Toronto Dominion Bank Tower
Toronto, ON M5K 1E6
Attention: Jamey Gage and Jonathan See
Facsimile No. (416) 868-0673

(b) and in the case of the Purchaser, addressed to it at:

Attention: _____
Facsimile No. _____
with a copy to:

Attention: _____
Facsimile No. _____

Any communication given or made will be deemed to have been given or made on the day it was received unless (i) it was received after 5 p.m., or (ii) if such day is not a Business Day, in each of which cases it will be deemed to have been given and made and to have been received on the next following Business Day.

22. **Commissions.** The Purchaser warrants that it has not used an agent in respect of this Agreement. The Purchaser hereby indemnifies the Vendor with respect to any damage, claim or loss that results from any breach of the representation in this Section 22.

23. **Acceptance of Offer.** This Agreement has been executed by the Purchaser and presented to the Vendor as an offer for acceptance by delivery of an original executed copy to the Purchaser on or prior to 5:00 p.m. on August 13, 2010 ("Acceptance Date"), failing which this Agreement will be null and void and of no further force or effect.

IN WITNESS WHEREOF the parties have executed this Agreement.

By: _____
Name:
Title:

By: _____
Name:
Title:

FTI CONSULTING CANADA INC., in its capacity as court-appointed receiver of all the assets, undertakings and properties of Skyservice Airlines Inc. and not in its personal or corporate capacity

By: _____
Name:
Title:

By: _____
Name:
Title:

- Schedule A – Contracts
- Schedule B – Excluded Assets
- Schedule C – Lands
- Schedule D – Permitted Encumbrances

SCHEDULE A
CONTRACTS

Nil

SCHEDULE B
EXCLUDED ASSETS

1. All Chattels owned by the tenants pursuant to the Leases.

SCHEDULE C

LANDS

Municipal Address: 31 Fasken Drive, Toronto, Ontario

Legal Description:

PIN 07420-0020 (LT)

PT BLK B, PL 7994, PART 1, 64R8871; T/W EB367331; ETOBICOKE, CITY OF TORONTO

SCHEDULE D

PERMITTED ENCUMBRANCES

- (1) Rights reserved to or vested in any municipality or governmental or other public authority by the terms of any lease, license, franchise, grant, agreement or permit, including the right to terminate same or to require annual payments as a condition to the continuance thereof, which do not materially adversely affect the use, value or marketability of the Lands, Buildings or Chattels.
- (2) The reservations, exceptions, limitations, provisos and conditions, if any, expressed in the original grant from the Crown, as the same may varied by statute.
- (3) Registered subdivision agreements, site plan control agreements, servicing agreements, encroachment agreements, development agreements, tunnel agreements, and other similar agreements with governmental authorities or public utilities affecting the development or use of the Lands, Buildings or Chattels and security given therefor, provided same are in good standing in all material respects.
- (4) Registered facility sharing, cost sharing, common use, servicing, reciprocal, tunnel and other similar agreements relating to the use and/or operation of the Lands, Buildings or Chattels and/or adjoining properties and security given by the parties thereto to each other to secure the performance of their respective obligations thereunder.
- (5) Encumbrances respecting minor encroachments by any portion of the Lands and Buildings over neighbouring lands or easements or rights of way and/or minor encroachments on the Lands and Buildings by improvements on neighbouring lands including, without limitation, any minor encroachments as shown on any survey of the Lands.
- (6) Title defects or irregularities which are of a minor nature and in the aggregate will not materially impair the use, value or marketability of the Lands, Buildings or Chattels for the purposes for which they are presently held.
- (7) (i) All Liens, encumbrances, restrictions, easements, rights of way, leases and tenancies, agreements and interests affecting title to the Lands, Buildings or Chattels which are registered by the Purchaser or are registrations which arise directly or indirectly due to the actions or the omissions of the Purchaser, (ii) notices of leases registered by or on behalf of tenants of the Lands and Buildings, and (iii) those registrations, if any, registered after the Acceptance Date with the consent of the Purchaser pursuant to the terms of this Agreement.
- (8) Instrument No. EB158733 registered on September 23, 1955 is an amendment to the Toronto Malton Airport Zoning Regulations.
- (9) Instrument No. EB216574 registered on June 17, 1959 is a Notice by the Department of Transport of Malton Airport zoning regulations.
- (10) Instrument No. EB255931 registered on March 13, 1962 is a Notice by the Department of Transport of Toronto Malton Airport zoning regulations.
- (11) Instrument No. EB412063 registered on January 29, 1973 is a Notice by the Department of Transport, Canada, of Airport zoning regulations.
- (12) Instrument No. EB461590 registered on May 3, 1976 is an Order In Council of the Privy Council of Canada, dated February 10, 1976, to amend Toronto International Airport zoning regulations.
- (13) Instrument No. E317117 registered on March 27, 2000 is a Notice by Her Majesty the Queen in Right of the Department of Transport Canada of Pearson Airport zoning regulations.
- (14) Instrument No. EB363078 registered on September 26, 1969 is an Agreement dated September 15, 1969, made between Bob-Clare Investments Limited and The Corporation of the Borough of Etobicoke, which agreement relates, *inter alia*, to the connection of a building sewer to a storm sewer situate on the street.

- (15) Instrument No. EB370363 registered on May 21, 1970 is an Agreement dated May 19, 1970, made between Bob-Clare Investments Limited and The Corporation of the Borough of Etobicoke, which agreement relates, *inter alia*, to the connection of a building sewer to a storm sewer.
- (16) Instrument No. E570750 registered on July 19, 2002, is a Notice of Change of Address – Owner dated July 17, 2002 to change the address of Skyservice Airlines Inc.