



*City of Burlington
Burlington International Airport
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MEMO

TO: Board of Finance

FROM: Ryan Betcher, Burlington International Airport

DATE: August 5, 2013

SUBJECT: Finance Board Term Amendment – Hangar Condominium Association Lease Renewal

The Burlington International Airport seeks Finance Board and City Council approval to revise the proposed term of the contract that was approved at the June 24, 2013 meeting. The proposed term of the agreement will increase from an initial term of five years with a five year renewal term to an initial term of five years with two five year renewal terms, from July 1, 2013 to June 30, 2028. All other terms of the agreement will remain in effect. The annual rental for year one is \$18,018, and will be adjusted annually by the CPI.

It is our intention to use the same contract that was approved by both the Board of Finance and City Council, a copy of which has been included. Thank you for your consideration.

The Airport Commission approved the terms of the agreement on July 15, 2013.

A draft resolution is included with this request.

LEASE AGREEMENT

THIS LEASE AGREEMENT, made this ____ day of _____, 2013, by and between the City of Burlington, a municipal corporation in the State of Vermont (hereinafter called "Lessor" or "City"), and Hangar Condominium Association, Inc., a Vermont corporation (hereinafter called "Lessee").

WITNESSETH:

WHEREAS, Lessor owns and operates an airport known as the Burlington International Airport located in South Burlington, Vermont, which airport and any additions or improvements thereto or changes therein which the City hereafter makes or authorizes are hereinafter collectively called the "Airport"; and

WHEREAS, the Airport has worked diligently to improve and upgrade its facilities and fulfill the national goal of a secure, efficient air transportation system, including its obligations to general aviation, particularly through the use of FAA/Airport Improvement Program funds for the South End Development Project; and

WHEREAS, Lessor and Lessee entered into a Lease Agreement dated February 1, 1982, with an effective date of January 1, 1982, whereby Lessee leased from Lessor a parcel of land on the Airport (the "1982 Lease"); and

WHEREAS, pursuant the terms of the 1982 Lease, Lessee did construct 12 individual hangar units on the land leased from Lessor; and

WHEREAS, Lessor and Lessee wish to terminate the 1982 Lease and enter into a new lease for a parcel of land on the Airport, and enter into a process for the possible relocation of its leased space to another part of the Airport at a later date, together with certain rights and privileges in connection therewith;

NOW THEREFORE, for and in consideration of the premises and of the mutual covenants and promises herein contained, the parties hereby covenant and agree as follows:

1. PREMISES

Lessor hereby leases and lets to Lessee and Lessee hereby hires and takes from Lessor for the purposes hereinafter set forth, and for the exclusive use of Lessee, a certain parcel of land on the Airport, as shown on the plan or sketch attached hereto marked Exhibit "A," and hereby specifically made a part hereof, said parcel of land containing approximately 46,200 square feet (hereinafter "premises" or "demised premises") to have and to hold the premises with the appurtenances thereto belonging, upon the terms and conditions hereinafter contained.

Lessor and Lessee agree, however, that the premises may be needed for other Airport purposes within the term of this Lease and that other suitable ground space of equivalent, or larger, size upon which the Lessee may construct hangar space for secure storage of aircraft and access to the runway and taxiways will be made available to relocate Lessee. It is further agreed that the cost of any such relocation shall be the responsibility of Lessee; provided, however, that if the relocation is requested for reasons other than the furtherance of Lessor's efforts to develop the so-called "south end" of the Airport in accordance with the FAA approved Airport Layout Plan, which plan may from time-to-time be amended to reflect current aviation demand, the cost of any such relocation shall be the responsibility of Lessor.

2. TERM

a. The initial term of this Agreement shall commence effective July 1, 2013, and end on June 30, 2018, unless sooner terminated as hereinafter provided. At the end of the initial term, provided that the Lessee is not then in default beyond the applicable grace period, and that the Lessor has not initiated physical construction of the new general aviation area identified for T hangars and executive hangars, as shown on the FAA approved Airport Layout Plan approved by

the FAA on March 23, 2012, to which the Lessee has expressed intention to relocate upon its availability, the Lessor and Lessee agree negotiate an extension of the lease for an additional two (2) terms each consisting of five (5) years, effective July 1, 2018 and July 1, 2023 respectively. The Lessee shall notify the Lessor of its desire to renew the subject lease not later than one year prior to the expiration of the initial term or any extension thereof then in effect. The terms and conditions of said lease extensions will be renegotiated in the one year period prior to the effective date of any such extension.

b. Effective June 30, 2013, the 1982 Lease Agreement shall be terminated and neither party shall thereafter have any right or obligation under the provisions of the 1982 Agreement.

3. RENTAL

For and during the term hereof, Lessee agrees to pay Lessor the following ground rental for the use and occupancy of the demised premises and as a condition for the privileges conferred upon Lessee by this Agreement, payable in equal monthly installments on or before the first day of each and every month, in advance, without billing, at the office of the Director of Aviation. Any rental amount payable which shall not have been paid by the first day of the month to which it applies shall bear interest at the rate of one and a half percent (1 1/2%) per month, which interest shall be paid by Lessee in addition to the rental amount.

a. \$0.39 per square foot for the 46,200 sf of ground, or Eighteen Thousand Eighteen Dollars (\$18,018.00) per annum for the first year of this Agreement, through June 30, 2014.

b. Commencing on July 1, 2014, and continuing each year thereafter through the remainder of the initial term of the lease, said rental will be adjusted to be equal to, and reflect, the then current published rate for ground rental at the Airport as determined by the application of any change in the value of the dollar, from the May of the preceding year to

May of the new year according to the Consumer Price Index for all Urban Consumers, published by the Bureau of Labor Statistics of the United States Department of Labor. In no event shall the new rates be less than the immediately preceding rate. As a time lapse occurs in the issuing of the Consumer Price Index, all adjustments shall be retroactive to the beginning of each new lease year.

c. In the event that the United States Department of Labor discontinues publication of the Consumer Price Index or data from which the index can be directly computed, or if the method for the determination of such index is substantially different than that existing at the time this Agreement is executed, the basis for the rental rate adjustment shall be redefined by Lessor in the manner necessary to accomplish the same adjustment objectives as set forth herein.

4. USE OF PREMISES

The demised premises contain 2 metal hangar buildings comprising of 12 individual hangars erected and owned by Lessee. The demised premises and the hangars shall be used and occupied solely for general aviation purposes and for no other purpose or purposes without the written consent of Lessor. Without limiting the generality of the foregoing, but merely by way of example, Lessee shall not use the premises to conduct a fixed based operator and aeronautics business; for commercial passenger transport; for the sale or lease of petroleum products, aircraft, engines, accessories and parts; to conduct a flight school; or to maintain or service non-Lessee equipment. Lessee shall have the right to utilize the demised premises for the storage of aircraft owned by other parties and to charge a fee for said storage provided, however, that the hangar space required for such storage is not reasonably available from a fixed base operator at the Burlington International Airport.

5. AGREEMENT SUBORDINATE

This Agreement shall be subject and subordinate to the following:

a. Lessor reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction, together with the right to prevent Lessee from erecting or permitting or causing to be erected any new building or other structure which, in the sole opinion of Lessor, would limit the usefulness of the Airport or constitute a hazard to aircraft consistent with FAA requirements;

b. This Agreement shall be subordinate to the provisions of any existing or any future agreement between Lessor and the State of Vermont and/or the United States of America relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the granting of Federal or State Funds or the approval to impose or use Passenger Facility Charges for the improvement or development of the Airport. Lessee shall not cause Lessor to violate any assurances made by Lessor to the United States Government and/or State of Vermont in connection with the granting of such federal or state funds or the approval of such PFCs.

c. Lessor's right, during time of war or national emergency to lease the landing facilities or any part thereof, or to otherwise permit the use thereof on an exclusive basis, by the United States of America or the State of Vermont for military use; the provisions of this Agreement, to the extent that they are inconsistent with the superior right, shall be suspended during any such period.

Provided, however, that if Lessor should exercise such rights, then during the period of exercise, there shall be an appropriate and proportionate reduction in the rental of any portion of the Leased Premises as to which Lessee is unable to

conduct the business substantially in accordance with the rights conferred by this Lease Agreement. The foregoing provision shall not be construed as affecting Lessee's right of cancellation under Section 11 below should Lessee be unable to conduct its business as foresaid for a period of at least ninety (90) days.

d. If any covenant, condition, or provision in this Agreement is held to be invalid, illegal, or unenforceable by any court of competent jurisdiction, or conclusively determined to be inconsistent with federal law or FAA grant assurances, such covenant, condition, or provision shall be deemed amended to conform to applicable laws so as to be valid or enforceable or, if it cannot be so amended without materially altering the intention of the parties, it shall be stricken. If stricken, all other covenants, conditions and provisions of this Agreement shall remain in full force and effect provided that the striking of such covenants, conditions or provisions does not materially prejudice either Lessor or Lessee in its respective rights and obligations contained in the valid covenants, conditions, or provisions of this Agreement.

6. LESSOR OBLIGATIONS

Lessor covenants and agrees:

- a. That it has lawful possession of the demised premises and has good and lawful authority to execute this Agreement.
- b. To continue its efforts to provide facilities to serve general aviation operators by attempting to expand the Airport's infrastructure to the south of the present Airport footprint with sufficient space to accommodate approximately 24 hangars (the "South End Project").

c. Lessor agrees to maintain the Airfield Area in good condition and repair. Such obligation shall include snow removal from runways and taxiways; provided, however, that the extent of such obligation as to snow removal from the Apron Area shall be limited to general snow removal required for the operation of aircraft and ground equipment, and shall be limited to the area beginning thirty (30) feet out from any building. To the extent possible, and to the extent that such snow removal is required for the operation of aircraft and ground equipment, Lessor agrees to assist Lessee with snow removal in the area within thirty (30) feet from building; provided, however, that CITY shall not be liable for any failure to do so.

7. LESSEE OBLIGATIONS

Lessee covenants and agrees:

a. To pay the rent and other charges herein reserved at such times and places as the same are payable.

b. To furnish to the demised premises and to pay all charges for property taxes, casualty insurance (on the buildings and contents), telephone service, water, heat, air conditioning, gas, electric power, trash and/or hazardous waste removal, snow removal and janitorial service, and other public utilities of every kind to the demised premises.

c. To keep and maintain all parts of the demised premises, including related and associated appurtenances, in good condition, order and repair during the term of this Agreement, including but not limited to painting, lighting, removal of snow and garbage, landscaping, replacement of broken glass with glass the same size and quality of that broken, installed and operating equipment including air

conditioning units, gas heaters, plumbing, and utility services. All maintenance shall be subject to general monitoring by Lessor to insure a continuing high quality of appearance commensurate with maintenance and safety standards of the Airport.

d. To observe and comply with any and all present and future requirements of the constituted public authority and with all federal, state or local statutes, ordinances, regulations, standards, conditions and agreements applicable to Lessee for its use of the demised premises, including, but not limited to, ordinance, rules and regulations promulgated from time to time by or at the direction of Lessor for the administration of the Airport; at its own expense to submit to and comply with the requirements of all state and federal regulatory agencies or municipal boards having jurisdiction over the construction of any fixed improvements on the demised premises, including, but not limited to, any State, or local governmental Department or Board; and at its own expense to comply with the standards for accessible design known as the Americans with Disabilities Act Accessibility Guidelines in connection with any new construction or alteration of the demised premises. Lessee shall bear the burden of this obligation regardless of whether any such Agency or Board shall require that Lessor be the applicant of record.

e. To indemnify and save harmless the Board of Airport Commissioners of the City of Burlington, its members, agents, officers and employees, their successors and assigns, and the City of Burlington, its officers, agents and employees, their successors and assigns, individually or collectively, from and against all liability for any fines, claims, suits, liens, demands, actions or cause of action of any kind and nature for personal injury, death or property damage in any way arising out of or resulting from any activity or operation of Lessee on the

Airport, including the demised premises, and Lessee further agrees to pay all expenses in defending against any such claims made against Lessor; provided, however, that Lessee shall not be liable for any injury, damage or loss occasioned by the sole negligence or willful misconduct of the Lessor, its agents or employees. Lessee shall give prompt and timely notice of any claim made or suit instituted which, in any way, directly or indirectly contingently or otherwise, affects or may affect Lessor.

f. To commit no actionable waste or nuisance upon the demised premises and shall not do or permit to be done anything which may result in the creation, commission or maintenance of any such waste or nuisance on said premises or the Airport.

g. To procure and maintain in effect during the term of this Agreement comprehensive general public liability insurance and hangar keeper liability insurance with responsible insurance underwriters, qualified to transact business in the State of Vermont, and naming Lessor as an additional insured, insuring against all legal liability for injuries to persons (including wrongful death) and damages to property caused by Lessee's use and occupancy of the demised premises or otherwise caused by Lessee's activities and operations on or about said premises or the use, occupancy, activities or operations of any assigns or sublessee of Lessee pursuant to paragraph 14; with liability limits as follows: (1) comprehensive general public liability insurance with liability limits of not less than \$1,000,000.00 for any one person, and not less than \$5,000,000.00 for any accident, involving injury (including wrongful death) to more than one person, and not less than \$5,000,000.00 for property damage resulting from any one accident; and (2)

hangar keeper liability insurance with liability limits of not less than \$1,000,000.00 per aircraft per occurrence.

If Lessor is subsequently required by a third party having legitimate authority to establish insurance coverage requirements applicable to the operations of the Lessee on the demised premises, and such requirement is to maintain insurance with coverage limits higher than the foregoing limits, then within sixty (60) days after Lessor's request therefore Lessee shall provide Lessor with an insurance policy whose limits are not less than those requested by Lessor, the Lessor shall provide to Lessee such documentation establishing a reasonable justification for requiring such additional limits.

Lessee shall furnish Lessor with a certificate of such insurance, within ten (10) days after execution of this Agreement, which shall provide that Lessor is an insured under said policy, and that policy cannot be cancelled or materially modified except upon thirty (30) days' advance written notice to Lessor. Lessor shall have the right to examine such insurance policy upon reasonable notice to Lessee.

In the event that Lessee is required by law to carry workmen's compensation insurance Lessee shall furnish to Lessor satisfactory evidence that it carries workmen's compensation insurance in accordance with the laws of the State of Vermont.

If at any time during the term hereof, Lessee shall fail to obtain and maintain the insurance as required herein, Lessor may affect such insurance by taking out policies in companies satisfactory to Lessor. The amounts of the premium or premiums paid for such insurance by Lessor shall be payable by Lessee to Lessor with the installments of rent thereafter next due under the terms of this Agreement.

h. To erect, construct, install, or make, or cause to be erected, constructed, installed, or made, all improvements on or to the demised premises which are deemed fit or proper for the storage of aircraft. All additions or improvements shall be subject to the prior written consent of Lessor, said consent not to be unreasonably withheld. All new construction and alterations of the demised premises shall be at the expense of Lessee and must comply with the standards for accessible design known as the Americans with Disabilities Act Accessibility Guidelines.

i. To observe and comply with any and all present and future security regulations and procedures and operational procedures promulgated from time to time by or at the direction of Lessor for the administration of the Airport.

j. That the management, maintenance and operation of the demised premises shall at all times be under the supervision and direction of an active, qualified, competent representative of Lessee, and Lessee shall identify its representative, and any successor, in writing to Lessor.

k. That it shall not park or allow to be parked any aircraft, vehicles, or equipment or leave or allow the same to be left standing on a public landing area, public ramp and apron area, public cargo ramp and apron area, public aircraft parking and storage area, or operational area, except at such places as may be prescribed or permitted by the Director of Aviation. Lessee further covenants and agrees to move or caused to be moved such aircraft from the place where it is parked or stored to any other place as designated and directed by the Director of Aviation.

l. To properly handle, remove and dispose of any and all lubricants and/or hazardous waste and to maintain the demised premises in a clean and safe condition.

m. To observe and comply with any and all present and future requirements of the constituted public authority and with all federal, state or local statutes, ordinances, regulations, standards, conditions and agreements regarding generation, storage, disposal, removal, transportation or treatment of hazardous substances.

Lessee further unconditionally, absolutely and irrevocably indemnifies and agrees to defend and hold harmless Lessor from and against all loss, cost and expense (including, without limitation, attorney's fees) of whatever nature suffered or incurred by Lessor on account of the existence on the demised premises, or the release or discharge from the demised premises, of "hazardous substances," including, without limitation, any claims, costs, losses, liabilities and expenses arising from the violation (or claimed violation) of any environmental laws or the institution of any action by any party against Lessor or the demised premises based upon nuisance, negligence or other tort theory alleging liability due to the improper generation, storage, disposal, removal, transportation or treatment of hazardous substances or the imposition of a lien on any part of the demised premises under the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. Section 9601, et seq., as amended ("CERCLA"), or any other laws pursuant to which a lien may be imposed due to the existence of hazardous substances. Lessee further unconditionally, absolutely, and irrevocably guarantees the payment of any fees and expenses incurred by Lessor in enforcing or seeking enforcement of the liability of Lessee under this indemnification. Provided, however, that Lessee shall not be liable for conditions on the demised premises that existed prior to January 1, 1982.

For the purposes of this Section, "hazardous substances" shall mean and include, but shall not be limited to, any element, substance, compound or mixture, including disease-causing agents, which after release into the environment or work place and upon

exposure, ingestion, inhalation or assimilation into any organism, either directly or indirectly, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions, including malfunctions in reproduction or physical deformations in such organisms or their offsprings, and all hazardous and toxic substances, wastes or materials, any pollutants or contaminants (including, without limitation, asbestos and raw materials which include hazardous constituents), or any other similar substances, or materials which are included under or regulated by any local, state or federal law, rule or regulation pertaining to environmental regulation, contamination, clean-up or disclosure, including, without limitation, CERCLA, and regulations adopted pursuant to such Acts, the Toxic Substances Control Act of 1976, as heretofore or currently in effect ("TSCA") and the Resource Conservation and Recovery Act of 1976, as heretofore or currently in effect ("RCRA").

Lessee agrees to provide and agrees to require all approved assignees, subcontractors, sublessees, or underlessees of the demised premises to provide an annual written report to the Director of Aviation by July 1, 2014 and annually on the same day thereafter, describing in reasonable detail all products and materials containing Hazardous Substances which have been present on the demised premises during the preceding calendar year. Such report shall include for such period (i) product name or other description of each product containing such substances, (ii) quantities of each product consumed, (iii) the general purpose of each product, and (iv) a description of the storage and disposal methods for each product. Lessee shall maintain and require its assignees, subcontractors, sub lessees, or under lessees to maintain records of the disposal of all waste products containing Hazardous Substances, which will be available to the Lessor upon request for inspection and copying.

8. MUTUAL COVENANTS

In connection with Lessor's leasing of the premises to Lessee, the parties mutually covenant and agree that:

a. If the demised premises or any part thereof are rendered untenable by public authority, or by fire or the elements, or other casualty, except such as shall have resulted from the negligence or willful conduct of Lessee, a proportionate part of the rent herein reserved (whether paid in advance or otherwise) shall be abated and suspended, according to the extent of such un-tenantability, until the demised premises are again made tenantable and restored to their former condition. If the premises or a substantial part thereof (more than 50%) are thereby rendered untenable to the extent they are not suitable for the purposes provided for herein, and so remain for a period of 90 days, Lessee may, at its option, terminate this Agreement by written notice to Lessor.

b. If Lessee shall pay the rent and other charges herein provided and shall keep, observe and perform all of the other covenants of this Agreement by it to be kept, performed and observed, it shall and may peaceably and quietly have, hold and enjoy the demised premises for the term of this Agreement.

c. As stated in Section 6b above, Lessor will continue its efforts to provide facilities to serve general aviation operations by planning and expanding the Airport's infrastructure at the south end of the Airport (known as the "South End Development Project") with sufficient space to accommodate Lessee's requirement for approximately 24 hangars. Upon the expiration of the term of this lease, and provided the Lessor has made significant progress with the development of the South End Development Project, the parties agree to negotiate in good faith a lease

agreement pursuant to which Lessee shall lease a parcel of land encompassed by the South End Project from Lessor sufficient to allow Lessee to construct, at its own expense, its new general aviation hangar facilities.

d. Lessor represents and warrants to Lessee that, subject to the terms of this Agreement, throughout the term hereof, Lessee may have, hold and enjoy peaceful, uninterrupted, and exclusive possession of the demised premises and rights herein leased and granted without hindrance by Lessor or any entity claiming by or through Lessor, subject to performance by Lessee of its obligations herein.

9. ENTRY ON PREMISES

Lessor and its authorized officers, employees, agents, contractors, sub-contractors and other representatives shall have the right to enter upon the demised premises for the following purposes:

a. Upon notice to Lessee, to inspect the demised premises at reasonable intervals during regular business hours (or at any time in case of emergency) to determine whether Lessee has complied and is complying with the terms and conditions of this Agreement and Lessee shall provide the Director of Aviation with serviceable keys to all of its facilities so as to permit the exercise of Lessee's rights hereunder; or

b. Upon prior notice to Lessee, to perform essential maintenance, repair, relocation or removal of existing underground or overhead wires, pipes, drains, cables and conduits now located on or across the demised premises and to construct, maintain, repair, relocate and remove such facilities in the future if necessary to carry out the master plan of development of the Airport, provided,

however, that said work shall in no event unduly disrupt or interfere with the operations of Lessee. Nothing herein shall be construed to impose upon Lessor any obligations so to construct or maintain or to make repairs, replacements, alterations or additions, or shall create any liability for any failure to do so. Lessee is and shall be in exclusive possession of the demised premises and Lessor shall not in any event be liable for any damage to the premises or to any property of Lessee or of any other persons located in or thereupon, other than to repair or remedy such damage as may be occasioned by negligence of Lessor, its employees or agents.

10. CANCELLATION RIGHTS OF LESSOR

Lessor shall have the right except as provided in Subparagraph "e" herein, upon ninety (90) days advance written notice to Lessee, to cancel this Agreement in its entirety, upon or after the happening of one or more of the following events, if said event or events shall then be continuing:

a. If Lessee shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking its reorganization or the readjustment of its indebtedness under the Federal Bankruptcy Law or any similar law or statute of the United States or any state, territory or possession thereof, or under the state, nation or government, or consent to the appointment of a receiver trustee or liquidator of all or substantially all of the property of Lessee;

b. If by order or decree of a court of competent jurisdiction Lessee shall be adjudged bankrupt or any order shall be made approving a petition seeking its reorganization, or the readjustment of its indebtedness under the Federal

Bankruptcy Laws or any law or statute of the United States or any state, territory or possession thereof, or under the law of any other state, nation or government, provided, that if any such judgment or order be stayed or vacated within ninety (90) days after the entry thereof, any notice of cancellation under this subsection given shall be and become void and of no effect;

c. If by or pursuant to any order or decree of any court or governmental authority, board, agency or officer having jurisdiction, a receiver, trustee or liquidator shall take possession or control of all or substantially all of the property of Lessee for the benefit of creditors, provided, that if such order or decree be stayed or vacated within sixty (60) days after the entry thereof or during such longer period in which Lessee shall diligently and in good faith contest the same, any notice of cancellation under this subsection shall be and become null, void and of no effect;

d. If Lessee shall voluntarily abandon the demised premises for a continuous period of one hundred twenty (120) days;

e. If Lessee shall fail to pay when due the rental charges or other money payments required by this Agreement, Lessor shall have the right, upon thirty (30) days advance written notice to Lessee, to cancel this Agreement in its entirety;

f. If Lessee shall fail to conduct itself in compliance with the norms and practices of the aviation industry and in particular with the requirements set forth in the Airport's Rules and Regulations;

g. If Lessee shall default in fulfilling any of the terms, covenants or conditions to be fulfilled by Lessee hereunder and shall fail to remedy said default within thirty (30) days of the receipt by Lessee of written demand from the City so

to do, except that if by reason of the nature of such default, the same cannot be cured within thirty (30) days, Lessor shall have the right to cancel if Lessee shall have failed to commence the remedying of such default within said thirty (30) days following receipt of such written demand or having so commenced shall fail thereafter to continue with diligence the curing thereof;

h. Continuation of the circumstances referenced in paragraph 13 for a period of ninety (90) days.

11. CANCELLATION RIGHTS OF LESSEE

Lessee shall have the right, upon thirty (30) days advance written notice to Lessor, to cancel this Agreement in its entirety upon or after the happening of one or more of the following events, if said event or events shall then be continuing:

a. The issuance by any court of competent jurisdiction of an injunction, order or decree, preventing or restraining the use by Lessor of all or any substantial part of the premises or of the Airport for the uses permitted by this Agreement, preventing or restraining the use of the Airport for usual airport purposes in its entirety or the use of any part thereof which may be used by Lessee and which is necessary for Lessee's operations on the Airport, which remains in force unvacated or unstayed for a period of at least ninety (90) days;

b. The default by Lessor in the performance of any of the terms, covenants or conditions to be fulfilled by it under this Agreement and the failure of Lessor to cure such default within a period of thirty (30) days following receipt of written demand from Lessee so to do, except that if by reason of the nature of such default, the same cannot be cured within thirty (30) days, Lessee shall have the right to cancel if Lessor shall have failed to commence the remedying of such default within said thirty (30) days following receipt of

such written demand or having so commenced shall fail thereafter to continue with diligence the curing thereof;

c. The inability of Lessee to conduct its business at the Airport substantially in accordance with the rights conferred by this Agreement, for a period of at least ninety (90) days, because of (i) any law, or (ii) any rule, order, judgment, decree, regulation or other action or non-action of any governmental authority, board, agency or officer having jurisdiction thereof;

d. In the event of destruction of all or a material portion of the Airport or the Airport facilities, or in the event that any agency or instrumentality of the United States Government or any state or local government shall occupy the Airport or substantial part thereof, or in the event of military mobilization or public emergency wherein there is a curtailment, either by executive decree or legislative action of normal civilian traffic at the Airport or the use of airplanes by the general public, and any of said events shall result in material interference with Lessee's normal operations continuing for a period in excess of ninety (90) days.

12. LIENS

Lessee shall cause to be removed any and all mechanic's or materialman's liens of any nature arising out of or because of any construction performed by Lessee or any of its contractors or sub-contractors upon the premises or arising out of or because of the performance of any work or labor upon or the furnishing of any materials for use at said premises, by or at the direction of Lessee within a reasonable time not to exceed three (3) months from the completion of any such construction. Provided, that if Lessee is in the process of contesting, in good faith, the assertion of any such lien, it shall not, pending the termination of such contest, be obligated to remove such lien.

13. FORCE MAJEURE

Neither Lessee nor Lessor shall be deemed in violation of this Agreement if it is prevented from performing any obligations hereunder by reason of strikes, boycotts, labor disputes, acts of God, acts of the public enemy, acts of superior governmental authority, severe weather conditions, riots, rebellion, sabotage, or any other circumstances for which it is not responsible or which is not under its control, and the party experiencing force majeure gives written notice to the other party identifying the nature of such force majeure, and when it began. The party experiencing force majeure shall take immediate action to attempt to remove such causes of force majeure as may occur from time to time and its operations under this Agreement shall be resumed immediately after such cause has been removed, provided that neither party shall be required to settle any labor dispute except upon terms that party deems acceptable. The suspension of any obligations under this section shall not cause the term of this Agreement to be extended and shall not affect any rights accrued under this Agreement prior to the occurrence of the force majeure. The party giving notice of the force majeure shall also give notice of its cessation.

14. ASSIGNMENT

a. The activities, uses, privileges and obligations authorized herein are personal and Lessee shall not assign, sub-contract, sublet, or underlet the same or any portion thereof except to its parent or a wholly owned subsidiary of Lessee, or assign, sub-contract, sublet, or underlet the demised premises or any portion thereof, except to its parent or a wholly owned subsidiary of Lessee, without the express consent of Lessor in writing, which shall not be unreasonably withheld, and any purported assignment or sub-contract in violation hereof shall be void. No assignment or subletting to a subsidiary of Lessee shall operate to relieve Lessee from any of its responsibilities hereunder and Lessor may continue to look to Lessee in its enforcement of any Lease term or condition. Lessor shall be given at least sixty (60) days advance written notice of

any planned assignment to or subletting by a subsidiary of Lessee and full opportunity to verify the subsidiary's status as such. Lessor will not be unnecessarily arbitrary in granting said permission, but Lessor shall be the sole judge as to the reliability, capability, character, and desirability of the parties involved.

b. Notwithstanding the provision of (a) above, for the purposes of financing construction of improvements upon the demised premises (the "Improvements"), and solely in connection therewith, Lessee shall have the right from time to time to execute and deliver to one or more banks or other sources of financing ("Lessee's Lender") suitable mortgages, assignments or other security interest on all or any portion of the Improvements and its interest as Lessee under this Agreement (the "Leasehold Estate"), subject to the following terms and conditions:

(1) Such security instruments shall constitute valid and enforceable liens in favor of Lessee's Lender, anything in this Agreement to the contrary notwithstanding.

(2) Lessee shall give written notice to Lessor of the identity of Lessee's Lender, and shall provide a copy to Lessor.

(3) Lessee's Lender shall have an opportunity to cure any default by Lessee within the applicable time limits provided in this Agreement to Lessee plus an additional fifteen (15) days.

(4) In order to accomplish cancellation of this Agreement pursuant to Sections 10 and 11 hereof, the party who would cancel shall deliver notice of such cancellation to Lessee's Lender, which or who shall thereupon have the right to become the owner of the Leasehold Estate on the same terms and priority as Lessee by paying back rent and curing such other defaults by Lessee as may then be existing.

(5) Nothing contained in this paragraph shall be construed as requiring Lessee's Lender to cure a default by Lessee hereunder; rather it shall become liable under this Agreement

only when and if it elects, upon default by Lessee, either to become owner of the Leasehold Estate or to assume the obligations of Lessee hereunder. In such event, Lessee's Lender shall become liable hereunder for the period it is the owner of the Leasehold Estate and it shall have all rights of Lessee hereunder for said period the same as if it has been the original signatory hereof.

(6) If Lessee's Lender becomes the owner of the Leasehold Estate, it shall, upon prior written consent of the Lessor as to the fact of transfer and the identity of the transferee, after consideration of the proposed transferee's experience in the aviation business, its capital structure and its general business reputation (which consent shall not be unreasonably withheld or delayed) have the right to transfer the Leasehold Estate to a third party subject to the assumption by the transferee of all obligations of Lessee hereunder. Such a transfer by Lessee's Lender shall be in a form satisfactory to the Lessor. Upon such a transfer, Lessee's Lender shall be relieved from all further responsibility and obligations of this Agreement.

(7) Nothing herein contained shall be construed as limiting the right of Lessee to cure any of the its defaults as elsewhere provided in this Agreement and, similarly, nothing herein contained shall be construed as granting Lessee's Lender, or its successor in interest, if any, greater rights in the demised premises and the Improvements than Lessee has under this Agreement.

15. EXCLUSIVITY - NON-DISCRIMINATION

a. Lessee agrees that in the exercise of any of the rights and privileges herein granted for the furnishing of any aeronautical services to the public that it will:

1. Furnish any such service on an fair, equal, and non-discriminatory basis to all users thereof, and

2. Charge fair, reasonable, and not unjustly discriminatory prices for any such unit or service; provided that Lessee may be allowed to make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

b. It is specifically understood and agreed that nothing herein contained shall be construed as granting or authorizing the granting of an exclusive right within the meaning of Section 308 of Federal Aviation Act of 1958.

c. Lessee, for itself, its personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that (1) no person on the grounds of race, color, national origin or sex shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over or under said land and the furnishing of services hereon, no person on the grounds of race, color, national origin or sex shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that Lessee shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations Department of Transportation, Subtitle A, Office of the Secretary Part 21 Non-Discrimination in Federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

That in the event of breach of any of the above non-discrimination covenants, Lessor shall have the right to terminate this Agreement and to re-enter and repossess said land and facilities thereon, and hold the same as if said Agreement had never been made or issued.

d. Lessee assures that it will undertake an affirmative action program as required by 14 C.F.R., Part 152 Subpart E, to insure that no persons shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 C.F.R., Part 152, Subpart E. Lessee assures that no person shall be

excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by the subpart. Lessee assures that it will require that its covered suborganizations provide assurances to Lessor that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 C.F.R., Part 152, Subpart E, to the same effect.

16. LIVABLE WAGE

Concessionaire shall comply with the provisions of the City's Livable Wage Ordinance, including any amendments to that ordinance and any annual adjustments to the Livable Wage rate by the City. Concessionaire shall submit a Certification of Compliance, and that certification is hereby incorporated into this Agreement. Currently, the livable wage for employees who receive health care benefits is \$13.94 per hour. The livable wage for employees who do not receive health care benefits is \$17.71 per hour.

Concessionaire is further advised to consult the livable wage ordinance for a more detailed description of its requirements.

18. TITLE TO IMPROVEMENTS

Upon expiration of this Agreement, by cancelation or termination of the lease term, all fixed improvements made upon the demised premises by Lessee shall be and remain the property of Lessee who, in lieu of any renewal, extension or renegotiation of this or any subsequent Agreement, shall remove or otherwise dispose of said fixed improvements as soon as reasonably possible, but in no event longer than one hundred and twenty (120) days, following such cancellation or termination. It is the obligation of Lessee to restore the demised premises to a condition equivalent to that existing immediately prior to Lessee's initial occupancy of the demised premise, which occurred on or about January 1, 1982.

19. GENERAL PROVISIONS

a. Any notice or other communication from either party to the other pursuant to this Agreement shall be deemed sufficiently given or communicated if sent by registered mail, with proper postage and registration fees prepaid, addressed to the party for whom intended, at the following address:

For Lessor: Director of Aviation
Burlington International Airport
1200 Airport Drive, Box 1
So. Burlington, VT 05403

For Lessee: President
Hangar Condominium Association, Inc.
PO Box 1660
Williston, VT 05495

or to such other address as the party to be given such notice shall from time to time designate to the other by notice given in accordance herewith.

b. The term "Lessor" as used in this Agreement means the Board of Airport Commissioners of the City of Burlington and the City of Burlington, and where this Agreement speaks of approval and consent by the City, such approval is understood to be manifested by act of the Director of Aviation, except as otherwise expressly stated in this Agreement.

c. No acceptance by Lessor of rentals, fees, charges or other payments in whole or in part, for any period or periods after a default of any of the terms, covenants, and conditions hereof, to be performed, kept or observed by Lessee, shall be deemed a waiver of any right on the part of Lessor to terminate this Agreement.

d. A waiver by Lessor of any default of Lessee, or by Lessee of any default by Lessor, in the performance of any of the covenants, terms or conditions of this Agreement shall not be deemed or considered to be a waiver of any other matter, and the various

rights, powers, privileges, options and remedies of Lessor and Lessee herein contained shall be cumulative, and no one of them shall be deemed to be exclusive of any other, or exclusive of any rights, powers, privileges, options or remedies provided by law.

e. All covenants, stipulations and agreements in this Agreement shall extend to and bind the legal representatives, successors and assigns of the respective parties hereto.

f. This Agreement shall not be varied in its terms by any oral agreement or representation, or otherwise than by an instrument in writing of subsequent date hereto executed by both parties by their respective officers or other persons duly authorized.

g. In the event any term, covenant or condition herein contained is held to be invalid by any court of competent jurisdiction, such invalidity shall not affect any other term, covenant or condition herein contained, provided that such invalidity does not materially prejudice either Lessor or Lessee in their respective rights and obligations contained in the valid terms, covenants or conditions hereof.

h. The sectional or paragraph headings throughout this Agreement are for the convenience of Lessor and Lessee and are not intended nor shall they be used to construe the intent of this Agreement or any part hereof, or to modify, amplify, or aid in the interpretation or construction of any of the provisions hereof.

i. The language in all parts of this Agreement shall in all cases be construed simply according to its fair meaning and not strictly construed against either party, it being stipulated and agreed that Lessee participated in the drafting hereof. This Agreement shall be construed and performance thereof shall be determined in accordance with the laws of the State of Vermont.

18. HOLDING OVER

Lessee shall yield and deliver peaceably to Lessor possession of the demised premises on the date of expiration or sooner termination of this Agreement. In the event Lessee shall hold over and remain in possession of the premises herein leased after expiration of this Agreement without any written renewal thereof, such holding over shall not be deemed to operate as a renewal or extension of this Agreement but shall only create a tenancy from month to month which may be terminated at any time by Lessor upon thirty (30) days advance written notice and which shall, except for rent and term, be on the terms herein so far as is applicable. Rent will be determined by Lessor consistent with the then prevailing rental fees for similar premises.

IN WITNESS WHEREOF, the parties have caused these presents to be executed by themselves or by their respective officer or representative thereunto duly authorized, the day and year first above written.

ATTEST:

CITY OF BURLINGTON

Witness

BY _____
Director of Aviation

Witness

ATTEST:
INC.

HANGAR CONDOMINIUM ASSOCIATION,

Witness

BY _____
Its duly authorized agent

Witness

STATE OF VERMONT
COUNTY OF CHITTENDEN, SS.

At Burlington, this _____ day of _____, 20____, before me personally appeared Mayor Bob Kiss, duly authorized agent of the City of Burlington, and he acknowledged the execution of this document to be his free act and deed, and the free act and deed of the City of Burlington.

Notary Public

STATE OF VERMONT
COUNTY OF CHITTENDEN, SS.

At _____, this _____ day of _____, 20____, before me personally appeared _____, duly authorized representative of Hangar Condominium Association, Inc., and he/she acknowledged the same to be his/her free act and deed and the free act and deed of Hangar Condominium Association, Inc..

Notary Public

200020/135

1 **RESOLUTION RELATING TO**

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6 **AUTHORIZATION TO EXECUTE AMENDED**
7 **LEASE WITH HANGAR CONDO ASSOCIATION**
8 **AT BURLINGTON INTERNATIONAL AIRPORT**
9

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11
12 **CITY OF BURLINGTON**
13

14 In the year Two Thousand Thirteen.....

15 Resolved by the City Council of the City of Burlington, as follows:

16
17 That WHEREAS, the City of Burlington (“City”) owns and operates the Burlington
18 International Airport in South Burlington, Vermont (“Airport”); and

19 WHEREAS, on June 24, 2013, this body authorized a lease to Hangar Condominium
20 Association, Inc., of 46,200 square feet of ground space at the total rental rate of approximately
21 \$18,018 per year to be adjusted by the CPI annually as described in a proposed lease, which was
22 intended to have a term of five years, with one renewal term of five years (“Lease”); and

23 WHEREAS, subsequent to the June 24, 2013 authorization of the Lease, and prior to its
24 execution, Hangar Condominium Association, Inc. and the Director of Aviation have tentatively
25 agreed to amend the effective term of the Lease, from a five year term with one five year renewal
26 (total ten years), to a five year term with two five year renewals (total fifteen years) (“Amended
27 Lease”); and

28 WHEREAS, the Director of Aviation deems the Amended Lease to be in the best interest
29 of the City, Airport and public airport purposes; and

30 WHEREAS, the Board of Airport Commissioners approved the effective fifteen year
31 term of the Amended Lease on July 15, 2013; and

32 WHEREAS, the Board of Finance, on August 5, 2013, voted to recommend City Council
33 approval of the Amended Lease, to be in substantial conformance with the draft document
34 approved by this body on June 24, 2013,

35

36 **PAGE TWO**

37

38 **RESOLUTION RELATING TO:**

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41 **AUTHORIZATION TO EXECUTE AMENDED**

42 **LEASE WITH HANGAR CONDO ASSOCIATION**

43 **AT BURLINGTON INTERNATIONAL AIRPORT**

44

45

46

47 NOW THEREFORE BE IT RESOLVED THAT the City Council hereby authorizes execution of

48 the Amended Lease Amendment described above and authorizes the Director of Aviation, Gene

49 Richards, to execute on behalf of the City, the Amended Lease and all other documents

50 necessary for the culmination of the Amended Lease, subject to prior review by the Chief

51 Administrative Officer and the City's legal counsel, as necessary.

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54 NAME/PURPOSE OF CONTRACTS: Hangar Condo Association Renewal

55 ADMINISTRATING DEPARTMENT: Airport

56 CONTRACT AMOUNTS: Per Agreement

57 CONTRACT TERM: Five years effective June 1, 2013

58 RENEWAL TERM: Five years effective July 1, 2018

59 Five years effective July 1, 2023

60 DESIGNATION OF FUNDS:

61 FISCAL YEAR: 2014

62 ACCOUNT NAME: Industrial Park

63 ACCOUNT NUMBER: 4465

64

65 200020-135 ; Resolution – "Hangar Condo Association" Lease Renewal