



*City of Burlington  
Burlington International Airport  
1200 Airport Drive, #1  
South Burlington, VT 05403  
(802) 863-2874  
[www.btv.aero](http://www.btv.aero)*

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## **MEMO**

**TO: Board of Finance**

**FROM: Ryan Betcher, Burlington International Airport**

**DATE: September 30, 2013**

**SUBJECT: Finance Board Approval Request – Aviation Deli Lease Agreement**

The Burlington International Airport seeks Finance Board and City Council approval to enter into an agreement with the Aviation Deli for the operation of food and beverage concession services at the Burlington International Airport.

Aviation Deli is seeking to enter into a lease agreement with the Burlington International Airport on November 1, 2013. The agreement is three (3) years from the commencement of operations and includes a renewal option of three (3) additional years, to be mutually agreeable by both parties. For both terms, Aviation Deli would pay the Airport ten percent (10%) of total revenues. In addition to paying a percentage of revenues, a Minimum Guaranteed Rent would go into effect for the second year of operations, which would be eight percent (8%) of year one revenues.

The agreement was reviewed by legal prior to being presented. In addition, the Airport Commission approved the terms of the agreement on August 19, 2013.

Thank you for your consideration.

A draft resolution is included with this Request.

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**AUTHORIZATION TO CONTRACT FOR  
FOOD AND BEVERAGE CONCESSION SERVICES  
WITH AVIATION DELI AT THE BURLINGTON  
INTERNATIONAL AIRPORT.**

In the year Two Thousand Thirteen.....

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

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

WHEREAS, the Director of Aviation has determined that the provision of pre-security Food and Beverage Concession services at the Airport will be in the best interest of the City, the traveling public and public airport purposes; and

WHEREAS, the Director of Aviation after review of responses to the Airport’s request for proposals for such services, has determined that it is in the best interest of the Airport to contract with a business known as Aviation Deli for pre-security food and beverage services, pursuant to an agreement calling for an initial three year term with a renewal option for an additional three years, to be mutually agreeable by both parties, and projected compensation to the Airport of ten percent (10%) of Aviation Deli’s total revenues with a minimum guaranteed rent, starting with the second year of operations, of eight percent (8%) of year one revenues (“Agreement”); and

WHEREAS, on August 19, 2013, the City of Burlington Airport Commission approved the terms of the Agreement.

NOW THEREFORE BE IT RESOLVED THAT upon City Council approval, that Director of Aviation Gene Richards, on behalf of the City, is authorized to negotiate and execute the Agreement and any documents necessary to facilitate the Agreement, subject to any

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42 **AUTHORIZATION TO CONTRACT FOR**  
43 **FOOD AND BEVERAGE CONCESSION SERVICES**  
44 **WITH AVIATION DELI AT THE BURLINGTON**  
45 **INTERNATIONAL AIRPORT.**

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49 applicable City Purchasing Procedure and to prior review by the Chief Administrative Officer

50 and the City Attorney, as appropriate.

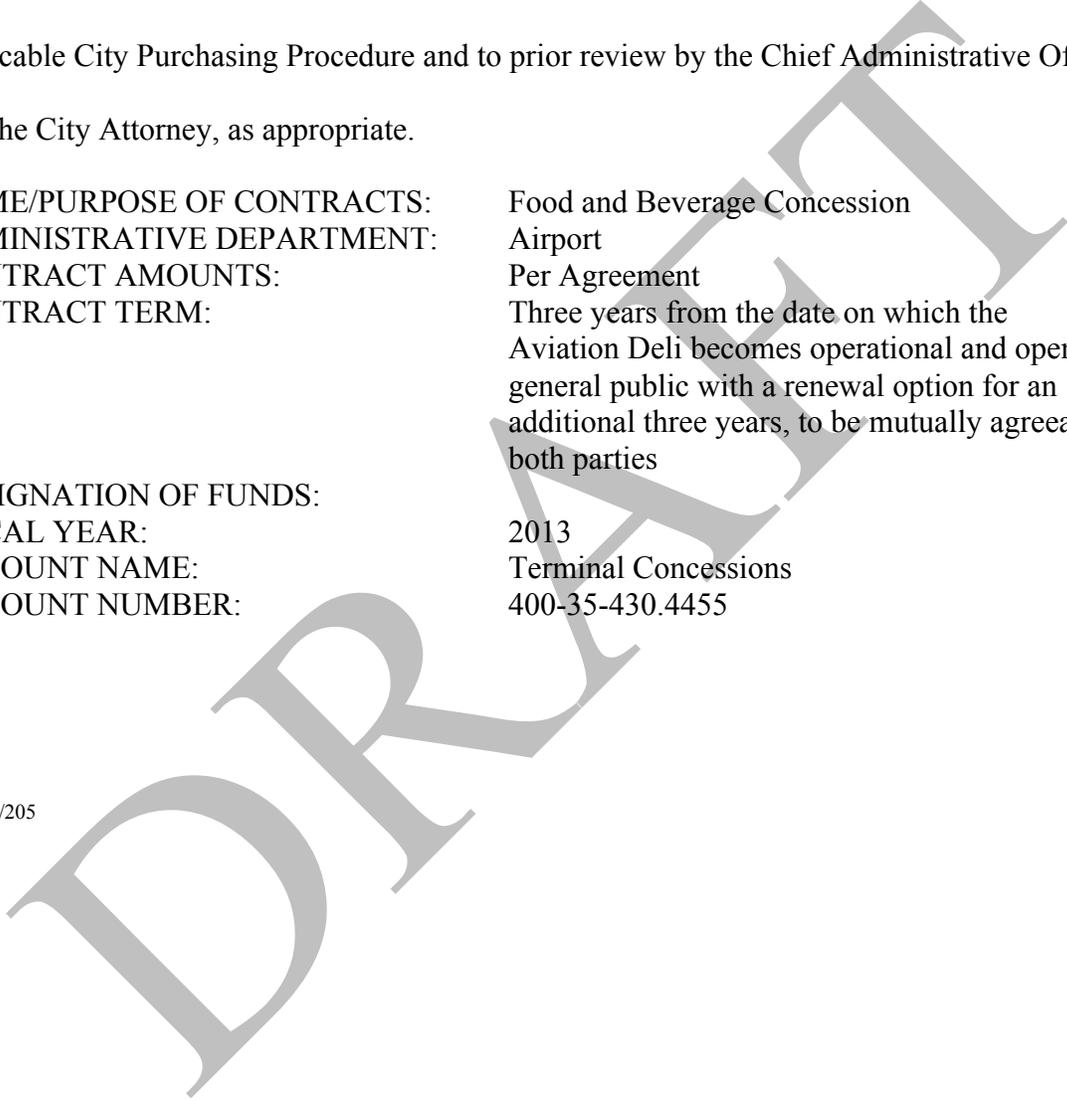
51 NAME/PURPOSE OF CONTRACTS:	Food and Beverage Concession
52 ADMINISTRATIVE DEPARTMENT:	Airport
53 CONTRACT AMOUNTS:	Per Agreement
54 CONTRACT TERM:	Three years from the date on which the
55	Aviation Deli becomes operational and open to the
56	general public with a renewal option for an
57	additional three years, to be mutually agreeable by
58	both parties
59 DESIGNATION OF FUNDS:	
60 FISCAL YEAR:	2013
61 ACCOUNT NAME:	Terminal Concessions
62 ACCOUNT NUMBER:	400-35-430.4455

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**CONCESSION AGREEMENT AND LEASE**

THIS CONCESSION AGREEMENT AND LEASE (hereinafter called “Agreement”) made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2013 by and between the City of Burlington, a municipal corporation existing under laws of the State of Vermont (herein after referred to as the “City” or “Lessor”), and Aviation Deli, a Vermont business qualified to do business in the State of Vermont (hereinafter called “Concessionaire” or “Lessee”).

**WITNESSETH**

**WHEREAS**, the City owns and operates the Burlington International Airport (hereinafter “Airport”); and

**WHEREAS**, food and beverage service is an essential service to provide for passengers arriving at and departing from the Airport as well as the general public and Airport employees; and

**WHEREAS**, the Airport wishes to contract for food and beverage service concessions at this time; and

**WHEREAS**, Concessionaire is in the business of providing food and beverage services and desires to be granted concession privileges at and to occupy space in the Terminal; and

**WHEREAS**, pursuant to a Proposal submitted by Concessionaire (hereinafter “Respondent’s Proposal”) on \_\_\_\_\_ and attached and incorporated herein as Exhibit A, pursuant to a Request for Proposals by the Airport, Concessionaire has been selected by Airport to be awarded the lease and operations of pre-security food and beverage concession rights in the Terminal.

**NOW, THEREFORE**, for and in consideration of the mutual covenants, agreements herein contained the parties hereto agree as follows:

**ARTICLE I**  
**DEFINITIONS**

- 1.01 “Agreement” as used herein contemplates and includes the lease of City-owned property and permission for Concessionaire to use such City-owned property for the operation of a food and beverage concession within said City-owned property under the terms and conditions expressly set forth herein.
- 1.02 “Airport” shall mean the Burlington International Airport located in the City of South Burlington, Chittenden County, Vermont as shown on Exhibit B attached hereto.
- 1.03 “Airport Terminal” and “Terminal” shall mean the existing terminal building and its existing concourses at the Airport as shown on Exhibit C-1 attached hereto.

- 1.04 “Board of Airport Commissioners” shall mean the body having the exclusive general management and control of the Airport, subject to any limitations or restrictions contained in the ordinances, resolutions and orders of the City Council of the City of Burlington, Vermont. Where this Agreement speaks of approval and consent by the City, such approval is understood to be manifested by act of the Board of Airport Commissioners or its delegate, the Director of Aviation.
- 1.05 “City of Burlington” and “City” shall include such public officials and public bodies as may, by operation of law, succeed to any or all of the rights, powers or duties which lawfully reside in the City Council of Burlington.
- 1.06 “Director of Aviation” and “Director” shall mean the director or acting director or interim director of the Airport as from time to time appointed by the mayor of the City of Burlington and shall include such person or persons as may from time to time be authorized in writing by the director to act for him or her with respect to any or all matters pertaining to this Agreement.
- 1.07 “Fixture” shall mean an article in the nature of personal property which has been so annexed to the realty that it is regarded as a part of the real property. That which is fixed or attached to something permanently as an appendage and is not removable. A thing is deemed to be affixed to real property when it is attached to it by roots, imbedded in it, permanently resting upon it, or permanently attached to what is thus permanent, as by means of cement, plaster, nails, bolts, or screws. Goods are fixtures when they become so related to particular real estate that an interest in them arises under real estate law, e.g. a furnace affixed to a house or other building, counters permanently affixed to the floor of a store, or a sprinkler system installed in a building. Notwithstanding, the foregoing, Trade Fixtures (as defined herein) shall not be deemed Fixtures hereunder.
- 1.08 “Gross Revenues” or “Gross Receipts” shall mean the total amount in dollars of actual sales price, whether for cash or on credit, or partly for cash and partly on credit, of all sales of food and beverages or merchandise (as the case may be), sold and/or made from the Premises, including sales for in-flight consumption, gift certificates, all retail display allowances, all credit charges and carrying charges, and all other receipts from business conducted in or from the Premises, including but not limited to, all sales for special events where food and beverage was prepared or made from the Premises, all catering to air carriers where food and beverage was prepared or made from the Premises, all sales to employees of the Concessionaire, all deposits not refunded to customers, all orders taken in or from the Premises whether or not such orders are filled elsewhere, sales through any person or persons permitted by the Concessionaire to use or operate from the Premises or any portion thereof. Gross Revenue shall not, however, include free, compensatory or discounted meals for the Concessionaire’s employees, nor any sums collected or paid by the Concessionaire for any sales or excise tax imposed by any duly constituted governmental authority, nor shall they include any exchange of goods between the Premises and other locations from which the Concessionaire operates where such exchange is made solely for the convenient operation of the business of the Concessionaire and not for the purpose of consummating a sale which has otherwise been made at, in, or from the Premises, nor the amount of return to suppliers, nor sales or other disposition of personal property of the Concessionaire not held for resale, nor sums received by the Concessionaire in settlement of claims for loss or damage to the Concessionaire’s goods or property. No deduction shall be made from Gross Revenues

for any franchise, income or gross receipts taxes, or for any other taxes based upon income of Concessionaire. Each sale upon installment or credit shall be treated as a sale for the full price in the month during which such sale is made, irrespective of the time when the Concessionaire receives payment from its customer, and no deduction shall be allowed for uncollected or uncollectible credit accounts.

- 1.09 “Premises” are the areas of the Airport Terminal designated by this Agreement and designated in Exhibit C-2 attached hereto and made a part hereof as to the place or places where the business of Concessionaire may be conducted, consisting of approximately 1,022 total square feet of floor area.
- 1.10 “Percentage Fee” shall mean percent (10%) of Gross Revenues.
- 1.11 “Trade Fixtures” shall mean and include equipment, furniture, furnishings, signs that are specifically provided by and used in the Premises in connection with the operation of the Concessionaire’s business.
- 1.12 “Year” as used in this Agreement shall mean the twelve-month period beginning on the Full Commencement Date, with successive years commencing on the anniversary of said date.

## **ARTICLE II** **PREMISES**

2.01 Concession Space Within the Terminal. Concessionaire shall occupy and operate from the Premises.

2.02 Parking. Concessionaire shall park business and personal vehicles (to include those of all employees) only in areas and spaces designated by the Director of Aviation.

2.03 Investment by the City. The Premises are provided to Concessionaire in as-is condition.

a) Concessionaire has inspected the Premises with regard to its fitness for its intended particular use. The City makes no warranty with respect to the condition of the Premises and the City shall not be liable for any latent or patent defects thereon. Notwithstanding the foregoing, if the Concessionaire is not able to operate its business as contemplated herein or in the Respondent’s Proposal, the Concessionaire shall have the right to terminate this Agreement. If utilities necessary for the operation of the Concessionaire’s business are not accessible from the Premises, the City agrees to work in good faith with the Concessionaire to provide the Concessionaire with access to such utilities, provided any costs associated therewith will be borne by the Concessionaire.

b) City reserves the right to make improvements and repairs to the Premises at its own expense during the term of this Agreement. Said improvements and repairs shall not unreasonably interfere with Concessionaire’s operations. The City and Concessionaire agree and acknowledge that improvements to the Airport Terminal may be undertaken during the term of this Agreement. City will attempt to perform such improvements in a manner so as not to unreasonably interfere with the operations of Concessionaire authorized hereunder. To the extent any such improvement and/or repairs have a

material adverse impact on the Concessionaire's business, any Minimum Guaranteed Rent shall be proportionally reduced by the amount by which such improvement and/or repairs reduce the Concessionaire's business, as determined by comparing against Concessionaire's historical business results during the prior Year for the same period of time (or if during the first Year, the projections provided in the Proposal).

2.04 Alterations to Premises. Concessionaire may use the Premises as-is or as renovated by such alterations as Concessionaire may be authorized to make pursuant to Section 8.03 of the Agreement. Otherwise, Concessionaire may not hereafter make noticeable changes to the appearance thereof without the prior written approval of the Airport, it being the intent of this provision that the appearance of the Premises not detract from the overall appearance of the Terminal. Concessionaire may install its own Trade Fixtures necessary for the conduct of concessionaire's food and beverage concession at the Airport in the Premises, subject to the prior approval of the Airport Director.

2.05 Furnishings, Fixtures and Equipment. Concessionaire shall provide for its own use and at its own expense all materials, supplies, and non-stationary furnishings, Fixtures, Trade Fixtures, and equipment necessary for the efficient operation of the concession business herein authorized. All materials, supplies, and non-stationary furnishings, Fixtures, Trade Fixtures and equipment shall be in accordance with industry standards and shall be safe, fire resistant and reasonably suitable in appearance, quality, and quantity. Such materials, supplies, and non-stationary furnishings, Fixtures, Trade Fixtures, and equipment, such as cash registers, safes and other Fixtures, and Trade Fixtures shall not be included in the category of improvements. Plans and specifications for all proposed non-stationary furnishings, Fixtures, Trade Fixtures, and equipment shall be submitted to the Airport Director for written approval prior to installation/placement.

- a) Any improvements made to the Premises by the Concessionaire shall be in accordance with the Airport's architectural design theme and subject to the written approval of the Director, which approval shall not be unreasonably withheld.
- b) All improvements, equipment, Fixtures, Trade Fixtures, furniture and interior design and décor constructed or installed by Concessionaire, its agents, or contractors shall conform to all applicable statutes, ordinances, building codes, and rules and regulations.

2.06 Utilities.

- a) City shall provide the Premises at City's expense with heat and air conditioning to keep the Premises at reasonable temperatures for the conduct of Concessionaire's activities.
- b) Costs of all other utilities shall be borne by the Concessionaire via separate metering or submetering and billing, either direct from the supplier or in the case of a submeter, billed by the City. City is providing access to all utilities, including but not limited to communications, water, gas, and electricity, including wiring installations as in existence at time of delivery. All installation of electrical fixtures, appliances and equipment within the Premises shall be subject to City's prior written approval and Concessionaire further agrees that its use of electrical current shall not at any time exceed the capacity of the wiring installation in place.

c) In all instances of any damage to any utility service line caused by Concessionaire, its employees, contractors, suppliers, or agents, Concessionaire shall be responsible for the cost of the repairs. In all instances of any damage to any utility service line caused by City, its employees, contractors, suppliers, tenants, or agents, City shall be responsible for the cost of the repairs

d) Should the installation of any equipment by Concessionaire require a modification to the Premises' gas distribution, communications, electrical or heating systems or the relocation or installation of any gas distribution, communications or electrical outlets or the use of electrical power other than that provided through the standard terminal electrical outlets, the cost of such modification, installation or relocation shall be borne entirely by Concessionaire.

2.07 City's Right to Enter and Inspect. The City shall have the right upon reasonable prior notice to Concessionaire to enter any part of the Premises at reasonable or necessary times for the purposes of inspection, protection or exercising any rights under this Agreement. It shall also have the right to show the Premises to others at any time within six (6) months prior to the date for termination of this Agreement set out in Section 3.01 hereof or in the event of a breach as defined in and provided by Article XII of this Agreement, at any time after such breach is declared.

2.08 Title to Improvements.

a) Title to all improvements made by the City that are Fixtures shall at all times during the term of this Agreement be and remain that of the City. Upon expiration or earlier termination of this Agreement, City may require Concessionaire to remove any improvements made by Concessionaire, if any, without damage to any remaining improvements or the Premises and return the Premises to City in the same condition that the same were delivered to Concessionaire, reasonable wear and tear excepted. Such removal and restoration shall be made at the sole cost and expense of Concessionaire.

b) Title to all materials and supplies and all personal property, including, without limitation, any Trade Fixtures, supplied by Concessionaire, shall at all times during the term, or any extension thereof, remain that of Concessionaire. Upon expiration or earlier termination of this Agreement, all such items shall be removed from the Premises and the Premises restored to the satisfaction of the City, reasonable wear and tear excepted. Said removal and restoration shall be at the sole cost and expense of Concessionaire. Notwithstanding the foregoing, at the request of the City, upon termination of this Lease, the City may elect to rent from the Concessionaire all Trade Fixtures installed on the Premises, in an "as is" condition, for operation by the City of a concession service for a period of time (the "Rental Period") not to exceed sixty (60) days following the termination date of this Lease. During the Rental Period, the City shall pay the Concessionaire a rental amount of \$50 per day, which shall be paid monthly in arrears. At the end of the Rental Period, the Concessionaire shall have access to the Premises to remove the Trade Fixtures. The City agrees to indemnify, defend and hold the Concessionaire harmless from all claims, suits, liabilities, expenses, damages, etc. (including reasonable attorneys' fees) arising out of the City's rental of the Trade Fixtures. During the Rental Period the City will be responsible for

insuring the Trade Fixtures and will be responsible for all maintenance and repair and any loss or damage to the Trade Fixtures occurring during the Rental Period, excluding ordinary wear and tear.

### **ARTICLE III**

#### **TERM AND COMMENCEMENT DATE**

##### **3.01 Term; Commencement Date**

(a) The term of this Agreement shall commence on or about \_\_\_\_\_, and shall continue for a period of three (3) Years from the date on which the Concessionaire becomes operational and open to the general public.

(b) Notwithstanding the provisions of Section 3.01 (a), in the event of abandonment by City of the Terminal as the passenger terminal for enplaning and deplaning passengers with respect to regularly scheduled airline flights, this Agreement, at either party's option, upon written notice to the other party, shall immediately terminate.

(c) Notwithstanding the provisions of Section 3.01(a) and (b) above, this Agreement may be extended for a period of one (1) additional term of three (3) years, by the Concessionaire upon written notice to the City at least ninety (90) days prior to expiration of the then current term. The Concessionaire's right to renew this Agreement shall be mutually agreeable between the City and Concessionaire, subject to the condition that no event of default under the terms of this agreement shall have occurred and is continuing; including, without limitation, any event of default hereunder resulting from a continuing breach of Article 7 of this Agreement.

**3.02 Holding Over.** Should Concessionaire hold over without City's written consent in any part of the Premises with respect to which this Agreement has terminated, such holding over shall be deemed merely a tenancy at will, but otherwise subject to all the terms and conditions herein provided.

**3.03 Restoration of Premises.** Upon termination of this Agreement or in the event that any of the leased space is relinquished pursuant to the provisions of ARTICLE XIV hereof, the Concessionaire shall restore the Premises and all leasehold improvements thereto to the condition in which they were received, constructed or installed, reasonable wear and tear and damage by fire or the elements excepted.

### **ARTICLE IV**

#### **RIGHTS GRANTED**

**4.01 Concession Rights Granted.** City hereby grants to Concessionaire the following rights, uses, privileges and obligations in connection with its use of the Premises.

(a) To use the Premises in the Terminal and concourses for concession, kitchen space and associated storage. The areas to be occupied by the Concessionaire are shown on Exhibit

C-2, attached hereto and by reference incorporated herein. The spaces to be occupied are located on the first floor of the Terminal's south end and in the north and south concourses and the uses to be made thereof are as follows:

- (i) Second Floor Pre-Security Terminal – \_\_\_\_\_;
- (b) The right (which shall extend to Concessionaire's employees, patrons, guests and invitees), in common with others, to use the public portions of the Airport and appurtenances thereto.
- (c) The right (which shall extend to Concessionaire's employees, patrons, guests, invitees, suppliers of materials and furnishers of service, and their equipment, vehicles and other property), in common with others, of ingress to and egress from the Premises, except as restricted by the Transportation Security Administration of the United States or federal regulations, over Airport roads, driveways and common areas, as the same shall be specified as such from time to time by City.
- (d) The right to install identification signs on and in the Premises, subject to prior written approval of the Director of Aviation.
- (e) The right of Concessionaire's employees to vehicular parking spaces in the Airport's employee parking facilities, for which the City may impose reasonable charges not to exceed the lowest rate charged to other tenants of the airport.

4.02 Restrictions on Use. Each right granted to Concessionaire hereunder and each area constituting a part of the Premises shall be exercised and used solely and exclusively for the purposes of and in connection with the operation of a semi-service coffee shop and two fast-casual restaurants, which may include the sale of alcoholic beverages, live music, and other ancillary activities reasonably related to the operation of a food and beverage business, and for no other purposes or activity whatsoever. Concessionaire shall limit its operations on the Premises to activities necessary to its provision of the above referenced services.

**ARTICLE V**  
**GENERAL DESCRIPTION OF CONCESSION RIGHTS GRANTED**

5.01 Subject to the terms and conditions hereinafter set forth, during the term of this Agreement, Concessionaire may do the following in/at the Premises:

- a) Second Floor Restaurant – Exercise the exclusive right within the Airport Terminal to operate a semi-service restaurant offering breakfast, lunch and dinner options.

**ARTICLE VI**  
**RENTS, FEES AND CHARGES**

6.01 Monthly Fee. As fees for the concession rights and the use and occupancy of the Premises herein granted, Concessionaire shall pay to the City an amount equal to the Percentage Fee in the amount of ten percent (10%). For each month during the term of this Agreement, the Percentage Fee shall be calculated at the end of each month and within ten (10) days thereafter, the

Concessionaire shall pay such amount to the City.

6.02 Minimum Guaranteed Rent. Semi-Annually on or about the fifteenth (15) of both January and July of each Year, the City will provide to the Concessionaire true and correct information on the number of actual enplanements for the preceding six months. Within thirty (30) days of Concessionaire's receipt of such information, the Concessionaire will calculate the Minimum Guaranteed Rent for the preceding six months based on the actual number of enplanements and will, to the extent such Minimum Guaranteed Rent exceeds the amounts paid pursuant to Section 6.01, pay the difference between the Minimum Guaranteed Rent due and the amount paid pursuant to 6.01 for such period. In the event this Agreement should terminate prior to the end of the term for a reason other than an event of default on the part of Concessionaire and at a time other than the end of a Year, then the Minimum Guaranteed Rent shall be calculated based on the actual enplanements through the end of the term.

For the first year of operations, the Concessionaire will not be required to pay a Minimum Guaranteed Rent. Following the first year of operations, Minimum Guaranteed Rent shall be based on 90% of Concessionaires Revenues with 10% of such revenues being the Minimum Guaranteed Rent. The determined figure shall represent the Minimum Guaranteed Rent for the remainder of the term.

6.04 Additional Fees and Charge The City shall be entitled to assess a late payment fee of one and a half (1.5%) percent per month or fraction thereof for any amounts that are past due under this Agreement; provided, however, such interest shall not accrue with respect to disputed items being contested in good faith and in writing by Concessionaire, in which event the legal rate of interest shall be charged from the due date on all disputed items determined to have been due to City. If, after thirty (30) days notice to Concessionaire City has paid any sum or sums or has incurred any obligation or expense for which Concessionaire has agreed in writing to pay or reimburse City, or if City is required or elects to pay any sum or sums or insure any obligations or expense by reason of the failure, neglect, or refusal of Concessionaire to perform or fulfill any one or more of the conditions, covenants and undertakings contained in this Agreement, Concessionaire agrees to pay such sums or expenses, including all interest, costs, damages and penalties, and agrees that the same shall be added to the next installment of fees due hereunder, and each and every part of the same shall be and become additional fees and charges, recoverable by the City in the same manner and with like remedies as if originally a part of the basic fees and charges set forth in Section 6.01 hereof. Any election by City to make such payments shall not act as a waiver of any rights City may have under this Agreement or by operation of law.

6.05 Books of Account and Auditing. Concessionaire shall keep at the Airport or at other locations true and complete records and accounts of all Gross Revenue. All such records and accounts shall be made available to City upon ten (10) days' prior notice to Concessionaire. All receipt forms used by Concessionaire in its operations at the Airport shall be pre-numbered and Concessionaire shall maintain records and controls insuring that the forms accurately reflect all Gross Revenue of Concessionaire from its operation at the Airport. Annually, within ninety (90) days after the end of each Year, Concessionaire, at its own expense, shall furnish a true and accurate statement for the preceding Year of all such Gross Revenue during such preceding Year (showing authorized deductions or exclusions made in computing the amount of such Gross Revenue), which statement shall be certified to be correct by an Independent Certified Public Accountant. Concessionaire agrees to give the City access during reasonable hours for inspection of Concessionaire's books and records, and Concessionaire agrees it will keep and preserve for at least three (3) years all receipt forms and other evidence of Gross Revenue for

such period. The City shall have the right at any time and from time to time to audit all of Concessionaire's records relating to business transacted at the Airport including, but not limited to, Gross Revenue, and the Concessionaire, upon request, shall make all such information available for such examination at the Premises or at other locations. If, as a result of such audit, it is established that Concessionaire or any licensee or franchisee of Concessionaire has understated Gross Revenue or business transacted for any Year by three percent (3%) or more (after the deductions and exclusions provided for herein), the entire expense of said audit shall be borne by Concessionaire. Any additional amounts due as a result of such audit shall forthwith be paid by Concessionaire to City with interest thereon at the rate of twelve percent (12%) per annum from the end of the month in which the discrepancy occurred. In the event the equipment installed and operated by the City shall allow for such transaction, the data collected from any point of sale equipment breaking down revenue by category shall be transmitted to the City in a summary form at least once a month for all transactions made within a calendar month—as requested by the City. Concessionaire agrees to use commercially reasonable efforts to provide the City information that may become necessary for the City to successfully implement new accounting or audit standards during the term of this Agreement. Annually, within ninety (90) days after the end of each Year, the City, at its own expense, shall furnish a true and accurate statement showing the number of enplanements at the Airport for the preceding Year.

6.06 Licenses, Fees and Taxes. Concessionaire shall pay and discharge when due, all federal, state, City, municipal and local taxes, assessments, rates, and license fees (that are not imposed arbitrarily in a manner that targets the Concessionaire specifically (as opposed to a broad class of similar businesses located in the City) of whatever nature that are or may be during the term or any renewal hereof, levied, assessed, imposed or charged on the Premises and on all improvements now thereon or hereafter to be built or made thereon, and on or against the income from the use and enjoyment of the Premises or improvements thereto. No such payment shall be considered a payment of rent entitling the Concessionaire to a credit under any other provision of this Agreement. The failure to pay any such tax, assessment, rate or licensee fee, the validity of which shall be contested in good faith and with reasonable promptness, and in accordance with applicable law, shall not be interpreted as a violation of this covenant until such contest shall have been abandoned or the time for objection or appeal has expired.

## **ARTICLE VII**

### **OPERATION OF CONCESSION BY CONCESSIONAIRE**

7.01 Mode of Operation. Concessionaire shall conduct its concession business at the Airport herein authorized in a reasonable and safe manner consistent with the overall image and atmosphere of a first class public facility. In striving to serve the public, Concessionaire shall charge reasonable nondiscriminatory prices for goods and services; furnish prompt, courteous and efficient, nondiscriminatory service adequate to meet all reasonable requests therefore; and require polite and inoffensive conduct and demeanor on the part of its representatives, agents, servants and employees. In particular, Concessionaire shall, at all times during the term of this Agreement, strictly comply with the conditions and requirements of this Article. The Concessionaire shall be required to have a supervisor on duty at the Airport during all hours of operation that can make decisions regarding the operation of the concession. The Concessionaire shall maintain and operate the concession in a first class manner and shall keep the Premises in a safe, clean, orderly and inviting condition at all times. All foods, drinks, beverages, confections and other items sold or kept for sale under the concession shall be of reasonably high

quality and must conform in all respects to federal, state and municipal food laws, ordinances and regulations.

- 7.02 Hours of Operation. Concessionaire acknowledges that the City's purpose in granting concession rights under this Agreement is to make food and beverage services readily available to the traveling public using the Terminal, and Concessionaire agrees to operate its concession business in such a manner as to meet the reasonable needs of the traveling public in a manner complementary to the method of operation of other facilities and concessions at the Airport.

**Service**

**Hours of Operation**

- A) Pre-Security Restaurant [insert]

The parties contemplate that on the Commencement Date of this Agreement, such reasonable needs may be met by Concessionaire's staffing, operating as provided herein. Concessionaire agrees, however, that in the event future airline schedules, passenger flow, or other circumstances change, including adding or subtracting regularly scheduled late-arriving or departing flights, Concessionaire and the City will regularly review the hours of operation to balance the Concessionaire's desire to operate in a profitable manner and the City's desire to ensure that the Airport has adequate food and beverage services available when passengers are enplaning. Under no circumstances shall Concessionaire reduce its regularly scheduled hours of operation without the prior consent of Director of Aviation.

- 7.03 Concessionaire's Personnel: Concessionaire will, in providing all concession services under this Agreement, employ or permit the employment of only such personnel as Concessionaire reasonably believes will enable Concessionaire to deliver a high standard of service to the public. All such personnel, while on or about the Premises, shall be clean, neat in appearance and courteous at all times and shall be appropriately attired in a manner such that they can be identified to be employees of Concessionaire, with badges or other suitable means of identification, in such instances as are appropriate. No personnel employed by Concessionaire, while on or about the concession areas, shall use improper language, or act in a loud or otherwise improper manner. Concessionaire shall cause the counter area of the Premises to be manned at all times by adequate numbers of qualified personnel to meet the reasonable demands of the traveling public. At no time will Concessionaire's employees verbally or in any manner solicit passengers or other individuals while on Airport property.

- 7.04 Concessionaire's General Manager. Concessionaire shall select and appoint a general manager of Concessionaire's operations at the Airport. Such person must be a qualified and experienced manager vested with full power and authority to conduct the normal and ordinary operation of the concession businesses herein authorized, including the authority to regulate the appearance, conduct and demeanor of Concessionaire's agents, servants and employees. Said manager shall be assigned to a duty station or office at the Terminal where he/she shall ordinarily be available during working hours, and where, during the manager's absence during working hours, a responsible subordinate with commensurate authority shall be in charge and available.

- 7.05 Public Address System At no cost to Concessionaire, Concessionaire shall allow the

installation in the Premises a public address system, and the broadcast within the Premises of flight announcements and other information broadcast over such system.

- 7.06 Flight Information Display At no cost to Concessionaire, Concessionaire shall allow the installation in the Premises of a flight information display system.
- 7.07 Janitorial Services Concessionaire shall, at its sole expense, provide necessary janitorial service for the maintenance of the walls, ceilings, floors; cleaning of interior surfaces of all windows; and cleaning and maintenance of its furniture, improvements, Trade Fixtures and Fixtures and equipment, including, but not limited to, cleaning of all range/oven hoods and related fire suppressor devices. Concessionaire will be responsible for installing a functioning oil and grease traps for all appliances and must maintain these traps in working order.
- 7.08 Garbage and Refuse Storage and Removal. Concessionaire shall strictly comply with all Airport rules and regulations and other rules and regulations regarding the disposal of trash and garbage; shall regularly remove from all concession areas to the garbage or refuse disposal area as indicated on Exhibit C-3 and then place inside the appropriate receptacle all rubbish, refuse, food scraps and garbage; and shall remove the accumulation of such material in said garbage or refuse disposal area at reasonably frequent intervals. The City currently provides a trash compactor at the Airport for use by its concessionaires and the Concessionaire shall be entitled to utilize the same without additional charge on the same terms and conditions as other concessionaires. During the term of the Lease, the City agrees to provide a garbage disposal area on site at the Airport for use by the Concessionaire; provided, however, that the City reserves the right to change the location and manner of such disposal at its sole discretion. Notwithstanding the foregoing, the Concessionaire shall at all times during the term of this Agreement arrange for handling and disposal of grease and, if applicable, household or other hazardous waste, and in no event shall the Concessionaire utilize the trash compactor or drainage system for the disposal of the same. The Concessionaire must provide a plan detailing the methods for grease and oil disposal for Board of Airport Commissioner approval. The Concessionaire shall provide and use suitable receptacles in connection with the Premises. Accumulation of boxes, cartons, barrels or other similar items shall not be permitted in public areas at the Airport.
- 7.09 Control of Rodents and Pests The Concessionaire agrees to provide adequate control of rodents, insects and other pests in the Premises. In the event that the Director reasonably determines that the Concessionaire's rodent, insect and pest control program is not acceptable or sufficient, Director may seek to control such rodents, insects and pests by other means. The Concessionaire agrees to reimburse the City no later than ten (10) days following demand by City for such reasonable expenses as it may incur due to Concessionaire's failure to comply with the foregoing.
- 7.10 Concessionaire's Expenses. Except as otherwise set forth herein, all expenses associated with planning, implementing and operating the concession or business anticipated by this Agreement shall be Concessionaire's responsibility.
- 7.11 Character of Advertising. Any and all advertising by Concessionaire in the Terminal shall be in good taste, professionally developed and presented in such a manner as not to be offensive to the general public and in conformity with any City sign program or policy

at the Airport; shall be displayed solely in the Premises of Concessionaire; and shall be subject to the prior approval of the Airport Director, which approval shall not be unreasonably withheld. Concessionaire shall neither place, nor permit to be placed, any signs or other objects on any glazed surface of the walls or ceilings or on any aluminum or metal framing in or around the Premises subject to prior approval of Airport Director, which approval shall not be unreasonably withheld.

- 7.12 Noise, Odor, Vibrations and Annoyances. Concessionaire shall conduct its operations in an orderly and proper manner so as not to commit any nuisance or waste in the Premises or annoy, disturb or be offensive to others in the Terminal and shall take all reasonable measures, using the latest known and most practicable devices and means, to eliminate any unusual, nauseous or objectionable smoke, gases, vapors, odors, or any vibrations which may tend to damage the Premises or cause offense or injury to persons in the vicinity.
- 7.13 Inspection and Review. At City's discretion and upon reasonable prior written notice to Concessionaire, City may make a complete inspection of Concessionaire's operations, including a review of the age and condition and quality of food and beverage service, preparation, and storage of equipment, maintenance of Premises, furnishings and equipment, and such other items as City may reasonably wish to review.
- 7.14 Prohibited Acts. Concessionaire shall not:
- a. Conduct its operations in a manner that deprives the public of its rightful, equal and uniform use of Airport property.
  - b. Conduct its operations so as to interfere with reasonable use by others of common facilities.
  - c. Conduct its operations in such a way as to hinder police, fire-fighting or other emergency personnel in the discharging of their duties or so as to constitute a hazardous condition that would increase the risks normally attendant upon the operations contemplated under this Agreement.
  - d. Fail to obey promptly any lawful command by any policeman, Airport representative, or other duly authorized representative of the City.
  - e. Fail to provide identification, logs or other documents that might be requested by any duly authorized representative of the Director of Aviation.
- 7.15 Additional Compliance Requirements. It is intended that the standards, obligations and duties imposed by this Article VII shall be maintained and complied with by Concessionaire in addition to its compliance with all applicable governmental laws, ordinances and regulations, and in the event that any of said laws, ordinances and regulations shall be more stringent than the standards, duties and obligations imposed on Concessionaire hereunder, then Concessionaire shall comply with such laws, ordinances and regulations in the operations under this Agreement. In addition, the Concessionaire shall not do anything or permit anything to be done on the Premises which may interfere with the effectiveness or accessibility of the drainage and sewage system, the fire protection system, the alarm system, and the Terminal for the protection of the Airport and the public.

- 7.16 Compliance with Airport Parking Regulations. Concessionaire acknowledges that City has the right and obligation to cite and/or tow away such improperly parked vehicles so as to protect and preserve for the public the orderly flow of traffic at the Airport. Upon reasonable notice being given by City, Concessionaire shall promptly remove any such illegally parked vehicles or be subject the charges of any tow services employed by City to tow said vehicles and hereby agrees to pay such charges.
- 7.17 Licenses, Certificates and Permits. Prior to the effective date of this Agreement, and during the term thereof, the Concessionaire shall provide City with copies of all licenses, certificates, permits, or other authorizations from all governmental authorities, if any, having jurisdiction over the operations of Concessionaire's operation at the Airport. Notwithstanding the generality of the foregoing, Concessionaire shall acquire and maintain a license from the Vermont Liquor Control Board to sell alcoholic beverages for consumption on the Premises in the name of the Concessionaire as long as dispensing of alcohol is allowed in the State of Vermont. In the event that the Concessionaire fails to obtain or maintain a liquor license for the Premises from the Vermont Liquor Control Board at any time during the term of this Agreement, the City may terminate this Agreement if Concessionaire fails to promptly use its best efforts to have such license reinstated. The Concessionaire shall comply with applicable state laws and regulations in connection with said license.
- 7.18 Operation of Brands. It is expressly recognized and agreed by the parties that the concession rights contained in this Agreement were granted to the Concessionaire on the strength of its Concessionaire's Proposal, including the specified brands to be operated in specific locations throughout the terminal building. Consequently, Concessionaire shall be obligated to seek the prior written approval of the City, through its Airport Director, for the substitution, addition, deletion, or expansion of any branded service source within the Terminal.
- 7.19 Other Business Activities. Concessionaire shall not engage in other business or activities within the confines of the Airport other than those contemplated herein or expressly authorized by the Board of Airport Commissioners.

## **ARTICLE VIII**

### **MAINTENANCE, ALTERATIONS, REPAIRS AND UPKEEP**

#### **8.01 Maintenance of the Premises.**

(a) The City shall be responsible for the structural maintenance, repair and upkeep of the Terminal. Concessionaire shall be obligated, without cost to City, to maintain the Premises and every part thereof and all improvements installed by Concessionaire, together with all of its Trade Fixtures, plate and mirror glass, equipment and personal property therein, in good repair and in a clean and orderly condition and appearance and shall keep the areas immediately adjacent to the exits and entrances to the Premises clean and orderly and free of obstructions. Maintenance of the Premises shall include, without limitation, the cleaning of all door and window surfaces except exterior surfaces of outside doors and windows, interior walls, floors, ceilings, lighting, decor and equipment. The Concessionaire shall also be responsible to ensure that the loading area, staging area

and Concessionaire's vehicle parking area are kept clean and free of obstructions.

(b) Upon reasonable notice to Concessionaire, the City may at any reasonable times enter the Premises to determine if satisfactory maintenance is being performed. If City determines that maintenance is not satisfactory, City shall so notify Concessionaire in writing. If said maintenance is not performed by Concessionaire within fifteen (15) days after receipt of written notice, City or its agents shall have the right to enter upon the Premises and perform the maintenance therefore and Concessionaire agrees to promptly reimburse City for the direct cost thereof, plus fifty percent (50%) of such cost for administrative overhead.

(c) Notwithstanding the above provision, any hazardous or potentially hazardous condition shall be corrected immediately upon receipt by Concessionaire of oral notice given by City. At City's reasonable discretion, Concessionaire shall close the Premises until such hazardous or potentially hazardous condition is removed.

8.02 Repairs. Except for the repairs or work which are the City's responsibility, the Concessionaire agrees to make all repairs to the Premises and will maintain and keep the Premises in good condition and repair, and will surrender and deliver up the same at the termination of the Agreement in as good order and condition as the same exists at the commencement of the term of the Agreement, reasonable wear and tear excepted.

8.03 Alterations to Premises. Concessionaire will make no alterations to the Premises except after first obtaining the City's written consent, such consent not to be unreasonably withheld or delayed. Without limiting the circumstances under which the City may withhold its approval, and by way of example, the City shall be justified in withholding approval if:

(a) Concessionaire has failed to make adequate plans to ensure the Premises remains free from liens of any nature;

(b) any such alterations would interfere with the provision of an adequate level of service during the period in which the alterations are to take place;

(c) any such alterations would result in the removal of improvements, ownership of which would vest in the City at the expiration of the term of this Agreement, without replacement by items that would also constitute such improvements of the same scope and quality;

(d) any such alterations would be damaging to either the structural soundness or external appearance of any part of the Terminal not within the Premises;

(e) any such alterations would not meet the City's reasonable requirements for the safe use of the Premises or any other part of the Terminal.

All alterations to the Premises made by the Concessionaire shall be at the Concessionaire's sole expense, and shall be made in a workmanlike manner without damage to the Premises except such that is repaired or corrected by the Concessionaire. The City shall have the right to review and approve or disapprove in writing the plans and specifications for such alterations.

8.04 Right to Concessionaire's Property. The Concessionaire shall have the obligation upon the termination of this Agreement to remove all of its personal property that has not been affixed to the Terminal building or the Premises and all Trade Fixtures; provided, however, that: (1) there shall be no event of default hereunder which is continuing; (2) Concessionaire, at its sole cost and expense, shall repair or reimburse the City for the cost of repairing any damage which may be caused by such removal; and (3) such removal and repairs shall have been completed by termination. Upon failure of Concessionaire to remove its personal property or Trade Fixtures by the date of termination of the Agreement, the Airport Director shall have the right to remove such personal property and Trade Fixtures, notwithstanding any security interest therein, and to store them at a location of his choice, and Concessionaire shall pay to City the cost of such removal and storage; or at the option of the City, any such property remaining after thirty (30) days following termination of this Agreement shall immediately be and become the property of the City. The City will give the Concessionaire reasonable access to the Premises to remove such property.

## **ARTICLE IX** **INDEMNIFICATION AND INSURANCE**

9.01 Indemnification – City Held Harmless. It is an express condition of this Agreement that Concessionaire shall indemnify, defend (with counsel satisfactory to City), and hold City, its officers, directors, shareholders, agents and employees, harmless from and against any and all claims, debts, demands, liabilities, losses, costs, damages, expenses (including reasonable attorneys' fees), judgments, penalties, fines, or causes of action of every kind or character, whether in law or in equity, by reason of any death, injury or damage to any person or persons or damage or destruction of property or loss of use thereof, whether it be the person or property of Concessionaire, its agents or employees, or of any third persons, arising from any negligent acts or omissions or intentional misconduct by the Concessionaire, its agents, affiliates, employees, tenants, or contractors.

9.02 Indemnification – Concessionaire Held Harmless. It is an express condition of this Agreement that the City shall indemnify, defend (with counsel satisfactory to Concessionaire), and hold Concessionaire, its officers, directors, shareholders, agents and employees, harmless from and against any and all claims, debts, demands, liabilities, losses, costs, damages, expenses (including reasonable attorneys' fees), judgments, penalties, fines, or causes of action of every kind or character, whether in law or in equity, by reason of any death, injury or damage to any person or persons or damage or destruction of property or loss of use thereof, whether it be the person or property of City, its agents or employees, or of any third persons, arising from any negligent acts or omissions or intentional misconduct by the City, its agents, affiliates, employees, tenants, or contractors.

9.03 Environmental Indemnification. Concessionaire shall also indemnify, defend (with counsel satisfactory to City), and hold City, its directors, officers, employees, agents, assigns, and any successors to City's interest in the Premises, harmless from and against any and all loss, cost, damage, expense (including reasonable attorney's fees), claim, cause of action, judgment, penalty, fine or liability, directly or indirectly, relating to or arising from Concessionaire's use, storage, release, discharge, handling, or presence of hazardous materials on, under, or about the Premises or the Airport in violation of Concessionaire's obligations under this Agreement

("Hazardous Materials Release"). This indemnification shall include without limitation (a) personal injury claims, (b) the payment of liens, (c) diminution in the value of the Premises or Airport, (d) damages for the loss or restriction on use of the Premises or the Airport, (e) sums paid in settlement of claims, (f) actual attorneys' fees, consulting fees, and expert fees, (g) the cost of any investigation of site conditions, and (h) the cost of any repair, cleanup, remediation, removal, or restoration work or detoxification if required by any governmental authorities or deemed necessary in City's reasonable judgment. City shall have the right but not the obligation to join and participate in, and control, if it so elects, any legal proceedings or actions initiated in connection with the Hazardous Materials Release. City may also negotiate, defend, approve, and appeal any action taken or issued by any applicable governmental authorities with regard to a Hazardous Materials Release. Any costs or expenses incurred by City for which Concessionaire is responsible under this paragraph or for which Concessionaire has indemnified City: (i) shall be paid to City on demand, during the term of this Agreement as additional rent; and (ii) from and after the expiration or earlier termination of the Agreement shall be reimbursed by Concessionaire on demand. Concessionaire's obligations pursuant to the foregoing indemnity shall survive the expiration or termination of this Agreement and shall bind Concessionaire's successors and assignees and inure to the benefit of City's successors and assignees.

9.04 Liability For Ground Water and Other Contamination. Notwithstanding any other provision of this Agreement, Concessionaire shall indemnify City from any loss due to and shall be and remain liable to City for any contamination of the Premises by hazardous or toxic substances, including, without limiting the generality hereof, motor fuels and lubricants, paints, thinners, solvents and chemicals, that should occur during the term of this Agreement (including any extensions of the term hereof by permission, holding over or otherwise) and should be caused by or attributable to Concessionaire, its officers, agents, suppliers, employees or customers. Concessionaire's liability shall survive the termination of this Agreement by expiration of the term or otherwise.

9.05 Liability Insurance. Concessionaire shall procure and maintain in force, at its own expense, during the term of this Agreement the following types and amounts of insurance;

Worker's Compensation	Statutory
Employer's Liability – Each accident	\$500,000
Each Employee	\$500,000
Disease Policy Limit	\$500,000
Comprehensive General (Public) Liability to Include;	\$1,000,000 Ea Occurrence
a. Premises/Operation	\$2,000,000 Aggregate
b. Independent Contractors	
c. Personal Injury	
d. Products/Completed Operations	
e. Contractual Liability – for the indemnification of obligations contained in Sections 9.01 and 9.04 above	
f. Hazardouse & Toxics Products	
Comprehensive Automobile Liability	\$1,000,000
Property Insurance	100% of replacement value
Liquor Liability	\$1,000,000

A certificate or certificates evidencing such insurance coverage shall be filed with the City at least thirty (30) days prior to the Commencement Date or at such other times as may be required by the City, and said certificate or certificates shall provide that such insurance coverage will not be canceled, reduced or the coverage materially changed without at least thirty (30) days' prior written notice to the City. At least thirty (30) days prior to the expiration of any such policy, a certificate showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is canceled, reduced or materially changed, Concessionaire shall, within fifteen (15) days after receipt of written notice from the City of such cancellation, reduction or adverse material change of coverage, file with the City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Certificates of insurance shall name the City of Burlington, Vermont, Burlington International Airport as an additional insured, on all policies.

9.06 Fire and Extended Coverage. The City agrees to maintain in force during the term of this Agreement fire, extended coverage and vandalism/malicious damage insurance on the Terminal and any additions, alterations, or modifications thereto, and on all contents owned by the City and incidental to the Terminal equal to 100% of replacement value.

Concessionaire shall be responsible for obtaining its own insurance on any contents, furnishings, Trade Fixtures, equipment and improvements which have not assumed the nature of real estate improvements.

9.07 Workers' Compensation and Employer's Liability Insurance. Concessionaire shall maintain workers' compensation and employer's liability insurance in the amounts and form required by the laws of the State of Vermont. Concessionaire shall furnish a certificate of said insurance to the City certifying that the City will be given thirty (30) days written notice of non-renewal, cancellation or other material change.

## **ARTICLE X** **LETTER OF CREDIT**

10.01 Letter of Credit. The Concessionaire shall provide the City contemporaneously with the delivery of this Agreement with a commitment letter from a recognized financial institution satisfactory to the City in its reasonable discretion committing to issue an irrevocable letter of credit (the "LOC"), in a form reasonably acceptable to the City, and in favor of the City, within thirty (30) days of the City's formal execution of this Agreement in an amount equal to \_\_\_\_\_. Any commitment letter must be signed by an officer of the institution committing to issue the LOC who possesses the actual and apparent authority to bind the institution to the obligations and commitments contained therein. The commitment letter may not contain any condition to the existence, validity, or satisfaction of the obligations and commitments therein contained, other than the City's formal execution of this Agreement. The Concessionaire shall provide the City with a draft copy of the terms of the proposed LOC with the commitment letter for the City's review and approval. The LOC delivered by Concessionaire to City as contemplated herein shall remain in force for the entire term of this Agreement, including

renewals hereof.

10.02 Certificate of Renewal. At least seventy-five (75) days prior to the expiration date on which any such LOC expires, Concessionaire shall provide and file with the City a renewal or replacement LOC which meets the requirements of Section 10.01.

## **ARTICLE XI**

### **DAMAGE OR DESTRUCTION OF PREMISES**

11.01 Repair and Rebuilding. In the event of damage or casualty to any part of the Premises, unless a decision is made by the City that the Terminal will not continue to be used as a passenger terminal by scheduled airlines, any such damage or destruction shall be repaired with reasonable dispatch by the parties in cooperation with each other, but with the City in charge of overseeing the performance of such repairs. Should such damage be such that Concessionaire is deprived of the use of the Premises, City will provide replacement premises to Concessionaire at City's expense. The City and Concessionaire shall attempt to agree on a program to finance the cost of repairs. If such program cannot be agreed upon, the City shall reduce the scope of repairs and rebuilding so that the same may be accomplished with insurance proceeds received by the parties in connection with the damage or casualty. Should the City decide that the Terminal will no longer be used as a passenger terminal by scheduled airlines, all insurance proceeds paid to the City under Section 9.05 and/or Section 9.06 with respect to insurance purchased, and property or improvements originally provided or paid for, by City shall belong to City, and all additional insurance proceeds with respect to insurance purchased by Concessionaire shall belong to Concessionaire. To the extent such damage or casualty has a material adverse impact on the Concessionaire's business, the Minimum Guaranteed Rent due hereunder will be abated for such period of time and the proportionally reduced by the amount by which such damage or casualty reduces the Concessionaire's business, as determined by comparing against Concessionaire's historical business results during the prior Year for the same period of time (or if in the first Year against the Projections provided in the Proposal).

11.02 Exception for Fault of Concessionaire. Notwithstanding the provisions of Section 11.01, if the Premises, or any part thereof, are damaged by the intentional or gross negligent act or omission of Concessionaire, its sub-concessionaires, their agents or employees, the cost of such repair and replacement shall be paid by Concessionaire out of Concessionaire's insurance proceeds or otherwise.

## **ARTICLE XII**

### **EQUAL EMPLOYMENT OPPORTUNITY, NON-DISCRIMINATION, PARTICIPATION IN CITY'S DISADVANTAGED BUSINESS ENTERPRISE PROGRAM, PUBLIC USE AND FEDERAL GRANTS**

12.01 Equal Employment Opportunity. Concessionaire assures it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E (or as amended, modified, or otherwise enacted or codified, as the case may be), to ensure that no person shall on the grounds of race, creed, color, national origin or sex be excluded from participating in any employment activities covered by said federal regulation. Concessionaire 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 said Subpart E. Concessionaire assures it will require that its covered sub-organizations provide assurances to Concessionaire that they will similarly

undertake affirmative action programs and that they will require assurances from their sub-organizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

12.02 Certificate of Non-Discrimination. By the execution of this Agreement, Concessionaire certifies as follows:

“We, the supplier of goods, materials, equipment or services covered by this bid or contract, will not discriminate in any way in connection with this contract in the employment of persons, or refuse to continue the employment of any persons, on account of the race, creed, color or national origin of such person.”

12.03 Concessionaire’s Participation in City’s Disadvantaged Business Enterprise Program. The Concessionaire assures that it will comply with pertinent statutes, executive orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from federal assistance. This provision obligates the Concessionaire or its transferee for the period during which federal assistance is extended to the Airport, except where federal assistance is to provide, or is in the form of, personal property or real property or interest therein or structures or improvement thereon. In these cases, this provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the sponsor or any transferee for a purpose for which federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property. In the case of contractors, this provision binds the contractors from the bid solicitation period through the completion of the contract. At all times during the term of this Agreement and as specifically requested by the City, Concessionaire shall cooperate with the City by providing all information and keeping all records required by any applicable federal regulation or requested by any governmental instrumentality having authority to do so and with any investigation or compliance review relating to the City’s Disadvantaged Business Enterprise Program at the Airport.

12.04 Federal Grants and Public Use. The parties acknowledge that the Airport will be operated as a public airport, subject to the provisions of the Federal Aviation Act of 1958, as amended, and grant agreements between the City and the federal government containing assurances guaranteeing the public use of the Airport, so that nothing contained in this Agreement shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958, as amended. The City reserves the right to further develop or improve, as it sees fit, the Terminal, the Airport, its landing area and taxiways, and to construct other terminal buildings and airports, regardless of the desires or views of Concessionaire and without interference or hindrance therefrom. This Agreement shall be subordinate to and superseded by the provisions of any existing or future agreement between the City and the United States of America, including instrumentalities thereof, 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 expenditure of federal funds in developing the Airport.

12.05 Non-Discrimination. Concessionaire for itself, its successors and assigns, as part of the consideration hereof, does hereby covenant and agree that:

- (a) No person shall be excluded from participation in, denied the benefit of, or be otherwise subjected to discrimination in the use of the Premises because of his

or her race, color, sex or national origin.

- (b) In the construction of any improvements on, over or under the Premises and the furnishings or services thereat, no person shall be excluded from participation in, or denied the benefits of, such construction or service, or otherwise be subjected to discrimination, because of his or her race, color, sex or national origin.
- (c) Concessionaire shall use the Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, as said regulations now or hereafter provide and as specifically notified or requested by the City.

12.06 Modifications to Comply with Federal Laws, Regulations, or Agreements. Should the United States or any instrumentality thereof having authority to do so require that any provision of this Agreement that is in violation of any federal law or regulation or any provision of an existing grant agreement between the City and the United States be changed or deleted or should any such change or deletion be required to retain its eligibility to participate in the Airport Improvement Program (AIP) and similar successor federal financial assistance programs, the City may give the Concessionaire notice that it elects that any such change or deletion be made. Concessionaire shall then elect either to consent to any such change or deletion or to cancel the remaining term of this Agreement. Such election shall be made in writing and delivered to the City within thirty (30) days of the date the City gave notice to the Concessionaire of its election that any such change or deletion be made.

12.07 Concessionaire's Non-Compliance. Concessionaire's non-compliance with any provision of this Article shall constitute a material breach of this Agreement, for which City may, in its reasonable discretion, upon Concessionaire's failure to begin to act to cure said breach within thirty (30) days of written notice thereof, terminate this Agreement upon ten (10) days written notice.

### **ARTICLE XIII** **ASSIGNMENT AND SUBLETTING**

Concessionaire shall not assign, sublet, subcontract, or otherwise purport to transfer (including but not limited to, by stock sale that results in a change of control) this Agreement or any right, interest, or obligation granted to or required of it by this Agreement without the prior written consent of the City. No such assignment or sublease shall serve to release Concessionaire from any of its obligations, duties or responsibilities under this Agreement unless the City agrees to such release in writing. Any such sublease shall be in writing and promptly upon the execution thereof, Concessionaire shall furnish a copy to the City. Notwithstanding the foregoing, in the event that the Concessionaire is in default with respect to a loan obligation to a lender where such default, pursuant to an agreement between the Concessionaire and such lender, would permit such lender to assign the Agreement, the Agreement may only be assigned by such lender with the prior written consent of the City, which shall not be unreasonably withheld.

### **ARTICLE XIV** **DEFAULT BY CONCESSIONAIRE**

14.01 Event of Default. The happening of any one or more of the following listed events and the expiration of any notice and cure periods herein provided (which events, upon such expiration, are hereinafter referred to singularly as “event of default” and collectively as “events of default”) shall constitute a breach of this Agreement on the part of Concessionaire, namely:

- (a) The filing by, on behalf of, or against Concessionaire of any petition or pleading to declare Concessionaire bankrupt, whether voluntary or involuntary, under any bankruptcy act or law;
- (b) The commencement in any court or tribunal of any proceeding, voluntary or involuntary, to declare Concessionaire insolvent or unable to pay its debts;
- (c) The failure of Concessionaire to pay any rent or any other amount payable under this Agreement within ten (10) days after written notice by the City that the same is due and payable, except that any failure to pay percentage rent which shall be caused by a miscalculation of the Gross Revenue or a failure notwithstanding the exercise of due diligence to have timely information concerning Gross Revenue, shall not be deemed a default provided such rent is paid within thirty (30) days after the correct amount thereof has been determined;
- (d) The failure in any material respect of Concessionaire to perform, fully and promptly, any act required of it under the terms of this Agreement, or otherwise to comply with any term or provision hereof within the shorter of: (i) the time specifically required; or (ii) thirty (30) days after written notice by the City to the Concessionaire to do so, unless such default cannot be cured within such period and Concessionaire has in good faith commenced and is prosecuting the cure thereof, in which case the Concessionaire shall have a reasonable extension of such period in order to cure such default; or (iii) immediately if Concessionaire allows insurance coverage to lapse or a situation exists that would endanger public health or safety;
- (e) The appointment by any court or under any law of a receiver, trustee, or other custodian of the property, assets or business of Concessionaire;
- (f) The assignment by Concessionaire of all or any part of its property or assets for the benefit of creditors;
- (g) Abandonment by Concessionaire of Premises; provided, failure of Concessionaire to operate the concession and to provide the service contemplated by the Agreement for a period of thirty (30) days shall constitute abandonment by Concessionaire;
- (h) The sale or levy upon a material portion of the Concessionaire’s real or personal property by any sheriff, marshal or constable.

14.02 Waiver. No waiver by the City of default by the Concessionaire of any of the terms, covenants, or conditions hereof to be performed, kept and preserved by the Concessionaire shall be construed to be a waiver of any subsequent default. The acceptance of rental or the performance of all or part of this Agreement by the City for or during any period or periods after default of any of the terms, covenants and conditions herein contained to be performed, kept and observed by the Concessionaire, shall not be deemed a waiver of any right on the part of the City to declare a default or cancel this Agreement for a subsequent breach thereof.

14.03 Effect of Default by Concessionaire/Termination. Upon the happening of any event of default as defined in Section 14.01 above and Concessionaire's failure to cure such default in the time period set forth in said Section, the City shall have the right to terminate the term of this Agreement by written notice to the Concessionaire, which termination shall be effective as of the date of said notice. Upon any termination of the Agreement, whether by lapse of time or otherwise, Concessionaire shall promptly cease operating its concession or otherwise occupying the Premises and shall deliver possession of the same, including any improvements, equipment and Trade Fixtures to the Airport Director, and Concessionaire hereby grants to the City full and free license to enter into and upon the Premises in such event and with or without process to expel or remove Concessionaire and any others who may be occupying the Premises and to remove therefrom any and all property, using for such purpose such force as may be necessary without being guilty or liable for trespass, eviction, or forcible entry and detainer and without relinquishing the City's right to rent or any other right given to the City hereunder or by operation by law. Except as otherwise expressly provided in this Agreement, Concessionaire hereby expressly waives the service of demand for the payment of rent or for possession of the Premises or to re-enter the Premises, including any and every form of demand and notice prescribed by any statute or other law.

**ARTICLE XV**  
**ABATEMENT OF MINIMUM GUARANTEED RENT,**  
**TERMINATION BY CANCELLATION AND DEFAULT BY CITY**

15.01 Abatement of Minimum Guaranteed Rent. In the event of any emergency situation wherein for a period of thirty (30) consecutive days or more there is a material curtailment, resulting from either governmental action or a shortage of materials, of the use of airplanes or airplane travel by the general public, Concessionaire's obligation to pay the Minimum Guaranteed Rent shall be suspended for the period of time after which such condition continues to exist beyond a period of thirty (30) days or more. The Minimum Guaranteed Rent for any such period of time shall be proportionally reduced by the amount by which such emergency situation reduces the Concessionaire's business, as determined by comparing against Concessionaire's historical business during the prior Year for the same period of time.

15.02 Right of Concessionaire to Terminate by Cancellation. Concessionaire may terminate this Agreement and cancel all of its obligations hereunder at any time Concessionaire is not in default in the payment of rentals, fees or charges payable to the City hereunder ninety (90) days after giving written notice to City upon or after the happening of any one of the following events:

(a) Concessionaire's inability to use the Premises for a period in excess of sixty (60) days, because of the issuance of any order, rule or regulation by the United States or any instrumentality therefor preventing the Concessionaire from operating at the Premises for a cause or causes not constituting a default under this Agreement;

(b) The default by City in the performance of any covenant or agreement herein required to be performed by it and the failure of City to remedy such default for a period of thirty (30) days after receipt from the Concessionaire of written notice to remedy the same, unless such default cannot be cured within such 30 day period and the City has in good faith commenced and is prosecuting the cure thereof, in which case the City shall have a reasonable extension of such period in order to cure such default; provided that no notice

of cancellation, as above provided, shall be of any force or effect if the City shall have remedied the default prior to receipt of the Concessionaire's notice of cancellation;

(c) The assumption by the United States or an instrumentality thereof of the operating, control or use of the Airport or any substantial part thereof in such a manner as to substantially restrict the Concessionaire for a period of at least ninety (90) days from operating its concession at the Airport;

(d) The withdrawal or cancellation by the United States or an authorized instrumentality thereof of the right of regularly scheduled airlines to operate at the Airport for a period that exceeds thirty (30) days;

(e) The issuance by any court of competent jurisdiction of an injunction restraining the use of the Airport or the Premises if said injunction shall remain in force for more than ninety (90) days;

(f) The Concessionaire's election under Section 10.06 [NTD: to what Section does this refer?] in which event no ninety (90) day waiting period shall be required;

(g) The failure of the City to offer adequate replacement premises for use by Concessionaire if the City exercises its right of termination by cancellation of the Agreement then in existence between City and Concessionaire.

15.03 Waiver. The Concessionaire's performance of all or any part of this Agreement for or during any period or periods after a default of any of the terms, covenants or conditions hereof to be performed, kept or observed by the City, or the occurrence of such other event as may excuse performance shall not be deemed a waiver of any right on the part of Concessionaire: (i) to cancel this Agreement for failure by the City so to perform, keep or observed, or by reason of such occurrence; or (ii) to enforce any other right that the Concessionaire may have by reason of such failure or occurrence.

## **ARTICLE XVI** **GENERAL PROVISIONS**

16.01 No Warranties or Inducements. By executing this Agreement, Concessionaire acknowledges that the City does not warrant the validity of any information that may have been furnished to Concessionaire concerning the volume of passengers who have traveled through the Airport in the past, amount of past concession revenues, amounts of square footage, or maintenance and operation cost rates or totals, and that City has not intended to provide or warrant any forecast of future passenger volumes, concession revenues, or maintenance and operation costs, rates or totals; that such information as the City has furnished with respect to these and other matters has been intended merely as one source of information available for consideration by Concessionaire, which Concessionaire has been encouraged to verify through its own investigation; that in the negotiations, Concessionaire has relied upon its own resources as to all of these matters; and that it has not relied upon any inducements or forecasts of the City.

16.02 Restrictions and Regulations. The operations conducted by Concessionaire pursuant to this Agreement shall be subject to:

(a) Any and all applicable rules, regulations, orders and restrictions which are now in force or which may be adopted hereafter by City with respect to the operation of the Airport, including restrictions on airline schedules or arrivals and departures;

(b) Any and all orders, directions or conditions issued, given or imposed by the City with respect to the use of the roadways, driveways, curbs, sidewalks, parking areas or public areas on the Airport; and

(c) Any and all applicable laws, ordinances, rules, statutes, regulations or orders of any governmental authority, whether at the federal, state or municipal level, lawfully exercising authority over the Airport or Concessionaire's operations, including without limitation restrictions on airline schedules of arrivals and departures and all provisions relating to environmental liability. It shall likewise be Concessionaire's responsibility to obtain and maintain in force throughout the term of this Agreement all permits and licenses which may be necessary or required for the proper operation of Concessionaire's business as it was proposed to the City. The failure to maintain such licenses and permits in good standing with the issuing agency throughout the term of this Agreement shall be cause for immediate termination of this Agreement, in the City's sole discretion.

City shall not be liable to Concessionaire for any diminution or deprivation of Concessionaire's rights hereunder on account of the exercise of any such authority, nor, except as elsewhere expressly provided in this Agreement, shall Concessionaire be entitled to terminate the whole or any portion of the Agreement by reason thereof unless the exercise of such authority shall so interfere with Concessionaire's use and enjoyment of the Premises as to constitute a termination of this Agreement by operation of law in accordance with the laws of the State of Vermont.

16.03 Non-Waivers. Every provision herein imposing an obligation upon City or Concessionaire is a material inducement and consideration for the execution of this Agreement. No waiver by City or Concessionaire of any of the terms, covenants or conditions of the Agreement, or noncompliance therewith, shall be deemed or taken as a waiver at any time thereafter of the same or any other term, covenant or condition herein contained, nor of the strict and prompt performance thereof. No delay, failure or omission of the City to re-enter the Premises or to exercise any right, power privilege or option arising from any default, or subsequent acceptance of fees then or thereafter accrued shall impair any such right, power, privilege or option or be construed to be a waiver of any such default or acquiescence therein. No notice by City shall be required to restore or revive time as being of the essence hereof after waiver by City of default in one or more instances.

16.04 Force Majeure. Neither party hereto shall be liable to the other for any failure, delay or interruption in the performance of any of the terms, covenants, or conditions of this Agreement due to causes beyond the control of that party, including, but not limited to, strikes, boycotts, labor disputes, shortages of materials, acts of God, acts of public enemy, acts of the superior governmental authority, weather conditions, floods, riots, rebellion, sabotage, or other circumstances for which such party is not responsible or which are not in its power to control, but Concessionaire shall not be relieved of its obligation to pay the Minimum Guaranteed Rent except as expressly provided in Section 15.01 hereof; provided, however, that to the extent any such event has a material adverse effect on the Tenant's business, the Minimum Guaranteed Rent for such period of time shall be proportionally reduced by the amount by which such damage or

casualty reduce the Concessionaire's business, as determined by comparing against Concessionaire's historical business results during the prior Year for the same period of time (or if the first Year against the projections in the Proposal).

16.05 Agreement Binding Upon Successors. This Agreement shall be binding upon and shall inure to the benefit of the successors and assign of the parties hereto.

16.06 Time of Essence. Time is expressly agreed to be of the essence of this Agreement.

16.07 Applicable Law. This Agreement and every question arising hereunder shall be construed or determined according to the laws of the State of Vermont.

16.08 Quiet Enjoyment. The City agrees that Concessionaire, upon payment of all fees, charges and other payments required under the terms of this Agreement on its part to be observed and kept, shall lawfully acquire and hold, use and enjoy the Premises during the term of this Agreement according to the terms and conditions hereof.

16.09 Concessionaire's Dealings With City. Whenever in this Agreement, Concessionaire is required or permitted to obtain the approval of, consult with, give notice to, or otherwise deal with the City, Concessionaire shall deal with the City's authorized representative who shall be the Aviation Director or his/her designee.

16.10 Notices, Consents and Approval.

(a) All notices, consents and approvals required or authorized by this Agreement to be given by or behalf of either party to the other shall be in writing and signed by the duly designated representative of the party by or on whose behalf they are given, shall be deemed given at the time a registered or certified letter properly addressed, postage prepaid, is deposited in any United States Post Office.

(b) Notice to the City shall be addressed to it and delivered at the office of the **Director of Aviation, Burlington International Airport, 1200 Airport Drive #1, South Burlington, Vermont 05403**, either by registered or certified mail, postage prepaid, or at such other office as it may hereafter designate by notice to the Concessionaire in writing.

(c) Notice to the Concessionaire shall be addressed to the attention of \_\_\_\_\_, either by registered or certified mail, postage prepaid or at such other office in the continental United States as it may hereafter designate by notice to the City in writing. The Concessionaire agrees to advise the City of changes to its address and the identity and/or address, as applicable, of its attorney of record provided herein.

(d) Whenever the approval of the City is required to permit any action by Concessionaire hereunder, such approval shall be requested in writing, shall be given or denied in writing, and shall not be unreasonably withheld or delayed.

16.11 Independent Contractor. The parties hereto agree that the Concessionaire is an independent contractor and not subject to the direction or control of the City, except as specified in this Agreement, and except by general rules and regulations adopted for the control and regulation of

the Airport and its facilities.

16.12 Interpretation. The language of this Agreement shall be construed according to its fair meaning, and not strictly for or against either City or Concessionaire. The section headings appearing herein are for the convenience of the parties and shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of this Agreement. If any provision of this Agreement is determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of this Agreement and all such other provisions shall remain in full force and effect; and it is the intention of the parties hereto that if any provision of this Agreement is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, the provision shall have the meaning which renders it valid.

16.13 Memorandum of Agreement in Lieu of Recording. The parties agree that should either desire that adequate legal notice of this Agreement be given on the public records of Burlington, Vermont, the other will agree to the execution of a memorandum of this Agreement containing a sufficient description of the parties, the Premises and term of this Agreement to comply with the minimum requirements for the giving of such notice.

16.14 Entire Agreement. The provisions of this Agreement contain the entire understanding between parties hereto and said Agreement may not be changed, altered or modified in any manner except by written instrument executed by both City and Concessionaire Incorporated and attached herein by reference is the Proposal (Exhibit A); where terms conflict this agreement controls.

16.15 Amendments. This Agreement may only be modified or amended by written instrument executed by City and Concessionaire.

16.16 Federal Security Requirements. Lessee hereby acknowledges that Lessor is required by 49 C.F.R. Part 1542, as amended from time to time (“TSA 1542”), to adopt and put into use facilities and procedures designed to prevent and deter persons and vehicles from unauthorized access to the Security Identification Display Area as defined in TSA 1542 (“SIDA”) and/or the AOA, as defined below. Lessee understands that the Lessor has met said requirements by developing an Airport Security Program (“ASP”) for the Airport, and Lessee warrants, covenants and agrees to be fully bound by and immediately responsive to the requirements of TSA 1542 and the ASP in connection with Lessee’s exercise of the privileges granted hereunder, and to impose similar requirements on any sublessees. Lessee shall not do or permit its agents, employees, contractors, or suppliers to do anything at the Airport that would be in conflict with or violate the requirements of any Federal, State or local law, regulation, or security directive regarding airport security, TSA 1542, or the ASP, as they may be amended from time to time. Lessee shall be responsible for obtaining and coordinating any security badging, vehicle decals, and/or any other actions required to ensure the Lessee’s agents, employees, contractors, suppliers, and sublessees, if any, are in compliance with all security requirements. Lessee shall be responsible for all costs associated with obtaining such badge and/or access privileges. “AOA” means those aircraft operating areas of the Airport used for landing, taking-off, movement and parking of aircraft, as the same now exists or as the same hereafter may be added to modified, changed or developed. Lessee agrees that if a prohibited incursion into the SIDA or AOA occurs, or if the safety or security of the SIDA or AOA or other sterile area of the Airport is breached by or due to the negligence or willful act or omission of Lessee’s or any of its employees, agents, representatives, contractors, subcontractors, consultants, licensees, independent contractors,

invitees, visitors, guests, patrons, or permittees and such incursion or breach results in a civil penalty action being brought against Lessor by the U.S. Government, Lessee shall reimburse Lessor for all expenses, including attorneys' fees and litigation expenses, incurred by Lessor in defending against the civil penalty action and for any civil penalty or settlement amount paid by Lessor as result of such action or inaction, incursion or breach. Lessor shall notify Lessee of any allegation, investigation, or proposed or actual civil penalty sought by the U.S. Government related to action or inaction of Lessee.

16.17 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 has been further advised to consult the livable wage ordinance for a more detailed description of its requirements.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed, in duplicate, with all the formalities required by law on the day and year written below.

**BURLINGTON INTERNATIONAL AIRPORT:**

ATTEST:  
\_\_\_\_\_  
(Name):

BY: \_\_\_\_\_  
Gene Richards  
Director of Aviation

STATE OF VERMONT  
COUNTY OF CHITTENDEN, ss

At Burlington this \_\_\_ day of \_\_\_\_\_, 2012 before me personally appeared Mayor Miro Weinberger, 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  
My Commission Expires:

**AV IATION DELI:**

ATTEST:  
\_\_\_\_\_  
(Name):  
\_\_\_\_\_  
(Name):

BY: \_\_\_\_\_  
(Name):  
\_\_\_\_\_  
TITLE: \_\_\_\_\_  
Duly Authorized  
DATE: \_\_\_\_\_

STATE OF VERMONT  
COUNTY OF CHITTENDEN, ss

At Burlington this \_\_\_ day of \_\_\_\_\_, 2012 before me personally appeared \_\_\_\_\_, duly authorized agent of Aviation Deli, and he acknowledged the execution of this document to be his/her free act and deed, and the free act and deed of The Aviation Deli.

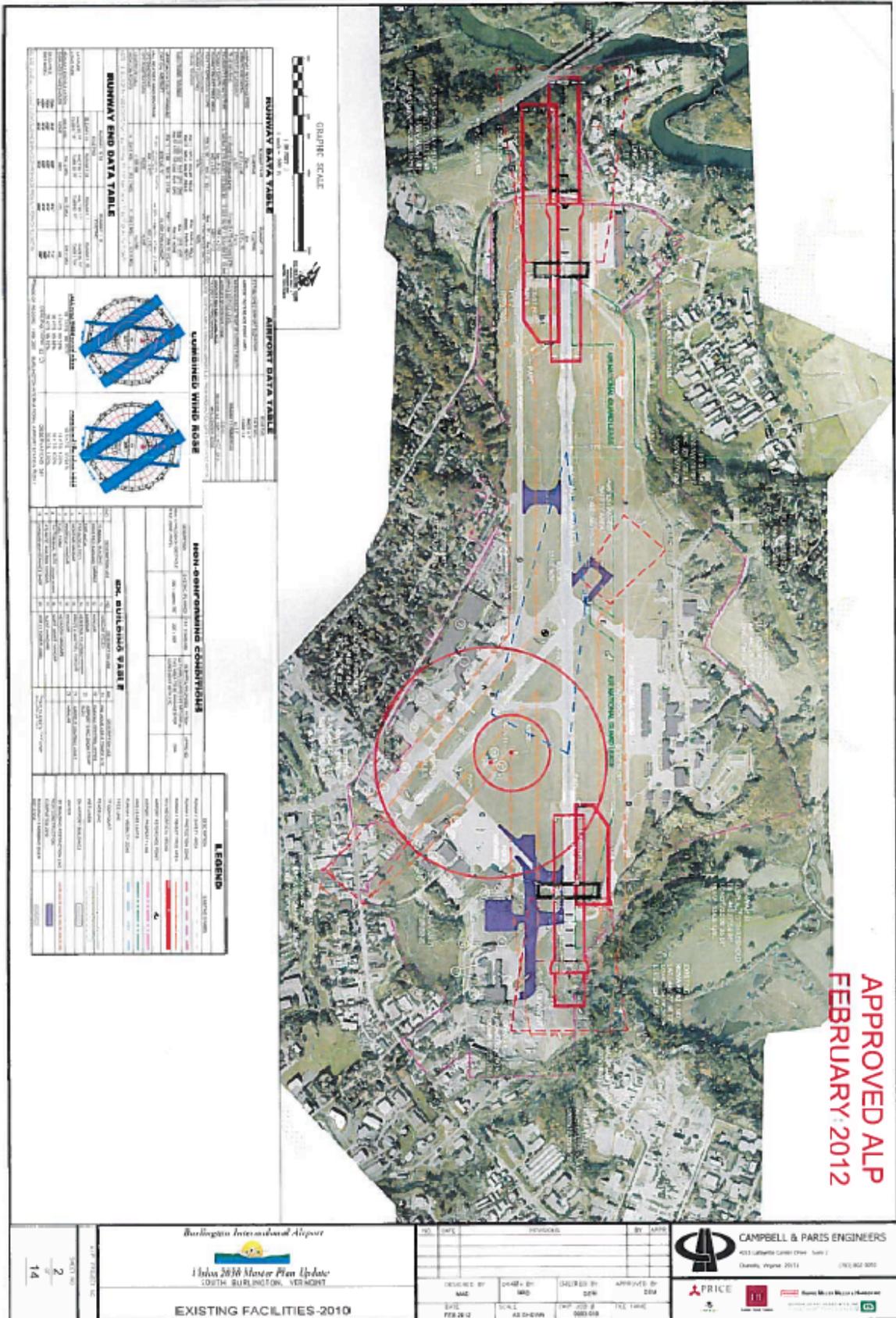
\_\_\_\_\_  
Notary Public  
My Commission Expires:

**Exhibit A**  
**Respondent's Proposal**

(see attached)

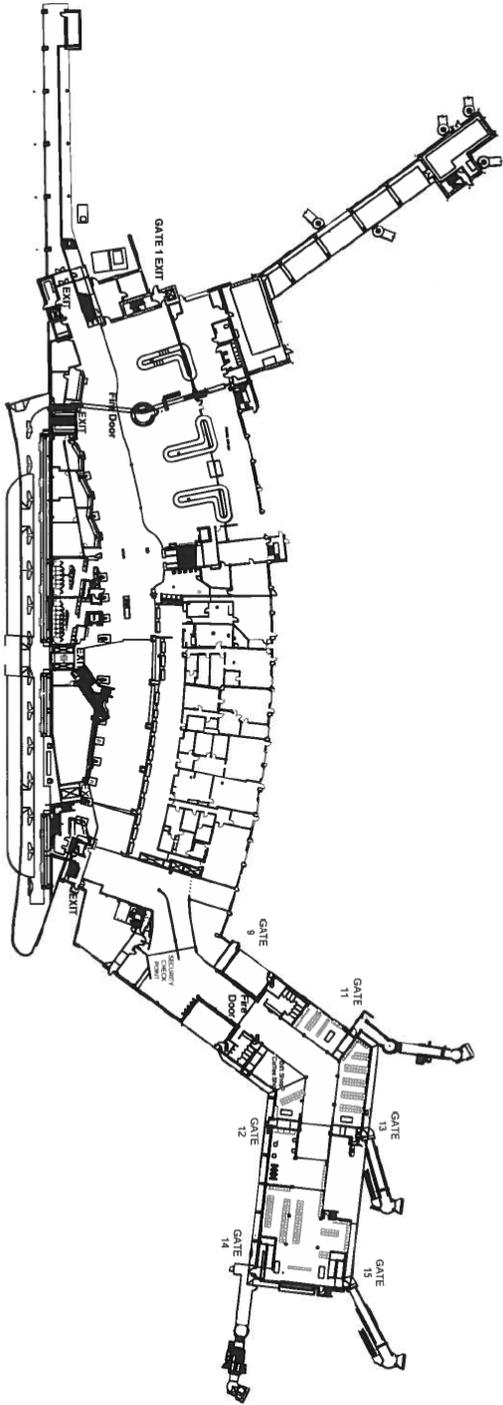
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# Exhibit B Airport Layout Plan

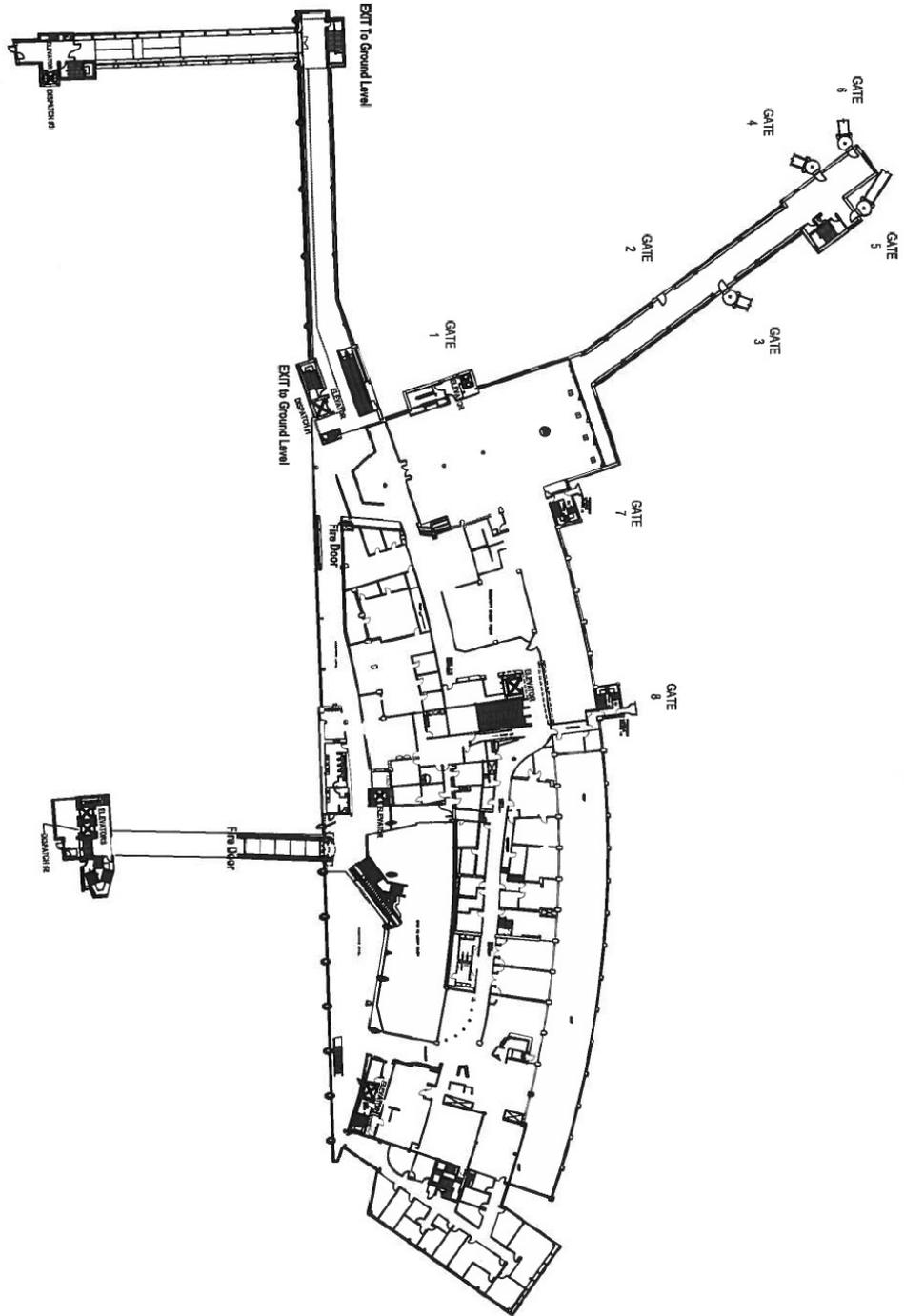


**Exhibit C-1**  
**Airport Terminal**  
**(drawing of terminal main building and attached north and south concourses as**  
**exists today)**

- *First Floor Terminal Building*



- *Second Level Terminal Building*



**Exhibit C-2**  
**(Identification of north, south & main terminal concessions as designated for**  
**Concessionaire)**

- *Second Floor Restaurant (Pre-Security)*

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Exhibit C-3

(exhibit showing trash removal and recycling areas of airport as designated for Concessionaire's use)

