

CITY CLERK'S OFFICE  
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Of So. Burlington Land Records  
Attest: Margaret A. Picard  
Margaret A. Picard, City Clerk

GROUND LEASE AND AGENCY AGREEMENT

THIS AGREEMENT, is made and entered into as of the 25<sup>th</sup> day of November, 1997 by and between the City of Burlington, a municipal corporation in the State of Vermont, acting by and through its Board of Airport Commissioners, (hereinafter called "Lessor") and Burlington Community Development Corporation, a Vermont corporation with its principal place of business at Burlington, Vermont (hereinafter called "Lessee").

WITNESSETH:

WHEREAS, Lessor is owner of a certain parcel of real estate located at the Burlington International Airport in South Burlington, Vermont, upon which is located the so-called "North Hangar". Said parcel consists of 3.55 acres more or less and is further described and depicted in Exhibit A, attached hereto, and hereafter referred to as the Premises; and

WHEREAS, the parties desire to provide for the leasing by Lessor to Lessee of the Premises; and

WHEREAS, Lessee has acquired the North Hangar from Innotech Aviation, Inc.;

WHEREAS, Lessee has entered into a financing arrangement with the Howard Bank (hereinafter called "Howard") to provide financing for the acquisition of rights referenced above and in connection with such financing, Lessee is granting Howard a first priority leasehold mortgage with respect to the Lessee's interest under this Agreement;

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

1. PREMISES - Lessor hereby leases to Lessee for its exclusive use, and Lessee hereby hires and takes from Lessor, the Premises at the Airport, together with improvements thereon (including but not limited to the North Hangar), all as described more fully on "SCHEDULE A" attached hereto, and specifically made a part hereof and incorporated herein (hereinafter called "the Leased Premises"), to have and to hold the Leased Premises with the appurtenances thereunto belonging upon the terms and conditions hereinafter provided.

2. TERM - The term of this Agreement shall commence on November 26, 1997, and shall end on November 26, 2017 unless sooner terminated as hereinafter provided.

3. RENTAL - For and during the term hereof, Lessee shall pay Lessor an annual rental of one dollar per year for the use and occupancy of the Leased Premises. The nominal rental amount agreed upon is in recognition of Lessee's facilitating this and related transactions which Lessor deems as benefiting the Lessor by improving operations at the Burlington International Airport, and enhancing public airport purposes, which Lessor considers as good and valuable consideration, and acknowledges receipt of same. Notwithstanding the foregoing, the parties remain free to renegotiate the rental and term at any time.

In addition to the foregoing, Lessee agrees to cooperate with Lessor in the collection of any appropriate fees associated with operating at the Airport, due and payable from any sublessee.

Any rental amount payable which shall not have been paid when due shall bear interest at the rate of one and a half percent (1 1/2%) per month, which interest shall be paid by Lessee in addition to such amount.

4. AGREEMENT SUBORDINATE - This Agreement shall be subject and subordinate to the following:

a. Lessor reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction, which, in the sole opinion of the Lessor, would limit the usefulness of the Airport or constitute a hazard to aircraft;

b. The provisions of any existing or future agreement between Lessor and the State of Vermont and/or United States 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 for airport development.

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

Provided, however, that if the City should exercise said rights, then during the period of exercise, there shall be an appropriate and proportionate reduction in the rental of any portion of the Leased Premises as to which Lessee is unable to conduct its business substantially in accordance with the rights conferred by this Agreement. The foregoing provision shall not be construed as affecting Lessee's right of cancellation

under Paragraph 15(d) below should the Lessee be unable to conduct its business as aforesaid for a period of at least ninety (90) days.

5. LESSEE RIGHTS - Lessee shall have the right during the term hereof, at its own expense, at any time and from time to time:

a. To subject the Premises to a sublease with HCA Aircraft Services, L.L.C., ~~per the terms and conditions of the sublease attached hereto as Exhibit B.~~

*M.H.H.  
for City of...*

b. To erect such other structures, facilities and fixed improvements as it may deem necessary or desirable in connection with the above described subleases provided, however, that plans and specifications for all such fixed improvements shall be approved by the Airport Manager and construction of all such fixed improvements shall be under the project management of the Airport Manager. "Fixed improvements" shall include all buildings and other structures erected upon the Leased Premises, all fencing, grading and surfacing with stone and/or hardtop, all underground and overhead wires, cables, pipes, conduits and drains.

c. To grant a leasehold mortgage of its interest under this agreement to Howard as security for financing to be provided for the construction of improvements on the leased premises.

6. LESSEE OBLIGATIONS - Lessee shall, by and through its sublessees, at its own expense:

a. Pay the rent and other charges herein reserved at such time and places as the same are payable, provided, however, that payment of said rent shall be subordinate to Lessee's obligations under certain loans of approximate even date herewith from the Howard Bank;

b. Pay all charges for water, heat, gas, electric power, sewage service, snow removal, trash and/or hazardous waste removal, and other public utilities of every kind consumed on the Leased Premises during the term of this Agreement;

c. Make no alterations, additions or improvements to the Leased Premises without Lessor's prior written consent, which consent shall not be unreasonably withheld or delayed;

d. Keep and maintain the Leased Premises in good condition, order and repair during the term of this Agreement including, but not limited to painting, lighting, snow and garbage removal, sweeping, landscaping, replacement of broken glass the same size and quality of that broken, installed and operating equipment, and surrender the same upon the expiration of the Lease term in the condition in which they are required to be kept, reasonable wear and tear and damage by casualty not caused by Lessee's negligence excepted;

e. Observe and comply with any and all requirements of the constituted public authorities and with all Federal, state or local statutes, ordinances, regulations and standards applicable to Lessee and sublessees or their use of the Leased Premises, including, but not limited to ordinances, rules and regulations promulgated from time to time or at the direction of Lessor for the administration of the Airport; and at its own expense to submit to and comply with the requirements of all Federal, state or local regulatory agencies or boards having jurisdictions over the construction of any fixed improvements on the Leased Premises including, but not limited to, any environmental board or board of health; and at its own expense to comply with the standards for accessible design known as the Americans with Disabilities Act Accessibility Guidelines

in connection with any new construction or alteration of the facilities. Lessee shall bear the burden of this obligation regardless of whether any such agency or board shall require that Lessor be the applicant of record. Notwithstanding the foregoing; (i) nothing required herein shall be construed as requiring Lessee to take any action to obtain any state or local approvals, permits or certificates of compliance with respect to the Leased Premises as the same exist as of the Effective Date, and Lessor represents that all such approvals, permits and certificates of compliance have been obtained, and (ii) nothing contained herein shall require the Lessee to take any remedial or other action regarding the Leased Premises for which Lessor has agreed to indemnify, defend, and hold Lessee harmless by operation of section 12c. below.

f. Pay any and all ad valorem real estate taxes and personal property inventory taxes which may be assessed against the Leased Premises during the term hereof or any renewal term. Lessee may, in the name of Lessor, appeal or otherwise contest the assessment of all such taxes against the Leased Premises it believes to be illegal, excessive or unjust.

7. LESSOR OBLIGATIONS - Lessor shall, by and through the Airport Manager:

a. Ensure reasonable ingress and egress to the premises by means of a serviceable industrial park access road.

b. Provide for snow removal from the public aircraft runways, taxiways, ramps and industrial park access roads. In making this covenant, Lessor fully anticipates that it will continue to own and operate the Airport and Airport Industrial Park for the duration of this Agreement and any extension thereof.

c. Lessor shall provide to Howard, (i) a "Statement of Support" pledging on an annual subject to appropriation basis and as a current expense but not a debt of the City of Burlington and Airport Commission, to repay Howard's loans to Lessee via an assignment and pledge of the cash flow generated from ongoing Airport Industrial Park operations, (ii) a negative pledge agreement under which Lessor shall agree not to grant any interest in rents or income from the Airport Industrial Park to any person or entity other than Howard, and (iii) an indemnification agreement relating to potential contamination of the leased premises.

#### 8. MANAGEMENT OF SUBLEASES

"Airport Manager" or "Director of Aviation" shall mean the individual appointed annually by the Board of Airport Commissioners acting under the control and direction of said Board and responsible as chief executive officer for the day-to-day operations of the Airport.

Lessor shall, by and through the Airport Manager (as agent of Lessee):

a. Fulfill all the obligations of Lessee in the sublease with HCA Aircraft Services, L.L.C. on behalf of Lessee;

b. Collect rents from any sublessee, and with those amounts make payments on Lessee's behalf on Promissory Notes from Lessee to Howard of approximate even date herewith. Any amounts remaining after said rents have been so applied, shall be forwarded to, and retained by, Lessee.

9. ENTRY OF PREMISES - Lessor, and its authorized officers, employees, agents, contractors, sub-contractors and other representatives, shall have the right to enter upon the Leased Premises for the following purposes:

a. To inspect the Leased Premises at reasonable intervals during regular business hours (or at any time in case of emergency) to determine whether Lessee and sublessees have complied and are complying with the terms and conditions of this Agreement and Lessee shall provide the Airport Manager with serviceable keys to all of its facilities so as to permit the exercise of Lessor's rights hereunder; or

b. To perform essential maintenance, repair, relocation or removal of existing underground or overhead wires, pipes, drains, cables and conduits now located on or across the Leased Premises, and to construct, maintain, repair, relocate and remove such facilities in the future if necessary to carry out the master plan of development of the Airport provided, however, that said work shall in no event disrupt or unduly interfere with the operations of Lessee or sublessees. Nothing herein shall be construed to impose upon Lessor any obligations so to construct or maintain or to make repairs, replacements, alterations or additions, or shall create any liability for any failure to do so. Lessee and/or any sublessees shall be in exclusive possession of the demised premises and Lessor shall not in any event be liable for any damage to the premises or to any property of Lessee or of any other persons located in or thereupon, other than to repair or remedy such damage as may be occasioned by negligence of Lessor, its employees or agents.

10. INSURANCE – Lessee, by operation of any sublease, shall require any sublessees to maintain general liability insurance insuring against all legal liability for injuries to persons (including wrongful death) and damages to property caused by Lessee's and sublessees' use and occupancy of the Leased Premises or otherwise caused by Lessee's and sublessees' activities or operations thereon with liability limits of not less than \$3,000,000 for any one person, and not less than \$5,000,000 for property damage

resulting from any one accident. Lessor shall maintain fire, casualty, business interruption, flood and other appropriate types of coverage with insurers acceptable to Howard in such amounts as are acceptable to Howard including hazard and extended coverage covering the Leased Premises and any fixed improvements. Also, by operation of any sublease, Lessor shall require any sublessee to maintain fire, casualty, worker's compensation, business interruption, flood and other appropriate types of coverage with insurers acceptable to Howard in such amounts as are acceptable to Howard, including hazard and extended coverage covering all leasehold improvements, chattels, furniture, fixtures, machinery and equipment located on the premises. Such policies shall name Howard as mortgagee, loss payee and additional insured, and the City of Burlington and Burlington Community Development Corporation as additional insureds. Such policies shall also contain a standard or "New York" loss payable clause and shall provide for at least 30 days prior written notification to Howard, Lessor and Lessee of any termination, cancellation or material modification of such policies. By operation of any sublease, Lessee shall require any sublessee to provide Lessee and the City of Burlington with certificates of all such insurance within ten (10) days after execution of any sublease, and thereafter with renewed certificates of all such insurance at no less than six (6) month intervals, while any sublease is in effect. In the event of any partial or total destruction of the leased premises, insurance proceeds shall be paid to Howard for disbursement to Lessee in accordance with Howard's usual construction disbursement terms in order to repair or reconstruct the "Leased Premises"; provided however that insurance proceeds shall be retained by Howard and applied to the Howard loan in the event that this lease is terminated because of such destruction.

11. INDEMNIFICATION - Lessee, shall indemnify and save harmless Howard, and by and through its sublessees, the Board of Airport Commissioners of the City of Burlington, its members, agents, officers and employees, their successors and assigns, and the City of Burlington, its officers, agents and employees, their successors and assigns, individually or collectively, from and against all liability for any fines, claims, suits, liens, demands, actions or cause of action of any kind and nature for personal injury, death or property damage or the failure to obtain governmental permits or the violation of any governmental permits in any way arising out of or resulting from any activity or operation of Lessee, or sublessee or the City of Burlington, on the Leased Premises, and Lessee, by and through sublessees further agrees to pay all expenses in defending against any such claims made against Lessor; provided, however, that Lessee and sublessees shall not be liable for any injury, damage or loss occasioned by the sole negligence or willful misconduct of the Lessor, its agents or employees. Lessee, by and through sublessees, shall give prompt and timely notice to Lessor of any claim made or suit instituted which, in any way, directly or indirectly contingently or otherwise, affects or may affect Lessor.

12. HAZARDOUS WASTES

a. Lessee, by and through sublessees, shall properly handle, remove and dispose of any and all lubricants and/or hazardous waste and shall maintain the Leased Premises in a clean and safe condition.

b. Lessee, by and through sublessees, unconditionally, absolutely and irrevocably indemnifies and agrees to defend and hold harmless Lessor from and against all loss, cost and expense (including, without limitation, attorney's fees) of whatever

nature suffered or incurred by Lessor on account of the existence on the Leased Premises, or the release or discharge from the Leased Premises, of "hazardous substances," including, without limitation, any claims, costs, losses, liabilities and expenses arising from the violation (or claimed violation) of any environmental laws or the institution of any action by any party against Lessor or the Leased Premises based upon nuisance, negligence or other tort theory alleging liability due to the improper generation, storage, disposal, removal, transportation or treatment of hazardous substances or the imposition of a lien on any part of the Leased Premises under the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. Section 9601, et seq., as amended ("CERCLA"), or any other laws pursuant to which a lien may be imposed due to the existence of hazardous substances. Lessee, by and through sublessees, further unconditionally, absolutely, and irrevocably guarantees the payment of any fees and expenses incurred by Lessor in enforcing or seeking enforcement of the liability of Lessee or sublessees under this indemnification.

For the purposes of this Section, "hazardous substances" shall mean and include, but shall not be limited to, any element, substance, compound or mixture, including disease-causing agents, which after release into the environment or work place and upon exposure, ingestion, inhalation or assimilation into any organism, either directly or indirectly, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions, including malfunctions in reproduction or physical deformations in such organisms or their offspring, and all hazardous and toxic substances, wastes or materials, any pollutants or contaminants (including, without limitation, asbestos and raw materials which include

hazardous constituents), or any other similar substances, or materials which are included under or regulated by any local, state or federal law, rule or regulation pertaining to environmental regulation, contamination, clean-up or disclosure, including, without limitation, CERCLA, and regulations adopted pursuant to such Acts, the Toxic Substances Control Act of 1976, as heretofore or currently in effect ("TSCA") and the Resource Conservation and Recovery Act of 1976, as heretofore or currently in effect (RCRA").

c. Notwithstanding the foregoing, Lessee's obligations under this paragraph 12 does not extend to conditions which existed prior to commencement of the lease terms of this agreement. With regard to environmental conditions which existed prior to commencement of the lease terms of this agreement, Lessor indemnifies and agrees to defend and hold harmless Lessee, to the same extent that Lessee is obligated by section b. above.

13. QUIET ENJOYMENT - Lessor represents and warrants to Lessee as follows:

a. It has lawful possession of the Premises and good and lawful authority to execute this instrument and to commit the City of Burlington to the transactions contemplated by this Agreement;

b. Throughout the term hereof, Lessee may have, hold and enjoy peaceful and uninterrupted possession of the Premises and rights herein leased and granted, subject to performance by Lessee of its obligations herein.

c. Lessor shall defend title to the leased premises for the benefit of Lessee, all permitted sublessees and assigns and Lessor shall take any and all other action and execute such other documents as may be necessary to ensure that Lessee and all

permitted sublessees and assigns have peaceful and uninterrupted possession of the Leased Premises for the term of this Agreement.

14. LESSOR CANCELLATION RIGHTS - Lessor shall have the right, upon thirty (30) days' advance written notice to Lessee (and to any bank or financial institution having a mortgage or security interest in the fixed improvements of whose such interest Lessee gives Lessor written notice), and subject to the terms of paragraph 21 herein, to cancel this Agreement in its entirety, upon or after the happening of one or more of the following events, if said event(s) shall then be continuing:

a. If Lessee shall fail for thirty (30) days after due date to pay the rental charges or other money payments required by this Agreement;

b. If Lessee shall default in fulfilling any of the other terms or conditions of this Agreement and shall fail to remedy said default within thirty (30) days following Lessee's receipt of written demand from Lessor to do so except that if the nature of such default is such that it cannot be remedied within said thirty (30) days, then Lessor shall have the right to cancel if Lessee shall have failed to commence remedying such default within said thirty (30) days or, having so commenced, shall fail thereafter to continue with diligence the curing thereof;

c. If Lessee or any sublessee shall voluntarily abandon and discontinue the conduct and operation of its service at the Airport for a continuous period of sixty (60) days.

d. If the fixed improvements upon the Leased Premises shall be totally destroyed or so extensively damaged that it would be impractical or uneconomical to restore the same to their previous condition.

15. LESSEE CANCELLATION RIGHTS - Lessee shall have the right, upon thirty (30) days' advance written notice to Lessor, and subject to the terms of paragraph 21 herein, to cancel this Agreement in its entirety upon or after the happening of one or more of the following events, if said event(s) shall then be continuing:

a. The issuance by any court of competent jurisdiction of an injunction, order or decree or any law, rule, regulation or other action or non-action of any governmental authority, board, agency or officer having jurisdiction thereof, preventing or restraining the use by Lessee of all or any substantial part of the Leased Premises or preventing or restraining the use of the Airport for usual Airport purposes in its entirety, or the use of any part thereof which may be used by Lessee and which is necessary for Lessee's operations on the Airport, which remains in force, unvacated or unstayed for a period of at least sixty (60) days;

b. Lessor's default in the performance of any of the terms or conditions imposed upon it by this Agreement and its failure to cure such default within a period of thirty (30) days following Lessor's receipt of written demand from Lessee to do so, except that, if the nature of such default is such that it cannot be cured within said thirty (30) days, then Lessee shall have the right to cancel if Lessor shall have failed to commence remedying such default within thirty (30) days or, having so commenced, shall fail thereafter to continue with diligence the curing thereof. Upon the occurrence of Lessor's default under this paragraph, Lessee may remain in possession without further payment of rent until the default is cured and at Lessee's election may cure Lessor's default and set off amounts paid to effect such cure against lease payments.

c. If the fixed improvements upon the Leased Premises shall be totally destroyed, or so extensively damaged that it would be impracticable or uneconomical to restore the same to their previous condition;

d. In the event of destruction of all or a material portion of the Airport or the Airport facilities, or in the event that any agency or instrumentality of the federal or any state or local government shall occupy the Airport or a substantial part thereof, or in the event of military mobilization or public emergency wherein there is a curtailment, either by executive decree or legislative action of normal civilian traffic at the Airport or of the use of airplanes by the general public, and any of said events shall result in material interference with Lessee's or any sublessees normal operations continuing for a period in excess of sixty (60) days.

16. LIENS - Lessee shall cause to be removed any and all mechanic's or materialman's liens of any nature arising out of or because of any construction performed by Lessee or any of its sublessees upon the Leased Premises or arising out of or because of the performance of any work or labor upon or the furnishing of any materials for use at the Leased Premises, by or at the direction of Lessee within reasonable time not to exceed six (6) months from the completion of any such construction.

17. FORCE MAJEURE - Neither Lessor nor Lessee shall be deemed in violation of this Agreement if it is prevented from performing any of its obligations hereunder by reason of acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, riots, rebellion, sabotage, or any other circumstances for which it is not responsible or which is not under its control, and the party experiencing force majeure gives written notice to the other party identifying the nature of such force

majeure, and when it began. The party experiencing force majeure shall take immediate action to attempt to remove such causes of force majeure as may occur from time to time and its operations under this Agreement shall be resumed immediately after such cause has been removed, provided that neither party shall be required to settle any labor dispute except upon terms that party deems acceptable. The suspension of any obligations under this section shall not cause the term of this Agreement to be extended and shall not affect any rights accrued under this Agreement prior to the occurrence of the force majeure. The party giving notice of the force majeure shall also give notice of its cessation.

18. RELOCATION BY LESSOR - In the event that proper, planned and orderly development of the Airport shall require that Lessor devote any part of the Leased Premises to a different use than that contemplated by this Agreement, Lessor shall have the right, upon sixty (60) days' advance written notice to Lessee and sublessees and assigns, subject to the terms of paragraph 21 herein, and without cost or expense to Lessee, or to sublessees and assigns, to relocate all or part of the Leased Premises. Said relocated premises shall be of no less area, as conveniently located as is reasonable considering all demands for space at the Airport and shall be replacement premises of the same or substantially similar quality as those premises vacated. All of Lessee's and sublessees' fixed improvements shall, without cost or expense to them, be relocated or replaced on said relocated premises. All terms and conditions of this Agreement, except the property description in Paragraph 1, shall apply to said relocated premises.

19. TITLE TO IMPROVEMENTS - Upon expiration of this Agreement, by cancellation or termination of the lease term, all fixed improvements made upon the

Leased Premises by Lessee shall become a part of the realty and remain on the Leased Premises as the property of Lessor.

20. ASSIGNMENT - Neither party shall assign this Lease and Lessee shall not sublet any part of the Leased Premises without the prior consent of the other party, which consent shall not be unreasonably withheld or delayed.

21. FINANCING ACQUISITION - For the purpose of financing the acquisition of the North Hangar from Innotech Aviation, Inc. Lessee shall have the right to execute and deliver to Howard or other source of financing a suitable first mortgage, assignment or other security agreement on said improvements and its interest under this Lease Agreement. Until Howard is fully paid and any mortgages or other encumbrances held by Howard is discharged, the following terms shall govern and control over any conflicting provisions of this Agreement:

- a. Such security instruments shall constitute valid and enforceable liens in favor of Howard or other source of financing, anything in this Agreement to the contrary notwithstanding.
- b. No notice by the Lessor to Lessee shall be effective unless and until a copy is given to Howard or other financing source.
- c. Lessor's right to cancel under Section 14 shall be subject to providing Howard written notice and an opportunity to cure that extends sixty (60) days beyond the applicable time limits provided in this document to Lessee.
- d. In order to accomplish cancellation of this Lease Agreement under Section 14 hereof, notice of such cancellation must be delivered to Howard or other source of financing, which or who shall thereupon have the right to become the owner of Lessee's leasehold estate on the same terms and priority as Lessee by paying back rent and curing such other defaults by Lessee as may then be existing.
- e. Nothing contained in this Paragraph shall be construed as requiring Howard or other source of financing to cure a default by Lessee hereunder; rather it shall become liable under this Lease Agreement only

when and if it elects, upon default by Lessee, either to become owner of the leasehold estate or to assume the obligations of Lessee hereunder. In such event, Howard or other source of financing shall become liable hereunder for the period it is the owner of the leasehold estate and it shall have all rights of Lessee under this Lease Agreement for said period the same as if it had been the original signatory hereof.

- f. If Howard or other source of financing becomes the owner of the leasehold estate, it shall, upon prior written consent of the Lessor as to the fact of transfer and the identity of the transferee have the right to transfer and assign its right and title in said leasehold estate to a third party subject to the assumption by its transferee of all obligations of Lessee hereunder. Such a transfer by Howard or other source of financing shall be in form satisfactory to the Lessor. Upon such a transfer Howard or other source of financing shall be relieved from all further responsibility and obligations of this Lease Agreement.
- g. Nothing herein contained shall be construed as limiting the right of Lessee to cure any of its defaults as elsewhere provided in this Lease Agreement and, similarly, nothing herein contained shall be construed as granting Howard or other source of financing greater rights in the Leased Premises than Lessee has under this Lease Agreement.
- h. No cancellation by Lessee under Section 15.c. shall be effective unless Lessor also receives a written consent to such cancellation from Howard.
- i. With the exception of the operation of Section 4 at page 3 herein, this Agreement shall not be subordinated to any mortgage or other encumbrance without the prior written consent of Howard and any action by Lessor purporting to subordinate this Lease shall not be effective unless Howard joins in such subordination.
- j. In the event that Howard succeeds to Lessee's rights under this Agreement and transfer such rights to a third party, the uses to which Lessee may make of the Leased Premises shall be expanded to include any lawful activity that is not inconsistent with the operation of the Airport.
- k. The payments to Lessor due under this Lease shall be fully subordinated to full and timely payment of amounts due to Howard. Upon any default under the Howard loan, all payments due under this Lease shall be subject to the prior payment of amounts due and payable by BCDC to Howard, including amounts due upon demand or at maturity.
- l. This Agreement shall not be subordinated to any agreement, mortgage or other encumbrance without the written consent of Howard and any action

by Lessor purporting to subordinate this lease, shall not be effective unless Howard joins in such subordination.

- m. No relocation under Section 18 shall be effective unless Lessor receives the written consent to such relocation from Howard.

22. NONDISCRIMINATION - Lessee shall undertake and/or cause any sublessee or assignee to undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall, on the grounds of race, creed, color, national origin or sex, be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Lessee assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this Agreement. Lessee shall require that its covered suborganizations provide assurances to Lessor that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

23. HOLDING OVER - In the event Lessee shall hold over and remain in possession of the Leased Premises after cancellation or termination of this Agreement without written renewal hereof, such holding over shall not be deemed to operate as a renewal or extension of this Agreement, but rather shall only create a tenancy from month-to-month which Lessor may terminate at any time upon thirty (30) days' advance written notice.

24. GENERAL PROVISIONS

- a. Any notice or other communication from either party to the other pursuant to this Agreement shall be deemed sufficiently given or communicated if sent

by certified mail, with proper postage and registration fees prepaid, addressed to the party for whom intended, at the following address:

For Lessor: Airport Manager  
Burlington International Airport  
1200 Airport Drive #1  
So. Burlington, VT 05403

For Lessee: President, BCDC  
City Hall  
Burlington, VT 05401

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

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

c. A waiver by Lessor of any default of Lessee, or by Lessee of any default by Lessor, in the performance of any of the covenants, terms or conditions of this Agreement shall not be deemed or considered to be a waiver of any other matter, and the various rights, powers, privileges, options and remedies of Lessor and Lessee herein contained shall be cumulative, and no one of them shall be deemed to be exclusive of any other, or exclusive of any rights, powers, privileges, options or remedies provided by law.

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

e. This Agreement shall not be varied in its terms by any oral agreement or representation, or otherwise than by an instrument in writing of subsequent date hereto

executed by both parties by their respective officers or other persons duly authorized; provided, however, that so long as Lessee is indebted to Howard, no amendment to this Agreement shall be valid unless consented to by Howard. Howard is the intended third party beneficiary of this Agreement for so long as Lessee is indebted to it.

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

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

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

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

BURLINGTON COMMUNITY  
DEVELOPMENT CORPORATION

ATTEST: [Signature] By: [Signature]

CITY OF BURLINGTON

ATTEST: [Signature] By: [Signature]  
Mayor

STATE OF VERMONT )  
CHITTENDEN COUNTY, SS )

At Burlington, Vermont this 25<sup>th</sup> day of November 1997,  
personally appeared [Signature] ~~Mayor Peter Clavelle~~ <sup>Brandon's reference</sup> duly authorized agent of Burlington  
Community Development Corporation, and he acknowledged this agreement by him  
sealed and subscribed to be his free act and deed and the free act and deed of the  
Burlington Community Development Corporation.

[Signature]  
Notary Public  
Commission Expires: 2/10/99

STATE OF VERMONT )  
CHITTENDEN COUNTY, SS )

At Burlington, Vermont this 25<sup>th</sup> day of November  
1997, personally appeared Mayor Peter Clavelle, duly authorized agent of the City of  
Burlington, and he acknowledged this agreement by him sealed and subscribed to be his  
free act and deed and the free act and deed of the City of Burlington and its Board of  
Airport Commissioners.

[Signature]  
Notary Public  
Commission Expires: 2/10/99

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Schedule A

*WJK*  
PORTION OF  
*the funds for City of Burlington*

A certain parcel together with a building commonly referred to as the "North Hangar" located in the City of South Burlington, Chittenden County, Vermont, and is located on Airport Drive, with the most southerly line being 523 feet northerly of the centerline intersection of Airport Road and Airport Drive, being a portion of the land conveyed to the City of Burlington, Vermont from the University of Vermont in Volume 13, Page 25. Bearings are based on magnetic north 1997 and a total station was used for measurements.

Beginning at a 3/4" iron pipe set flush North 53° 59' 56" West, 29.48 feet from an Agency of Transportation/NOAA disk #C95030;

then South 87° 29' 28" East, 515.66 feet to a 3/4" iron pipe set flush, approximately one foot westerly of the edge of the airport work road pavement;

then South 03° 06' 05" West, 305.23 feet to a 3/4" iron pipe set flush, approximately one foot westerly of the edge of the airport work road pavement;

then North 86° 38' 59" West, 483.48 feet to the right-of-way of Airport Drive;

then along said right-of-way North 07° 51' 58" West, 303.06 feet to a point;

then South 87° 29' 28" East, 25.50 feet to the point of beginning.

Meaning to describe a parcel on the easterly side of Airport Drive containing 3.55 acres as shown on a plat prepared by Little River Survey Company, "Land to be Leased, North Hangar Parcel, Burlington International Airport, Airport Drive, South Burlington, Chittenden County, Vermont", dated November 1997, Job #97526.

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*WJK*