Resolution Relating to

RESOLUTION _____

Sponsor(s): Councilors Shannon, Bushor, Aubin: Bd. of Finance

Introduced: 12/9/13

Referred to: _____

_____

Action: _____

Date: _____

Signed by Mayor: _____

AUTHORIZATION TO EXECUTE LEASE RENEWAL WITH FEDERAL EXPRESS CORPORATION FOR 73 CUSTOMS DRIVE AT BURLINGTON INTERNATIONAL AIRPORT

CITY OF BURLINGTON

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 City owns land and a building at the Airport known as 73 Customs Drive; and

WHEREAS, the Federal Express Corporation, now requests to renew a lease of 9,000 square feet in the building at the total rental rate of approximately $18,000, and 84,250 square feet of ramp area at the total rental rate of approximately $31,155.45 per year to be adjusted by the CPI annually as described in a proposed lease, a draft copy of which is attached hereto; and

WHEREAS, the lease will be effective January 1, 2014, have an initial term of four years and six months, and have a renewal term of an additional five years effective July 1, 2018 ("Lease"); and

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

WHEREAS, the Board of Airport Commissioners approved the principal terms of the Lease on March 18, 2013; and

WHEREAS, the Board of Finance approved the Lease on November 25, 2013, to be in substantial conformance with the draft document attached hereto.

Resolution Relating to

AUTHORIZATION TO EXECUTE LEASE RENEWAL WITH FEDERAL EXPRESS CORPORATION FOR 73 CUSTOMS DRIVE AT BURLINGTON INTERNATIONAL AIRPORT

NOW THEREFORE BE IT RESOLVED that the Mayor of the City of Burlington, Miro Weinberger, is hereby authorized to execute the Lease between Federal Express Corporation and the City of Burlington, and such other documents as will be required for the lawful culmination of the Lease, all subject to the prior approval of the Chief Administrative Officer and the City Attorney as necessary.

NAME/PURPOSE OF CONTRACTS:	Federal Express Lease Renewal
ADMINISTRATING DEPARTMENT:	Airport
CONTRACT AMOUNTS:	Per Agreement
CONTRACT TERM:	Four years six months effective January 1, 2014
RENEWAL TERM:	Five years
DESIGNATION OF FUNDS:	
FISCAL YEAR:	2014
ACCOUNT NAME:	Industrial Park
ACCOUNT NUMBER:	4465.4470

200020-70 ; Resolution – "Federal Express" Lease Renewal

DRAFT
FedEx Lease No.: 88-2161-002

LEASE AGREEMENT

This Lease Agreement is made this _____ day of _____ , 2013, and effective as of January 1, 2014, by and between the City of Burlington, a municipal corporation in the State of Vermont (hereinafter referred to as "Lessor" or "City"), and Federal Express Corporation, a Delaware corporation, having a principal place of business at 3680 Hacks Cross Road, Building H, 3rd Floor, Memphis, TN 38125, and authorized to do business in the State of Vermont (hereinafter "Lessee").

W I T N E S S E T H:

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

WHEREAS, Lessee desires to rent from Lessor property known as 73 Customs Drive, so called, together with certain ramp space at the Airport,

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

1. PREMISES

Lessor hereby leases to Lessee and Lessee hereby hires and takes from Lessor, building known as 73 Customs Drive, so called, on the Airport, and an area immediately surrounding, as shown on the plan or sketch attached hereto and marked Exhibit "A" (specifically made a part hereof and incorporated herein), said building parcel containing

approximately 9,000 square feet, together with the ramp area shown on Exhibit "A" and consisting of approximately 84,250 square feet (hereinafter called "Leased Premises").

2. TERM

The term of this Agreement shall be for a period of four (4) years and six (6) months, commencing on January 1, 2014 and terminating at midnight on June 30, 2018, unless sooner terminated as hereinafter provided.

3. RENEWAL

Provided Lessee is not in default or violation of any of the terms and/or conditions of this Agreement and subject to the express prior approval of the Burlington City Council, Lessee has the right to renew the Agreement with the same terms and conditions (unless otherwise agreed upon by the parties) for a period of five (5) years, commencing on July 1, 2018, unless sooner terminated as hereinafter provided (or as otherwise agreed upon by the parties), with the except in of the escalated amount set forth in Article 5.

4. USE OF PREMISES

Lessee may use the Leased Premises only for lawful purposes reasonably related to Lessee's or its affiliates' business operations, including, without limitation, the parking of trucks and vans.

5. RENTAL

For and during the Term hereof, Lessee agrees to pay Lessor the following annual Rental for the use and occupancy of the Leased Premises and as consideration for the privileges conferred upon Lessee by this Agreement, in equal monthly installments on or before the first day of each and every month, in advance, without billing, at the office of the

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

a. Building.

- Term (4 years, 6 months):
  - January 1, 2014 – June 30, 2014: $18,000
  - July 1, 2014 – June 30, 2015: $18,000
  - July 1, 2015 – June 30, 2016: $18,000
  - July 1, 2016 – June 30, 2017: $18,000
  - July 1, 2017 – June 30, 2018: $18,000

b. Ramp Area. Thirty Thousand Five Hundred Fifty Six Dollars and 33/100 ($31,155.45) per annum, adjusted by the application of any change in the value of the dollar from July of the preceding year to July of the current year according to the Consumer Price Index for all Urban Consumers, published by the Bureau of Labor Statistics of the United States Department of Labor. In no event shall the new rates be less than the immediately preceding rate. As a time lapse occurs in the issuing of the Consumer Price Index, all adjustments shall be retroactive to the beginning of each new lease year.

c. Building Renewal.

- Renewal Term (5 years):
  - July 1, 2018 – June 30, 2019: $20,340
  - July 1, 2019 – June 30, 2020: $20,340
  - July 1, 2020 – June 30, 2021: $20,340
  - July 1, 2021 – June 30, 2022: $20,340
  - July 1, 2021 – June 30, 2022: $20,340

d. In the event that the United States Department of Labor discontinues publication of the Consumer Price Index or data from which the index can be directly computed, or if

the method for the determination of such index is substantially different than that existing at the time this Agreement is executed, the basis for the rental rate adjustment shall be redefined by Lessor in the manner necessary to accomplish the same adjustment objectives as set forth herein.

6. AGREEMENT SUBORDINATE

This Agreement shall be subject and subordinate to the following:

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

b. This Agreement shall be subordinate to the provisions of any existing or any future agreement between Lessor and the State of Vermont and/or the United States of America relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of Federal or State Funds for the development of the Airport.

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

7. LESSOR OBLIGATIONS

Lessor covenants and agrees that it has lawful possession of the Leased Premises and had good and lawful authority to execute this Agreement.

8. LESSEE OBLIGATIONS

Lessee covenants and agrees:

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

b. To furnish, at Lessee's expense, to the Leased Premises telephone service, trash removal, snow removal and janitorial service, water, electric power, heat, gas, air conditioning and other public utilities of every kind;

c. That during the Term, Lessor shall correct all defects in, and maintain in good condition, (i) the structure of the building (exclusive of expansions that Lessee makes, as distinguished from expansions that Lessor makes at Lessee's request), including, without limitation, the roof (including roof membrane and deck), footings, foundations, exterior wall assemblies (including weather walls), floor slabs, subfloors, bearing walls, structural columns, and beams, (ii) the parking areas, drives, sidewalks and other exterior paving on the land, and (iii) the drains, electrical, mechanical, plumbing and drainage works leading up to, from and under the land. Moreover, Lessor shall also make all capital replacements of components of the systems serving the Leased Premises (exclusive of expansions that Lessee makes, as distinguished from expansions that Lessor makes at Lessee's request), including, without limitation, the cargo glycol collection and treatment system installed by Lessor, the electrical, plumbing and HVAC systems, that become

necessary in order for those systems to continue to operate at the level of performance contemplated by the original design specifications for those systems.

d. Except as noted above, to keep and maintain the Leased Premises and related and associated appurtenances, in good condition, order and repair during the term of this Agreement, including but not limited to painting, lighting, removal of snow and garbage, landscaping, replacement of broken glass with glass the same size and quality of that broken, installed and operating equipment, and utility services.

d. Lessee shall comply with all legal requirements applicable to its use of the Leased Premises during the Term, including, without limitation, Public Accommodation Laws insofar as they relate to (i) any improvements or alterations that Lessee or its contractors initiate and construct within the Leased Premises or that Lessor constructs after the effective date of this Agreement at Lessee's request or (ii) any change occurring during the Term in the business operations that Lessee conducts on the Leased Premises.

e. As additional rental hereunder, Lessee shall pay and discharge as they become due, promptly and before delinquency, all taxes, assessments, rates, charges, license fees, municipal liens, levies, excises, or imposts, whether general or special, or ordinary or extraordinary, of every name, nature and kind whatsoever, including all governmental charges of whatsoever name, nature, or kind, which may be levied, assessed, charged, or imposed, or which may become a lien or charge on or against the land hereby demised, or any part thereof, the leasehold of Lessee, herein, the premises described herein, any building or buildings, or any other improvements now or hereafter thereon, or on or against Lessee's estate hereby created which may be a subject of taxation, or on or against

Lessor by reason of its ownership of the fee underlying this Agreement, during the entire term hereof.

Specifically and without in any way limiting the generality of the foregoing, Lessee shall pay all special assessments and levies or charges made by any municipal or political subdivision for local improvements, and shall pay the same as they shall fall due and before they shall become delinquent. All of the taxes and charges under this section shall be prorated at the commencement and expiration of the term hereof. Lessee shall have the right to contest the amount or validity of any such tax or assessment by appropriate legal proceedings in its own name or in the name of Lessor. Lessor shall have the right to participate in legal proceedings in connection with the contest or assessment of any such taxes or assessment at the Lessor's election, if Lessor is alleged to be liable for the payment of such taxes or any part thereof. Lessee shall pay all costs and expenses arising therefrom except Lessor's expense for legal counsel.

f. Lessee shall keep and hold the Lessor herein and its officers, directors, agents, servants and employees harmless from any and all liabilities, losses, suits, claims, judgments, fines, penalties, demands or expenses, including all reasonable costs for investigation and defense thereof (including but not limited to attorneys' fees, court costs and expert fees), claimed by anyone by reason of injury or damage to persons (including death) or property sustained in or about the Airport, as a proximate result of the acts or omissions of the Lessee, its agents, servants, or employees, or arising out of the operations of the Lessee upon and about the Airport, excepting such liability as may result from the sole negligence of the Lessor, its officers, directors, servants, agents or employees; provided, however, that upon filing of any claim with the Lessor for damages

arising out of incidents for which Lessee herein agrees to hold Lessor harmless, then and in that event the Lessor shall notify Lessee of such claim and Lessee shall have the right to settle, compromise or defend the same. Lessee shall further use legal counsel reasonably acceptable to the Lessor in carrying out Lessee's obligations hereunder. Any final judgment rendered against the Lessor for any cause for which Lessee is liable hereunder shall be conclusive against Lessee as to liability and amount, where the time for appeal therefrom has expired. The indemnity provision set forth herein shall survive the expiration or early termination of this Agreement.

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

h. Lessee shall carry and maintain airline liability insurance with respect to all aircraft owned, leased or operated by Lessee for bodily injury or death and property damage liability in a combined single limit amount of not less than one hundred million dollars ($100,000,000) per occurrence and shall include aircraft liability, airport liability and cargo liability. Provided, however, if Lessee operates at the Airport only as a Regional/Commuter Air Carrier, Lessee shall maintain aircraft liability insurance in a combined single limit amount of not less than fifty million dollars ($50,000,000) per occurrence. A twenty-five million dollars ($25,000,000) per occurrence sub-limit for personal injury, bodily injury (including death) and property damage liability shall cover: premises-operation, medical payments, contractual liability, liability of independent contractors, personal injury, and fire legal liability.

Lessee shall furnish to Lessor satisfactory evidence that it carries workmen's compensation insurance in accordance with the laws of the State of Vermont.

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

i. To erect, construct, install, or make, or cause to be erected, constructed, installed, or made, all improvements on or to the Leased Premises, which are deemed fit or proper for the conduct of its business. All additions or improvements shall be subject to the prior written consent of Lessor, said consent not to be unreasonably withheld. All improvements or alterations erected or made to the Leased Premises shall on expiration or sooner termination of this Agreement belong to Lessor without compensation to Lessee.

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

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

l. Environmental Regulations - General. Lessee acknowledges that its uses of the Leased Premises and the operations, maintenance and activities conducted thereon are

subject to federal, state and local environmental laws, rules and regulations, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 et seq. (1980), as amended ("CERCLA"), the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq. (1976), as amended ("RCRA"), the Clean Water Act, 33 U.S.C. §1251 et seq. (1972), as amended, the Clean Air Act, 42 U.S.C. §7401 et seq. (1970), as amended, and the regulations promulgated on the authority of any of the foregoing (those laws, rules and regulations, as they may now be in effect and as they may be enacted or modified during the term of this Agreement, being collectively referred to as "Environmental Regulations"). As a material covenant of this Agreement, Lessee shall comply at its sole expense with Environmental Regulations applicable to Lessee's construction, operations, maintenance, use and activities on the Premises.

m. Indemnification. LESSEE HEREBY RELEASES, DISCHARGES AND HOLDS LESSOR HARMLESS FROM, AND SHALL INDEMNIFY LESSOR AGAINST, CLAIMS, LIABILITIES, SUITS, DAMAGES, EXPENSES AND FINES ARISING OUT OF OR RESULTING FROM ANY RELEASE (AS DEFINED BELOW) OF HAZARDOUS MATERIAL (AS DEFINED BELOW) TO THE EXTENT CAUSED BY LESSEE OR ANY OF ITS AFFILIATES, CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, OFFICERS, AGENTS AND OTHER INVITEES (Lessee and each of its Affiliates, contractors, subcontractors, employees, officers, agents and other invitees being collectively called an "Lessee-Related Party" and collectively called the "Lessee-Related Parties"). Notwithstanding any provision in this Section or any other provision of this Agreement, Lessee shall not be liable for and Lessor shall have the sole

responsibility, and shall bear all costs and liability for any contamination or pollution by or from Hazardous Material that occurs because of, but only to the extent of, (i) any Release that occurs prior to the Effective Date as a result of the activities of any party other than an Lessee-Related Party; (ii) any Release that occurs as a result of the activities of Lessor or any of its contractors, subcontractors, employees, officers, agents and other invitees (Lessor and each of its contractors, subcontractors, employees, officers, agents and other invitees being collectively called an "Lessor-Related Party" and collectively called the "Lessor-Related Parties"), or (iii) any Release that occurs after the expiration of the term of this Agreement or any earlier termination of this Agreement as a result of the activities of any party other than an Lessee-Related Party..

n. Cooperation with Governmental Agency Requirements. During the term of this Agreement, Lessee shall make at its sole expense all submissions, and provide all information, to the Vermont Department of Environment and Conservation ("VTDEC") or any successor to that agency, the U.S. Environmental Protection Agency ("USEPA"), and any other local, state or federal authority or agency (each of which is called a "Governmental Agency") that requires submission of information regarding any reportable Release of Hazardous Material that occurs as a result of the activities of an Lessee-Related Party.

If a Governmental Agency determines that a response or plan of action must be undertaken because of any Release of Hazardous Material that occurs as a result of the activities of an Lessee-Related Party, without regard to whether such Release is sudden or gradual, accidental or intentional, Lessee shall prepare and submit at its sole expense the required plans and shall undertake, implement and diligently perform at its sole expense

the required action, response or plan to completion in accordance with the applicable Environmental Regulations. Lessee does not undertake any obligation to remediate, or any liability for the cost of remediating, any part of the Airport to a level of contamination lower than that which existed on the date on which Lessee initially began its occupancy of any part of the Airport on an exclusive use basis or to a level of contamination lower than that which the Governmental Agencies having jurisdiction over the environmental condition require in order to discontinue enforcement actions. The foregoing only obligates Lessee to take actions that are consistent with the planned use of the contaminated portion of the Airport, as reflected in the Lessor's Airport Master Plan; that is to say, the foregoing only obligates Lessee to remediate to industrial/industrial commercial standards rather than to more stringent standards that would be applicable if the planned use of the contaminated portion of the Airport was more environmentally sensitive, such as residential use. Moreover, if the Governmental Agencies having jurisdiction over the required remediation will reduce the scope of the removal, containment and remedial actions that Lessee must take in order for those Governmental Agencies to discontinue enforcement actions so long as deed restrictions that will not impair the operation of the Airport as a commercial airport are recorded, the Lessor shall permit the recordation of those deed restrictions and, to the extent required by the Governmental Agencies conducting the enforcement actions, shall join in the execution of the deed restrictions.

o. Stormwater Discharge Regulations. Lessee acknowledges that the Airport is subject to the Vermont National Pollutant Discharge Elimination System program (" Vermont NPDES"), which is a state-delegated program version of EPA's National

Pollutant Discharge Elimination System program, and the regulations that are associated with that program and that relate to stormwater discharges at the Airport. Lessee further acknowledges that it is familiar with the Vermont NPDES stormwater regulations, that it will conduct operations at the Airport in compliance with those regulations and any applicable Vermont NPDES stormwater discharge permit, as either may be amended from time to time.

Lessor and Lessee both acknowledge that close cooperation is necessary to ensure compliance with any applicable Vermont NPDES stormwater discharge permit, as well as to ensure safety and to minimize costs. Lessee acknowledges that in order to minimize the exposure of stormwater to materials that Lessee generates, stores, handles or otherwise uses, it may be necessary to implement and use "Best Management Practices," as defined in 40 CFR, Part 122.2 and as required by virtue of any applicable Vermont NPDES stormwater discharge permit, as such regulation or permit may be amended from time to time.

Lessor shall promptly notify Lessee of any changes to any portions of any Vermont NPDES stormwater discharge permit that applies to, or that affects, Lessee's operations at the Airport. Lessor currently operates the Airport under an individual Vermont NPDES stormwater discharge permit. Without intending to limit the generality of the foregoing, Lessor shall give Lessee advance written notice of Lessor's intent to begin discussions with the VTDEC or, if applicable, its successor agency regarding the renewal or issuance to Lessor of an Individual Vermont NPDES stormwater discharge permit and shall take such steps as may be reasonably necessary to ensure that Lessee has a meaningful opportunity to participate in the discussions. For example, before accepting

the issuance or renewal of an Individual Vermont NPDES stormwater discharge permit, Lessor must afford Lessee a reasonable opportunity to review and comment upon any permit requirements that will be applicable to Lessee and its operations at the Airport. Lessor shall meaningfully consider any such comments that Lessee offers and shall adopt such of those comments that can be reasonably characterized as being in the best interests of the Airport's operation.

Lessor shall from time to time provide Lessee with written notice of the requirements of the applicable Vermont NPDES stormwater discharge permit that Lessee must perform at the Airport, including, without limitation, requirements for: certification of non-stormwater discharges; preparation of stormwater pollution prevention plans or similar plans; implementation of "good housekeeping" measures or Best Management Practices; and maintenance of necessary records. Those notices must include applicable deadlines. Within thirty (30) days after Lessee's receipt of any such notice, Lessee shall notify Lessor in writing if Lessee objects to any of the requirements set forth in the Lessor's notice. Lessee's failure to provide timely notice of its objections to the requirements set forth in Lessor's notice will constitute Lessee's assent to such requirements. If Lessee provides Lessor with written notice of its objections, as required above, Lessor and Lessee will pursue a prompt resolution of their differences. If, as a result of the parties' efforts to resolve differences in accordance with the foregoing, the parties agree to pursue VTDEC's approval of revisions to the Vermont NPDES stormwater discharge permit, Lessee shall bear all costs incurred in connection with such effort, including, without limitation, Lessor's reasonable attorneys' and environmental consultants' fees and expenses . Lessee may not object to Lessor notices regarding

Vermont NPDES stormwater discharge permit requirements on the authority of the foregoing unless Lessee has a good faith basis to do so.

p. No Release of Obligations. Lessee's obligations under this Section will survive any assignment of Lessee's interests under this Agreement or any subletting of the Premises as long as Lessor does not specifically release Lessee from those obligations in connection with Lessor's consent to the assignment or sublease. Furthermore, Lessee's obligations arising under this Section will survive the expiration of the term of this Agreement or any earlier termination of this Agreement insofar as they relate to conditions that came into being, or events that occurred, prior to that expiration or termination.

q. Defined Terms.

"Hazardous Material" means (a) any "hazardous waste", as it is defined in 42 U.S.C. Section 6901 et seq., (b) any "hazardous substance", as it is defined in CERCLA, (c) asbestos, polychlorinated biphenyls and petroleum hydrocarbons, and (d) any substance, waste or material classified or regulated as "hazardous", "toxic", "contaminant" or "pollutant" or words of like import pursuant to applicable Environmental Regulations.

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing or migration into the environment.

"Environmental Claim" means any investigation, notice of violation, demand, allegation, action, suit, injunction, judgment, order, consent decree, penalty, fine, lien, proceeding or claim (whether administrative, judicial or private in nature) arising in

connection with (a) an actual or alleged violation of any Environmental Regulations applicable to the Airport, (b) any Release of Hazardous Material at or from the Airport, (c) any actual or threatened abatement, removal or other remedial, corrective or response action taken at, or in respect of, the Airport in connection with a Release of Hazardous Material, or (d) any damage, injury, threat or harm to human health or safety, natural resources or the environment occurring or allegedly occurring as a result of any Release of Hazardous Materials at the Airport.

9. MUTUAL COVENANTS

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

a. If the Leased Premises or any part thereof are rendered untenable by public authority, or by fire or the elements, or other casualty, except such as shall have resulted from the negligence or willful conduct of Lessee, Lessee may, at its option, terminate this Agreement by written notice to Lessor.

b. Lessee acknowledges that other entities engaged in the same or similar operations will be leasing space adjacent to the building, which contains the Leased Premises. Lessor reserves the right to enact a series of protective covenants, applicable to Lessee and all other such entities to insure the efficient, orderly and coordinated exercise of such operations. Lessor shall consult with Lessee before enacting such protective covenants and shall attempt reasonably to accommodate Lessee's interests, but Lessee shall be obligated to adhere to such protective covenants when they are enacted and in effect.

10. ENTRY ON PREMISES

With prior written notice, 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 has complied and is complying with the terms and conditions of this Agreement and Lessee shall provide the Director of Aviation with serviceable keys to all of its facilities so as to permit the exercise of 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 unduly disrupt or interfere with the operations of Lessee. Nothing herein shall be construed to impose upon Lessor any obligations so to construct or maintain or to make repairs, replacements, alterations or additions, or shall create any liability for any failure to do so. Lessee is and shall be in exclusive possession of the Leased Premises and Lessor shall not in any event be liable for any damage to the Leased 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.

11. LESSOR CANCELLATION RIGHTS

Lessor shall have the right, upon thirty (30) days advance written notice to the other, to cancel this Agreement in its entirety with Lessee hereby agreeing to quit/vacate

the Leased Premises entirely and forthwith, upon or after the happening of one or more of the following events, if said event(s) shall then be continuing:

a. If within ten (10) days of written notice of failure to pay, Lessee shall pay the rental charges or other money payments (including but not limited to payments for taxes) required by this Lease Agreement;

b. If Lessee shall default in fulfilling any of the other terms or conditions of this Lease Agreement and shall fail to remedy said default within forty-five (45) 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 forty-five (45) days, then Lessor shall have the right to cancel if Lessee shall have failed to commence remedying such default within said forty-five (45) 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 thirty (30) days;

d. If any fixed improvement on the Leased Premises shall be totally destroyed, or so extensively damaged that it would be impracticable or uneconomical to restore the same to its previous condition;

e. If Lessee for any reason claims or is alleged to be bankrupt (voluntary or involuntary), or otherwise insolvent.

12. LESSEE CANCELLATION RIGHTS

Lessee shall have the right upon thirty (30) days advance written notice to Lessor, to cancel this Lease 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 any injunction, order or decree 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 the usual Airport purposes in its entirety, or the use of any part thereof which may be used by Lessee and which is necessary for the 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 Lease Agreement and its failure to cure such default within a period of sixty (60) 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 sixty (60) days, then Lessee shall have the right to cancel if Lessor shall have failed to commence remedying such default within sixty (60) days or, having so commenced, shall fail thereafter to continue with diligence the curing thereof;

c. If any fixed improvement on the Leased Premises shall be totally destroyed, or so extensively damaged that it would be impracticable or uneconomical to restore the same to its previous condition;

d. In the event of destruction of all or a material portions 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 substantial part thereof, or in the

event of military mobilization or public emergency wherein there is a curtailment, either by executive decree or legislative action of normal civilian traffic at the Airport or the use of airplanes by general public, and any said events shall result in material interference with Lessee's normal operations continuing for a period in excess of sixty (60) days.

13. LIENS

Lessee shall cause to be removed any and all mechanic's or material man's liens of any nature arising out of or because of any construction performed by Lessee or any of its contractors or sub-contractors upon the 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 a reasonable time not to exceed three (3) months from the completion of any such construction. Provided, that if Lessee is in the process of contesting, in good faith, the assertion of any such lien, it shall have a period of six (6) months to remove such lien.

14. FORCE MAJEURE

Neither Lessee nor Lessor shall be deemed in violation of this Agreement if it is prevented from performing any obligations hereunder by reason of strikes, boycotts, labor disputes, acts of God, acts of the public enemy, acts of superior governmental authority, severe weather conditions, riots, rebellion, sabotage, or any other circumstances for which it is not responsible or which is not under its control, and the party experiencing force majeure gives written notice to the other party identifying the nature of such force majeure, and when it began. The party experiencing force majeure shall take immediate action to attempt to remove such causes of force majeure as may occur from time to time and its operations under this Agreement shall be resumed

immediately after such cause has been removed, provided that neither party shall be required to settle any labor dispute except upon terms that party deems acceptable. The suspension of any obligations under this section shall not cause the term of this Agreement to be extended and shall not affect any rights accrued under this Agreement prior to the occurrence of the force majeure. The party giving notice of the force majeure shall also give notice of its cessation.

15. RELOCATION BY LESSOR

In the event that proper, planned and orderly development of the Airport shall require that Lessor devote any part of the Lease Premises to a different use than that contemplated by the Lease Agreement, Lessor shall have the right, upon three hundred and sixty five (365) days advance written notice to Lessee to relocate all or part of the Leased Premises. Said relocated premises shall be of comparable 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 fixed improvements and trade fixtures shall, without cost or expense to Lessee, will also be relocated or replaced on said relocated premises. All the terms of this Agreement, shall apply to said relocated premises.

16. ASSIGNMENT

The activities, uses, privileges, and obligations authorized herein are personal and Lessee shall not assign, transfer in any fashion (including by stock sale), sub-contract, sublet, or underlet the same or any portion thereof, without the prior express consent of Lessor in writing and any purported assignment or subcontract in violation hereof shall be void.

17. EXCLUSIVITY - NON-DISCRIMINATION

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

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

2. Charge fair, reasonable, and non-discriminatory prices for any such unit or service; provided that Lessee may be allowed to make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

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

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

Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

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

d. Lessee assures that it will undertake an affirmative action program as required by 14 C.F.R., Part 152 Subpart E, to insure that no persons shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 C.F.R., Part 152, Subpart 19 E. Lessee assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by the subpart. Lessee assures that it will require that its covered suborganizations provide assurances to Lessor that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 C.F.R., Part 152, Subpart E, to the same effect.

18. GENERAL PROVISIONS

a. All notices, approvals, requests, consents and other communications given, required or permitted in accordance with the terms of this Agreement must be in writing and must be hand-delivered or sent by FedEx Express overnight service or United States certified or registered mail, return receipt requested. The parties will consider notices given or delivered when received or when the recipient refuses proper delivery. The parties will address notices as follows:

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

For LESSEE: Manager, Airport Relations and Development
Federal Express Corporation (#88-2161)
3680 Hacks Cross Road
Building H, 3rd Floor
Memphis, Tennessee 38125

With a copy to: Federal Express Corporation
Legal Department
3620 Hacks Cross Road
Building B, 3rd Floor
Attn: Managing Director, Business Transactions Group (#88-2161)
Memphis, Tennessee 38125

A party may change the address to which it wishes notices to be sent by delivering notice of the change of address to the other party in accordance with the terms of this paragraph..

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

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

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

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

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

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

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

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

i. The language in all parts of this Agreement shall in all cases be construed simply according to its fair meaning and not strictly construed against 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.

19. HOLDING OVER

Lessee shall yield and deliver peaceably to Lessor possession of the Leased Premises on the date of expiration or sooner termination of this Agreement. It is agreed and understood that any holding over by Lessee after the termination of this Agreement shall not renew and extend the Agreement but shall operate and be construed as a tenancy from month to month for which Lessee agrees to pay to Lessor 150% of the Rental. Lessee shall be liable to Lessor for all loss or damage on account of any such holding over against Lessor's will after the termination of this Agreement, whether such loss or damage may be contemplated at this time or not. It is expressly agreed that acceptance of the foregoing payment by the Lessor in the event that Lessee fails or refuses to surrender possession shall not operate to give Lessee any right to remain in possession nor shall it constitute a waiver by the Lessor of its right to possession.

20. SECURITY

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 form unauthorized access to the Security Identification Display Area as define 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 an 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 f 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 breeched 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.

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

CITY OF BURLINGTON

_____ BY:_____
Witness Mayor

_____
Witness

FEDERAL EXPRESS CORPORATION

_____ BY:_____
Witness

_____ Name:
Witness

Title:_____

Date:_____

STATE OF VERMONT
COUNTY OF CHITTENDEN, SS.

Dated at Burlington, Vermont, this day of _____, 2013, personally appeared Miro Weinberger, Mayor, City of Burlington, and acknowledged the foregoing instrument by him signed and sealed to be his free act and deed and the free act and deed of the City of Burlington.

Before me, _____
Notary Public
My Commission Expires:_____

STATE OF TENNESSEE
COUNTY OF SHELBY

Dated at Memphis, Tennessee, this day of _____, 2013, personally appeared _____, and acknowledged the foregoing instrument by him/her signed and sealed to be his/her free act and deed and the free act and deed of Federal Express Corporation.

Before me, _____
Notary Public
My Commission Expires:_____