

SCHEDULE 17



RICHMOND • AIRPORT • VANCOUVER

YVR NON-COMPETITION AGREEMENT

For the Richmond • Airport • Vancouver Rapid Transit Project

RAV PROJECT MANAGEMENT LTD.

INTRANSIT BC LIMITED PARTNERSHIP

VANCOUVER INTERNATIONAL AIRPORT AUTHORITY

Dated March 29, 2005

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YVR NON-COMPETITION AGREEMENT

THIS AGREEMENT dated the 29th day of March, 2005.

BETWEEN:

RAV PROJECT MANAGEMENT LTD.

(**"RAVCO"**),

AND:

INTRANSIT BC LIMITED PARTNERSHIP, by its general partner INTRANSIT
BRITISH COLUMBIA GP LTD.

(the **"Concessionaire"**),

AND:

VANCOUVER INTERNATIONAL AIRPORT AUTHORITY

(**"YVR"**)

WHEREAS:

A. RAVCO and the Concessionaire entered into an agreement (the **"Concession Agreement"**) dated March 29, 2005 for the design, construction, financing and operation of a rapid transit system (the **"System"**) connecting the City of Vancouver with the City of Richmond and the Vancouver International Airport (the **"Airport"**);

B. The Airport Connector (as defined in this Agreement) will operate across lands controlled by YVR;

C. Pursuant to the Concession Agreement, the Concessionaire will construct and operate the Park & Ride Facility (as defined in this Agreement) for use by System passengers; and

D. RAVCO and the Concessionaire have agreed to enter into this Agreement with YVR to restrict certain business activities at the Park & Ride Facility and the Airport Connector.

THIS AGREEMENT WITNESSES that in consideration of \$10 now paid by YVR to each of RAVCO and the Concessionaire (the receipt and sufficiency of which are hereby acknowledged), the parties agree as follows:

1. INTERPRETATION

1.1 Defined Terms

In this Agreement:

- (a) **"Affiliate"** has the meaning given to the word "affiliate" in the *Business Corporations Act* (British Columbia);
- (b) **"Airport Connector"** means that segment of the System connecting Bridgeport Station with the Airport;
- (c) **"Concession Agreement"** has the meaning given to it in Recital A;
- (d) **"Lease"** means the lease to be entered into whereby YVR will lease the Airport Connector to the Greater Vancouver Transportation Authority;
- (e) **"Park & Ride Facility"** means the parking facility to be located at the Bridgeport Station on the System;
- (f) **"System"** has the meaning given to it in Recital A;
- (g) **"Term"** has the meaning given to it in Section 2.1; and
- (h) **"YVR"** has the meaning given to it in Recital A.

1.2 Construction and Interpretation

The division of this Agreement into Sections, the insertion of headings and the provision of a table of contents are for convenience only, do not form a part of this Agreement and will not be used to affect the construction or interpretation of this Agreement. The word "including" will not be construed as limiting the general term or statement immediately preceding. Unless otherwise specified:

- (a) each reference in this Agreement to **"Section"** and **"Schedule"** is to a Section of, and a Schedule to, this Agreement;
- (b) each reference to a statute is deemed to be a reference to that statute and any successor statute, and to the regulations made under that statute and any successor statute, as amended or re-enacted from time to time;
- (c) words importing the singular include the plural and vice versa and words importing gender include all genders;
- (d) references to time of day or date mean the local time or date in Vancouver, British Columbia.

1.3 Governing Law

This Agreement and each of the documents contemplated by or delivered under or in connection with this Agreement are governed exclusively by, and are to be enforced, construed and interpreted exclusively in accordance with, the laws of British Columbia and the laws of Canada applicable in British Columbia which will be deemed to be the proper law of the Agreement.

1.4 Severability

Each provision of this Agreement is severable. If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, the illegality, invalidity or unenforceability of that provision will not affect:

- (a) the legality, validity or enforceability of the remaining provisions of this Agreement, or
- (b) the legality, validity or enforceability of that provision in any other jurisdiction

except that if:

- (c) on the reasonable construction of this Agreement as a whole, the applicability of the other provision presumes the validity and enforceability of the particular provision, the other provision will be deemed also to be invalid or unenforceable, and
- (d) as a result of the determination by a court of competent jurisdiction that any part of this Agreement is unenforceable or invalid and, as a result of this Section 1.4, the basic intentions of the parties in this Agreement are entirely frustrated, the parties will use all reasonable efforts to amend, supplement or otherwise vary this Agreement to confirm their mutual intention in entering into this Agreement.

2. COVENANTS

2.1 Non-Competition

During the term of the Concession Agreement (including any extensions) (the "**Term**"), the Concessionaire will not:

- (a) advertise or promote, or permit the advertisement or promotion anywhere on the System of, the Park & Ride Facility as a parking facility for users of the System travelling on the Airport Connector;
- (b) permit or authorize overnight parking at the Park & Ride Facility at parking rates less than the minimum amount charged by YVR for overnight parking at the Airport to the extent Concessionaire or anyone for whom the Concessionaire is, in law, responsible, operates or manages the Park & Ride Facility; [note to Doug: I have essentially flipped the sentence around];
- (c) permit any advertising of park & fly or similar services, other than park & fly services operated by YVR, anywhere on the System; or
- (d) without the express prior approval of YVR, operate, or permit the operation of commercial businesses at or, to the extent it is in the Concessionaire's direct or indirect control, near any portion of the Airport Connector targeting air travellers using the Airport, including, without limitation, duty free sales or car rentals.

2.2 Use of Park & Ride Facility

During the Term, the Park & Ride Facility is intended to be used for the convenience of daily commuters travelling from Richmond to Vancouver, and the Concessionaire will, to the extent it or anyone for whom it is, in law, responsible, operates or manages the Park & Ride Facility, take all such reasonable steps as may be requested, from time to time, by YVR to discourage the use by any member or members of the public of the Park & Ride Facility as a parking facility for users of the Airport, provided that nothing in this Agreement will obligate the Concessionaire to do anything that is contrary to applicable Laws.

2.3 General Use Restrictions

Without in any way limiting the other provisions of this Section 2, the Concessionaire will not, at any time during the Term, and will ensure that any Affiliate of the Concessionaire and any party holding any direct or indirect ownership in any shares of the Concessionaire will not, at any time during the Term, without the express prior approval of YVR, use or allow to be used any portion of the Airport Connector directly or indirectly for the purposes of any business or undertaking which is the same as, similar to, or in competition with any business or undertaking carried on at any time in or on the whole or any part of the Airport.

3. REMEDIES

3.1 Acknowledgement of Necessity for Restrictions

RAVCO and the Concessionaire acknowledge and agree that all restrictions in this Agreement are reasonable, fair and valid in all the circumstances and, to the fullest extent permitted by law, hereby waive all defences to the strict enforcement hereof by YVR.

3.2 Injunctive Relief

RAVCO and the Concessionaire recognize that a breach of the covenants in this Agreement would result in irreparable injury and damage to YVR and that YVR could not be adequately compensated for such injury and damage by monetary damages and that YVR will be entitled to injunctive or other equitable relief to prevent an anticipatory or continuing breach of this Agreement, or any part of this Agreement, and to secure its enforcement without the burden of proving actual damage to YVR by reason of any such breach and without having to post security in respect of an application for such relief. Nothing herein will be construed as a waiver by YVR of any right it may now have or hereafter acquire to monetary damages by reason of any injury to its property, business or reputation or otherwise arising out of any wrongful act or omission of RAVCO or the Concessionaire hereunder.

4. GENERAL

4.1 Amendment

No amendment, waiver, termination or variation of the terms, conditions, warranties, covenants, agreements and undertakings set out in this Agreement will be of any force or effect unless the

same is reduced to writing duly executed by all parties hereto in the same manner and with the same formality as this Agreement is executed.

4.2 Waiver

No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision (whether or not similar) and no waiver will constitute a continuing waiver unless otherwise expressly provided.

4.3 Assignment

Neither RAVCO nor the Concessionaire may assign this Agreement without the prior written consent of YVR.

4.4 New Concessionaire

If at any time the System or the Park & Ride Facility are operated by any person other than the Concessionaire, RAVCO will, if and to the extent it has the authority to do so, cause such party to be bound by the terms of this Agreement prior to granting such party the right to operate the System or the Park & Ride Facility.

IN WITNESS WHEREOF this Agreement has been executed by each of the parties hereto as of the day and year first above written.

RAV PROJECT MANAGEMENT LTD.

Per: _____
Authorized Signatory

INTRANSIT BC LIMITED PARTNERSHIP, by its general partner
INTRANSIT BRITISH COLUMBIA GP LTD.

Per: _____
Authorized Signatory

VANCOUVER INTERNATIONAL AIRPORT AUTHORITY

Per: _____
Authorized Signatory