

Order 129-15/16

Amend to approve the assignment of the lease: 7-0 (Thibodeau, Hinck recused) on 12/21/2015

Passage as amended: 7-0 (Thibodeau, Hinck recused) on 12/21/2015

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
EDWARD J. SUSLOVIC (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER APPROVING THE AMENDED AND RESTATED GROUND LEASE TO
NORTHEAST AIR FOR A FIXED BASE OPERATION
AT PORTLAND INTERNATIONAL JETPORT**

ORDERED, that the assignment of the lease dated July 1, 1996 between LCL Associates and the City of Portland to Northeast Air is hereby approved; and

BE IT FURTHER ORDERED, that the 20-year renewal of the LCL Associates Ground Lease Agreement and the 20-year renewal of the Northeast Air Ground Lease Agreement are hereby approved and such leases are hereby combined under the name of Northeast Air for a Fixed Base Operation on expanded premises, including a \$2.5 million investment by Northeast Air at Portland International Jetport, with an option to renew for an additional 20 years, in substantially the form attached hereto; and

BE IT FURTHER ORDERED, that the City Council hereby authorizes the City Manager or his or her designee to execute said document and any other related documents necessary or convenient to carry out the intent of said document.

**AMENDED, CONSOLIDATED AND RESTATED
GROUND LEASE AGREEMENT**

THIS AMENDED AND RESTATED LEASE AGREEMENT made and entered into this ____ day of _____ 2015, by and between the **CITY OF PORTLAND**, a municipal corporation, existing under and by virtue of the laws of the State of Maine, hereinafter called "**CITY**", and **NORTHEAST AIR**, a Maine corporation with a principal office located at 1001 Westbrook Street, Portland, Maine, hereinafter called "**TENANT**" (**CITY** and/or **TENANT** also referred to herein singly or collectively as, "Party" or "Parties").

W- I- T- N- E- S- S- E- T-H:

WHEREAS, **CITY** and **TENANT** are parties to a certain Ground Lease, Parking and Aircraft Tiedown Agreement dated November 14, 1997 ("Lease 1") for certain space consisting of approximately 82,100 square feet at the Portland International Jetport (the "Airport"); and

WHEREAS, by virtue of a certain December ____, 2015 Assignment of Lease, **CITY** and **TENANT**, are parties to a certain Ground Lease Agreement dated July 1, 1996 ("Lease 2") for certain space consisting of approximately 45,160 square feet at the Airport; and

WHEREAS, the initial terms of Lease 1 and Lease 2 expire on June 30, 2016, and **TENANT** desires to exercise its option to renew both leases for twenty years, which **TENANT** may do subject to renegotiation of the rent, as more fully set forth in Lease 1 and Lease 2; and

WHEREAS, **TENANT** also desires to expand its operations at the Airport by increasing its current leased premises by an additional 61,026 square feet (the "New Space") to a total of approximately 188,286 square feet, investing no less than \$2,500,000.00 in the New Space, as more fully described in **TENANT**'s _____ 2015 _____ (the "Proposal"), a copy of which is attached hereto as **Exhibit A** and incorporated herein, and the **CITY** desires that it do so; and

WHEREAS, in order to facilitate the expansion of **TENANT**'s operations at the Airport, **TENANT** and **CITY** desire to consolidate their leases, add the New Space to the leased premises and extend the lease terms by twenty years, subject to the terms and conditions set forth herein; and

NOW, THEREFORE in consideration of the mutual covenants and considerations herein contained, **CITY** and **TENANT** hereby agree that Lease 1 and Lease 2 be consolidated,

amended and restated as of the Effective Date (as defined in Article 3) as follows:

ARTICLE 1 - LEASED PREMISES

1.1 LEASED PREMISES

1.1.1 In consideration of the rent hereinafter to be paid by **TENANT**, and other consideration, and the covenants and agreements hereinafter contained, to be kept and performed by **TENANT**, **CITY** does hereby demise, lease and let unto **TENANT**, the property located at the Airport, and more particularly described below, to have and to hold unto said **TENANT** on the terms and conditions in this Lease.

1.1.2 The term "Leased Premises" or "Premises" as used in this Lease Agreement, shall mean and include the premises described in Lease 1 and Lease 2 (the "Existing Space") together with an additional adjacent 61,026 square feet of space as described in the Proposal (the "New Space") all of which is located at Portland International Jetport in the City of Portland, Cumberland County, State of Maine, on Westbrook Street, adjacent to the Airport and consisting of a total of approximately 188,286 square feet as shown and described in **Exhibit A** attached hereto and incorporated herein, including the rights of ingress thereto and egress therefrom and the right to install, use and maintain utilities, subject to any utility or other easements of record.

1.2 "AS IS" CONDITION.

TENANT takes the Premises in "as is" condition. Other than **CITY** ownership thereof, **CITY** makes no representation or warranty as to the physical condition of the Premises nor as to any other matter concerning the Premises, including but not limited to the presence of any environmental hazards thereon. Without limiting the foregoing, the **CITY** represents that, as of the execution date of this Lease, it has not received notice of any such hazards. All **TENANT** improvements, additions and alterations at or to the Premises will be at **TENANT**'s sole cost and expense and **CITY** shall have no responsibility therefor.

ARTICLE 2 – CONSTRUCTION OF FBO FACILITY

2.1 TENANT OBLIGATIONS

2.1.1 **TENANT** shall, at its own cost and expense, construct, operate and maintain a general aviation facility and fixed base operation (the "Project") on the Premises in accordance with the Proposal.. To the extent reasonable, the Exhibits to this Lease shall be read to be supplemental to it, but in the event of conflict between the terms of this document and the Exhibits, this document shall control.

2.1.2 The minimum capital investment for this Project shall be Two Million Five Hundred Thousand Dollars (\$2,500,000). Prior to construction, the proposed design and materials, including but not limited to landscaping, to be used for such construction shall be subject to the review and approval of the Airport Director, which approval shall not be unreasonably withheld or delayed. The Airport Director's review shall include review for compatibility with existing

airport design and materials and for compliance with the Airport Master Plan then in effect. In addition, prior to construction, **TENANT** shall provide proof of financial ability to complete the project which proof shall be satisfactory to the Airport Director, after consultation with the **CITY**'s Finance Director. The Airport Director's approval hereunder shall not be unreasonably withheld or delayed.

2.1.3 **TENANT** shall pay for and obtain all required Federal, State, County, City of Portland and **CITY** permits or approvals prior to such construction, including but not limited to any required Planning Board approval, and Federal Aviation Agency (hereinafter the "FAA") approvals, including filing of FAA Form 7460-1, Notice of Proposed Construction or Alteration, or applicable successor form. In addition to complying with any applicable **CITY** ordinance, all exterior signage to be placed or erected on the Premises shall be subject to the prior written approval of the Airport Director. In the event any substantive change is made in the proposed design and materials to be used after all other applicable review, such changes shall be submitted to the Airport Director for final review and approval, which approval shall not be unreasonably withheld or delayed. **TENANT** shall arrange and attend a pre-construction meeting, including all site and construction contractors and subcontractors and representatives of the Airport, prior to beginning site work. This meeting shall include, but not be limited to, a review of **TENANT**'s security plan during such site and construction work. **TENANT** shall ensure that a "badged" person acceptable to the Airport shall monitor all entry and exit to and from the site during such site work and construction.

2.1.4 In the event **TENANT** is unable to obtain any required federal, state or local approvals and permits necessary for construction of its Project and to begin construction no later than Twelve (12) months from the date of execution of this Lease, each party reserves the right to terminate this Lease upon no less than thirty (30) days prior written notice, with no further obligations of either party hereunder. Upon obtaining all federal, state and local approvals and permits required for construction of the facility, **TENANT** shall promptly commence and diligently complete such construction, subject to any agreed upon phasing of construction of portions of the Project.

2.1.5 Except as provided above, **TENANT** shall not erect any structures, make any improvements, nor do any construction work on the Premises, without the prior written approval of the Airport Director, whose approval shall not be unreasonably withheld or delayed. Alterations, modifications, additions to or replacements of any structure constructed on the Premises which are in excess of the amounts provided in Section 5.2.4 below are subject to the prior written approval of the Airport Director, which approval shall not be unreasonably withheld or delayed. The requirement for the Airport Director's prior approval shall not apply to any improvements, repairs or replacements which are immediately necessary because of an emergency caused by no fault of **TENANT**, but **TENANT** shall inform the Airport Director of such emergency work as soon as reasonably practicable.

2.1.6 Performance and Payment Bonds; Letters of Credit; Insurance. Prior to the commencement of any construction under this Agreement, **TENANT** shall provide **CITY** with evidence of a performance and payment bond from its contractor(s) in the full amount of the final construction contracts, naming the **TENANT** obligee on such bonds and **TENANT** shall

provide **CITY** with one or more letters of credit in a form satisfactory to the **CITY** in the full amount of the final construction contracts. In addition, **TENANT** shall provide evidence of commercial general liability insurance coverage in the minimum amount of Two Million Dollars (\$2,000,000) from the general contractor, and naming the **CITY** as an additional insured thereon, as well as automobile and workers compensation insurance.

2.2 USES

2.2.1 Permitted Uses. **TENANT**, as a full service fixed base operator at the Airport, is required to continuously provide the following services during the term of this Agreement, unless otherwise agreed in writing by the **CITY**:

- (i) Aircraft/airline fueling, de-icing and servicing (e.g. cleaning);
- (ii) Aircraft maintenance and servicing, by a licensed aircraft mechanic (Aircraft and Power) on staff and/or on-call;
- (iii) Aircraft tiedowns
- (iv) Aircraft hangar storage;
- (v) Pilots lounge, with sanitary facilities;
- (vi) Charter, directly, through contract or through referral service;
- (vii) Automobile parking; and
- (viii) **TENANT** business office.

Failure to provide the foregoing services on a reasonable basis for thirty (30) consecutive calendar days shall be, at the option of the **CITY**, a breach of this Agreement, subject to termination pursuant to Article 11 below. Notwithstanding the foregoing, de-icing services shall be subject to all applicable federal and state environmental regulations and airport regulations, and shall be performed only in designated areas off-Premises, and in such manner as is permitted by such regulations.

2.2.2 In addition to the foregoing, **TENANT** shall have the right, but is not required, to use the Premises for the following purposes, and purposes incident thereto:

- (i) Ground handling, including freight handling;
- (ii) Airline maintenance;
- (iii) Sales of aircraft (including aircraft leasing) and aircraft parts;
- (iv) Avionics sales;
- (v) Flight school;
- (vi) GSE equipment servicing; and
- (vii) Major and minor overhaul and repair of aircraft and associated accessories.

No air meets shall be conducted at said Airport unless prior approval shall have been obtained in writing from the Airport Director and the Federal Aviation Administration.

2.2.3 In addition to the foregoing, **TENANT** shall manage, on a non-exclusive, non-discriminatory public basis, the aircraft ramp recently reconstructed by **CITY** and located adjacent to the Premises, and identified on Exhibit A (hereinafter the "Ramp"). **TENANT** shall

have the right to rent aircraft tiedowns for general aviation use at fair market rentals. For purposes of this Agreement, the term "aircraft tiedown" shall refer to a generally accepted method of securing small aircraft to pavement. **TENANT** shall manage the use and condition of the aircraft tiedowns in such a manner that such use and condition will not interfere with nor endanger the general operations at the Airport. **TENANT** shall be entitled to the reasonable service or use fees to be paid by users of the aircraft tiedowns, subject to **CITY**'s percentage rentals contained in this Agreement. Upon request, **TENANT** shall provide **CITY** with the names, addresses and other reasonably available information regarding renters/users of the tiedowns hereunder.

2.2.4. **TENANT** is entitled to use the areas designated for "parking" on Exhibit A for parking of customer and employee motor vehicles.

2.2.5. No use of the Premises shall be permitted hereunder without the specific written consent of the Airport Director except those uses specifically required or permitted herein.

2.2.6 Upon thirty (30) days prior written notice to **CITY**, **TENANT** may request permission for an expansion or change in use on the Premises, which permission shall not be unreasonably withheld by Airport Director. **TENANT** covenants that it shall not use nor permit the use of the Premises for any purpose other than those provided in Section 2.2.1 - 2.2.4 above without the prior written approval of the Airport Director.

2.2.7 Prohibited Uses: **TENANT** shall not use the Premises for the conduct of any non-aeronautical business, for residential use, or for non-aeronautical storage or non-aeronautical activities.

2.2.8 **TENANT** shall not store fuel upon the Premises except to the extent permitted by applicable City Code(s) and applicable state or other law or regulation, and shall not block a taxiway nor park any aircraft in such a location as to interfere with Airport operations, nor permit any other person to do so. No damaged aircraft shall be parked on the Ramp, nor at the aircraft tiedowns at any time without the prior approval of the Airport Director, which approval may be granted for such storage up to a maximum of sixty (60) days. In the event of such approval, **TENANT** shall cover such damaged aircraft within twenty-four (24) hours of a request to do so by the Airport Director, such cover to be in a manner as is reasonably approved by the Airport Director. Aircraft ramp and service equipment shall not be stored on the Premises, except in a manner and in such designated locations as the Airport Director may reasonably authorize in writing in advance. All aircraft and equipment repairs except minor repairs shall be performed inside a structure and not on the aircraft apron. All such minor repair shall be subject to the approval of the Airport Director, which approval shall not be unreasonably withheld. **TENANT** covenants that it shall not do any, and shall not permit anyone to do, any engine run-ups on the Premises. Off-Premises run ups at sites approved by the Airport Director between the hours of 7:00 a.m. and 10:00 p.m. must be coordinated in advance with the Airport's Communications Center.

2.2.9 All activities hereunder must be conducted pursuant to the Airport Minimum Standards and Rules and Regulations and policies in effect on the date of execution of this Agreement and as

may be later amended or revised, and all applicable federal, state and local laws and regulations. Prior to undertaking any activities hereunder, **TENANT** shall obtain, at **TENANT**'s own cost and expense, all approvals and permits required under the Airport Minimum Standards, as well as any other required federal, state or local approvals and permits.

2.2.10 Fuel Trucks. **TENANT** shall have the right to use the airfield perimeter road as shown on Exhibit A to provide access by fuel trucks, de-icing vehicles and other vehicles used in connection with this Lease, from the Premises to the terminal ramp. Such use by fuel trucks shall be permitted so long as such use of the road by the fuel trucks is permitted under state and federal law and regulations.

ARTICLE 3 – TERM

3.1 INITIAL TERM

The Initial Term of this Lease commences upon the date of execution of this Lease Agreement (the "Effective Date"), and ends at 11:59 p.m. on June 30, 2036 (the "Termination Date").

3.2. RENEWAL TERM

TENANT shall have the option to renew this Lease for an additional Twenty (20) years so long as **TENANT** has been and is continuing in full compliance with all of the terms and conditions herein, and subject to renegotiation of the rent as provided in Article 4 below. **TENANT** shall provide **CITY** with no less than One Hundred and Eighty (180) days notice of its intent to renew prior to expiration of the initial term of this Lease. **CITY** shall renew the Lease pursuant to Section 4.3 below and subject to the continuing compliance by **TENANT** with all the terms and conditions herein. Such renewal shall be in writing signed by both parties.

3.3 HOLDING OVER

3.3.1 In the event **TENANT** shall continue to occupy the Leased Premises beyond the Lease term or any extension thereof without **CITY**'s written renewal thereof, such holding over shall not constitute a renewal or extension of this Lease, but shall create a tenancy at sufferance which may be terminated at any time by **CITY** or **TENANT** by giving thirty (30) days' written notice to the other party. Any such tenancy at sufferance shall otherwise be on all of the terms and conditions of this Lease Agreement, except that the monthly Rent shall be one and one-half times the amount due on the first day of the last month of the term of the Lease.

ARTICLE 4 - RENTALS, FEES AND RECORDS

4.1 FIXED GROUND RENT

4.1.1 Fixed ground rent per square foot for Existing Space. For the rights and privileges granted herein, **TENANT** shall pay a fixed annual rental of \$0.25 per square foot for the Existing Space, which consists of approximately 127,260 square feet of land at the Airport. Fixed ground rent shall be payable in equal monthly installments. The initial monthly rental for the Existing

Space shall be Two Thousand Six Hundred Fifty-One Dollars and Twenty-Five Cents (\$2,651.25) per month.

4.1.2 Fixed Ground Rent and Rent Commencement Date for New Space. For the rights and privileges granted herein, **TENANT** shall pay a fixed annual rental of \$0.25 per square foot for the New Space, which consists of approximately 61,026 square feet of land at the Airport, provided, however, that such ground rent for the New Space shall be due and payable commencing the first day of the month following the month in which **TENANT** obtains the certificate of occupancy for all building structures and parking areas comprising the Project, or on August 1, 2016, whichever is earlier in time (the "New Space Rent Commencement Date"), and continuing on the first day of each subsequent month during the initial term and any renewal term of this Lease. Beginning on the New Space Rent Commencement Date, the initial fixed ground rent for the New Space shall be One Thousand Two Hundred Seventy-One Dollars and Thirty-Eight Cents (\$1,271.38) per month.

4.1.3. Monthly rent for Aircraft Tiedowns. During the term hereof, **TENANT** shall pay to **CITY** a fixed monthly rental of Ten Dollars and Nine Cents (\$10.09) for each tiedown on the Ramp.

4.1.4 Rent increases. Beginning on the first July 1 following the New Space Rent Commencement Date, and annually thereafter during the Initial Term, the fixed rent in Section 4.1.1 and 4.1.2 will be adjusted, based on the increase in the prior 12 months' Consumer Price Index of the U.S. Department of Labor, All Urban Consumers, all items (1982-84 = 100) for the U.S. City Average, or comparable successor index for the immediately prior twelve months.

4.2 PERCENTAGE RENT

4.2.1 In addition to the foregoing monthly rent, **TENANT** shall pay to **CITY** two percent (2%) of all gross receipts actually received by **TENANT**, by the entities listed on Exhibit C, by any member or shareholder of **TENANT** or of the entities listed on Exhibit C, and by any of **TENANT**'s subtenants or sub-subtenants, from all of their operations on the entire Premises and from all of their operations on the premises covered by the leases listed on Exhibit B attached hereto; provided, however, that the following shall not be subject to the percentage rental hereunder: 1) aircraft sales and leasing; 2) sales of aircraft parts and accessories; 3) charter flight sales; 4) fixed rent collected from the subtenants and sub-subtenants approved by the **CITY**, up to the amount due to **CITY** under Section 4.1 above; 5) any rent payable to **TENANT** from an entity wholly owned by **TENANT**, or by any entity listed on Exhibit C (Tenant and the entities listed on Exhibit C may be referred to herein individually as a "Tenant Party" or collectively as "Tenant Parties"); 6) aircraft maintenance performed by a Tenant Party on aircraft owned or dry leased by a Tenant Party; and 7) the 2% payment itself, whether paid by **TENANT** or a Tenant Party, or by an approved subtenant.

4.2.2 "Gross receipts" shall mean and include all gross revenues received by any person and arising out of or resulting from any operations or activities from, at or on the Premises, but shall not include the amount of any tax on sales whether designated a sales tax or not and imposed by

any federal, state or local governmental authority, either now or in the future. Said operations and activities shall be performed and/or charged in accordance with normal and customary industry rates. To the extent that any question arises as to whether the normal and customary rates are being charged, the Airport Director, in his discretion, may adjust the rates to be consistent with market rates charged for services at the following airports: BGR, BDL, ALB, MHT and BVT.

4.2.2.1 “Dry lease” shall mean an agreement between a Tenant Party and an aircraft leasing or financing company under which the aircraft is provided to the Tenant Party with no crew, insurance, ground staff, supporting equipment, maintenance, etc., transferring possession and operational control over the aircraft to the Tenant Party.

4.2.3 **CITY** reserves the right to amend or modify the percentage rent payable, or the manner in which such rent, or any portion thereof, is calculated under this Lease Agreement, to the extent that such amendment or modification is applicable generally in a non-discriminatory manner to all persons providing similar services at the Airport and providing that such amendment, modification or increase is reasonably revenue neutral to **TENANT**. In such case, **CITY** shall provide **TENANT** with no less than thirty (30) days written notice prior to the effective date of such new rates or charges. In addition to the foregoing, **CITY** reserves the right to impose landing fees on all charters landing at the Airport pursuant to generally applicable, non-discriminatory rules and regulations issued pursuant to Airport rule-making.

4.2.4 Without limiting the foregoing, **TENANT** agrees to renegotiate the rent payable hereunder in the event of commencement or renewal of the term of the Lease of any other FBO located on the Airport, with the goal to minimize any discriminatory rental structure between competing FBO’s at the Airport.

4.3 RENEWAL RENT

In the event **TENANT** renews this Lease as provided in Section 3.2 above, all rent, including without limitation fixed and percentage rent, under this Lease Agreement during said renewal term shall be in the amount negotiated in good faith by the parties. Notice of intent to negotiate a new rent term shall be given no less than 120 days prior to renewal of the Lease; provided, however, that failure to give such notice shall not diminish nor negate the Parties’ obligation to negotiate a new rent hereunder. If the parties have been unable to agree upon a new rental within 45 days after such notice (the “Rent Agreement Date”), the parties agree to submit the issue of rent only to the following appraisal process. **CITY** and **TENANT** shall use reasonable good faith efforts to agree, within fifteen (15) days after the Rent Agreement Date, upon a single appraiser to determine the renewal rent for the Premises. Such appraiser shall use its best efforts to render the appraisal to **CITY** and **TENANT** on or before twenty (20) days after its selection, and such appraisal shall be final and binding upon the parties. In the event **CITY** and **TENANT** cannot agree upon a single appraiser within ten (10) days after the Rent Agreement Date (the “Election Date”), then each of **CITY** and **TENANT** shall, within ten (10) days after the Election Date,

select an appraiser. Such two (2) appraisers shall select a third appraiser within five (5) days. Such third appraiser shall use its best efforts to render the appraisal to the CITY and TENANT on or before twenty (20) days after its selection. The fair rental value determined by such third appraiser shall be final and binding upon the parties and shall be the rent for the renewal term hereunder. The cost of the appraiser appointed by each party shall be borne by such party, and the cost of the third appraiser or, if the CITY and TENANT shall have jointly selected one appraiser, the jointly-selected appraiser, shall be borne one-half (½) by the CITY and one-half (½) by the TENANT.

4.4 TIME AND PLACE OF PAYMENTS

4.4.1 The foregoing fixed rents of Section 4.1 shall be payable, without need for invoice, in equal monthly installments in advance on or before the first business day of each calendar month of the Term or any renewal term, at the office of the Airport Director, Portland International Jetport, 1001 Westbrook Street, Portland, Maine 04103, or such other place as the CITY may direct in writing from time to time.

4.4.2 The percentage of gross receipts shall be due and payable monthly, without need for invoice, at the office of the Airport Director at the address above, on the fifteenth (15th) day of each month based upon the gross receipts of the previous calendar month, the first of which shall be due and payable on the fifteenth (15th) day of the month following the month during which TENANT begins operations on the Premises. A detailed monthly revenue statement of all revenues received by any person as a result of any transaction at or on the Premises, regardless of the location of the person receiving such revenue and regardless of where such revenue is paid, shall be kept on file at the Airport office of TENANT for review by the Airport Director or his or her designee during regular business hours. The monthly revenue statement shall provide such detail as the Airport Director may require, including without limitation, a description of each such transaction, to whom the money was paid and the location of such person, and the gross amount of such money, showing the amount of the permitted deductions of sales taxes actually paid. CITY agrees that it shall endeavor to keep all such information reviewed by the Airport Director or his or her designee confidential, and shall not share such information with any person or entity, unless City, in its sole discretion, determines that disclosure of such information is required by law.

4.4.3 Within one hundred and eighty (180) days of the close of TENANT's fiscal year, TENANT, at its sole cost and expense, shall have prepared a reviewed financial statement, prepared and signed by an independent accountant, of all operations conducted at or from the Leased Premises for the previous fiscal year and will keep a copy of such statement on file in its office located at the Airport for review during regular business hours by the CITY. TENANT will notify CITY when said financial statement is available for review. In the event such financial statement discloses any payment due to CITY which has not been paid, such payment of any unpaid balance shall be made immediately upon completion of such financial statement. TENANT's fiscal year is from January 1 to December 31 of each year and TENANT shall provide the Airport Director with written notice of any change in said fiscal year. A late fee of Fifty Dollars (\$50.00) per day will be assessed for every day that the said financial statement is late in being made available to the CITY and said late fee shall be due and payable upon demand

by CITY. CITY agrees that it shall endeavor to keep all such financial statements reviewed by CITY confidential, and shall not share such information with any person or entity, unless CITY, in its sole discretion, determines that disclosure of such information is required by law.

4.4.4 CITY reserves the right to conduct an audit of TENANT's records, upon reasonable notice and during regular business hours, to determine the accuracy of amounts paid hereunder. In the event such audit discloses an underpayment to CITY of more than Ten Percent (10%) in any year, TENANT shall pay to CITY, in addition to the amount owed and any applicable late charges, the reasonable cost to CITY of its audit. In the event said audit shows an overpayment by TENANT, said overpayment shall be deducted from TENANT's next due monthly percentage payment or payments. All records related to operations at or from the Leased Premises shall be maintained by TENANT for a minimum of six (6) years. CITY agrees that it shall endeavor to keep any and all information reviewed by CITY in connection with any such audit confidential, and shall not share such information with any person or entity, unless CITY, in its sole discretion, determines that disclosure of such information is required by law.

4.4.5 TENANT shall make prompt and timely payment, without deduction or setoff, of all rentals, fees, assessments, taxes and other charges due hereunder as the same may from time to time come due.

4.5 DELINQUENT RENTALS

There shall be added to all sums which the TENANT is required to pay hereunder (whether as rental or otherwise) to CITY and which are unpaid ten (10) days after their due date, a late charge of one and one-half percent (1-1/2%) of the unpaid sum for each full calendar month of delinquency computed as simple interest on a daily basis, using thirty (30) days in the month for purposes of calculating the daily rate. Any late charge assessed shall be computed from the original due date of the unpaid sum. The rate of the late charge may be changed from time to time pursuant to generally applicable Airport Rules and Regulations. Any late charge hereunder shall be additional to any interest or other charge imposed by the CITY generally, including without limitation, interest on unpaid real or personal property taxes.

ARTICLE 5 – MAINTENANCE AND OPERATIONS

5.1 NET LEASE

The use and occupancy of the Leased Premises by TENANT will be without cost or expense to CITY and all rent payable hereunder shall be net to the CITY. It shall be the sole responsibility of TENANT to maintain, repair and operate the entirety of the Leased Premises and any improvements and facilities constructed thereon at TENANT's sole cost and expense, except as otherwise explicitly stated herein.

5.2 MAINTENANCE AND OPERATIONS

5.2.1 Premises. All repair, and maintenance of the Premises, including, but not limited to, general asphalt maintenance, landscaping, trimming and mowing, paving and snow and ice removal, shall be the responsibility of the **TENANT**. **TENANT** shall maintain the Premises and all of the fixtures, equipment and personal property which may be located in or upon any part thereof in a reasonably neat, clean and sanitary condition. **TENANT** shall not store snow off the Premises without written approval from the Airport Director. Snow removal shall not block any aircraft movement areas at any time.

5.2.2 **CITY** has reconstructed the Ramp with airport and FAA funds in compliance with FAA requirements and the Ramp will be maintained by **CITY** for twenty years from and after the Rent Commencement Date. **TENANT** assumes all liability for the safe use of the Ramp during the term of this Lease and any renewal term. **CITY** shall have no obligation to reconstruct the Ramp during the term of the Lease or any renewal term. **CITY** will plow, sand and de-ice the Ramp and Ramp taxiway and tiedown taxi lanes to the extent that such lanes can accommodate a Thirty (30) foot plow blade; if not, **TENANT** shall be responsible for all such plowing, sanding and de-icing. **TENANT** will be responsible for removing all snow at the tie downs on the Ramp. **TENANT** will further be responsible for the installation, maintenance and repair of the tiedowns themselves and painting of tiedown parking spots. **TENANT** shall not store snow in **CITY** plowed areas without the prior written approval of the Airport Director.

5.2.3 **TENANT** shall take good care of the Premises; shall reasonably maintain the Premises and the improvements, buildings and fixtures thereon in good condition at all times; shall make all repairs and replacements inside and outside, ordinary and extraordinary, structural or otherwise. Such repairs and replacements by **TENANT** shall be in quality and class not inferior to the original material and workmanship. **TENANT** shall pay promptly the costs and expenses of such repairs, replacements and maintenance, and maintain and repair all utility service lines located upon the Leased Premises to the extent they are used by **TENANT**, except to the extent such maintenance or repair is the obligation of the utility company providing such utility service.

5.2.4 All exterior repairs, replacements and maintenance shall be compatible with the original improvements and shall be in quality and class not inferior to the original material and workmanship. Except in the case of emergency repairs, all such exterior repairs and replacements in excess of Twenty Thousand Dollars (\$20,000.00) shall be subject to the prior written approval of the **CITY**, which shall not be unreasonably withheld or delayed, and shall comply with all applicable federal, state and local permit requirements. Standard design plans for such exterior repairs and replacement shall be submitted to the Airport Director for review and approval, which approval shall not be unreasonably withheld or delayed. Exterior repair and replacement shall be governed by applicable Minimum Standards and Development Guidelines.

5.2.5 **TENANT** shall paint, repair, replace or rebuild all or any part of the Premises, interior or exterior, structural or non-structural, as provided above, which may be damaged or destroyed (subject to the provisions of Article 9 below). In such case, **TENANT** shall have the right to apply any available insurance proceeds to such purposes.

5.2.6 **TENANT** shall provide, at its sole cost and expense, the necessary receptacles and arrangements for adequate sanitary handling and disposal, away from the Airport, of all trash, garbage and other refuse which results from use of, or activities on, the Premises. Unless otherwise agreed in writing by **CITY**, all such trash, garbage and other refuse shall be disposed of at EcoMaine in Portland, or successor thereto. **CITY** reserves the right to require **TENANT** to participate in any recycling program which may be imposed by Airport rules or by local, state or federal law or regulation. **TENANT** shall defend, indemnify and hold the **CITY** harmless from any cost, expense, claim, fine or liability, including without limitation attorney's fees and court costs, arising out of or resulting from **TENANT**'s storage, collection, transportation or disposal of any trash, garbage or other refuse hereunder. This obligation of defense and indemnification shall remain in full force and effect after termination or expiration of this Lease.

5.2.7 **TENANT** shall provide and use suitable covered metal receptacles for all such garbage, trash, and other refuse and must be stored inside the hangar. Piling of boxes, cartons, barrels, pallets, debris, or similar items in an unattractive or unsafe manner, on or about the Leased Premises, shall not be permitted. Dumpster(s) can be stored outside if suitable covering and a good appearance is maintained at all times.

5.2.8 To the extent that **TENANT** does not undertake or pay for any of its obligations under this Subsection 5.2, **CITY** reserves the right to undertake such obligations or to pay such costs, in its sole discretion, and to charge all costs thereof to **TENANT** as additional rent. Except in the case of a threat to public health or safety as determined by the **CITY**, in which case **CITY** may proceed immediately, prior to such undertaking or payment, **CITY** shall provide **TENANT** with written notice of such failure to meet such obligations or to pay such costs, and shall provide **TENANT** with thirty (30) days from the date of such notice to undertake such obligation and proceed diligently to complete it, or to pay such cost. In the event **CITY** undertakes any such obligation or pays such cost hereunder, **TENANT** shall repay the **CITY** all such amounts immediately upon **CITY**'s demand therefor. Nothing herein shall prevent or prohibit the **CITY** from declaring a default hereunder and terminating the Lease as provided in Article 11 below.

5.3 CITY RIGHT TO INSPECT AND REPAIR

5.3.1 **CITY**, through its agents, may come on the Premises and its structures to inspect same for compliance with the requirements of this Lease, Airport rules and regulations, environmental laws, or other applicable legal and regulatory requirements. Such inspection will generally take place during normal business hours and following seventy two (72) hours advance notice to the **TENANT**, but the **CITY** reserves the right to enter the Premises unannounced at any time that the Airport Director determines such entry is necessary for public safety or security reasons. In the event of such unannounced entry, **CITY** shall notify the **TENANT** that such inspection occurred within a reasonable time thereafter. **TENANT** shall provide **CITY** with the ability to access the Premises and the buildings for such public safety and security purposes.

5.3.2 **CITY**, at its reasonable discretion, shall be the sole judge of the quality of the exterior repair and maintenance; and **TENANT**, upon notice by **CITY** to **TENANT** shall be required to perform whatever repair and maintenance **CITY** deems reasonably necessary. If said repair and maintenance is not undertaken by **TENANT** within thirty (30) days after receipt of written

notice, **CITY** shall have the right to enter upon the Leased Premises and perform the necessary repair and maintenance, the cost of which shall be borne by **TENANT** as additional rent to be paid to **CITY** immediately upon demand therefor. Notwithstanding the foregoing, in the case of a threat to public health or safety, **CITY** may undertake such repairs as it deems reasonably necessary and charge the cost thereto to **TENANT** as additional rent to be paid to **CITY**, without regard to any notice requirement herein. No waste shall be committed or damage done to the Premises, the buildings and equipment located thereon, nor to property of **CITY**.

5.4 UTILITIES

TENANT shall have the right to bring utilities to the Premises at its own cost and expense and in accord with all applicable laws, rules and regulations for the extension and hookup of such utilities. **TENANT** shall assume and pay for all construction, installation and periodic costs or charges for utility services furnished to **TENANT** during the term hereof; provided, however, that, consistent with applicable laws, regulations or permit requirements, **TENANT** shall have the right to connect to any and all storm and sanitary sewers and water and utility outlets at its own cost and expense, subject to the approval of the Airport Director, which shall not be unreasonably withheld or delayed; and **TENANT** shall pay for any and all service charges incurred there from. The **TENANT** must also meet the requirements of the Airport's Storm Water Pollution Prevention Plan and any amendments thereto.

5.5 PAYMENT OF TAXES AND OTHER ASSESSMENTS

5.5.1 **TENANT** agrees to pay promptly when due, and not to permit to become delinquent, levies, taxes, assessments, excises, permit fees, license fees, charges, impositions or burdens of whatsoever kind and nature, whether general or special, ordinary or extraordinary, foreseen or unforeseen, or for any public improvements or utility services (hereinafter "impositions") which, at any time during the term of this Lease Agreement, may be created, levied, assessed, imposed or charged upon or with respect to the Leased Premises or any part thereof, by any federal, state, county, municipal or other authority, which imposition would be valid and applicable to **TENANT** irrespective of this section.

5.5.2 Nothing herein contained shall be construed as stopping or preventing **TENANT** from contesting in good faith, however, the validity or applicability to its operations hereunder of any such law, ordinance, rule, regulation, tax assessment, excise fee or charge, including the exhaustion of all appeal rights, provided that the Leased Premises shall not be in danger of being forfeited nor the **CITY** exposed to any threat of fine, penalty or violation.

5.5.3 Notwithstanding the foregoing, **TENANT** acknowledges that **CITY** has the right from time to time to establish and impose reasonable charges and fees for users of the Airport or its facilities, provided that such charges and fees are charged in a uniform and non-discriminatory manner and do not significantly increase the total fixed and percentage rent due hereunder; and provided, further, that **CITY** shall provide **TENANT** with no less than thirty (30) days prior written notice prior to imposing any new fee or charge which directly or indirectly affects **TENANT** or any sub-tenant of **TENANT**.

5.6 NONDISCRIMINATION; AFFIRMATIVE ACTION

5.6.1 The **TENANT**, for itself, its successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with this Lease of the Premises that, to the extent applicable to **TENANT**'s operations hereunder:

(a) no person on the grounds of age, race, color, sex, disability, religion, national origin or sexual orientation shall be excluded from participation in, denied the benefits of, or be otherwise subject to, discrimination in the use of said facilities;

(b) that in the construction of any improvements on, over, or under such Premises and the furnishing of services thereon, no person on the grounds of age, race, color, sex, disability, religion, national origin, or sexual orientation shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and

(c) that the **TENANT** shall use the Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-Discrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended; and

(d) that **TENANT** shall undertake an affirmative action program as required by 14 CFR Part 152, Sub E, to insure that no person shall on the grounds of race, creed, color, national origin, or sexual orientation be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E.

5.6.2 **TENANT** agrees to furnish service on a fair, equal, and non discriminatory basis to all users thereof, and to charge fair, reasonable, and non discriminatory prices for each unit of service.

5.6.3 Nothing in this Section 5.6.3 is intended, nor shall it be deemed, to permit **TENANT** to establish or carry out any non-aeronautical commercial activity from the Premises.

5.7. Intentionally omitted.

5.8 OBSERVANCE OF STATUTES, ETC.

5.8.1 During the Term hereof and renewal term, **TENANT** shall, at its own cost and expense, promptly observe and comply with all existing and future applicable laws, ordinances, rules, regulations, licenses, permits, decisions and decrees of the Federal, State, County and **CITY** Governments (including but not limited to Airport Rules and Regulations, Airport Minimum Standards, Airport Storm Water Pollution Prevention Plan, Airport Security Plan and Regulations, Airfield Regulations, Airport Development Guidelines, and the Airport Certification Manual), as well as those of any other government authority having jurisdiction over the Premises or any part thereof, including without limitation all applicable Federal Aviation Administration rules and regulations, whether the same are in force at the

commencement of the term of this Agreement or should be enacted in the future.

5.8.2 **TENANT** shall not make any use of the Premises which is improper, offensive or contrary to any law or ordinance, nor to permit any act or thing to be done which shall constitute a nuisance or which may make void or voidable any insurance on the Premises or the buildings or improvements thereon.

5.8.3 **TENANT** shall pay all fines, penalties, damages, expenses or costs, including reasonable counsel fees, and shall indemnify and hold the **CITY** harmless therefrom, which may in any manner arise out of or are imposed on **TENANT**, **CITY** or Airport because of the failure of the **TENANT** to comply with the requirements of this Section 5.8. Without limiting any other right of **CITY** hereunder, **TENANT**'s non-compliance with any provision of this Section 5.8 shall be grounds for termination of this Lease Agreement.

5.8.4 **TENANT** shall have the right, but not the obligation, to contest, without cost or expense to **CITY**, the validity or application of any law, ordinance, rule, regulation, or requirement of the type referred to in the preceding sub-section. If by the terms of any such provision, compliance may be legally delayed without risk of forfeiture or lien on the Premises or penalty to the **CITY**, pending resolution of the legal challenge, **TENANT** may delay compliance therewith until final determination of such proceeding.

5.8.5 **CITY** agrees to execute and deliver any appropriate papers or other instruments which may be reasonably necessary or proper to permit **TENANT** to contest the validity or application of any such provision.

5.9 ENVIRONMENTAL STATUTES

5.9.1 **TENANT** covenants and agrees to comply with all applicable environmental laws, including without limitation all laws governing hazardous substances and all requirements related to storm water discharges and permits, and to provide to **CITY**, immediately upon receipt, copies of any correspondence, Notice, Pleading, Citation, Indictment, Complaint, Order, Decree or other document from any source asserting or alleging a circumstance or condition which requires, or may require, a clean-up, removal, remedial action, or other response by or on the part of **TENANT** under environmental laws, or which seek civil, criminal or punitive penalties from **TENANT** for an alleged violation of environmental laws. **TENANT** further agrees to advise the **CITY** in writing as soon as **TENANT** becomes aware of any condition or circumstances which may result in a potential violation of any environmental laws. **TENANT** shall comply with the Airport's Storm Water Pollution Prevention Plan and any amendments thereto, and shall grant access to the **CITY** for inspections required by the plan. **TENANT** agrees, at its expense, and at the request of **CITY** when it has a reasonable belief that there is a problem or when required by another governmental entity, to permit an environmental audit for the benefit of **CITY** and **TENANT**, to be conducted by **CITY**. This provision shall not relieve **CITY** from conducting its own environmental audits or taking any other steps necessary to comply with environmental laws.

5.9.2 Without limiting the foregoing, **TENANT** shall not dump, flush, or in any way introduce

any hazardous materials or hazardous waste or any other toxic materials upon the Leased Premises nor shall it improperly store, or dispose of any hazardous materials or hazardous waste from any such property, except in full compliance with all applicable laws and regulations. For purposes of this paragraph, the term hazardous materials shall mean inflammable, explosives, radioactive materials and hazardous substances defined as "hazardous substances," "hazardous materials" or "toxic substances" in the Comprehensive Environmental Response Compensation Liability Act of 1980, as amended, the Hazardous Conservation and Recovery Act, and the Resources Conservation and Recovery Act, or any similar federal, state or local law, or in any regulations promulgated pursuant thereto, or in any other applicable law. The term "hazardous materials" shall also include any other chemical, material or substance which is or may be regulated as toxic or hazardous or exposure to which is prohibited, limited or regulated by any federal, state or other governmental authority or agency or which, even if not so regulated, may or could pose a hazard to human health and safety.

5.9.3 If in the opinion of **CITY**, there exists any uncorrected violation by **TENANT** of an environmental law which requires, or may require, a cleanup, removal or any condition or other remedial action by **TENANT** under any environmental law, regulation, permit, license, judgment or decree, and such cleanup, removal or other remedial action is not completed, or commenced and diligently pursued, within thirty (30) days from the date of written notice from **CITY** to **TENANT**, the same shall, at the option of **CITY**, constitute an event of default hereunder.

5.9.4 For the purposes of this Section 5.9, the term "environmental law or laws" shall mean all Federal, State and local laws including statutes, regulations, ordinances, codes, rules, permits, licenses, judgments, decrees, or other governmental restrictions and requirements relating to the environment or any hazardous substance, including but not limited to, the State of Maine environmental protection statutes, the Federal Solid Waste Disposal Act, the Federal Clean Air Act, the Federal Clean Water Act, the Research Conservation and Recovery Act of 1976, the Federal Comprehensive Environmental Responsibility, Cleanup and Liability Act of 1980 as amended by the Super Fund Amendments and Reauthorization Act of 1986, regulations of the Environmental Protection Agency, regulations of the Nuclear Regulatory Agency, and regulations of any State Department of Environmental Protection or successor agency now or anytime hereafter in effect.

5.9.5 **TENANT** shall defend, indemnify and hold the **CITY** harmless from and against and in respect of any and all damages, costs and expenses, including without limitation, fines, penalties, reasonable attorney's fees, consequential damages and remedial costs and other liabilities arising from claims based upon the environmental condition of the Premises and the surrounding property (including without limitation all facilities, improvements, structures and equipment thereon and soil and groundwater thereunder), resulting from (a) **TENANT**'s use of the Premises or operations thereon by or on behalf of **TENANT**; (b) claims arising out of, related to, or in connection with (i) the release by **TENANT** of any hazardous material into, onto or from the Premises; or (ii) any arrangement by **TENANT** for the treatment, recycling, storage or disposal at any facility owned or operated by any person or entity of a hazardous material which is present on the Premises or has been or may be deposited at, disposed on or released onto the Premises; and (c) claims related to demolition, cleanup or other remedial measure with regard to

environmental conditions on or around the Premises by **TENANT**; or (d) claims resulting from any act or omission of **TENANT** in violation of any federal, state or local environmental laws or regulations with respect to **TENANT**'s use of the Leased Premises.

5.9.6 **CITY** shall give to **TENANT** prompt and reasonable notice of any such claim or action, and **TENANT** shall have the right to investigate, compromise, and defend the same.

5.9.7 **TENANT**, as used in this Section 5.9, shall mean and include the named **TENANT**, its officers, agents, employees, invitees, customers, subcontractors, transferees, licensees, subtenants, vendors, suppliers or anyone for whose act **TENANT** may be legally liable.

5.9.8 The Terms of this Section 5.9 shall expressly survive the expiration or earlier termination of this Lease Agreement, including without limitation the terms of Subsection 5.9.5.

5.10 HAZARD LIGHTS

TENANT shall, at its expense, provide and maintain hazard lights on any structure erected by **TENANT** on the Leased Premises, if required by **CITY** or FAA regulations. Any hazard lights so required shall comply with the specifications and standards established for such installations by the FAA.

5.11 OTHER RESTRICTIONS

TENANT shall not, and shall not permit any person, to use the Premises in such a manner as to create electrical interference with navigational signals or radio communication between the Airport and aircraft, make it difficult for pilots to distinguish between Airport lights and other lights, result in glare in the eyes of pilots using the Airport, impair visibility in the vicinity of the Airport, create bird strike hazards, or otherwise in any way endanger or interfere with the landing, takeoff, or maneuvering of aircraft intending to use the airport.

5.12 CONFLICTING REGULATIONS

Where there exists a conflict between any of the regulations or limitations prescribed in this Lease and any other regulations applicable to the same area, whether the conflict is with respect to the height of structures or trees, and the use of land, or any other matter, the more stringent limitation or requirement shall govern and prevail.

5.13 AIRPORT ZONE HEIGHT LIMITATIONS

TENANT shall comply with all applicable zone height limitations in its operations hereunder, including but not limited to 14 CFR Federal Aviation Regulation, Part 77, or any successor law or regulation, and shall not, nor permit any person to, erect, alter or maintain any structure, or grow any vegetation in any zone to height in excess of the height limitations. **CITY** reserves the right to enter upon the Premises and to remove any such structure or vegetation, and charge the cost thereof to **TENANT** as additional rent should **TENANT** fail to effect such removal promptly after written notice from the Airport Director to do so. **TENANT** shall submit FAA

Form 7460-1 Notice of Proposed Construction or Alteration, or applicable successor form, to the FAA, with a copy to the Airport Director, prior to erecting any possible obstruction on the Premises.

5.14 NOISE ABATEMENT

5.14.1 The **TENANT** agrees that it will comply, and require all flight crews of aircraft based at the facility on the Premises to comply with all applicable elements of the Airport's Noise Compatibility Plan (FAR Part 150 Study) approved by the FAA. This includes use of preferred noise abatement departure routes, use of Airport's voluntary noise abatement departure procedures, use of the preferential runway use program, use of the maintenance run-up procedure, and attendance at noise advisory committee meetings if requested.

5.14.2. If operations on the Premises cause or are projected to cause substantial shifts in the noise contours surrounding the Airport (from the projected contours developed by HMMH as provided in the Noise Exposure Map dated March, 2007 available from the Airport Director) that bring or are projected to bring neighboring residences within the 65 DNL contour, the **TENANT** agrees to accept operational restrictions on its use of the Premises to the degree consistent with FAA requirements.

ARTICLE 6 - OBLIGATIONS OF CITY

6.1 OPERATION AS PUBLIC AIRPORT

CITY covenants and agrees that at all times during the term of this Lease it will operate and maintain the Airport as a public airport consistent with and pursuant to the Sponsor's Assurances given by **CITY** to the United States Government under the Federal Airport Act or any successor Assurances or Act.

6.2 INGRESS AND EGRESS

Upon paying the rental hereunder and performing the covenants of this Lease, **TENANT** shall have the right of ingress to and egress from the Premises for the **TENANT**, its officers, employees, agents, servants, vendors, suppliers, customers, and invitees over the roadway provided by **CITY** serving the Premises. **TENANT's** access shall be in common with other users and shall be subject to applicable security requirements and to possible episodic interruptions due to security or safety concerns. **CITY's** roadways shall be used jointly with other tenants on the Airport, and **TENANT** shall not interfere with the rights and privileges of other persons or firms using said facilities and shall be subject to such weight and type use restrictions as **CITY** deems necessary.

6.3 CONSTRUCTION BY CITY

There are no facilities to be constructed by **CITY** under this Agreement.

6.4 "MOST FAVORED NATIONS"

CITY agrees that if it contracts with a full service fixed base operator operating at the Airport for any more favorable term in regard to permitted and required uses, or in regard to the fixed rent or percentage rent payable hereunder, **CITY** agrees, upon **TENANT**'s request, to offer such term or terms to **TENANT** as an amendment to this Agreement. "Full service fixed base operator" as used herein shall mean a fixed base operator operating, at a minimum, at the Airport on a daily basis from 8:00 a.m. to 5:00 p.m. and providing all of the services required to be provided in Section 2.1.1 above, as such Section is in effect as of the execution date of this Agreement.

ARTICLE 7 - CITY'S RESERVATIONS

7.1 IMPROVEMENT, RELOCATION OR REMOVAL OF STRUCTURES

7.1.1 **CITY**, at its sole discretion, reserves the right to further develop or improve the aircraft operating area and other portions of the Airport, including the right to remove or relocate any structure on the Airport, as it sees fit, and to take any action it considers necessary to protect the instrument approaches of the Airport against obstructions, together with the right to prevent **TENANT** from erecting or permitting to be erected, any buildings or other structure on the Airport which, in the opinion of **CITY** would limit the usefulness of the Airport or constitute a hazard to aircraft. **CITY** acknowledges that it has agreed to permit **TENANT** to construct the Project.

7.1.2 In the event **CITY** requires the use of the Premises for expansion, improvement, or development of the Airport, **CITY** reserves the right, on six (6) months notice, to relocate or replace **TENANT**'s improvements in substantially similar form at another generally comparable location on the Airport. The costs of such relocation or replacement shall be paid or reimbursed, as appropriate, by **CITY**.

7.2 WAR OR NATIONAL EMERGENCY

During any time of war or national emergency, **CITY** shall have the right to lease the Airport or any part thereof to the United States Government for military use, and if any such lease or agreement is executed, the provisions of this Lease Agreement insofar as they are inconsistent with the lease or agreement with the Government shall be suspended, and in that event, a just and proportionate part of the rent hereunder shall be abated, and **TENANT** shall be entitled to receive that portion of rental payments received by the **CITY** that exceed the amounts owed to the **CITY** under this Lease.

ARTICLE 8 - INDEMNITY AND INSURANCE

8.1 INDEMNIFICATION

8.1.1 To the fullest extent permitted by law, **TENANT** agrees to defend, indemnify, and save forever harmless the **CITY**, its officers, agents and employees, from and against all claims and

actions and all reasonable expenses incidental to the investigation and defense thereof, based on or arising out of claims for damages or injuries to any person or property, including wrongful death and loss of use of property, and arising, in whole or in part, out of **TENANT's** use, occupancy or management of the Leased Premises or the Ramp; **CITY** shall give to **TENANT** prompt and reasonable notice of any such claims or actions, and **TENANT** shall have the right and obligation to investigate and defend the same; and provided further, that **TENANT** shall not be liable for any claims, actions, injury, damages or losses to the extent they are occasioned by the negligent or intentional act of **CITY**, its officers, agents or employees. Notwithstanding the foregoing, **TENANT** shall defend the **CITY** from all such claims. "**TENANT**" as used in this Subsection 8.1.1 and in Section 8.2 shall mean and include the named **TENANT**, the Tenant Parties, their officers, agents, employees, invitees, customers, subcontractors, transferees, licensees, subtenants, vendors, suppliers and anyone for whose act **TENANT** or Tenant Parties may be legally liable.

8.1.2 **TENANT** shall, at its own cost and expense defend any and all suits or actions, just or unjust, which may be brought against **CITY** or in which **CITY** may be impleaded with others upon any such above-mentioned matter, claim or claims, including claims of contractors, employees, laborers, material, men, and suppliers. **CITY** shall have the right to participate in such suits and no action shall be settled without prior consent of the **CITY**. Such obligation of indemnity and defense shall not be construed to negate nor abridge any other right of indemnification or contribution running to the **CITY** which would otherwise exist. The extent of this indemnity provision shall not be limited by any requirement of insurance contained herein.

8.1.3 If **TENANT** is required to obtain workers compensation coverage under Maine law, **TENANT** agrees to procure and maintain throughout the term of this Lease Agreement, an endorsement to its Workers Compensation coverage waiving any and all rights of subrogation against **CITY**. In the event such waiver is not available, **TENANT** shall defend, indemnify and hold the **CITY** harmless from any such subrogated claims.

8.1.4 This indemnity and hold harmless provision of this Section 8.1 includes indemnity against all reasonable expenses, fees, costs and liabilities incurred in or in connection with any such claim or proceeding brought thereon, and the defense thereof with counsel reasonably acceptable to the **CITY**. The provisions of this Article 8 and the obligations of **TENANT** hereunder shall survive the termination or expiration of this Lease.

8.1.5 Notwithstanding anything to the contrary contained in this Lease, in no case shall either party be liable to the other, or to any third party, for any incidental, indirect, consequential, special or punitive damages arising out of or relating to this Lease.

8.2 LIEN INDEMNIFICATION

Throughout the term of this Lease, **TENANT** shall not cause nor permit any lien against the Leased Premises, any portion thereof or any **CITY** property wherever located, or any improvements thereto, to arise out of or accrue from any action, omission or use thereof by **TENANT**. **TENANT** may in good faith, however, contest the validity of any alleged lien. **TENANT** shall defend and indemnify and hold the **CITY** harmless from any cost, expense,

attorney's fees or other liability arising out of or resulting from any such lien or liens, and shall promptly discharge such lien or stay or prevent its foreclosure by bond or other appropriate legal procedure which is acceptable to the **CITY**. So long as **TENANT** defends **CITY** in any action concerning any such lien, **TENANT** shall not be required to post a bond with respect to such lien prior to the commencement of a foreclosure action against the **CITY**. This provision shall survive termination or expiration of this Lease Agreement. If (a) **TENANT** is not defending against such lien; and (b) foreclosure proceedings have been commenced by a lienor other than **CITY**, and (c) **TENANT** has not bonded off or otherwise made provision for the subject lien, **CITY** may, at its sole discretion, pay any amounts secured by any such lien and in such case, **TENANT** shall repay all such payments to **CITY** immediately upon **CITY**'s demand therefor.

8.3 INSURANCE

8.3.1 Without expense to the **CITY**, and with no lapse in coverage, **TENANT** shall obtain and cause to be kept in force at all times during the term of this Agreement, insurance no less than that required by the Jetport Minimum Standards for FBO operations at the Airport. A copy of the insurance requirements in effect as of the execution date of this Agreement is attached as Exhibit D.

8.3.2 **TENANT** shall procure and maintain, as of the date of beneficial occupancy of the Leased Premises, all risks fire and casualty insurance, in an amount no less than ninety percent(90%) of the replacement value of the Project and related fixtures, or in such maximum amount as is available if ninety percent (90%) is not available.

8.3.3 **TENANT** and the **CITY** understand and agree that the minimum limits of the insurance herein required may become inadequate during the term of this Agreement and **CITY** reserves the right to amend the minimums as needed throughout the term of this Lease. **TENANT** agrees that it will increase such minimum limits upon receipt of notice in writing from the **CITY**.

8.3.4 In the event any construction or renovation on the Premises or the Ramp is approved by the **CITY**, **TENANT** shall procure and maintain, or cause to be procured and maintained, commercial general liability insurance covering bodily injury and property damage, including special hazards insurance, in such amount as the **CITY** may reasonably require, covering such construction. Said insurance shall protect **TENANT** and **CITY** from any claims or damages arising out of or resulting from such construction or renovations, and shall name the **CITY** as an additional insured thereon. In addition to the foregoing, **TENANT** shall cause to be procured and maintained automobile liability and workers compensation insurance in such amounts as the **CITY** may reasonably require.

8.3.5 All policies of insurance required herein shall be in a form and issued by a company or companies approved to do insurance business in the State of Maine. Each such policy affecting the Premises or the Ramp shall provide that such policy may not be changed, altered or canceled by the insurer during its term without first giving thirty (30) days' notice in writing to the Airport Director. Each liability policy required to be obtained hereunder shall name the **CITY** as an additional insured thereunder and shall be on an occurrence basis. All policies required hereunder shall be primary to any insurance or self-insurance which **CITY** may maintain for its

own benefit.

8.3.6 Certificates or other evidence of insurance coverage required of **TENANT** in this Article, in amounts no less than those stipulated herein or as may be in effect from time-to-time, shall be delivered to the **CITY** prior to the execution of this Lease Agreement and annually thereafter. **TENANT** shall at all times during the term of this Lease Agreement provide **CITY** with at least thirty (30) days prior written notice of any change or modification in insurance coverage or insurance carrier affecting the Leased Premises or the Ramp. Insurer shall provide no less than thirty (30) days written notice prior to cancellation, reduction in coverage or expiration of each policy required hereunder, said notice to be sent to the Airport Director. It shall be **TENANT**'s responsibility throughout the term of this Lease to provide or have provided to the Airport Director renewal insurance certificates with no lapse in coverage prior to such renewal.

8.3.7 If at any time **TENANT** should fail either to obtain or to maintain in force the insurance required herein, the **CITY** shall notify **TENANT** of its intention to purchase such insurance for **TENANT**'s account; and, if **TENANT** has not delivered evidence of insurance to the Airport Director prior to the date on which the current insurance expires, the **CITY** may effect such insurance by taking out policies in companies satisfactory to the **CITY** and charging the costs thereof to **TENANT** as additional rent. Such insurance shall be in amounts no greater than those stipulated herein or as may be in effect from time-to-time. The amount of the premiums for such insurance obtained by the **CITY** shall be payable by **TENANT** as additional rental immediately upon demand therefor by **CITY**. Nothing herein is intended nor shall it be deemed to waive any right of **CITY** to declare the Lease in default hereunder.

8.4 LEASE SURETY

8.4.1 Prior to the Rent Commencement Date, **TENANT** shall provide the Airport Director with a bond or letter of credit (the "Surety") guaranteeing **TENANT**'s performance of its obligations hereunder in the amount of One Hundred Thousand Dollars (\$100,000.00). **CITY** shall be the obligee on such Surety and it shall be in a form satisfactory to the Airport Director. If **TENANT** shall default in the payment of any rent, tax, fees or charge due under this Agreement to any entity, or the performance of any other obligations under this Lease Agreement, **CITY** shall have the right to call the Surety and upon notice from **CITY** to said Surety, said Surety shall pay any amounts owed by **TENANT** and unpaid, and to reimburse **CITY** any loss, costs or expenses it incurs in the event of any default hereunder by **TENANT**. Notwithstanding the foregoing, **TENANT** shall remain liable for any amounts due hereunder and unpaid, and any costs and expenses incurred by **CITY** in excess of the amount of said letter of credit. The **CITY**'s rights under this Subsection shall be in addition to all other rights and remedies provided to the **CITY** under this Agreement.

8.4.2. **CITY** reserves the right to require any successor, assignee, subtenant or other transferee of **TENANT** as tenant under this Lease, as a condition of **CITY** consent to such succession, assignment, sublease or transfer, to provide **CITY** with a Surety as provided in Subsection 8.4.1 above.

8.4.3. Notwithstanding the reimbursement of any amounts owed through the letter of credit, **CITY** reserves the right to declare **TENANT** in default under the Lease for the underlying failure of **TENANT** to pay any amounts or undertake any obligation required herein, which failure resulted in **CITY** drawing upon the letter of credit.

ARTICLE 9 - DESTRUCTION OF PREMISES

9.1 In the event the buildings and improvements on the Premises, or any substantial part thereof, should be damaged or destroyed by an insured casualty, such buildings or improvements shall be repaired or rebuilt by **TENANT** and paid for with the **TENANT**'s insurance proceeds; and, if such proceeds are insufficient for such purposes, the **TENANT** shall pay the deficiency, unless otherwise agreed as provided herein. Repair or restoration of the buildings and improvements shall be in accordance with the original Plans and Specifications, together with alterations or modifications made or agreed upon prior to the casualty, unless the parties otherwise mutually agree to new or modified plans or such new or modified plans are required by then applicable law or regulation.

9.2 Notwithstanding the foregoing, during the last ten (10) years of this Agreement or any renewal thereof, in the event the buildings and improvements on the Premises, or a substantial part thereof, should be destroyed, then **TENANT** may terminate this Agreement by written notice to **CITY** within ninety (90) days of the casualty and all obligations of each party hereunder shall terminate. In the event of such termination, **TENANT** shall return the Premises to **CITY** restored to a clean and usable condition, with removal of all personal and real property as provided in Article 12.3 below, "Termination for **TENANT** Default". If **TENANT** does not provide notice of such termination, **TENANT** shall proceed diligently to rebuild and restore the Premises and the buildings and improvements thereon in accord with the original plans and specifications or such other plans and specifications as may be approved by the Airport Director and any applicable planning authority.

9.3 If the building or buildings shall be damaged in such manner as to render them unusable in whole or in part during repair and restoration thereof, the rent provided to be paid under the terms of this Lease Agreement shall be abated or reduced proportionately during the period from the date of such damage or destruction until the work of repairing, restoring or reconstructing said building or buildings is completed.

ARTICLE 10 - CONDEMNATION

10.1 **CITY** agrees to give prompt written notice to **TENANT** of any eminent domain, condemnation, compulsory acquisition or like proceedings by any competent authority which might result in a partial or full, temporary or permanent, taking of the Leased Premises and of which **CITY** has actual notice. Each party may file and prosecute their respective claims for an award, but all awards and payments on account of a taking shall be held in trust by the recipient to be distributed according to the respective interests of the parties, i.e., payments allocable to the value of the Leased Premises and the residual interest in the Leased Premises shall be paid to **CITY** and payments allocable to **TENANT**'s leasehold interest and improvements shall be paid to **TENANT**.

10.2 In the case of a taking (other than for temporary use) of the fee of the entire Leased Premises, or so substantial a part of the Leased Premises that such taking materially impairs **TENANT's** conduct of its operations at or from the Premises, this Agreement shall terminate as of the effective date of such taking. In the case of a temporary taking (including without limitation a temporary taking as a result of relocation under 7.1.2 above), this Agreement shall be suspended during such time as **TENANT** is unable to use the Leasehold Premises for the uses provided herein. In the case of a temporary taking which does not permit **TENANT** to use the Premises as provided herein for a period of ninety (90) days or more, at the conclusion of said ninety (90) day period, **TENANT** may, in its discretion, give **CITY** a thirty (30) day notice of its intent to terminate the Lease Agreement, during which thirty (30) day period **CITY** may provide **TENANT** with comparable leased space from which to conduct its operations; and, in such event, this Lease will be amended to cover such alternative space and shall not terminate. In the event **CITY** does not provide such alternative space, this Lease shall terminate at the end of the thirty (30) day notice period, with no further obligation by either party. Nothing herein shall prevent or prohibit the **CITY** from providing alternative space to **TENANT** prior to receipt of the thirty (30) day notice of termination. **TENANT's** obligation to pay rent hereunder shall be suspended during any temporary taking during which **TENANT** is unable to conduct its operations at or from the Leased Premises; provided, however, to the extent **TENANT** is able to continue its operations hereunder from the Premises or from an alternative site, the **TENANT** shall continue to pay the fixed rent based upon the square footage then available to **TENANT**, and the percentage rent, if applicable.

ARTICLE 11 - TERMINATION OF LEASE

11.1 **CITY's Right to Terminate.** The **CITY**, in addition to any other rights to which it may be entitled by law, acting by and through its City Manager, may declare this Lease Agreement terminated in its entirety, subject to and in the manner provided herein, upon or after the happening of any one or more of the following events, and may exercise all rights of entry and re-entry upon the Premises:

- (a) To the extent permitted by law, the filing by **TENANT** of a voluntary petition in bankruptcy or any assignment for benefit of creditors of all or any part of **TENANT's** assets;
- (b) To the extent permitted by law, the entry of an order for relief against the **TENANT**, by a court of applicable jurisdiction, pursuant to any involuntary bankruptcy petition filed against the **TENANT**;
- (c) To the extent permitted by law, the taking of jurisdiction by a court of competent jurisdiction of **TENANT** or its assets, pursuant to proceedings brought under the provisions of any Federal reorganization act;
- (d) To the extent permitted by law, the appointment of a receiver or trustee of **TENANT's** assets by a court of competent jurisdiction or a voluntary agreement with **TENANT's** creditors;

(e) The voluntary abandonment by **TENANT** of the Leased Premises (and the failure to pay rent thereon) for a period in excess of thirty (30) days; or

(f) The material breach by **TENANT** of any of the covenants or agreements herein contained and not cured as provided below. A material breach shall include, but not be limited to, the failure of the **TENANT** to comply with the mandatory elements of the Airport's Part 150 program and the failure of **TENANT** to pay any rental, tax, fee, or charge required to be paid by the terms of this Lease Agreement.

11.2 **TENANT's Right to Terminate.** **TENANT**, in addition to any other right given to it herein or to which it may be entitled by law, may terminate this Agreement in its entirety, subject to and in the manner provided herein, upon or after the happening of any one of the following events:

(a) The issuance by any court of competent jurisdiction of an injunction which materially prevents or restrains the use of the Airport or the Leased Premises for the purposes permitted under this Lease Agreement and such injunction remaining in force for a period of at least ninety (90) days after the date of receipt of written notice of such injunction by **CITY**;

(b) Subject to **TENANT's** obligation to restore or repair the Premises under Article 9 above, the inability of **TENANT** to use said Leased Premises and Airport facilities due to war, earthquake or other casualty for a longer period than ninety (90) days after the date of receipt of written notice of such inability from **TENANT**;

(c) Any action of any governmental authority, board, agency or officer having jurisdiction thereof preventing **TENANT** from conducting the activities permitted hereunder at or on the Leased Premises by a taking, directly or indirectly, in whole or a substantial part, of the Leased Premises for a period of at least ninety (90) days after receipt of written notice of such action by **CITY**, subject to Article 10 above;

(d) The taking, through the process of eminent domain, of all or a substantial part of the Premises leased by **TENANT**, subject to Article 10 above; or

(e) The material breach by **CITY** of any of the covenants or agreements herein contained and not cured as provided below.

11.3 **Default by CITY.** In the event of any default by **CITY** of any of its obligations under this Lease Agreement, **TENANT** may declare the **CITY** in default by delivering by hand during regular business hours or sending by certified mail, return receipt requested, of written notice to **CITY's** Airport Director in the office of the Airport Administration, addressed and copied as provided in Section 14.9 below, specifying both the date upon which termination will take effect and also the cause for which this Lease Agreement is being terminated. No termination shall be effective until not less than thirty (30) days have elapsed after the date of delivery of notice by **TENANT** to **CITY**, and such default shall not have been cured during such thirty (30) day

period by the **CITY**. If such default by its nature cannot be cured within such thirty (30) day period, no termination shall be effective if the **CITY** commences to correct such default within said thirty (30) days from the date of delivery of the notice of default, and continues with due diligence to correct the same as promptly as reasonably practicable.

11.4 Default by **TENANT**. In the event of any default by **TENANT** of any of its obligations under this Lease Agreement, **CITY** may declare the **TENANT** in default by delivering by hand during regular business hours or sending by certified mail, return receipt requested, of written notice to **TENANT** addressed as provided in Section 14.9 below, specifying both the date upon which termination will take effect and also the cause for which this Lease Agreement is being terminated. Except as provided otherwise in this Lease Agreement whereby no opportunity to cure is required, no termination shall be effective until not less than thirty (30) days have elapsed after the date of delivery of notice by **CITY** to **TENANT**, and such default shall not have been cured during such thirty (30) day period by the **TENANT**. If such default by its nature cannot be cured within such thirty (30) day period, no termination shall be effective if the **TENANT** commences to correct such default within said thirty (30) days from the date of delivery of the notice of default, and continues with due diligence to correct the same as promptly as reasonably practicable. In the event **TENANT** knew or should have known of the default prior to receipt of **CITY** notice, said thirty (30) day period to cure shall be deemed to begin as of the date **TENANT** knew or should have known of said default. Notwithstanding the foregoing, if **TENANT** should fail to pay any sum, including without limitation any rental, tax, assessment or use fee or charge, as required hereunder, **TENANT** shall have ten (10) days from receipt of **CITY** notice of default to cure said default, and if not so cured, termination of this Lease Agreement shall be effective as of the eleventh day following said receipt of notice.

ARTICLE 12 - RIGHTS UPON TERMINATION

12.1 **TENANT** agrees that upon the expiration of the term of this Lease or sooner termination thereof, the Leased Premises will be delivered to **CITY** in good condition, reasonable wear and tear excepted, and all buildings, fixtures and personal property located on the Leased Premises shall remain on, or be removed from, the Leased Premises as provided herein. Upon the termination or expiration of this Lease Agreement, all rights of **TENANT** hereunder to possession of the Leased Premises shall immediately terminate.

12.2 Lease Expiration or Termination for **CITY** Default. Upon expiration of this Lease Agreement or termination for default by **CITY**, **TENANT** shall have the right, but not the obligation, upon notice to **CITY** prior to the effective date of such expiration or termination, to enter upon the Premises within thirty (30) days after the effective date of such expiration or termination and to remove all buildings, fixtures and personal property installed on the Premises, and to repair any damage to the Leased Premises caused by said removal and to restore the Premises to its original condition, all at **TENANT**'s cost and expense. In the event **TENANT** does not provide such notice to **CITY**, title to all buildings, fixtures and personal property located thereon shall vest in the **CITY** as of the day following the effective date of expiration or termination of this Lease Agreement.

12.3 Termination for TENANT default.

12.3.1 Personal Property. If termination of this Lease Agreement is for default by **TENANT** hereunder, **TENANT** shall remove all personal property located on the Premises within thirty (30) days after the date of such termination. Title to and ownership of any personal property left on the Premises after the expiration of said thirty (30) day period shall immediately vest in **CITY** as of the thirty-first day following the effective date of such termination. Personal property as used hereunder shall not include any buildings or fixtures located on the Premises.

12.3.2 Buildings and Fixtures. If termination of this Lease Agreement is for default by **TENANT** hereunder, all buildings and fixtures on the Leased Premises shall become the property of **CITY** and title thereto shall vest in **CITY** as of the thirty-first day following the effective date of such termination; provided, however, upon written notice from **CITY** to **TENANT** prior to the date of termination of this Lease Agreement, **CITY** may require **TENANT** to remove all such buildings and fixtures within thirty (30) days after the date of such termination and to repair any damage to the Leased Premises caused by said removal and to restore the Premises to its original condition, all at **TENANT**'s cost and expense.

12.4 TENANT Failure to Remove. Upon vesting of title in **CITY** in any buildings, fixtures or personal property pursuant to the terms of this Article, **CITY** shall have the right to use, lease, sell, assign, remove or otherwise dispose of, or store such property, subject to the requirements of any then applicable laws for the disposition of abandoned property. **CITY** shall be entitled to all proceeds from any such use, lease, sale, assignment or other disposition; and in the event **TENANT** was required to remove such buildings, fixtures or personal property under the terms of this Article and failed to do so, **TENANT** shall be liable to **CITY** for all losses, fees, or costs incurred by **CITY** in such use, lease, sale, assignment, removal, storage or other disposition, including without limitation reasonable attorney's fees, and any costs or expenses incurred by **CITY** to repair any damage to the Leased Premises caused by said removal and to restore the Premises to its original condition.

ARTICLE 13 - NO ASSIGNMENT AND SUBLETTING

13.1 The **TENANT** shall not assign, rent, sublease, convey, mortgage, encumber or otherwise transfer in any manner all or any part of the Leased Premises or the improvements located thereon or any of the privileges granted to **TENANT** hereunder, without the prior written consent of the **CITY**, which approval shall not be unreasonably withheld or delayed. To the degree consistent with this Lease Agreement and the scope of use described herein, the **CITY** consents to operation of the FBO through the wholly owned entities of **TENANT** or through any one or more of the Tenant Parties, as identified in Exhibit C. **TENANT** shall provide **CITY** with a list of all persons, companies, corporations, or other entities who operate at or from the Premises under a sublease or other agreement, transfer or assignment by or with **TENANT**, such list to be provided on an annual basis or upon **CITY**'s request. **CITY** reserves the right to review the form of all subleases. **CITY** further reserves the right to place such reasonable conditions upon any such transfer as it deems to be in the best interest of the **CITY**. In the event of any approved transfer, sublease or assignment, **TENANT** shall continue to be liable to **CITY** for all rent, fees, taxes and assessments for which it is liable hereunder. All approved

transferees, subleases or assignees shall be required to conform to all of the terms and conditions of this Lease Agreement, including without limitation, all insurance requirements hereunder.

13.2 Any violation of the terms of this Article by any person at or on the Premises, or conducting any activities from, at or on the Premises, shall be deemed a breach of this Lease Agreement and, at **CITY** option, may result in termination of this Lease Agreement pursuant to Article 11.

13.3 Any sale or transfer, whether to one or more persons or entities and whether at one or more different times, of a total of fifty percent (50%) or more of the ownership interest in any corporation, partnership, limited liability company or other entity which is then the legal tenant under this Lease Agreement shall be deemed an assignment of this Lease Agreement within the meaning of this Article 13. Any establishment of a separate LLC or other entity by **TENANT**, other than those identified in Exhibit C, to operate on or from the Premises shall be deemed a transfer of this Lease, even if such LLC or other entity is wholly owned by **TENANT** or other entity named in Exhibit C.

13.4 Despite any permitted assignment, subletting or other transfer, **TENANT** shall not be relieved of its obligations under this Lease Agreement but shall continue to remain primarily liable hereunder and shall not be relieved of such liability by an extension of time or other indulgence granted by **CITY** to any transferee, assignee or sublessee or by failure of **TENANT** to receive notice thereof and **TENANT** hereby waives suretyship defenses.

ARTICLE 14 - MISCELLANEOUS PROVISIONS

14.1 NON-INTERFERENCE WITH OPERATION OF AIRPORT

14.1.1 **TENANT**, by accepting this Lease, expressly agrees for itself, its successors and assigns that it will not make use of the Leased Premises in any manner which might interfere with the landing and taking off of aircraft at **CITY**'s Airport or otherwise constitute a hazard or interfere with or endanger general operations at the Airport. In the event the aforesaid covenant is breached, the **CITY** reserves the right to enter upon the Premises hereby leased and cause the abatement of such interference at the expense of the **TENANT**, and reimbursement for such **CITY** expense shall be paid by **TENANT** immediately upon **CITY**'s demand therefor.

14.1.2 **CITY** hereby reserves for itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises, together with the right to cause in said air space such noise as may be inherent in the operation of aircraft now known or hereafter used for navigation of, or flight in the air, using said air space, or landing at, taking off from, or operating at the Airport. In addition, **TENANT** acknowledges that because of the close location of the Premises to the "airfield operations area", that noise, vibration, fumes, debris and other interference with the Premises will be caused by Airport operations. **TENANT** hereby waives any and all rights and remedies against **CITY** arising out of any noise, vibration, fumes, debris and/or interference that is caused by the operation of the Airport. **CITY** reserves the right to enter the Premises for navigational needs.

14.2 QUIET ENJOYMENT

The **CITY** agrees that on payment of the rentals and fees hereunder, and subject to performance and compliance by **TENANT** of the covenants, conditions and agreement on its part to be performed and complied with herein, **TENANT** shall peaceably have and enjoy the rights, uses and privileges of the Airport, its appurtenances and facilities, and of the Leased Premises, to the extent granted herein. It is mutually agreed, however, that this Lease Agreement is made subject to the covenants, requirements and restrictions contained in the Deeds by which **CITY** obtained title to the Airport.

14.3 AGREEMENTS WITH FEDERAL GOVERNMENT

This Lease Agreement is subject and subordinate to the provisions of any agreements that have been or shall be made between the **CITY** and the United States of America relative to the operation or maintenance of the Airport, the execution of which have been or shall be required as a condition precedent to the transfer of Federal rights of property to the **CITY** for Airport purposes, or to the expenditure of Federal funds for the extension, expansion, or development of the Airport, including the expenditure of Federal funds for the development of the Airport in accordance with the provisions of the Federal Aviation Act of 1958, as it has been amended from time to time (the "Sponsor's Assurances"). **TENANT** agrees to comply with all applicable federal law, regulations and Sponsor's Assurances and to modify or amend this Agreement as required to comply with such applicable laws, regulations and Sponsor's Assurances.

14.4 LICENSE FEES AND PERMITS

TENANT shall obtain and pay for all licenses, permits, fees or other authorization or charges as required under Federal, State or local laws and regulations insofar as they are necessary to comply with the requirements of this Agreement and the privileges extended hereunder.

14.5 SECURITY AGREEMENT

TENANT, at its own cost and expense, shall be responsible for ensuring that all building entrances, gates (Intellikey locks required to be provided by **TENANT** or equal approved by the Airport Security Coordinator), exits, and any access to the Leased Premises are in compliance with the Airport Security Program as required by 49 CFR Part 1542, and any amendments thereto. **TENANT** must control and regulate any doors, openings or entrances to the Security Identification Display Area (SIDA) to prevent unauthorized access by persons and/or vehicles. It shall be **TENANT**'s responsibility, at its own cost and expense, to be in compliance with all existing and future security requirements of the Department of Transportation, Transportation Security Administration, and/or the Airport Security Program, and **TENANT** shall hold the **CITY** harmless and shall pay any fines, penalties, cost or expenses incurred by **CITY** or by **TENANT** and arising out of any breach of said security requirements by **TENANT**, its officers, agents, employees, customers, invitee, subtenants, contractors, subcontractors or anyone for whose act **TENANT** may be liable.

14.6 PARAGRAPH HEADINGS

The paragraph headings contained herein are for convenience of reference and are not intended to define or limit the scope of any provision of the Lease.

14.7 INTERPRETATIONS

The laws of the State of Maine shall govern the validity, interpretation, performance and enforcement of this Agreement. Words of gender used in this Agreement shall be held and construed to include the other gender, and words in the singular shall be held to include the plural and vice versa unless the context otherwise requires. Unless the context specifically provides otherwise, "person" wherever used in this Lease shall include, without limitation, an individual, a sole proprietor, a corporation, a partnership or any legal entity authorized by law.

14.8 DISPUTE RESOLUTION

Except as provided herein for determination of Renewal Rent in Section 4.3, all disputes hereunder which are not mutually resolved shall be resolved by trial without a jury in the Courts of Cumberland County, State of Maine. Notwithstanding the foregoing, **TENANT** and **CITY** may mutually agree to submit any dispute hereunder to binding arbitration, subject to the following terms and conditions:

14.8.1 A request for arbitration shall be directed to the American Arbitration Association, under its commercial arbitration rules. The jurisdiction and authority of the arbitrator selected and the arbitrator's opinion and award shall be confined exclusively to the interpretation of the express provision or provisions of this Lease at issue between the parties and in accordance with the laws of the State of Maine. The arbitrator shall have no authority to add to, detract from, alter, amend or modify any provision of the Lease Agreement. The arbitrator shall not impose on either party hereto a limitation or obligation not expressly provided for in this Agreement.

14.8.2 The award shall be in writing and shall set forth the arbitrator's findings of fact and conclusions of law in a form sufficient to appraise the parties and any appellate court of the basis for the decision.

14.8.3 The award is subject to review by the Cumberland County Superior Court, sitting without a jury, which may affirm, modify or reverse the award pursuant to 14 M.R.S.A. Section 5927 et. seq. In the event of any conflict between said statute and this Lease Agreement, this Lease Agreement shall prevail.

14.8.4 The review by the court shall be based upon the record of proceedings before the arbitrator, unless the court, by order, provides otherwise. The appellant shall have the responsibility to prepare the record of proceedings and its submission to the court.

14.9 NOTICES

Except as otherwise provided in Article 11 for certified mail or hand delivery of notice of default, whenever any notice or payment is required by this Lease Agreement to be made, given or transmitted to the parties hereto, such notice or payment shall be enclosed in an envelope with

sufficient postage attached to insure delivery and deposited in the United States Mail, addressed to, or hand-delivered to:

CITY:

Airport Director
Portland International Jetport
1001 Westbrook Street
Portland, Maine 04101
with a copy to:

City Manager
389 Congress Street
Portland, ME 04101

and notices, consents and approvals to **TENANT** addressed to, or hand delivered to:

Northeast Air
1001 Westbrook Street
Portland, Maine 04102

With a copy to:

or such place as either party shall designate in writing.

14.10 ENTIRE AGREEMENT

This Lease Agreement, together with the exhibits attached hereto, constitutes the entire agreement between the parties and all other representations or statements heretofore made, verbal or written, are merged herein, and this Lease Agreement may be amended only in a writing executed by duly authorized representatives of the parties hereto.

14.11 NON-WAIVER

No waiver by either party of any of the terms, covenants, and conditions hereof to be performed kept and observed by the other party shall be construed as, or operate as, a waiver of any subsequent default of any of the terms, covenants or conditions herein contained, to be performed, kept, and observed by the other party. The receipt by **CITY** of any rent with knowledge of any breach of this Lease Agreement by **TENANT** or of any default by **TENANT**

in the observance or performance of any of the terms, covenants or conditions of this Lease Agreement shall not be deemed to be a waiver of any provision of this Lease Agreement. If any action by **TENANT** shall require the consent or approval of **CITY**, **CITY**'s consent to, or approval of, such action on any one occasion shall not be deemed a consent to, or approval of, said action on any subsequent occasion, or consent to, or approval of, any other action on the same or any subsequent occasion.

14.12 REMEDIES CUMULATIVE

All rights and remedies of the parties herein enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law. Likewise, the exercise by either party of any remedy provided herein or allowed by law shall not be to the exclusion of any other remedy.

14.13 TIME OF ESSENCE

Time is and shall be of the essence in respect to the performance of each and every provision of this Lease Agreement.

14.14 FORCE MAJEURE

Neither the **CITY** nor **TENANT** shall be deemed in violation of this Lease Agreement if either should be prevented from performing any of the obligations hereunder (other than any obligations to make payments) by reason of strikes, boycotts, labor disputes, embargoes, shortage of material, 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 within its control. The party claiming Force Majeure shall give prompt written notice to the other party of such event or events, and shall resume performance promptly upon the conclusion of the event or events preventing its performance.

14.15 PARTIAL INVALIDITY

If any term, covenant, condition, or provision of this Agreement or the application thereof to any person or circumstance shall at any time or to any extent, be held to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Lease Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition, and provision of this Lease Agreement shall be valid and be enforced to the fullest extent permitted by law. In the event of such invalid provision, there will be added to this Lease Agreement a provision as similar to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

14.16 NON EXCLUSIVE RIGHTS

Nothing herein contained shall be deemed to grant to **TENANT** any exclusive right or privilege within the meaning of section 308 of the Federal Aviation Act for the conduct of any activity at the Airport.

14.17 Intentionally omitted.

14.18 MEMORANDUM OF LEASE

Either party at the request of the other, shall execute, acknowledge and deliver for recording, a memorandum or short form lease prepared by the requesting party; provided, however, that the relations between **CITY** and **TENANT** shall be governed solely by the provisions of this Lease Agreement and not by any such memorandum or short form lease which may be executed, delivered and recorded.

14.19 SUCCESSORS AND ASSIGNS

All of the terms, provisions, covenants, stipulations, conditions and considerations in this Lease Agreement shall extend to and bind the legal representatives, heirs, successors, and any permitted assigns of the respective parties hereto. Nothing herein shall be deemed to authorize or permit any assignment or other transfer, in whole or in part, of the interest of **TENANT** in violation of any other provisions contained in this Lease Agreement.

14.20 ASSIGNMENT TO CITY SUCCESSOR IN INTEREST

The **CITY** may assign or otherwise convey its interest, rights, duties and/or obligations hereunder to any airport authority or other successor in interest.

14.21 NO PERSONAL LIABILITY

No Councilor, director, partner, officer, shareholder, member, manager, agent or employee of either party shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement, or because of any breach thereof, or because of its or their execution or attempted execution.

14.22 AUTHORITY OF PARTIES

14.22.1 **CITY** represents that it has the right to lease said property designated herein as the Airport and the Leased Premises, together with all facilities, rights, licenses and privileges herein granted, and has full power and authority to enter into this Lease Agreement in respect thereof.

14.22.2 **TENANT** hereby makes the following representations as the basis for its undertakings herein contained:

- (a) **TENANT** is a corporation duly organized under the laws of the State of Maine; it is _____; it is in good standing under the laws of said State; has the power to enter into this Agreement; by proper corporate action has duly authorized the execution and delivery of this Agreement; and is in full compliance with all applicable Maine laws relating to the conduct of its business in Maine; and

(b) **TENANT** will occupy and possess the Leased Premises subject to the control and jurisdiction of the **CITY** in accordance with the terms hereof.

14.23 TRANSITION PROVISION

Prior to the Effective Date, the rights and obligations of **CITY** and **TENANT** are those described in Lease 1 and Lease 2. On the Effective Date, Lease 1 and Lease 2 shall be deemed amended and restated so as to contain all of the terms of this Lease, and this Lease as amended and restated shall govern all future rights, obligations, duties and liabilities of the parties.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their duly authorized representatives as of the date first above mentioned at Portland, Maine.

WITNESS

CITY OF PORTLAND, MAINE

Jon P. Jennings, Its City Manager

NORTHEAST AIR

STATE OF MAINE
Cumberland, ss.

, 2015

Personally appeared the above-named Jon P. Jennings, City Manager of the City of Portland, as aforesaid, and acknowledged the foregoing instrument to be his free act and deed in his said capacity, and the free act and deed of the municipal corporation.

Before me,

Notary Public/Attorney at Law

STATE OF MAINE
Cumberland, ss.

, 2015

Personally appeared the above-named _____, _____ of
Northeast Air, and acknowledged the foregoing instrument to be his free act and deed and the
free act and deed of said corporation.

Before me,

Notary Public/Attorney at Law

Tenant's Proposal

EXHIBIT A

Northeast Air Leases:

Lease # 1: Dated March 30, 1970 and restated and revised on November 14, 1997.

Agreement with Northeast Air

Term: Initial term through June 30, 2016

One twenty year renewal expiring June 30, 2036.

Premises: Hangar building 44,000 sq. ft.

Additional building property 22,000 sq. ft.

Parking lot approximately 16,100 sq. ft.

Ground rent based on 82,100 sq. ft. area shaded in **red** at right. Also includes management of ramp south of hangar and ramp/tiedowns north of hangar shaded in **orange** at right.

Lease #2: Dated July 1, 1996.

Term: Initial term 20 years through June 30, 2016

Agreement with LCL Associates

One twenty year renewal through June 30, 2036

Premises: Hangar building property 45,160 sq. ft. shaded in **blue** at right.

Lease #3: Former Airborne Parcel on FSDO ramp not shown. Dated January 20, 1998

Term: Twenty five year initial term through January 2023 with one option to extend 25 years to January 2048.

Agreement with HLJ Associates by assignment from LCL associates
Premises: Hangar property 68,553 sq. ft.

Lease #4: Dated August 12, 1976 with Maine Aviation Corporation. Assigned to Irving Oil Corporation September 8, 1995. Assigned to Northeast October 4, 2000.

Term: Initial ten year option followed by one ten and one twenty year option. Original agreement with all options expires August 11, 2016. An additional 20 year option was issued on August 3, 2011 and must be exercised 60 days prior to August 11, 2016. It requires a \$465,000 investment in the premises.

Premises: Hangar property 44,500 sq. ft. shaded in **green** to right. Also includes management of ramp shaded in **purple** to right.

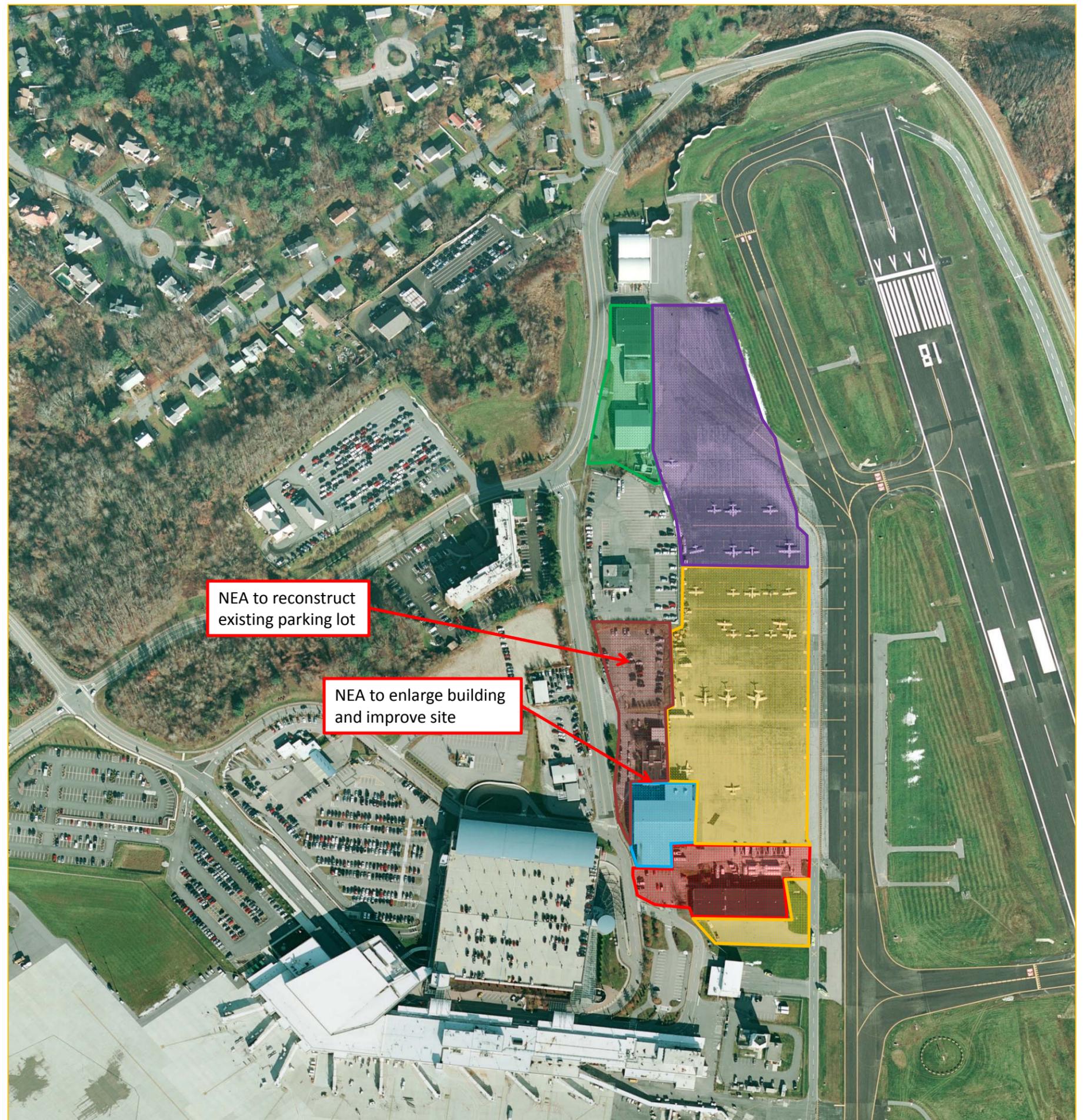
Proposed Restatement, Expansion, & Revision of Leases #1 and #2:

Proposed December 2015.

Term: Extends Lease #1 and #2 by 20 years to June 30, 2056.

Requires investment of \$2.5 million

Premises: Ground lease increased by 61,026 sq. ft. as shown in **burgundy** at right. Total leased premises of 188,286 includes areas in Lease #1 of 82,100 sq. ft. and management of ramp /tiedowns, Lease #2 of 45,160 sq. ft., and new area of 61,026 sq. ft. Lease is revised to conform with all terms of recent City of Portland lease with Hangar Group.





NEA
NORTHEAST AIR

NEA



EXHIBIT B

List of Leases Between City of Portland and Tenant Parties

1. November 14, 1997 Restated and Revised Lease between City of Portland and Northeast Air.
2. January 20, 1998 Lease between HLJ Associates and City of Portland.
3. August 12, 1976 Lease between Northeast Air and City of Portland.

EXHIBIT C

Tenant Parties

HJL Associates, a Maine corporation with a mailing address of _____.

LCL Associates, a Maine corporation with a mailing address of _____.

EXHIBIT D

Insurance Requirements

	Self-Fueling	Non-Commercial Hangar	General Aviation Deicing	Air Carrier De-icing	Commercial Hangar	Temporary Specialized Commercial	Specialized Commercial	Aircraft Sales	Aircraft Charter or Aircraft Management	Aircraft Rental, Flying Club, Flight Training	Avionics, Instrument, Propeller Repair	Aircraft Maintenance	Fixed Base Operator
COMMERCIAL GENERAL LIABILITY (Combined Single Limit)													
Each Occurrence	\$ 1,000,000	\$ 1,000,000	\$ 1,000,000	\$ 25,000,000	\$ 1,000,000	\$ 1,000,000	\$ 1,000,000	\$ 1,000,000	\$ 1,000,000	\$ 1,000,000	\$ 1,000,000	\$ 1,000,000	\$ 2,000,000
VEHICULAR LIABILITY of BUSINESS AUTOMOBILE LIABILITY (Combined Single Limit)													
Each Occurrence	\$ 1,000,000	\$ 1,000,000	\$ 1,000,000	\$ 10,000,000	\$ 1,000,000	\$ 1,000,000	\$ 1,000,000	\$ 1,000,000	\$ 1,000,000	\$ 1,000,000	\$ 1,000,000	\$ 1,000,000	\$ 2,000,000
HANGAR KEEPER'S LIABILITY (Largest Aircraft Accommodated)													
SE Piston Each Aircraft	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000	\$ 150,000
Each Occurrence	\$ 300,000	\$ 300,000	\$ 300,000	\$ 300,000	\$ 300,000	\$ 300,000	\$ 300,000	\$ 300,000	\$ 300,000	\$ 300,000	\$ 300,000	\$ 300,000	\$ 300,000
ME Piston Each Aircraft	\$ 250,000	\$ 250,000	\$ 250,000	\$ 250,000	\$ 250,000	\$ 250,000	\$ 250,000	\$ 250,000	\$ 250,000	\$ 250,000	\$ 250,000	\$ 250,000	\$ 250,000
Each Occurrence	\$ 500,000	\$ 500,000	\$ 500,000	\$ 500,000	\$ 500,000	\$ 500,000	\$ 500,000	\$ 500,000	\$ 500,000	\$ 500,000	\$ 500,000	\$ 500,000	\$ 500,000
SE Each Aircraft	\$ 1,000,000	\$ 1,000,000	\$ 1,000,000	\$ 1,000,000	\$ 1,000,000	\$ 1,000,000	\$ 1,000,000	\$ 1,000,000	\$ 1,000,000	\$ 1,000,000	\$ 1,000,000	\$ 1,000,000	\$ 1,000,000
Each Occurrence	\$ 2,000,000	\$ 2,000,000	\$ 2,000,000	\$ 2,000,000	\$ 2,000,000	\$ 2,000,000	\$ 2,000,000	\$ 2,000,000	\$ 2,000,000	\$ 2,000,000	\$ 2,000,000	\$ 2,000,000	\$ 2,000,000
ME Each Aircraft	\$ 2,000,000	\$ 2,000,000	\$ 2,000,000	\$ 2,000,000	\$ 2,000,000	\$ 2,000,000	\$ 2,000,000	\$ 2,000,000	\$ 2,000,000	\$ 2,000,000	\$ 2,000,000	\$ 2,000,000	\$ 2,000,000
Each Occurrence	\$ 4,000,000	\$ 4,000,000	\$ 4,000,000	\$ 4,000,000	\$ 4,000,000	\$ 4,000,000	\$ 4,000,000	\$ 4,000,000	\$ 4,000,000	\$ 4,000,000	\$ 4,000,000	\$ 4,000,000	\$ 4,000,000
Light Turbine Each Aircraft	\$ 2,500,000	\$ 2,500,000	\$ 2,500,000	\$ 2,500,000	\$ 2,500,000	\$ 2,500,000	\$ 2,500,000	\$ 2,500,000	\$ 2,500,000	\$ 2,500,000	\$ 2,500,000	\$ 2,500,000	\$ 2,500,000
Each Occurrence	\$ 5,000,000	\$ 5,000,000	\$ 5,000,000	\$ 5,000,000	\$ 5,000,000	\$ 5,000,000	\$ 5,000,000	\$ 5,000,000	\$ 5,000,000	\$ 5,000,000	\$ 5,000,000	\$ 5,000,000	\$ 5,000,000
Medium Turbine Each Aircraft	\$ 5,000,000	\$ 5,000,000	\$ 5,000,000	\$ 5,000,000	\$ 5,000,000	\$ 5,000,000	\$ 5,000,000	\$ 5,000,000	\$ 5,000,000	\$ 5,000,000	\$ 5,000,000	\$ 5,000,000	\$ 5,000,000
Each Occurrence	\$ 10,000,000	\$ 10,000,000	\$ 10,000,000	\$ 10,000,000	\$ 10,000,000	\$ 10,000,000	\$ 10,000,000	\$ 10,000,000	\$ 10,000,000	\$ 10,000,000	\$ 10,000,000	\$ 10,000,000	\$ 10,000,000
Heavy Turbine Each Aircraft	\$ 10,000,000	\$ 10,000,000	\$ 10,000,000	\$ 10,000,000	\$ 10,000,000	\$ 10,000,000	\$ 10,000,000	\$ 10,000,000	\$ 10,000,000	\$ 10,000,000	\$ 10,000,000	\$ 10,000,000	\$ 10,000,000
Each Occurrence	\$ 20,000,000	\$ 20,000,000	\$ 20,000,000	\$ 20,000,000	\$ 20,000,000	\$ 20,000,000	\$ 20,000,000	\$ 20,000,000	\$ 20,000,000	\$ 20,000,000	\$ 20,000,000	\$ 20,000,000	\$ 20,000,000
AIRCRAFT AND PASSENGER LIABILITY (Combined Single Limit, Each Occurrence)													
SE Piston	\$1,000,000 CSI/\$100,000 sub limit per seat/passenger												
ME Piston	\$1,000,000 CSI/\$100,000 sub limit per seat/passenger												
SE and ME Turboprop	\$5,000,000 CSI/\$200,000 sub limit per seat/passenger												
Light Turbine	\$5,000,000 CSI/\$200,000 sub limit per seat/passenger												
Medium Turbine	\$10,000,000 \$ 10,000,000 \$ 10,000,000 \$ 10,000,000												
Heavy Turbine	\$10,000,000 \$ 10,000,000 \$ 10,000,000 \$ 10,000,000												
Student and Renters	\$ 100,000												
CP Professional Liability	\$ 100,000												