

**NANTUCKET MEMORIAL AIRPORT COMMISSION**

**February 11, 2014**

**AGENDA**

1. Review and Approve:
  - a. Agenda
  - b. 1/14/14 Minutes
  - c. 1/28/14 Minutes - *Pending*
  - d. Ratify 2/5/14 Warrant
2. Public Comment
3. Pending Leases/Contracts as Set Forth on Exhibit 1, Which Exhibit is Herein Incorporated by Reference
4. Pending Matters
  - a. **070913-1** TON Memorandum of Understanding (MOU) Update
5. Finance
6. **022613-2** Master Plan & Sustainability Program Update
7. Manager's Report
  - a. Project Updates
  - b. RFP/Bid Status
  - c. Operations Update
8. Sub-Committee Reports
9. Commissioner's Comments
10. Public Comment
11. Executive Session – G.L. c.30A, §21(a)
  - a. Review ES minutes of 8/28/12, 9/18/12, 12/4/12, 12/11/12, 2/26/13, 4/23/13, 5/28/13, 8/27/13, 9/10/13, 9/24/13, 10/8/13 and 10/22/13, 11/12/13 and 12/10/13 for possible release; and 1/14/14 for review and possible release,

**Public Safety Facility**

1<sup>st</sup> Floor Meeting Room

4 Fairgrounds Road

**5:00 PM**

Town of Nantucket  
**NANTUCKET MEMORIAL AIRPORT**  
14 Airport Road  
Nantucket Island, Massachusetts 02554

Thomas M. Rafter, Airport Manager  
Phone: (508) 325-5300  
Fax: (508) 325-5306



*Commissioners*  
Daniel W. Drake, Chairman  
Arthur D. Gasbarro, Vice Chair  
David C. Gray, Sr.  
Andrea N. Planzer  
Jeannette D. Topham

**DRAFT**

**AIRPORT COMMISSION MEETING**

**January 14, 2014**

The meeting was called to order 4:03 PM by Chairman Daniel W. Drake with the following Commissioners present, David C. Gray, Sr., Andrea N. Planzer and Jeanette D. Topham. Vice Chair, Arthur D. Gasbarro participated remotely by phone due to geographical distance.

The meeting took place in the 1<sup>st</sup> Floor meeting room at the Public Safety Facility, 4 Fairgrounds Rd.

Airport employee present was Thomas M. Rafter, Airport Manager.

Also present was Attorney David Jenkins from Legal Counsel's office.

Ms. Topham made a **Motion** to enter into Executive Session, to reconvene in Open Session, to: a) conduct strategy with respect to collective bargaining where if held in open session, may have a detrimental effect on the bargaining position of the Commission; b) to discuss strategy with respect pending litigation on a personnel matter. The Chair has determined that an open session may have detrimental effect of the litigation position of the Commission; c) to consider the purchase, exchange, lease or value of real property and to discuss pending litigation for Gatto vs. Town. The Chair has determined that an open session may have a detrimental effect on the negotiation/litigation position of the Commission; d) to review Executive Session minutes of 8/28/12, 9/18/12, 12/4/12, 12/11/12, 2/26/13, 4/23/13, 5/28/13, 8/27/13, 9/10/13, 9/24/13, 10/8/13, 10/22/13 and 11/12/13 for possible release, and 12/10/13 for review and possible release; and e) to discuss strategy with respect to pending litigation with respect to the completion of the GA Building. The Chair has determined that an open session may have detrimental effect on the litigation position of the Airport Commission. **Second** by Ms. Planzer and **Passed** by the following roll-call vote:

Chairman Drake – Aye  
Vice Chair Gasbarro – Aye  
Mr. Gray – Aye  
Ms. Topham – Aye  
Ms. Planzer – Aye

Open session reconvened at 5:10 PM.

Mr. Jenkins was no longer on the phone.

Airport employees Noah Karberg, Environmental Coordinator, David Sylvia, Training & Compliance Officer and Ashley Christ, Business Manager joined the meeting.

Mr. Drake announced the meeting was being recorded.

Mr. Drake asked for comments on the Agenda. Hearing none, the Agenda was approved.

Ms. Topham made a **Motion** to approve the 11/26/13 Minutes. **Second** by Mr. Planzer and **Passed** by the following roll-call vote:

Chairman Drake – Aye  
Vice Chair Gasbarro – Aye  
David C. Gray, Sr. – Aye  
Andrea Planzer – Aye  
Jeanette Topham – Aye

Mr. Drake reported the 12/10/13 Minutes were not finalized.

Ms. Topham made a **Motion** to ratify the Warrants of 12/18/13 and 1/8/14. **Second** by Ms. Planzer and **Passed** by the following roll-call vote:

Chairman Drake – Aye  
Vice Chair Gasbarro – Aye  
Andrea Planzer – Aye  
Jeanette Topham – Aye

David C. Gray, Sr. – Abstained

#### **Public Comment**

None.

#### **Pending Leases & Contracts**

Mr. Rafter noted the **GJ Smith Bunker Parcel Lease** is still pending as Legal Counsel has not yet provided their comments on the proposed revisions. Additionally, Mr. Rafter added, there is an open question as to the use of the lot proposed in the response to the RFP vs. the use of the lot in the draft Lease indicating the change of use may not be allowable per the Procurement Laws.

Mr. Drake suggested reviewing the 1/14/14 email from Rod Allred of Turn Key Storage, an associate of GJ Smith Inc. to keep the process moving forward while waiting for Legal Counsel's comments.

The email reviewed the items previously discussed at the 11/26/13 Commission Meeting:

- In lieu of annual CPI increases, a constant 3.5% annual increase. After discussion the Consensus of the Commission, subject to Counsel's approval, agreed to the annual 3.5% increase for the first 15 years and the then current annual CPI for any renewal term.
- Delay of Lease payments six (6) months from Lease signing date. After discussion, mostly on the needs for consistency, the majority consensus of the Commission was that lease payments would begin when lease is signed.

- Utility investment reimbursement from future tenants tying in to improvements. Mr. Allred indicated it was approximately 1400 feet for a water connection and slightly less for power. Discussion led to the Commission expressing its view that any future Request for Proposals for additional tenants wanting to utilize the utility would be required to pay a portion of the cost to the Lessee making the initial investment. Any existing tenants should be approached as well. Mr. Rafter agreed to confer with Legal Counsel and the Water Company on how utility sharing has or can be handled.
- Lessee requests that all structural improvements above ground remain property of the tenant. After brief discussion it was agreed, noting at the end of the term, the Commission may require to tenant remove all structures and restore lot to pre-build condition.
- Required environmental inspection prior to Lease signing be at the at landlords expense. Mr. Rafter noted the study was completed by the Airport already and will provide a copy.

Discussion moved to exterior lighting both in the sense on local ordinance as well as FAA requirements with Mr. Allred agreeing to comply with any requirement.

Mr. Rafter presented amendments to two (2) Mass DOT Grants for approval:

- **Runway 6/24 HIRLS, Airfield Guidance Signs, Wind Cone and Segmented Circle** - Mr. Rafter indicated this is an extension of the date only to process the final payment.
- **Re-Align and Widen Taxi Connector** – Mr. Rafter indicated the change is to accommodate the change order of the repainting of the Runway 15/33 taxiway edge lines.

Mr. Gray made a **Motion** to accept both MassDOT Grant amendments, noting the correction needed to the Airport Manager’s name on the Runway 6/24 document. **Second** by Ms. Planzer and **Passed** by the following roll-call vote:

Chairman Drake – Aye  
 Vice Chair Gasbarro – Aye  
 Mr. Gray – Aye  
 Ms. Topham – Aye  
 Ms. Planzer – Aye

An Assumption of ATM Lease from **Santander Bank (aka Sovereign Bank/Nantucket Bank) to Blue Hills Bank** – Mr. Rafter explained the Assignment will continue the lease on a month-to-month basis until the ATM spaces are placed out to bid as required. Ms. Topham made a **Motion** to approve the Assumption of the ATM Lease. **Second** by Ms. Planzer and **Passed** by the following roll-call vote:

Chairman Drake – Aye  
 Vice Chair Gasbarro – Aye  
 Mr. Gray – Aye  
 Ms. Topham – Aye  
 Ms. Planzer – Aye

An Amendment to the **World Fuel Services** Contract for the purchase of aviation fuel supply to extend the 1/31/14 expiration date to 2/28/14 to accommodate the re-advertisement of the RFP. **Motion** made by Ms. Planzer. **Second** by Mr. Gray and **Passed** by the following roll-call vote:

Chairman Drake – Aye  
 Vice Chair Gasbarro – Aye  
 Mr. Gray – Aye  
 Ms. Topham – Aye

Ms. Planzer – Aye

**Pending Matters**

**021213-2 Air Traffic Control Tower (ATCT) Rehabilitation:**

- **RFQ Status** - Mr. Rafter reported receiving comments from the FAA on the draft Request for Qualifications (RFQ) for Architectural/Engineering Design and Construction services. Their comments are being incorporated before sending to Chief Procurement Officer for review.
- **Flat Roof Building** – Mr. Rafter reported using the existing FBO as temporary FAA offices during the ATCT rehabilitation.
- **Reimbursable Agreement for Preliminary Design Services for Temporary (Mobile) ATCT** - Mr. Rafter presented the Reimbursable Agreement with the FAA for the preliminary design of the mobile ATCT. Mr. Rafter indicated the funds are in place and this agreement guarantees the Airport will reimburse the FAA for this portion of the project. **Motion** by Ms. Topham to approve the Reimbursable Agreement. **Second** by Ms. Planzer and approved by the following roll-call vote:

Chairman Drake – Aye  
Vice Chair Gasbarro – Aye  
Mr. Gray – Aye  
Ms. Topham – Aye  
Ms. Planzer – Aye

**062513-3 Noise Abatement** – Mr. Rafter presented the Noise Complaint summary for December reporting a total of four (4) complaints, two of which were out-of-corridor.

**070913-1 TON Memorandum of Understanding (MOU)** – Mr. Rafter reported meeting with the Chief Procurement Officer on two occasions to discuss the parameters but does not have any hard copies changes to present as yet.

**Finance**

**111213-2 Fuel Revolver/100813-1 FY2015 Budget Revision** - Mr. Rafter reported receiving verification earlier in the day from Legal Counsel and Dept. of Revenue (DOR) that excess revenue from the FY13 Fuel Revolver can be transferred to the Operating Budget through a positive Annual Town Meeting (ATM) vote.

Mr. Rafter recommended leaving \$50K in the Fuel Revolver (FR) as seed money for FY15 and through Town Meeting transferring the remaining funds of approximately \$219K to the FY15 Operating Budget. Mr. Rafter reminded the Commission the FY15 Budget was adopted with the intent to amend once the status of the FR was clarified. Mr. Rafter explained the \$50K seed money would cover the first delivery of fuel in FY15. **Motion** by Ms. Planzer to approve Mr. Rafter’s recommendation. **Second** by Ms. Topham and **Passed** by the following roll-call vote:

Chairman Drake – Aye  
Vice Chair Gasbarro – Aye  
Mr. Gray – Aye  
Ms. Topham – Aye  
Ms. Planzer – Aye

**011414-1 Audit Management Letter** – Mr. Rafter reported receiving the draft Audit Management Letter and we have provided comments. At the Audit Committee meeting held earlier in the day, Mr. Rafter was pleased to hear Airport Revenue is accurate but work needs to be done on our Assets ledger, Capital and Receivable side. Mr. Rafter attributes the findings to miscommunications, change of personnel and re-alignment with the Finance Department at the beginning of the Fiscal Year; but adds significant improvement has occurred as the year progressed.

Mr. Drake noted having made a statement at the Audit Committee meeting that the findings mentioned in the in the Management Letter could have been addressed much sooner than FY13 should the prior audit firm had been more thorough. Mr. Drake added the Auditor did mention they were pleased with the Airport's current procurement process and agreed to interview Mr. Rafter and the Chairman during next year's audit.

**011414-2 FY14 Quarterly Update** – Mr. Rafter presented the FY14 second quarter update which he will present to the Board of Selectman at their 1/22/14 meeting. Mr. Rafter indicated although the report shows a surplus of approximately \$700K over FY13 for the same period, due to timing of some transactions being posted, the surplus is more like \$500K over last year and is before any subsidy from the Town or Retained Earnings.

**011414-3 Recap of 1/7/14 FinCom Meeting** – Mr. Rafter indicated the FinCom expressed concern over applying all of FY13 Retained Earnings towards the Budget. Mr. Rafter explained by managing the budget closely we will hopefully not have to use all of it reminding the Commission in the FY13 budget, we had applied \$1.3 in Retained Earnings, but actually used \$320K.

The other concern expressed by FinCom was predicting the FAA approval of the Passenger Facility Charge to produce \$600K of income. Mr. Rafter did explain if the application is not approved, the Airport will have to ask the Town for a subsidy but added not ever hearing of an application that was not approved.

**011414-4 Warrant Approval Procedure Change** – Mr. Rafter explained as part of the Audit Management Letter recommendations, the approval procedure for the signing of the Warrant will include a table of the batch totals so that each Commissioner will note which batches were included the Warrant is reviewed. This is to identify any batches that may have been added after some signatures have been obtained. Additionally, the time period for reviewing the Warrants will be shortened to one day to alleviate batches being added.

Ms. Topham requested receiving the Warrant schedule.

**011414-5 Airport Cooperative Research Program (ACRP) Grant Funding Proposal** – Mr. Rafter explained the ACRP works under the Transportation Research Board which falls under the Academy of Science and is funded through the FAA with approximately \$20M per year. The FAA solicits Problem Statements from airports and if the statements are applicable for multiple airports, the FAA will rank priority and solicit consultants to study and address possible solutions. The FAA has currently issued an RFP for which Mr. Karberg would like to submit a proposal for.

Mr. Karberg presented the RFP for ACRP- 02-50 'Driving Benefits from Alternative Aircraft-Taxi Systems noting Nantucket currently ranks #10 in longest average aircraft taxi out times, due to delays at destination airports. Mr. Karberg explained the benefits of research and development of an alternative aircraft taxi system would be fuel savings to the airlines and noise and emissions reduction for airports.

Mr. Karberg feels this is a good opportunity for Nantucket to participate in conjunction with the Carbon Neutral program. The funding if awarded would be \$300K over the next 18 months. Mr. Karberg further explained this stage of the program doesn't implement the technology. It is looking at ways to evaluate the technology to develop specific defensible benefits. Mr. Karberg requests the Commission approval to participate in the program.

Mr. Drake read the letter prepared and addressed to Christopher Jenks, Director of the Cooperative Research Programs at the Transportation Research Board approving Mr. Karberg participation. Mr. Rafter interjected he encourages Mr. Karberg to participate as long as it does not hinder his other duties and is authorized by Procurement. Mr. Gray made a **Motion** authorizing Mr. Drake to sign the letter. **Second** by Ms. Planzer and **Passed** by the following roll-call vote:

Chairman Drake – Aye  
Vice Chair Gasbarro – Aye  
Mr. Gray – Aye  
Ms. Topham – Aye  
Ms. Planzer – Aye

**022613-2 Master Plan & Sustainability Program Update** – Mr. Rafter reported meeting with Jacobs to review the Master Plan draft submittals on the forecast analysis, financial analysis and noise work tasks. Mr. Rafter and Jacobs concurred the work done on the financial analysis is incomplete and Jacobs will review with the sub-consultant to revise. Mr. Rafter also asked Jacobs to revise their forecast analysis to include the impact of Jet Blue on the Boston market.

The next Advisory Working Group meeting will take place sometime in February. The Draft Meeting Summary of the November 12, 2013 meeting was provided along with the comments from some of the group members including suggestions to revise the Airport's Mission Statement.

Mr. Rafter noted he is drafting a Business Plan which he hopes to present at a near future meeting.

#### **Manager's Update**

##### **Other Project Updates**

- **Passenger Facility Charge (PFC)** – Mr. Rafter noted the Airline comments submitted are included in the packets. A draft PFC Application is expected from the consultant in the next few days.
- **Runway 6 PAPI** installation is complete.
- **Runway 15/33 REILS/PAPI** installation is still pending.

##### **RFP/Bid Status**

- Carbon Neutral Proposals are due January 17<sup>th</sup>.
- RFQ for Air Traffic Control Tower is being finalized.
- Engineering Proposals have been received and are being evaluated.
- Aviation Fuel Proposals are due January 24<sup>th</sup>.

##### **Operations**

- **Airport Town Meeting Articles** include the Operating Budget, Capital Expenses, Budget Transfers, Fuel Revolver, rescinding of unneeded Borrowing Authorities, Collective Bargaining and the Home Rule Petition (HRP) to remove the cap on the Fuel Revolver. Mr. Drake interjected the HRP may not be needed if the State Legislation has passed.
- The Accounting Offices have moved over to the new building. The FBO staff will move later in February.

- MassDOT has notified the Airport of some available funding for equipment; however, the equipment must be on site by June 30, 2014. Mr. Rafter spoke with the Town Treasurer on the timing of the borrowing who indicated there shouldn't be a problem. Grant applications are being prepared to submit to MassDOT.
- Mr. Rafter handed out changes made by Legal Counsel on the Taylor Hangar Lease Assignment to Marine Lumber, addressing the Probate concerns from the original document. Mr. Drake noted the Commission initially approved the Assignment at their October 30, 2013 meeting pending receipt of the Estate paperwork. Mr. Drake suggested the changes be reviewed and held until the next meeting.

Mr. Rafter gave an update on the status of the GA Building punch list noting the lighting sensors have been adjusted and are working well. Mr. Rafter noted the Contractor has only 45 days to complete the punch list and has asked the Architect to update the list and advise how many days are left. Mr. Rafter added the value of the punch list items not complete within the 45 days will be deducted from the final payment.

### **Statistics**

Mr. Sylvia reviewed the November 2013 statistics:

- Operations for November were 7,532, down 12.66% compared to last November 2012 at 8,624
- Enplanements for November were 7,717, down 8.95% compared to November 2012 at 8,476
- Freight for November was 150,133 lbs, down 10.74% from November 2012 at 170,008 lbs.

Mr. Drake requested only fiscal year statistics be reported beginning with January's presentation.

Brief discussion took place regarding boat traffic noting the Steamship Authority indicates the slow ferry is down 2.1% but the fast ferry is up 11.5%.

### **Sub-Committee Reports**

None.

### **Commissioner's Comments**

None.

### **Public Comment**

None.

Having no further business, Ms. Topham made a **Motion** to adjourn. **Second** by Mr. Gray and **Passed** by the following roll-call vote:

Chairman Drake – Aye  
Vice Chair Gasbarro – Aye  
Mr. Gray – Aye  
Ms. Topham – Aye  
Ms. Planzer – Aye

Meeting adjourned at 6:51 PM.



Respectfully submitted,

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Ashley Christ, Recorder

Master List of Documents Used

1/14/14 Agenda including Exhibit 1

11/26/13 Draft Minutes

GJ Smith Inc. Lease Building Plans

1/14/14 Email from Allred to Christ; Subject: TurnKeyStorage – Nantucket –Airport Lease Agreement

MassDOT Standard Contract – “Re-Align & Widen South Apron Taxiway Connector”

MassDOT Standard Contract – “Replace RW 6/24 HIRLS, Airfield Guidance Signs, Wind Cone”

Assignment of ATM Lease – Santander/Sovereign bank to Blue Hills Bank

Page 2 of the 11/2/13 Commission Minutes referencing World Fuel Services Contract Amendment

FAA Non-Federal Preliminary Design Reimbursable Agreement re Mobil Air Traffic Control Tower

December Noise Complaints

1/9/14 email from Roselli to Christ; Subject: Response to Management Letter

Management Letter Response #2

Draft 2 of the Town of Nantucket Management Letter dated 6/30/13

FY2014 2<sup>nd</sup> Quarter Update a/o 12/31/13

1/24/13 Draft letter from Drake to Jenks re ACRP 02-50 Alternative Aircraft-Taxi System

ACRP 02-50 RFP dtd 11/26/13

ACRP Power Point Presentation

11/12/13 Master Plan Working Group Draft Meeting Summary

Working Group Comments emails

Cape Air PFC Comment letter dtd 12/30/13


Island Airlines PFC Comment Letter dtd 12/31/13

Assignment & Assumption of Taylor Hangar Revised (Handout)

November 2013 Statistics

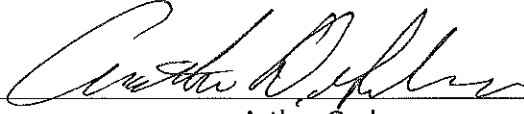
# Warrant 02/05/2014

Please Sign and Date



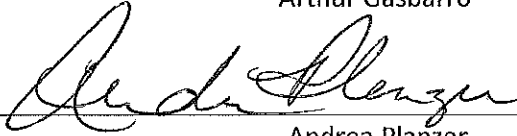
1/28/14

Daniel Drake



1/28/14

Arthur Gasbarro



1/30/14

Andrea Planzer



1/28/14

Jeanette Topham

David C Gray SR.

Batch# <u>724</u>	Total <u>11,023.70</u>	Batch Date <u>1/21/14</u>
Batch# <u>725</u>	Total <u>7,787.54</u>	Batch Date <u>1/21/14</u>
Batch# <u>726</u>	Total <u>110,595.84</u>	Batch Date <u>1/21/14</u>
Batch# <u>727</u>	Total <u>110,444.97</u>	Batch Date <u>1/21/14</u>
Batch# <u>728</u>	Total <u>21,029.26</u>	Batch Date <u>1/28/14</u>
Batch# _____	Total _____	Batch Date _____
Batch# _____	Total _____	Batch Date _____
Batch# _____	Total _____	Batch Date _____

EXHIBIT 1  
PENDING LEASES/CONTRACTS/AGREEMENTS  
February 11, 2014

Type of Agreement/Description	With	Amount	Other Information	Source of Funding
Lease	Emily Air, LLC	(3,876.84)	Sale of Ocean Wings Hangar 20 Year with 1 - 10 Yr Option Plus \$1,500 Annual Business Fee, Annual CP	Income

Pending as of Meeting Posting Date

**NANTUCKET MEMORIAL AIRPORT COMMISSION  
LEASE AGREEMENT**

This Lease Agreement executed on the \_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the Town of Nantucket acting by and through the NANTUCKET MEMORIAL AIRPORT COMMISSION, an agency duly created by the Town of Nantucket, pursuant, to the powers contained in Massachusetts General Laws, Ch. 90, Sec. 51D, hereinafter called the "Landlord", and Emily Air LLC hereinafter called the Tenant, and the Tenant hereby leases the Premises described below in accordance with the following terms and conditions.

In consideration of the mutual covenants and agreements hereinafter set forth, Landlord and Tenant agree as follows:

**ARTICLE ONE – Lease Data**

- Landlord:** Nantucket Memorial Airport Commission  
14 Airport Road  
Nantucket, MA 02554  
Attn: Airport Manager  
(508) 325-5300
- Tenant:** Emily Air, LLC  
550 Barnstable Road  
Hyannis, MA 02601
- Premises:** 12 Airport Road, Nantucket, MA 02554  
8,811 ± Square Feet, As described on Exhibit A1 & A2, attached hereto
- Permitted Use:** Aircraft Storage, Aircraft Maintenance  
Charter & Flight School Operations
- Base Rent:** \$3,876.84 Annually, or \$323.07 Monthly  
as adjusted annually in accordance with Section 3.1
- Additional Rent:**
  - Annual Business Fee -** Currently \$1,500 per year
  - Amount in Lieu of Local Taxes -** Determined annually
  - All Applicable Rates & Charges –** Determined annually
- Bond:** \$100,000
- Commencement Date:** February 15, 2014
- Initial Term:** Twenty (20) Years
- Options to Extend:** One – Ten (10) Year
- Security Deposit:** \$975.00
- Initial Public Liability Insurance Coverage:** \$1,000,000

## ARTICLE TWO - Premises

2.1 Premises. Landlord hereby leases to the Tenant and the Tenant hereby leases from the Landlord, the Premises, as described on Exhibit A attached hereto and incorporated herein, upon and subject to the terms of this Lease.

2.2 Obligations of Tenant. The Tenant shall be solely responsible for obtaining all permits, licenses and approvals required by federal, state or local law applicable to the use of the Premises or the construction of any buildings and improvements on the Premises, and present a copy to the Airport office for the file. This Lease is contingent upon Tenant successfully obtaining all required permits, licenses and approvals for construction within 120 days of the date of execution this Lease. Tenant also agrees to have any construction completed within one year from the date of this Lease

2.3 Condition of Premises. The Premises are hereby leased in an "as is" condition, it being expressly understood and agreed that Landlord is not obligated to install services or facilities in the Premises beyond those now in place.

2.4 Additional Charges. Tenant will be responsible for bringing to the Premises and for making all connection to public utilities. All connection charges will be paid for by the Tenant.

## ARTICLE THREE – Rent and Other Charges

3.1 Base Rent. Tenant shall pay to the Landlord, during the term hereof, the Base Rent set forth in Article One, above, such amount to be paid in twelve equal monthly installments, in advance on or before the first day of each month. Base Rent shall be increased, but not decreased, annually based on the change in the federal CPI-W rate as published by the United States Bureau of Labor Statistics, effective on the anniversary of the Commencement Date specified in Article One, above. Further, on each five year anniversary of the Commencement Date, the Base Rent shall be increased, but not decreased, based on the greater of (i) the change in the CPI-W, as described above and (ii) the fair market rental value of the Premises as of such date as determined by an a qualified independent real estate appraiser identified by the Landlord to which the Tenant has no reasonable objection.

3.2 Additional Rent. In addition to the Base Rent, the Tenant shall pay annually, as Additional Rent:

(i) an annual Business Fee in the amount set forth in Article One, above, as it may be adjusted from time to time by the Landlord for all tenants;

(ii) a payment in lieu of local real estate and personal property taxes which would have been levied by the Town of Nantucket on the Premises and improvements constructed upon the Premises by Tenant for that tax year; and

(iii) such other consideration as is specified by the Nantucket Memorial Airport's Fees and Charges that, as the same may be amended from time to time.

The Landlord will bill the Tenant for these amounts annually and the payment will be due within 15 days thereafter.

3.3 Security Deposit. On or before the Commencement Date, as set forth in Article One, above, the Tenant shall pay to the Landlord the amount of the Security Deposit, as set forth in Article One, above, which shall be held by the Landlord, without obligation for interest, as security for the performance of the Tenant's covenants and obligations under this Lease. If the Landlord draws upon the Security Deposit, the Tenant shall, within fifteen (15) days after receipt of written notice, replenish the amount of the Security Deposit held by the Landlord.

3.4 Bond. At least ninety (90) days prior to expiration of the Lease, if the then-current term has not been extended or otherwise renewed, the Tenant shall post a bond in an amount sufficient to assure the restoration of the Premises to its original condition, such amount to be the amount set forth in Article One, subject to such reasonable adjustment as the Landlord may determine.

3.5 Late Payment Fee. Any amount due from Tenant to Landlord under this Article Three or otherwise due under this Lease that is not paid when due shall bear and accrue interest at the rate of one and one-half percent (1.5%) per month from the due date until receipt of payment. Any partial payments received on said indebtedness shall be applied first to interest, and then to principal. With respect to any payment of additional Percentage Rent that is determined to be due as a result of an audit, the late payment fee shall be assessed beginning on the date such additional amount of Percentage Rent should have been paid.

#### **ARTICLE FOUR – Term and Extensions**

4.1 Term. This Lease shall commence on the Commencement Date set forth in Article One, above and, subject to earlier termination in accordance with the terms hereof, continue for the Initial Term set forth in Article One, above.

4.2 Extension Options. The Tenant shall have such options to extend this Lease as set forth in Article One, above, provided that, (i) at the time of both the exercise and extension of the this Lease, the Tenant is in full compliance with the terms and conditions here and (ii) throughout the term of the Lease, the Tenant has not been in any material default hereunder. The Tenant shall exercise any option hereunder by giving written notice to the Landlord by certified mail, return receipt requested, postage prepaid to Landlord, no later than six (6) months prior to the expiration of the then-current term.

Except as the terms may not be relevant or applicable, and except as to any further options, all the terms and conditions of the Lease shall apply for the extended period, except that the Base Rent for the initial year of the extension period shall be the Base Rent for the final year of the then-current term, as adjusted as provided in Section 3.1, above, and be increased similarly thereafter.

4.3 Holding Over. If, after the termination or expiration of this Lease, Tenant shall remain in possession without any express written agreement as to such holding over, Tenant shall be deemed to be a tenant at sufferance from day to day at a daily rental rate equal to two hundred fifty percent (250%) of the Base Rent previously in effect. During such continued occupancy, all other provisions of this Agreement (except as to the term) shall be in effect.

#### **ARTICLE FIVE - Rules and Regulations Governing the Airport**

5.1 Acceptance of Airport Rules and Regulations. Tenant shall observe and obey all other rules and regulations promulgated by the Landlord and other appropriate local, state and federal entities having jurisdiction over the Nantucket Memorial Airport, including the Federal Aviation Administration (FAA) and the Massachusetts Aeronautics Commission. In addition to, and not to the exclusion of, all other applicable rules promulgated by the FAA, Tenant agrees to conduct its operations in compliance with the Federal Aviation Regulations, including all amendments hereafter made, embodied in 49 C.F.R. Part 107. Tenant further agrees to comply with all fire fighting and safety equipment requirements consistent with the nature of the premises to comply with local codes and fire regulations of the Town of Nantucket and will not take, or fail to take, any action that would adversely affect the insurability of the Premises or any other portion of the Airport.

(a) Tenant acknowledges the existence of a body of procedures for the abatement of noise caused by aircraft which have been adopted by the Airport and community as of December 1, 1987, as part of a study performed under Part 150 of the Federal Air Regulations. It is further understood that all tenants conducting commercial airlines operations, or general aviation operations, at the Nantucket Memorial Airport are required to comply with those flight procedures as a condition of their tenancy. Each tenant must satisfy the Nantucket Memorial Airport of their continuing compliance no more seldom than once each year prior to lease renewal and at any time that the Airport Commission has reason to believe that non-compliance has occurred. A finding after hearing that the tenant has failed to comply with such flight procedures shall be deemed to be sufficient cause for non-renewal or cancellation of tenant's lease.

(b) Lessee will recognize the importance of federal funding to the Airport under the Airport Improvement Program (or other future program) and will submit to the DOT (whether required by the DOT or not) Form Number 1800-31 on a timely basis with a copy to the Airport Manager's office. This report is for reporting enplanements, from which our Airport receives its federal funding for capital improvement projects. Also, monthly enplanement numbers shall be supplied to the Airport Manager's office within 15 days after the month being reported.

5.2 Non-Discrimination Assurances. The Tenant, for itself, its heirs, personal representatives and its successors and assigns, does hereby covenant and agree:

(a) That in the event facilities are constructed, maintained, or otherwise operated on the Premises for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the Tenant shall maintain and operate such facilities and services in compliance with all other requirements imposed 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;

(b) As a covenant running with the Premises that (i) no person on the grounds of race, color, handicap, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (ii) 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 race, color, handicap, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; (iii) 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, Nondiscrimination 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;

(c) If the Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the Tenant shall maintain and operate such facilities and services in compliance with all other requirements imposed 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;

(d) That the breach of any of the above nondiscrimination covenants constitutes a material breach of this Lease and the Landlord shall have the right to terminate the Lease and to re-enter and repossess said land and the facilities thereon, and hold the same as if said Lease had never been made or issued.

5.3 Liability for Fines and Penalties. Should Tenant, its customers, agents, employees, officers or guests violate said rules, regulations or covenants, and should said violations result in a citation or fine to the Landlord, then Tenant shall fully reimburse the Landlord for said citation or fine and for all costs and expenses, including reasonable attorney's fees, incurred by the Landlord in defending against the citation or fine. All such amounts shall constitute additional amounts due under the Lease and shall be paid within fifteen (15) days of Tenant's receipt of notice thereof.

#### **ARTICLE SIX – Use of Premises**

6.1 Use of Premises: The Tenant shall use the Premises solely for the purposes set forth in Article One and activities necessary and incidental thereto, including any additional activities as approved by the Landlord.

#### **ARTICLE SEVEN – Tenant Covenants and Restrictions**

7.1 Liens and Alterations: Tenant shall not permit any mechanic's liens or similar liens to remain upon the Premises for labor and materials furnished to Tenant in connection with work of any character performed at the direction of the Tenant and shall cause any such lien to be released of record without cost to Landlord within sixty (60) days of the filing of the lien. Landlord shall not, under any circumstances, be liable for the payment of any expenses incurred or for the value of any work done or material furnished to the Premises or any part thereof, but all such shall cause all contractors to carry workers' compensation insurance in accordance with statutory requirements and comprehensive public liability insurance and automobile liability insurance covering such contracts on or about the Premises in amounts reasonably acceptable to Landlord and agrees to submit certificates evidencing such coverage to Landlord prior to the commencement of and during the continuance of such work.

Tenant shall not make any alterations, additions or improvements to the Premises without the prior written consent of the Landlord, which may be withheld in Landlord's sole and absolute discretion. All such alterations, additions or improvements shall be at Tenant's expense.

Tenant shall procure all necessary permits before undertaking any work on the Premises, and shall cause all such work to be performed in a good and first-class workmanlike manner and in accordance with the requirements of insurers, employing new materials of prime quality and shall defend, hold harmless, exonerate and indemnify Landlord from all injury, loss or damage to any person or property occasioned by such work. Tenant improvements, alterations and repairs shall be done and materials and labor furnished at Tenant's expense, and the laborers and material men furnishing labor and materials to the Premises or any part thereof shall release Landlord and the Premises from any liability.

All structural improvements and additions made by Tenant shall be the exclusive property of the Landlord, and all nonstructural alterations and additions shall be the exclusive property of Tenant. Tenant may at any time, at its sole option, remove any such nonstructural alteration or addition and restore the Premises to the same conditions as prior to such alteration or addition, reasonable wear and tear and damage by fire or other casualty only excepted.

7.2 Assignment and Subletting: Tenant shall not sublet, underlet, mortgage, pledge or encumber this Lease any portion of the Premises without, in each instance, having first obtained the prior written consent of Landlord. Any assignment or sublease under such consent shall be void unless the assignee or sub Tenant acknowledges in writing that it will be bound by and subject to the terms of this Agreement. No permitted assignment or subletting shall in any way impair the continuing primary liability of the Tenant hereunder and no consent by the Landlord in a particular instance shall be deemed to be a waiver of the obligation to obtain the Landlord's consent in a subsequent instance. As used herein, the term "assign" or "assignment" shall be deemed to include, without limitation, any transfer of Tenants interest in the Lease by operation of law.

7.3 Aeronautics Restrictions. Tenant shall have the right to operate in the manner authorized by proper governmental authority and agencies, and shall be subject to the following restrictions:



(a) The Landlord reserves unto 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 real property as described in this Lease, together with the right to cause in said airspace such sound as may be inherent in the operation of aircraft, now known or hereafter used for the navigation of or flight in said airspace, together with the emission of fumes or particles incidental to aircraft navigation, and for the use of said airspace for the landing on, taking off from or operating on Nantucket Memorial Airport.

(b) The Tenant expressly agrees for itself, its successors and assigns to prevent the use of the Premises for purposes which will create or result in hazards to flight such as, but not limited to, purposes which will (i) produce electrical interference with radio communications, (ii) make it difficult for pilots to distinguish between airport lights and others, (iii) project glare in the eyes of the pilots, (iv) impair visibility in the vicinity of the airport, or (v) otherwise endanger the landing, take-off or maneuvering of aircraft.

(c) The Landlord retains the continuing right in the Premises to prevent the erection or growth of any building, structure, tree, or other objects extending in to the airspace (above 45 feet Mean Ground Level) and to remove from said airspace, at the Tenant's expense or at the sole option of the Landlord, as an alternative, to mark and light as obstructions to air navigation, any such building, structure, tree, or other object now upon, or which in the future may be upon the property together with the right of ingress to, passage over, and egress from Tenant's property for the above purposes.

(d) The Tenant expressly agrees for itself, its successors and assigns, that the reservations and restrictions set forth in this instrument shall run with the land which shall be the servient tenement, it being intended that the lands now and hereafter comprising the Airport shall be the dominant tenement; excepting, however, that such reservations and restrictions shall become void and of no force and effect on such date as the lands comprised in the aforesaid Airport shall cease to be used for Airport purposes.

(e) The Tenant for itself, its heirs, personal representatives, successors in interest and assigns do hereby agree that if any aeronautical services or activities are to be offered, performed or conducted upon the Premises that:

In the exercise of the rights and privileges granted for the furnishing of aeronautical services to the public, Tenant will

(i) furnish said service on a fair, equal, and not unjustly discriminatory basis to all users thereof, and

(ii) charge fair, reasonable, and not unjustly discriminatory prices for each unit or service; provided that the Tenant may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

(f) It is mutually understood and agreed by the parties hereto that nothing contained in this Lease shall be construed as granting or as authorizing the granting of an exclusive right within the meaning of Section 308 (a) of the Federal Aviation Act of 1958.

7.4 Maintenance and Repair; Nuisance. Tenant will maintain the Premises and any structures or other improvements constructed thereon in good condition and repair, including painting the exterior of the building to prevent rusting or deterioration of any portions thereof; shrubbery, plantings and lighting will also be maintained. Any visible damage or defacement to the building, windows, or appurtenances will be corrected by the Tenant as quickly as possible to prevent a continuing condition of apparent disrepair or will remove the damaged remains from the Premises, and any replacement structure will be subject to the same terms and conditions as the original structure. The Tenant will not make or suffer any unlawful, improper, noisy or

offensive use of the Premises, or permit any use that shall be liable to endanger, affect, or make voidable any insurance on the Premises, or the building or any of its contents, or to increase the cost of any such insurance. Tenant covenants and agrees that the Premises shall not be used for any objectionable, unlawful purpose, or for any purpose which will constitute a nuisance; that it will permit Landlord to enter the Premises at all reasonable times for the purpose of inspecting the same and that upon the termination of this Lease it will quietly and peacefully surrender possession of the Premises to Landlord in good order and condition, ordinary wear and tear, damage by the elements and unavoidable casualty only excepted. If Tenant shall fail to keep the Premises in the condition required herein, or if repairs are required to be made by Tenant pursuant to the terms hereof, within thirty (30) days after notice by Landlord (or without notice in any emergency), Landlord shall have the right (but shall not be obligated) to make such repairs or perform maintenance work or any other work required of Tenant pursuant to this Lease and charge the reasonable cost thereof to Tenant as Additional Rent.

7.5 Sanitation. Tenant shall supply at its own expense a receptacle suitable for the disposal of refuse and shall be responsible for the disposal of all refuse. Tenant shall not permit any refuse to accumulate so as to constitute a fire or health hazard within the premises. If Tenant fails or neglects to keep the Premises and area herein described in a clean and sanitary condition at all times, Landlord shall have the right, without any obligation to do so, to enter upon the Premises and put them in a clean and sanitary condition in the event that Tenant fails to do so within twenty-four (24) hours after notice of any such condition. In the event the Tenant fails to comply with any such notice and Landlord acts to clean the Premises, Tenant shall reimburse Landlord for all cost and expense incurred by Landlord to clean the Premises

7.6 Airport Construction and Development. Tenant recognizes that from time to time during the term of this Lease it may be necessary for Landlord to initiate and carry forward programs of construction, expansion, maintenance and repair, and that such construction, expansion, maintenance and repair or relocation to an equal or better location may temporarily inconvenience or temporarily interrupt Tenant in its operations at the Airport. Tenant agrees that no liability shall be attached to Landlord, its agents or employees by reason of such relocation, temporary inconvenience or temporary interruption, so long as Landlord has made reasonable efforts to mitigate the effect of such work on the Tenant, and Tenant waives any right or claim to damages or other consideration therefor, except for reasonable and proportionate rental abatement in the event the Premises may not be used during any such period of time, or, in the alternative, the cost of the relocating the Tenant to an alternative location.

7.7 Hazardous Materials. Tenant shall not use, handle, store or dispose of any Hazardous Waste, Hazardous Material, Oil or radioactive material, as such terms are used or defined in Section 2 of Chapter 21C, Section 2 of Chapter 21D, and Section 2 of Chapter 21E of the General Laws of Massachusetts, and the regulations promulgated thereunder, as such laws and regulations may be amended from time to time (collectively "Hazardous Materials") in, under, on or about the Premises except for such storage and use consented to by Landlord in advance in writing, which consent may be withheld in Landlord's sole and absolute discretion. Any Hazardous Materials on the Premises, and all containers therefore, shall be used, kept, stored and disposed of in conformity with all applicable laws, ordinances, codes, rules, regulations and orders of governmental authorities. Any violation of said laws, rules or regulations shall be deemed a material breach of this Lease for which Landlord may terminate this Lease. Tenant shall (i) notify Landlord immediately of any release or threat of release of any Hazardous Materials on or from the Premises and any loss or damage or claim of loss or damage resulting therefrom, (ii) be solely responsible for remediating all contamination in full compliance with all applicable statutes, regulations and standards, at Tenant's sole cost and expense, and (iii) indemnify, defend and hold Landlord harmless from and against all liability, loss, damage, costs and expenses (including without limitation, reasonable attorney's fees and expenses), causes of action, suits, claims, demands, or judgments of any nature in any way suffered, incurred, or paid as a result of the presence or release or threatened release of Hazardous Materials on or from the Premises which is caused or exacerbated by Tenant, its agents, employees, contractors, representatives, licensees, or invitees. Tenant hereby acknowledges and agrees that Landlord shall have no responsibility to Tenant, its agents, employees, representatives, permittees and invitees, for the presence of such Hazardous Materials on the Premises or be required to abate or remediate the same. This provision shall survive the expiration or termination of this Lease.

## ARTICLE EIGHT - Indemnity and Public Liability Insurance

8.1 Tenant's Indemnity. To the maximum extent this agreement may be made effective according to law, Tenant agrees to defend, indemnify and save harmless Landlord from and against all claims, expenses or liability of whatever nature from any suits, claims and demands arising directly or indirectly (i) from the failure of the Tenant's or Tenant's contractors, agents, employees or invitees to comply with the terms of this Lease or with any applicable laws, codes, bylaws, rules, orders regulations or lawful direction now or hereafter in force of any public authority and any accident, injury or damage whatsoever to any person, or to the property of any person, occurring on or about the Premises or (ii) from any accident, injury or damage however caused to any person or property on the Premises or occurring outside of the Premises but on the Airport property, in each case where such accident, damage or injury results or is claimed to have resulted from any act, omission or negligence on the part of Tenant or Tenant's contractors, agents, employees, or invitees or anyone claiming by or through the Tenant; and (iii) from any and all costs and expenses incurred in connection with any cleanup, remediation, removal or restoration work required by any federal, state or local governmental authority because of the presence of any Hazardous Materials on or about the Premises to the extent that Tenant or Tenant's contractors, agents, employees or invitees or anyone claiming by or through the Tenant caused or contributed to such environmental occurrence, in these cases, occurring after the date of this Lease until the end of the term of this Lease and thereafter so long as Tenant is in occupancy of any part of the Premises. This indemnity and hold harmless agreement shall include indemnity against all costs, expenses and liabilities incurred in or in connection with any such claim or proceeding brought thereon, and the defense thereof, including, without limitation, reasonable attorneys' fees at both the trial and appellate levels.

8.2 Insurance. Tenant agrees to maintain in full force from the date upon which Tenant first enters the Premises for any reason, throughout the term of this Lease, and thereafter so long as Tenant is in occupancy of any part of the Premises and agrees prior to the commencement of the Lease, and thereafter on or before January 1 of each term of this Lease, to deliver to the Landlord a certificate of insurance evidencing compliance with the requirements herein:

(a) A policy of general liability and property damage insurance with respect to the Premises and the property of which the Premises are a part, naming the Tenant as an insured and the Landlord as an additional named insured, in the minimum amount of \$1,000,000 bodily injury and property damage for each occurrence, with a combined single limit of \$3,000,000 annual aggregate limit under which Tenant and Landlord are named as an insured. Landlord shall have the right from time to time to increase such minimum amounts upon notice to Tenant, provided that any such increase shall provide for coverage in amounts similar to like coverage being carried on like coverage being carried on similar property in the Nantucket area;

(b) A policy of fire and extended coverage insurance upon its building and leasehold improvements, furniture, furnishings, fixtures and equipment to the full insurable value thereof and any applicable equipment vendors or lenders give the Airport satisfactory releases from fire and extended coverage liability;

(c) A policy of Workers' Compensation insurance during any construction, maintenance or repair of the Premises by the Tenant or any of its contractors, covering the obligations of the Tenant and or its contractors in accordance with Massachusetts Workers' Compensation or Benefits law. Prior to the commencement of any construction, maintenance or repair of the Premises, the Tenant shall deliver to the Landlord a copy of the certificate of insurance which shall also name the Landlord as an additional insured.;

(d) Automobile Liability Insurance of not less than \$1,000,000 per occurrence covering owned, hired and non-hired vehicle use and shall name the Landlord as an additional insured.; and

- (e) Such other insurance as may reasonably be required by the Landlord.

Without limiting Landlord's other rights under any other provisions of this Lease, if Tenant shall fail to keep the Premises insured as provided herein, and if such failure shall continue for a period of ten (10) days following written notice by Landlord to Tenant thereof, then Landlord, without further notice to Tenant, may take out and pay for such insurance, and the amount of such payment shall become due and payable as Additional Rent on demand.

8.3 Tenant's Risk. To the maximum extent this agreement may be made effective according to law, Tenant agrees that all of the furnishings, fixtures, equipment, effects and property of every kind, nature and description of Tenant and all persons claiming by, through or under Tenant which, during the Term of this Lease or any occupancy of the Premises by Tenant or anyone claiming under Tenant, may be on the Premises or elsewhere on the Property, shall be at the sole risk and hazard of Tenant, and if the whole or any part thereof shall be destroyed or damaged by fire, water or otherwise, or by the leakage or bursting of water pipes or sprinklers, by theft or from any other cause, no part of said loss of damage is to be charged to or borne by Landlord unless due to the negligence or misconduct of Landlord, its employees, agents, or contractors.

8.4 Injury Caused By Third Parties. To the maximum extent this agreement may be made effective according to law, Tenant agrees that Landlord shall not be responsible or liable to Tenant, or to those claiming by, through or under Tenant, for any loss or damage that may be occasioned by or through the acts or omissions of persons other than Landlord and Landlord's employees, agents and contractors.

8.5 Waiver of Subrogation. Insofar as, and to the extent that, the following provision shall not make it impossible to secure insurance coverage obtainable from responsible insurance companies doing business in the locality in which the Property is located (even though extra premium may result therefrom) Landlord and Tenant mutually agree that any property damage insurance carried by either shall provide for the waiver by the insurance carrier of any right of subrogation against the other, and they further mutually agree that, with respect to any damage to property, the loss from which is covered by insurance then being carried by them, respectively, the one carrying such insurance and suffering such loss releases the other of and from any and all claims with respect to such loss to the extent of the insurance proceeds paid with respect thereto.

**THE TENANT SHALL DEPOSIT WITH THE LANDLORD CERTIFICATES FOR ALL INSURANCE REQUIREMENTS LISTED ABOVE PRIOR TO THE COMMENCEMENT OF THEIR TERM, AND THEREAFTER WITHIN THIRTY (30) DAYS PRIOR TO THE EXPIRATION OF ANY SUCH POLICIES. ALL SUCH INSURANCE CERTIFICATES SHALL PROVIDE THAT SUCH POLICIES SHALL NOT BE MATERIALLY CHANGED, ALTERED OR CANCELED WITHOUT AT LEAST TEN (10) DAYS PRIOR WRITTEN NOTICE TO EACH ASSURED NAMED THEREIN.**

#### **ARTICLE NINE – Default and Landlord's Remedies**

9.1 Tenant's Default. If at any time subsequent to the date of this Lease any one or more of the following events (herein referred to as a "Default of Tenant") shall happen:

(i) Tenant shall fail to pay the Base Rent, payment of Additional Rent when due and such failure shall continue for ten (10) days after written notice thereof; or

(ii) Tenant shall fail to pay charges hereunder when due and such failure shall continue for ten (10) days after notice to Tenant; or

(iii) Tenant shall neglect or fail to perform or observe any other covenant herein contained on Tenant's part to be performed or observed and Tenant shall fail to remedy the same as soon as practicable and in any event within thirty (30) days after written notice to Tenant specifying such neglect or failure, or if such failure is of such a nature that Tenant cannot reasonably remedy the same within such thirty (30) day period, Tenant shall fail to commence promptly (and in any event within

such thirty (30) day period) to remedy the same and to prosecute such remedy to completion with diligence and continuity; or

(iv) Tenant's leasehold interest in the Premises shall be taken on execution or by other process of law directed against Tenant; or

(v) Tenant shall make an assignment for the benefit of creditors or shall file a voluntary petition in bankruptcy or shall be adjudicated bankrupt or insolvent, or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future Federal, State or other statute, law or regulation for the relief of debtors, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Tenant or of all or any part of its properties, or shall admit in writing its inability to pay its debts generally as they become due; or

(vi) A petition shall be filed against Tenant in bankruptcy or under any other law seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future Federal, State or other statute, law or regulation and shall remain undismissed or unstayed for an aggregate of sixty (60) days (whether or not consecutive), or if any debtor in possession (whether or not Tenant) trustee, receiver or liquidator of Tenant or of all or any substantial part of its properties or of the Premises shall be appointed without the consent or acquiescence of Tenant and such appointment shall remain unvacated or unstayed for an aggregate of ninety (90) days (whether or not consecutive); or

(vii) If a Default of Tenant of the kind set forth in clauses (i) and (ii) above shall occur and Tenant shall cure such Default within the applicable grace period and an event which would constitute a similar Default after the applicable grace period shall occur more than twice within the next 365 days, whether or not such similar Default is cured within the applicable grace period; then, in any such case, Landlord may terminate this Lease by notice to Tenant along with written notice to Tenant specifying a date not less than five (5) days after the giving of such notice on which this Lease shall terminate and this Lease shall come to an end on the date specified therein as fully and completely as if such date were the date herein originally fixed for the expiration of the Term of this Lease (Tenant hereby waiving any rights of redemption under Massachusetts General Laws c. 186 §11), and Tenant will then quit and surrender the Premises to Landlord, but Tenant shall remain liable as hereinafter provided.

9.2 Re-entry by Landlord. If this Lease shall have been terminated as provided in this Article, or if any execution or attachment shall be issued against Tenant or any Tenant's property whereupon the Premises shall be taken or occupied by someone other than Tenant, then Landlord may, without notice, re-enter the Premises, either by force, summary proceedings, ejectment or otherwise, and remove and dispossess Tenant and all other persons and any and all property from the same, as if this Lease had not been made, and Tenant hereby waives the service of notice of intention to re-enter or to institute legal proceedings to that end.

9.3 Damages. In the event of any termination as provided in this Article, Tenant shall pay the Base Rent and other sums payable hereunder up to the time of such termination, and thereafter Tenant, until the end of what would have been the Term of this Lease in the absence of such termination, and whether or not the Premises shall have been relet, shall be liable to Landlord for, and shall pay to Landlord, as liquidated current damages, the Base Rent and other sums which would be payable hereunder if such termination had not occurred, less the net proceeds, if any, of any reletting of the Premises, after deducting all reasonable expenses in connection with such reletting, including, without limitation, all repossession costs, brokerage commissions, legal expenses, attorneys' fees, advertising, expenses of employees, alteration costs and expenses of preparation for such reletting. Tenant shall pay such current damages to Landlord monthly on the dates which the Base Rent would have been payable hereunder if this Lease had not been terminated.

At any time after such termination, whether or not Landlord shall have collected any current damages as set forth in Section 9.3, as liquidated final damages and in lieu of all such current damages beyond the date of such demand, at Landlord's election Tenant shall pay to Landlord an amount equal to the excess, if

any, of the Base Rent and other sums as hereinbefore provided which would be payable hereunder from the date of such for what would be the then unexpired Term of this Lease if the same remained in effect, discounted to present value at a rate of 8% per year, over the then fair net rental value of the Premises for the same period, also discounted to present value at a rate of 8% per year.

9.4 Reletting of Premises. In case of any Default by Tenant, re-entry, expiration and dispossession by summary proceedings or otherwise, Landlord may (i) re-let the Premises or any part or parts thereof, either in the name of Landlord or otherwise, for a term or terms which may at Landlord's option be equal to or less than or exceed the period which would otherwise have constituted the balance of the Term of this Lease and may grant concessions or free rent to the extent that Landlord considers reasonably advisable and necessary for the purpose of reletting the Premises; and such actions and the making of any alterations, repairs and decorations to the Premises in connection therewith shall not operate or be construed to release Tenant from liability hereunder as aforesaid. Landlord shall in no event be liable in any way whatsoever for failure to re-let the Premises, or, in the event that the Premises are re-let, for failure to collect the rent under such re-letting. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of Tenant being evicted or dispossessed, or in the event of Landlord obtaining possession of the Premises, by reason of the violation by Tenant of any of the covenants and conditions of this Lease.

9.5 No Limitation of Remedies. The specified remedies to which Landlord may resort hereunder are not intended to be exclusive of any remedies or means of redress to which Landlord may at any time be entitled lawfully, and Landlord may invoke any remedy (including the remedy of specific performance) allowed at law or in equity as if specific remedies were not herein provided for.

9.6 Costs. All reasonable costs and expenses incurred by or on behalf of Landlord (including, without limitation, reasonable attorneys' fees and expenses at both the trial and appellate levels) in enforcing its rights hereunder in connection with any Default of Tenant shall be paid by Tenant.

#### ARTICLE TEN – Tenant Obligation Upon Lease Termination

10.1 Restoration of Premises. Subject to the provisions hereof, upon the expiration or earlier termination of this Lease, the Tenant shall have the obligation, at its expense, to dismantle and remove the structures it has constructed upon the Premises and to remove and dispose of any hazardous waste deposited thereon by the Tenant. Such removal and restoration shall be commenced only after written notice is given to the Landlord and shall be completed within forty-five (45) days; provided, however, that if, upon receipt of such notice, the Landlord determines that Tenant is in default of any provision hereof, Landlord, in its discretion may elect by written notice to instruct the Tenant not to remove the improvements, or any part thereof, and may take possession thereof as security for the performance of the terms hereof. Landlord, in its discretion may elect by written notice to instruct the Tenant not to remove the improvements, or any part thereof, and may take possession thereof as security for the performance of the terms hereof. Notwithstanding Landlord's election to take possession of the improvements, Tenant shall continue to be obligated to restore the Premises as aforesaid.

10.2 Removal of Personal Property. The Tenant shall at the expiration or other termination of this Lease remove all Tenant's goods and effects from the Premises, (including, without hereby limiting the generality of the foregoing, all signs and lettering affixed or painted by the Tenant, either inside or outside the Premises). Tenant shall deliver to the Landlord the Premises and all keys, locks thereto, and other fixtures connected therewith and all alterations and additions made to or upon the Premises, in good condition, damage by fire or other casualty only excepted. In the event of the Tenant's failure to remove any of Tenant's property from the Premises, Landlord is hereby authorized, without liability to Tenant for loss or damage thereto, and at the sole risk of Tenant, to remove and store any of the property at Tenant's expense, or to retain same.

10.3 Environmental Inspection. Within forty-five (45) days before or after the termination of the Lease, Tenant shall at its sole cost and expense have a Site Assessment performed by a certified engineer to be performed on the Premises as to the presence of Hazardous Materials as defined in G.L. c. 21E, and will promptly forward a copy thereof to the Landlord.

## ARTICLE ELEVEN – Miscellaneous

11.1 Notices. Whenever under this Lease a provision is made for any demand, notice, or declaration of any kind or where it is deemed desirable or necessary by either party to give or serve any such notice, demand, or declaration to the other, it shall be in writing sent by certified or registered mail, return receipt requested with postage prepaid at the address set forth in Article One, above, or at such other addresses as the parties may from time to time designate by written notice to the other party, as it may be changed by notice duly given hereunder.

11.2 Waiver. One or more waivers of any covenant, term, or condition of this Lease by either party shall not be construed by the other party as a waiver of a subsequent breach of the same covenant, term, or condition. The consent or approval of either party to or of any act by the other party of a nature requiring consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.

11.3 Relationship of Parties. Nothing contained in this Lease shall be deemed or construed by the parties or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association between Landlord and Tenant, it being expressly understood and agreed that neither the method of computation of rent nor any of the other provisions contained in this Lease nor any act or acts of the parties shall be deemed to create any relationship between Landlord and Tenant other than the relationship of landlord and tenant.

11.4 Governing Law. The law of the Commonwealth of Massachusetts shall govern the validity, performance, and enforcement of this Lease.

11.5 Successors. The provisions, covenants, and conditions of this Lease shall be binding on the legal representatives, heirs, successors, and permitted assigns of the respective parties.

11.7 Amendments. Except as provided herein, no subsequent alterations, amendments, changes, or additions to this Lease shall be binding upon Landlord or Tenant unless and until reduced to writing and signed by both parties. Submission of this Lease by Landlord to Tenant for examination shall not bind Landlord in any manner, and no lease, contract, option, agreement to lease, or other obligation of Landlord shall arise until this Lease is signed by Landlord and delivered to Tenant.

11.8 Quiet Enjoyment: Landlord agrees that, on payment of the rentals herein provided for and the performance of the covenants and agreements on the part of the Tenant to be performed hereunder, Tenant shall have peaceful and quiet use and possession of the Premises.

11.9 Severability. If any provision of this Lease is declared to be illegal, unenforceable, or void, then both parties shall be relieved of all obligations under that provision, provided, however, that the remainder of the Lease shall be enforced to the fullest extent permitted by law.

**IN WITNESS WHEREOF**, the Landlord and Tenant have caused this Lease Agreement to be executed under seal as of the day and year first above written.

NANTUCKET MEMORIAL AIRPORT  
COMMISSION

TENANT:

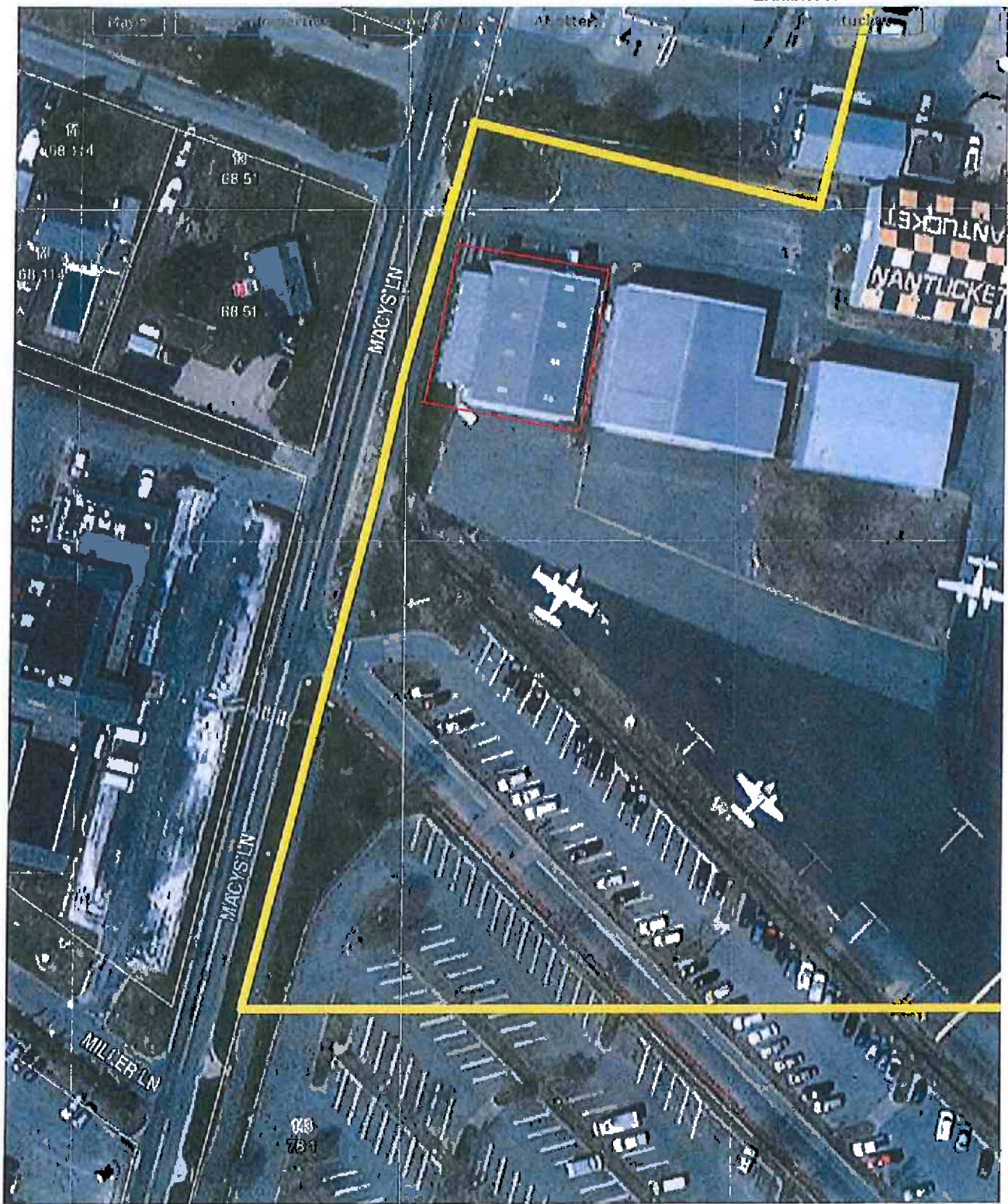
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