

ORder 8 – 11/12

Passage 7/18/11 (7-0) (Coyne out, Leeman absent)

NICHOLAS M. MAVODONES (MAYOR)

KEVIN J. DONOGHUE (1)

DAVID A. MARSHALL (2)

EDWARD J. SUSLOVIC (3)

CHERYL A. LEEMAN (4)

**CITY OF PORTLAND**

IN THE CITY COUNCIL

JOHN R. COYNE (5)

JOHN M. ANTON (A/L)

DORY RICHARDS WAXMAN (A/L)

JILL C. DUSON (A/L)

**ORDER APPROVING OPTION WITH NORTHEAST AIR TO EXTEND  
GROUND LEASE AT PORTLAND INTERNATIONAL JETPORT**

**ORDERED**, that the Option to Lease Real Estate between the City of Portland and Northeast Air to extend the term of a ground lease at the Portland International Jetport is hereby approved in substantially the form attached hereto.

## OPTION TO LEASE REAL ESTATE

This Option to Lease Real Estate ("Option Agreement") is made this \_\_\_day of \_\_\_\_\_, 2011, by and between the **CITY OF PORTLAND**, a municipal corporation with a principal location at 389 Congress Street, Portland, ME 04101 ("City") and **NORTHEAST AIR**, a Maine corporation with a principal location at the Portland International Jetport, 1011 Westbrook Street, Portland, ME 04102 ("Tenant")

**WHEREAS**, City owns and operates the Portland International Jetport (hereafter "Airport") and has a ground lease with Tenant dated August 12, 1976, as amended and assigned to Tenant by Irving Oil Company on October 4, 2000, (hereafter the "Lease"); and

**WHEREAS**, pursuant to said Lease, Tenant is a Fixed Base Operator at the Airport, providing various services to airlines and others using the Airport; and

**WHEREAS**, the Lease is due to expire on August 11, 2016; and

**WHEREAS**, Tenant wishes to continue its operations at the Airport into the future;

**NOW, THEREFORE**, for and in consideration of the covenants and obligations contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City hereby grants to Tenant an exclusive option to extend the Lease, on the following terms and conditions:

1. **OPTION.** City hereby grants to Tenant an Option to extend the term of the Lease for an additional twenty (20) year renewal term through August 11, 2036. Such extension shall be on the same terms and conditions as in the Lease except as otherwise amended in writing by both parties. The Lease shall be extended on the 60<sup>th</sup> day after notice by Tenant to City, unless City notifies Tenant in writing within the sixty (60) days of receipt of such notice that Tenant has not satisfied the conditions in Section 3 below. Tenant shall have sixty (60) days thereafter to comply with the conditions, and the Lease shall be extended on a month to month basis so long as Tenant is making a diligent effort to come into compliance. If Tenant does not satisfy the requirements of Section 3 by November 30, 2016, then either party may terminate this Agreement, and the Lease, on thirty (30) days prior written notice hand delivered to the persons and addresses herein, with no further liability thereunder for either party.

2. **OPTION TERM.** The Option period commences on the date of execution of this Agreement by both parties and automatically expires on 11:59 p.m. of the 60<sup>th</sup> day prior to August 11, 2016, and thereafter shall be null and void unless otherwise agreed in writing by the parties.

3. **CONDITIONS PRECEDENT.** Prior to extension of the Lease term as provided in Section 1, Tenant must:

a. Commit in writing to the expenditure of no less than Four Hundred Sixty Five Thousand Dollars (\$465,000), at its cost and expense, on improvements to the Lease site to be completed within 545 days of the date upon which the Option is exercised, unless otherwise agreed in writing by the parties, and grant of the extension by the City. If Tenant makes improvements to the Lease site prior to exercise of the option, such improvements, to the extent approved in advance in writing by the Airport Director, shall be credited against the \$465,000, as adjusted. The approval of the Airport Director shall not be unreasonably withheld. The \$465,000 will be adjusted by one-half the inflation rate during the option period until exercised, 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. Such commitment shall be made in writing to the City Manager with a copy to the Airport Director; and

b. Provide the City Manager, with a copy to the Airport Director and Corporation Counsel, with written notice of its intent to exercise the option and its proposal for the site improvements required under paragraph (a) above. Such notice must be given at least sixty (60) days prior to the August 11, 2016 expiration date of the Lease. Notice shall be hand-delivered to the following and sent by certified mail.

City Manager  
City of Portland  
389 Congress Street  
Portland, Maine 04101  
Pc: Corporation Counsel  
(same address)

Airport Director  
Portland International Jetport  
1001 Westbrook Street  
Portland, Maine 04102

c. Be in compliance with the material terms of the Lease, the Agreement dated May 27, 2011 and this Option Agreement.

4. **OPTION CONSIDERATION.** As consideration for this Option, Tenant has paid City a non-refundable fee of One Dollar (\$1.00), receipt of which is hereby acknowledged.

5. **EXCLUSIVITY OF OPTION.** This Option Agreement is exclusive and non-assignable and exists solely for the benefit of the named parties above. Should Tenant attempt to assign, convey, delegate, or transfer this Option Agreement without the City's express written permission, any such attempt shall be deemed null and void.

6. **TIMING.** Time is of the essence in this Option Agreement.

7. **GOVERNING LAW AND VENUE.** Except as provided in Section 10 below, this Option Agreement shall be governed, construed and interpreted by, through and under the Laws of the State of Maine. The parties further agree that the venue for any and all disputes related to this Option Agreement shall be Cumberland County courts. The parties agree to make good faith effort to resolve any disputes hereunder through the use of mediation prior to filing litigation.

8. **ENTIRE AGREEMENT; MODIFICATION.** This document sets forth the entire agreement and understanding between the parties relating to the subject matter herein and supersedes all prior discussions between the parties. No modification of or amendment to this Option Agreement will be effective unless in writing signed by the party to be charged.

9. **SUPERIOR LAW.** The parties acknowledge that the Airport is governed by federal laws and regulations and should any provision of this Agreement be deemed to be in violation of such laws and regulations during its term, the parties agree to make a good faith effort to amend this Option Agreement to so comply. Should the Federal Aviation Agency rule that the extension term itself is in violation of such law or regulation, then either party may terminate this Option Agreement with no further liability for either party.

10. **NO WAIVER.** No failure or delay by either party to exercise any right or to enforce any obligation herein, and, no course of dealing between the parties shall operate as a waiver of such right or obligation or be construed as or constitute a waiver of the right to enforce or insist upon compliance with such right or obligation in the future. Any single or partial exercise of any right or failure to enforce any obligation shall not preclude any other or further exercise, or the right to exercise any other right or enforce any other obligation

11. **NO LIABILITY.** No Councilor, director, partner, officer, 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. Neither party shall be liable for any incidental, special or consequential damages to the other party in the event of breach.

13. **APPROVAL.** This Option Agreement is subject to the approval of the Portland City Council. City Administration agrees to make a good faith effort to request such approval no later than July 18, 2011. The Council has full discretion to approve or disapprove this Agreement, in whole or in part, with no further liability for either party.

**IN WITNESS WHEREOF**, this Agreement is executed by the duly authorized representatives of City and Tenant this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

**WITNESS**

\_\_\_\_\_

**WITNESS**

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**CITY OF PORTLAND**

\_\_\_\_\_

Mark Rees, City Manager

**NORTHEAST AIR**

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\_\_\_\_\_  
Print Name and Title