

Order 86-18/19

Passage: 7-0 (Strimling, Duson absent) on 10/15/2018

Effective 10/25/2018

ETHAN K. STRIMLING (MAYOR)  
BELINDA S. RAY (1)  
SPENCER R. THIBODEAU (2)  
BRIAN E. BATSON (3)  
JUSTIN COSTA (4)

**CITY OF PORTLAND**  
IN THE CITY COUNCIL

KIMBERLY COOK (5)  
JILL C. DUSON (A/L)  
PIOUS ALI (A/L)  
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER APPROVING OPTION TO EXTEND NORTHEAST AIR  
NORTH APRON LEASE TO JUNE 30, 2056**

**ORDERED**, that the option to extend the Northeast Air North Apron Lease at the Portland International Jetport for twenty (20) years to June 30, 2056 is hereby approved 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 documents and any other related documents necessary or convenient to carry out the intent of this order.

**SEVENTH AMENDMENT TO  
AGREEMENT BETWEEN  
CITY OF PORTLAND  
AND  
NORTHEAST AIR**

**THIS SEVENTH AMENDMENT** is made as of this \_\_\_\_ day of \_\_\_\_\_, 2018, to the **INDENTURE OF LEASE** dated August 12, 1976 by and between the **CITY OF PORTLAND**, a body politic and corporate, located in Cumberland County and State of Maine (hereinafter the "**City**"), and **NORTHEASE AIR**, a Maine corporation with a mailing address of 987 Westbrook Street, Portland, Maine 04102 (hereinafter the "**Tenant**").

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

**WHEREAS**, by virtue of a Quitclaim Assignment of Lease and Quitclaim Deed to Fixtures to Irving Oil Corporation dated September 10, 1995, and an Assignment of Leasehold Interest between Irving Oil Corporation and Northeast Air dated October 4, 2000, the City and Tenant are parties to a certain Indenture of Lease between the City and Maine Aviation Corporation dated August 12, 1976, as amended by a certain Amendment dated September 23, 1976, a certain Amendment dated June 19, 1978, a certain Amendment dated July 17, 1980, a certain Amendment dated December 24, 1981, a certain Fourth [*sic*] Amendment dated February 22, 1983, and a certain Sixth Amendment to Agreement dated August 29, 2018 (collectively, the "Lease"); and

**WHEREAS**, the termination date of the Lease is August 11, 2036; and

**WHEREAS**, City and Tenant are also party to a certain Amended, Consolidated and Restated Ground Lease Agreement dated February 2, 2016 (the "Consolidated Lease"), which includes a renewal term provision providing Tenant an option to extend the term of the Consolidated Lease until June 30, 2056 subject to the terms and conditions of the Consolidated Lease; and

**WHEREAS**, City and Tenant wish to amend the Lease to add a renewal provision similar to that set forth in the Consolidated Lease.

**NOW, THEREFORE**, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to amend the Lease as follows:

1. Section 18 of the Lease is hereby deleted and replaced with the following:

Tenant shall have the option to renew this Lease for an additional term through June 30, 2056 (the "2056 Renewal Term") so long as Tenant has been and is continuing in full compliance with all of the terms and conditions of this Lease, Airport Minimum Standards and Rules and Regulations, and subject to renegotiation of the rent as provided below. Tenant shall provide City with no more than nine months and no less than six months' notice of its intent to renew prior to expiration of the current term of this Lease. City shall renew the Lease as outlined below, subject to the continuing compliance by Tenant with all the terms and conditions of the Lease. Such renewal shall be in writing signed by both parties.

Notwithstanding anything to the contrary in the Lease, including the rent provisions in pages 2-6 of the Lease, in the event Tenant renews this Lease for the 2056 Renewal Term, all rent under the Lease during said 2056 Renewal Term, including, without limitation, fixed annual and percentage rent, shall be in an amount to be negotiated in good faith by the parties. Notice of intent to negotiate new rent for the 2056 Renewal 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 2056 Renewal Term. 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.

2. SURVIVING TERMS. Any and all terms of the Lease not herein amended shall remain in full force and effect for the duration of the Lease as amended hereby and are hereby ratified. In the event of any conflict between the terms of this Amendment and the terms of the Lease and any exhibits thereto, the terms of this Amendment shall govern and control so long as this Amendment is in effect.

**IN WITNESS WHEREOF**, the said **CITY OF PORTLAND** has caused this Amendment to be signed and sealed by Jon P. Jennings, its City Manager, thereunto duly authorized, and **NORTHEAST AIR** has caused this Amendment to be signed and sealed by \_\_\_\_\_, its \_\_\_\_\_, thereunto duly authorized, the day and year first above written.

WITNESS:

**CITY OF PORTLAND**

\_\_\_\_\_

By: \_\_\_\_\_  
Jon P. Jennings  
Its City Manager

WITNESS:

**NORTHEAST AIR**

\_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_  
Its: \_\_\_\_\_

Approved as to form:

Approved as to funds:

\_\_\_\_\_  
City Corporation Counsel's Office

\_\_\_\_\_  
City Finance Director